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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2022

OR

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

For the transition period from _____ to _____

Commission file number: 001-34028

AMERICAN WATER WORKS COMPANY, INC.

(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of incorporation or organization)

51-0063696

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

1 Water Street, Camden, NJ 08102-1658

(Address of principal executive offices) (Zip Code)

(856) 955-4001

(Registrant's telephone number, including area code)

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common stock, par value \$0.01 per share	AWK	New York Stock Exchange

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

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

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

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

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

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

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

<u>Class</u>	<u>Shares Outstanding as of October 25, 2022</u>
Common Stock, par value \$0.01 per share	181,827,874

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Throughout this Quarterly Report on Form 10-Q (“Form 10-Q”), unless the context otherwise requires, references to the “Company” and “American Water” mean American Water Works Company, Inc. and all of its subsidiaries, taken together as a whole. References to the “parent company” mean American Water Works Company, Inc., without its subsidiaries.

The Company maintains a website at <https://amwater.com>, an Investor Relations website at <https://ir.amwater.com>, and a Diversity and Inclusion website at <https://diversityataw.com>. Information contained on the Company’s websites, including its Sustainability Report, its Inclusion and Diversity Annual Report, and other reports or documents, shall not be deemed incorporated into, or to be a part of, this report, and any website references included herein are not intended to be made through active hyperlinks.

FORWARD-LOOKING STATEMENTS

Statements included in Part I, Item 2—Management’s Discussion and Analysis of Financial Condition and Results of Operations and in other sections of this Form 10-Q are forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and the Private Securities Litigation Reform Act of 1995. In some cases, these forward-looking statements can be identified by words with prospective meanings such as “intend,” “plan,” “estimate,” “believe,” “anticipate,” “expect,” “predict,” “project,” “propose,” “assume,” “forecast,” “likely,” “uncertain,” “outlook,” “future,” “pending,” “goal,” “objective,” “potential,” “continue,” “seek to,” “may,” “can,” “should,” “will” and “could” or the negative of such terms or other variations or similar expressions. Forward-looking statements may relate to, among other things: the Company’s future financial performance, liquidity and cash flows; the timing and amount of rate and revenue adjustments, including through general rate case filings, filings for infrastructure surcharges and other governmental agency authorizations and proceedings, and filings to address regulatory lag; the Company’s growth and portfolio optimization strategies, including the timing and outcome of pending or future acquisition activity; the ability of the Company’s California subsidiary to obtain adequate alternative water supplies in lieu of diversions from the Carmel River; the amount and allocation of projected capital expenditures and related funding requirements; the Company’s ability to repay or refinance debt; the future impacts of increased or increasing financing costs, inflation and interest rates; the Company’s ability to execute its current and long-term business, operational and capital expenditures strategies; the Company’s ability to finance current operations, capital expenditures and growth initiatives by accessing the debt and equity capital markets, including the timing and amount of the Company’s future public equity issuances; the outcome and impact on the Company of governmental and regulatory proceedings and related potential fines, penalties and other sanctions; the ability to meet or exceed the Company’s stated environmental and sustainability goals, including its greenhouse gas emission reduction, water delivery efficiency and water system resiliency goals; the ability to complete, and the timing and efficacy of, the design, development, implementation and improvement of technology and other strategic initiatives; the impacts to the Company of the COVID-19 pandemic; the ability to capitalize on existing or future utility privatization opportunities; trends in the water and wastewater industries in which the Company operates, including macro trends with respect to the Company’s efforts related to customer, technology and work execution; regulatory, legislative, tax policy or legal developments; and impacts that future significant tax legislation may have on the Company and on its business, results of operations, cash flows and liquidity.

Forward-looking statements are predictions based on the Company’s current expectations and assumptions regarding future events. They are not guarantees or assurances of any outcomes, financial results, levels of activity, performance or achievements, and readers are cautioned not to place undue reliance upon them. These forward-looking statements are subject to a number of estimates, assumptions, known and unknown risks, uncertainties and other factors. The Company’s actual results may vary materially from those discussed in the forward-looking statements included herein as a result of the following important factors:

- the decisions of governmental and regulatory bodies, including decisions to raise or lower customer rates and regulatory responses to the COVID-19 pandemic;
- the timeliness and outcome of regulatory commissions’ and other authorities’ actions concerning rates, capital structure, authorized return on equity, capital investment, system acquisitions and dispositions, taxes, permitting, water supply and management, and other decisions;
- changes in customer demand for, and patterns of use of, water, such as may result from conservation efforts, impacts of the COVID-19 pandemic, or otherwise;
- limitations on the availability of the Company’s water supplies or sources of water, or restrictions on its use thereof, resulting from allocation rights, governmental or regulatory requirements and restrictions, drought, overuse or other factors;
- a loss of one or more large industrial or commercial customers due to adverse economic conditions, the COVID-19 pandemic, or other factors;
- changes in laws, governmental regulations and policies, including with respect to the environment, health and safety, data and consumer privacy, security and protection, water quality and water quality accountability, contaminants of emerging concern, public utility and tax regulations and policies, and impacts resulting from U.S., state and local elections and changes in federal, state and local executive administrations;
- the Company’s ability to collect, distribute, use, secure and store consumer data in compliance with current or future governmental laws, regulations and policies with respect to data and consumer privacy, security and protection;
- weather conditions and events, climate variability patterns, and natural disasters, including drought or abnormally high rainfall, prolonged and abnormal ice or freezing conditions, strong winds, coastal and intercoastal flooding, pandemics (including COVID-19) and epidemics, earthquakes, landslides, hurricanes, tornadoes, wildfires, electrical storms, sinkholes and solar flares;
- the outcome of litigation and similar governmental and regulatory proceedings, investigations or actions;

- the risks associated with the Company’s aging infrastructure, and its ability to appropriately improve the resiliency of or maintain and replace, current or future infrastructure and systems, including its technology and other assets, and manage the expansion of its businesses;
- exposure or infiltration of the Company’s technology and critical infrastructure systems, including the disclosure of sensitive, personal or confidential information contained therein, through physical or cyber attacks or other means;
- the Company’s ability to obtain permits and other approvals for projects and construction of various water and wastewater facilities;
- changes in the Company’s capital requirements;
- the Company’s ability to control operating expenses and to achieve operating efficiencies;
- the intentional or unintentional actions of a third party, including contamination of the Company’s water supplies or the water provided to its customers;
- the Company’s ability to obtain adequate and cost-effective supplies of pipe, equipment (including personal protective equipment), chemicals, electricity, fuel, water and other raw materials, and to address or mitigate supply chain constraints that may result in delays or shortages in, as well as increased costs of, supplies, products and materials that are critical to or used in the Company’s business operations;
- the Company’s ability to successfully meet its operational growth projections, either individually or in the aggregate, and capitalize on growth opportunities, including, among other things, with respect to:
 - acquiring, closing and successfully integrating regulated operations and market-based businesses;
 - the Company’s Military Services Group (“MSG”) entering into new military installation contracts, price redeterminations, and other agreements and contracts with the U.S. government; and
 - realizing anticipated benefits and synergies from new acquisitions;
- risks and uncertainties following the completion of the sale of the Company’s Homeowner Services Group (“HOS”) and its New York subsidiary, including:
 - the Company’s ability to receive any contingent consideration provided for in the HOS sale, as well as amounts due, payable and owing to the Company from time to time under the seller promissory note when due; and
 - the ability of the Company to redeploy successfully and timely the net proceeds of these transactions into the Company’s Regulated Businesses (as defined herein);
- risks and uncertainties associated with contracting with the U.S. government, including ongoing compliance with applicable government procurement and security regulations;
- cost overruns relating to improvements in or the expansion of the Company’s operations;
- the Company’s ability to successfully develop and implement new technologies and to protect related intellectual property;
- the Company’s ability to maintain safe work sites;
- the Company’s exposure to liabilities related to environmental laws and similar matters resulting from, among other things, water and wastewater service provided to customers;
- changes in general economic, political, business and financial market conditions, including without limitation conditions and collateral consequences associated with the COVID-19 pandemic;
- access to sufficient debt and/or equity capital on satisfactory terms and when and as needed to support operations and capital expenditures;
- fluctuations in inflation or interest rates, and the Company’s ability to address or mitigate the impacts thereof;
- the ability to comply with affirmative or negative covenants in the current or future indebtedness of the Company or any of its subsidiaries, or the issuance of new or modified credit ratings or outlooks by credit rating agencies with respect to the Company or any of its subsidiaries (or any current or future indebtedness thereof), which could increase financing costs or funding requirements and affect the Company’s or its subsidiaries’ ability to issue, repay or redeem debt, pay dividends or make distributions;
- fluctuations in the value of benefit plan assets and liabilities that could increase the Company’s cost and funding requirements;
- changes in federal or state general, income and other tax laws, including (i) future significant tax legislation, (ii) the availability of, or the Company’s compliance with, the terms of applicable tax credits and tax abatement programs, and (iii) the Company’s ability to utilize its state income tax net operating loss carryforwards;
- migration of customers into or out of the Company’s service territories;
- the use by municipalities of the power of eminent domain or other authority to condemn the systems of one or more of the Company’s utility subsidiaries, or the assertion by private landowners of similar rights against such utility subsidiaries;
- any difficulty or inability to obtain insurance for the Company, its inability to obtain insurance at acceptable rates and on acceptable terms and conditions, or its inability to obtain reimbursement under existing or future insurance programs and coverages for any losses sustained;
- the incurrence of impairment charges related to the Company’s goodwill or other assets;
- labor actions, including work stoppages and strikes;
- the Company’s ability to retain and attract qualified employees;

- civil disturbances or unrest, or terrorist threats or acts, or public apprehension about future disturbances, unrest, or terrorist threats or acts; and
- the impact of new, and changes to existing, accounting standards.

These forward-looking statements are qualified by, and should be read together with, the risks and uncertainties set forth above, and the risk factors and other statements contained in the Company's Annual Report on Form 10-K for the year ended December 31, 2021 (the "Form 10-K") and in this Form 10-Q, and readers should refer to such risks, uncertainties and risk factors in evaluating such forward-looking statements. Any forward-looking statements the Company makes shall speak only as of the date this Form 10-Q was filed with the U.S. Securities and Exchange Commission ("SEC"). Except as required by the federal securities laws, the Company does not have any obligation, and it specifically disclaims any undertaking or intention, to publicly update or revise any forward-looking statements, whether as a result of new information, future events, changed circumstances or otherwise. New factors emerge from time to time, and it is not possible for the Company to predict all such factors. Furthermore, it may not be possible to assess the impact of any such factor on the Company's businesses, either viewed independently or together, or the extent to which any factor, or combination of factors, may cause results to differ materially from those contained in any forward-looking statement. The foregoing factors should not be construed as exhaustive.

PART I. FINANCIAL INFORMATION

ITEM 1. CONSOLIDATED FINANCIAL STATEMENTS

American Water Works Company, Inc. and Subsidiary Companies

Consolidated Balance Sheets (Unaudited)

(In millions, except share and per share data)

	September 30, 2022	December 31, 2021
ASSETS		
Property, plant and equipment	\$ 29,062	\$ 27,413
Accumulated depreciation	(6,426)	(6,329)
Property, plant and equipment, net	22,636	21,084
Current assets:		
Cash and cash equivalents	77	116
Restricted funds	27	20
Accounts receivable, net of allowance for uncollectible accounts of \$64 and \$75, respectively	358	271
Unbilled revenues	273	248
Materials and supplies	93	57
Assets held for sale	—	683
Other	189	159
Total current assets	1,017	1,554
Regulatory and other long-term assets:		
Regulatory assets	1,075	1,051
Seller promissory note from the sale of the Homeowner Services Group	720	720
Operating lease right-of-use assets	90	92
Goodwill	1,143	1,139
Postretirement benefit assets	208	193
Other	237	242
Total regulatory and other long-term assets	3,473	3,437
Total assets	\$ 27,126	\$ 26,075

The accompanying notes are an integral part of these Consolidated Financial Statements.

American Water Works Company, Inc. and Subsidiary Companies
Consolidated Balance Sheets (Unaudited)

(In millions, except share and per share data)

	September 30, 2022	December 31, 2021
CAPITALIZATION AND LIABILITIES		
Capitalization:		
Common stock (\$0.01 par value; 500,000,000 shares authorized; 187,169,722 and 186,880,413 shares issued, respectively)	\$ 2	\$ 2
Paid-in-capital	6,813	6,781
Retained earnings	1,359	925
Accumulated other comprehensive loss	(39)	(45)
Treasury stock, at cost (5,342,477 and 5,269,324 shares, respectively)	(377)	(365)
Total common shareholders' equity	7,758	7,298
Long-term debt	10,940	10,341
Redeemable preferred stock at redemption value	3	3
Total long-term debt	10,943	10,344
Total capitalization	18,701	17,642
Current liabilities:		
Short-term debt	634	584
Current portion of long-term debt	265	57
Accounts payable	220	235
Accrued liabilities	610	701
Accrued taxes	69	176
Accrued interest	116	88
Liabilities related to assets held for sale	—	83
Other	216	217
Total current liabilities	2,130	2,141
Regulatory and other long-term liabilities:		
Advances for construction	306	284
Deferred income taxes and investment tax credits	2,372	2,421
Regulatory liabilities	1,614	1,600
Operating lease liabilities	78	80
Accrued pension expense	250	285
Other	186	180
Total regulatory and other long-term liabilities	4,806	4,850
Contributions in aid of construction	1,489	1,442
Commitments and contingencies (See Note 11)		
Total capitalization and liabilities	\$ 27,126	\$ 26,075

The accompanying notes are an integral part of these Consolidated Financial Statements.

American Water Works Company, Inc. and Subsidiary Companies
Consolidated Statements of Operations (Unaudited)

(In millions, except per share data)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
Operating revenues	\$ 1,082	\$ 1,092	\$ 2,861	\$ 2,979
Operating expenses:				
Operation and maintenance	416	436	1,156	1,286
Depreciation and amortization	164	161	485	476
General taxes	63	78	208	241
Total operating expenses, net	643	675	1,849	2,003
Operating income	439	417	1,012	976
Other income (expense):				
Interest expense	(111)	(101)	(317)	(300)
Interest income	14	—	39	—
Non-operating benefit costs, net	19	20	58	59
Other, net	6	4	38	11
Total other (expense) income	(72)	(77)	(182)	(230)
Income before income taxes	367	340	830	746
Provision for income taxes	70	62	157	128
Net income attributable to common shareholders	\$ 297	\$ 278	\$ 673	\$ 618
Basic earnings per share:				
Net income attributable to common shareholders	\$ 1.63	\$ 1.53	\$ 3.70	\$ 3.40
Diluted earnings per share:				
Net income attributable to common shareholders	\$ 1.63	\$ 1.53	\$ 3.70	\$ 3.40
Weighted-average common shares outstanding:				
Basic	182	182	182	182
Diluted	182	182	182	182

The accompanying notes are an integral part of these Consolidated Financial Statements.

American Water Works Company, Inc. and Subsidiary Companies
Consolidated Statements of Comprehensive Income (Unaudited)
(In millions)

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
Net income attributable to common shareholders	\$ 297	\$ 278	\$ 673	\$ 618
Other comprehensive income, net of tax:				
Defined benefit pension plan actuarial loss, net of tax of \$1 and \$0 for the three months ended September 30, 2022 and 2021, respectively, and \$1 and \$1 for the nine months ended September 30, 2022 and 2021, respectively	—	1	2	3
Unrealized gain on cash flow hedges, net of tax of \$0 and \$0 for the three months ended September 30, 2022 and 2021, respectively, and \$1 and \$0 for the nine months ended September 30, 2022 and 2021, respectively	1	—	4	1
Net other comprehensive income	1	1	6	4
Comprehensive income attributable to common shareholders	\$ 298	\$ 279	\$ 679	\$ 622

The accompanying notes are an integral part of these Consolidated Financial Statements.

American Water Works Company, Inc. and Subsidiary Companies
Consolidated Statements of Cash Flows (Unaudited)
(In millions)

	For the Nine Months Ended September 30,	
	2022	2021
CASH FLOWS FROM OPERATING ACTIVITIES		
Net income	\$ 673	\$ 618
Adjustments to reconcile to net cash flows provided by operating activities:		
Depreciation and amortization	485	476
Deferred income taxes and amortization of investment tax credits	13	121
Provision for losses on accounts receivable	17	28
Pension and non-pension postretirement benefits	(37)	(31)
Other non-cash, net	(31)	(34)
Changes in assets and liabilities:		
Receivables and unbilled revenues	(129)	(103)
Pension and non-pension postretirement benefit contributions	(40)	(31)
Accounts payable and accrued liabilities	(9)	28
Accrued taxes	(148)	25
Other assets and liabilities, net	(30)	(68)
Net cash provided by operating activities	764	1,029
CASH FLOWS FROM INVESTING ACTIVITIES		
Capital expenditures	(1,597)	(1,205)
Acquisitions, net of cash acquired	(288)	(78)
Net proceeds from sale of assets	608	—
Removal costs from property, plant and equipment retirements, net	(85)	(70)
Net cash used in investing activities	(1,362)	(1,353)
CASH FLOWS FROM FINANCING ACTIVITIES		
Proceeds from long-term debt	822	1,113
Repayments of long-term debt	(14)	(370)
Repayments of term loan	—	(500)
Net short-term borrowings (repayments) with maturities less than three months	50	(97)
Advances and contributions in aid of construction, net of refunds of \$13 and \$17 for the nine months ended September 30, 2022 and 2021, respectively	64	50
Debt issuance costs and make-whole premium on early debt redemption	(7)	(26)
Dividends paid	(348)	(318)
Other, net	(1)	(4)
Net cash provided by (used in) financing activities	566	(152)
Net decrease in cash, cash equivalents and restricted funds	(32)	(476)
Cash, cash equivalents and restricted funds at beginning of period	136	576
Cash, cash equivalents and restricted funds at end of period	\$ 104	\$ 100
Non-cash investing activity:		
Capital expenditures acquired on account but unpaid as of the end of period	\$ 347	\$ 238

The accompanying notes are an integral part of these Consolidated Financial Statements.

American Water Works Company, Inc. and Subsidiary Companies
Consolidated Statements of Changes in Shareholders' Equity (Unaudited)
(In millions)

	Common Stock			Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock		Total Shareholders' Equity
	Shares	Par Value	Paid-in-Capital			Shares	At Cost	
Balance as of December 31, 2021	186.9	\$ 2	\$ 6,781	\$ 925	\$ (45)	(5.3)	\$ (365)	\$ 7,298
Net income attributable to common shareholders	—	—	—	158	—	—	—	158
Common stock issuances (a)	0.2	—	15	—	—	—	(12)	3
Net other comprehensive income	—	—	—	—	1	—	—	1
Balance as of March 31, 2022	187.1	\$ 2	\$ 6,796	\$ 1,083	\$ (44)	(5.3)	\$ (377)	\$ 7,460
Net income attributable to common shareholders	—	—	—	218	—	—	—	218
Common stock issuances (a)	—	—	8	—	—	—	—	8
Net other comprehensive income	—	—	—	—	4	—	—	4
Dividends (\$0.6550 declared per common share)	—	—	—	(120)	—	—	—	(120)
Balance as of June 30, 2022	187.1	\$ 2	\$ 6,804	\$ 1,181	\$ (40)	(5.3)	\$ (377)	\$ 7,570
Net income attributable to common shareholders	—	—	—	297	—	—	—	297
Common stock issuances (a)	0.1	—	9	—	—	—	—	9
Net other comprehensive income	—	—	—	—	1	—	—	1
Dividends (\$0.6550 declared per common share)	—	—	—	(119)	—	—	—	(119)
Balance as of September 30, 2022	187.2	\$ 2	\$ 6,813	\$ 1,359	\$ (39)	(5.3)	\$ (377)	\$ 7,758

(a) Includes stock-based compensation, employee stock purchase plan and dividend reinvestment and direct stock purchase plan activity.

	Common Stock			Retained Earnings	Accumulated Other Comprehensive Loss	Treasury Stock		Total Shareholders' Equity
	Shares	Par Value	Paid-in-Capital			Shares	At Cost	
Balance as of December 31, 2020	186.5	\$ 2	\$ 6,747	\$ 102	\$ (49)	(5.2)	\$ (348)	\$ 6,454
Net income attributable to common shareholders	—	—	—	133	—	—	—	133
Common stock issuances (a)	0.2	—	10	—	—	(0.1)	(15)	(5)
Net other comprehensive income	—	—	—	—	1	—	—	1
Balance as of March 31, 2021	186.7	\$ 2	\$ 6,757	\$ 235	\$ (48)	(5.3)	\$ (363)	\$ 6,583
Net income attributable to common shareholders	—	—	—	207	—	—	—	207
Common stock issuances (a)	0.1	—	8	—	—	—	—	8
Net other comprehensive income	—	—	—	—	2	—	—	2
Dividends (\$0.6025 declared per common share)	—	—	—	(110)	—	—	—	(110)
Balance as of June 30, 2021	186.8	\$ 2	\$ 6,765	\$ 332	\$ (46)	(5.3)	\$ (363)	\$ 6,690
Net income attributable to common shareholders	—	—	—	278	—	—	—	278
Common stock issuances (a)	—	—	7	—	—	—	—	7
Net other comprehensive income	—	—	—	—	1	—	—	1
Dividends (\$0.6025 declared per common share)	—	—	—	(110)	—	—	—	(110)
Balance as of September 30, 2021	186.8	\$ 2	\$ 6,772	\$ 500	\$ (45)	(5.3)	\$ (363)	\$ 6,866

(a) Includes stock-based compensation, employee stock purchase plan and dividend reinvestment and direct stock purchase plan activity.

The accompanying notes are an integral part of these Consolidated Financial Statements.

American Water Works Company, Inc. and Subsidiary Companies
Notes to Consolidated Financial Statements (Unaudited)
(Unless otherwise noted, in millions, except per share data)

Note 1: Basis of Presentation

The unaudited Consolidated Financial Statements included in this report include the accounts of American Water Works Company, Inc. and all of its subsidiaries (the “Company” or “American Water”), in which a controlling interest is maintained after the elimination of intercompany balances and transactions. The financial statements have been prepared in accordance with accounting principles generally accepted in the United States (“GAAP”) for interim financial reporting, and the rules and regulations for reporting on Quarterly Reports on Form 10-Q (“Form 10-Q”). Accordingly, they do not contain certain information and disclosures required by GAAP for comprehensive financial statements. In the opinion of management, all adjustments necessary for a fair statement of the financial position as of September 30, 2022, and the results of operations and cash flows for all periods presented, have been made. All adjustments are of a normal, recurring nature, except as otherwise disclosed.

The unaudited Consolidated Financial Statements and Notes included in this report should be read in conjunction with the Company’s Annual Report on Form 10-K for the year ended December 31, 2021 (“Form 10-K”), which provides a more complete discussion of the Company’s accounting policies, financial position, operating results and other matters. The results of operations for interim periods are not necessarily indicative of the results that may be expected for the year, primarily due to the seasonality of the Company’s operations.

Note 2: Significant Accounting Policies

New Accounting Standards

Presented in the table below are new accounting standards that were adopted by the Company in 2022:

Standard	Description	Date of Adoption	Application	Effect on the Consolidated Financial Statements
Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity	Simplification of financial reporting associated with accounting for convertible instruments and contracts in an entity’s own equity. The standard reduced the number of accounting models for convertible debt instruments and convertible preferred stock. This will result in fewer embedded conversion features being separately recognized from the host contract. Earnings per share (“EPS”) calculations have been simplified for certain instruments.	January 1, 2022	Either modified retrospective or fully retrospective	The standard did not have a material impact on its Consolidated Financial Statements.
Disclosures by Business Entities about Government Assistance	The amendments in this update require additional disclosures regarding government grants and contributions. These disclosures require information on the following three items about government transactions to be provided: information on the nature of transactions and related accounting policy used to account for transactions, the line items on the balance sheet and income statement affected by these transactions including amounts applicable to each line, and significant terms and conditions of the transactions, including commitments and contingencies.	January 1, 2022	Either prospective or retrospective	The standard did not have a material impact on its Consolidated Financial Statements.

Presented in the table below are recently issued accounting standards that have not yet been adopted by the Company as of September 30, 2022:

Standard	Description	Date of Adoption	Application	Estimated Effect on the Consolidated Financial Statements
Accounting for Contract Assets and Contract Liabilities from Contracts with Customers	The guidance requires an acquirer recognize and measure contract assets and contract liabilities acquired in a business combination in accordance with Accounting Standards Codification Topic 606, as if it had originated the contracts. The amendments in this update also provide certain practical expedients for acquirers when recognizing and measuring acquired contract assets and contract liabilities from revenue contracts in a business combination.	January 1, 2023; early adoption permitted	Prospective	The Company is evaluating any impact on its Consolidated Financial Statements, as well as the timing of adoption.
Troubled Debt Restructurings and Vintage Disclosures	The main provisions of this standard eliminate the receivables accounting guidance for troubled debt restructurings (“TDRs”) by creditors while enhancing disclosure requirements when a borrower is experiencing financial difficulty. Entities must apply the loan refinancing and restructuring guidance for receivables to determine whether a modification results in a new loan or a continuation of an existing loan. Additionally, the amendments in this update require that an entity disclose current-period gross write-offs by year of origination for financing receivables and net investment in leases.	January 1, 2023; early adoption permitted	Prospective, with a modified retrospective option for amendments related to the recognition and measurement of TDRs.	The Company is evaluating any impact on its Consolidated Financial Statements, as well as the timing of adoption.

Allowance for Uncollectible Accounts

Allowances for uncollectible accounts are maintained for estimated probable losses resulting from the Company's inability to collect receivables from customers. Accounts that are outstanding longer than the payment terms are considered past due. A number of factors are considered in determining the allowance for uncollectible accounts, including the length of time receivables are past due, previous loss history, current economic and societal conditions and reasonable and supportable forecasts that affect the collectability of receivables from customers. The Company generally writes off accounts when they become uncollectible or are over a certain number of days outstanding.

Presented in the table below are the changes in the allowance for uncollectible accounts for the nine months ended September 30:

	2022	2021
Balance as of January 1	\$ (75)	\$ (60)
Amounts charged to expense	(17)	(28)
Amounts written off	19	22
Other, net (a)	9	(10)
Balance as of September 30	<u>\$ (64)</u>	<u>\$ (76)</u>

- (a) This portion of the allowance for uncollectible accounts is primarily related to COVID-19 related regulatory asset activity. The 2021 activity also includes the portion of the allowance related to the Company's New York subsidiary, which was sold on January 1, 2022, and is included in assets held for sale on the Consolidated Balance Sheets as of December 31, 2021. See Note 5—Acquisitions and Divestitures for additional information.

Reclassifications

Certain reclassifications have been made to prior periods in the Consolidated Financial Statements and Notes to conform to the current presentation.

Note 3: Regulatory Matters

General Rate Cases and Infrastructure Surcharges

Presented in the table below are annualized incremental revenues, excluding reductions for the amortization of excess accumulated deferred income tax (“EADIT”) that are generally offset in income tax expense, assuming a constant water sales volume, resulting from general rate case authorizations and infrastructure surcharge authorizations that became effective in the respective period:

(In millions)	During the Three Months Ended September 30,		During the Nine Months Ended September 30,	
	2022	2021	2022	2021
General rate cases by state (a):				
New Jersey (effective September 1, 2022)	\$ 61	\$ —	\$ 61	\$ —
Hawaii (effective July 1, 2022)	2	—	2	—
West Virginia (effective February 25, 2022)	—	—	15	—
California (effective January 1, 2022 and January 1, 2021)	—	—	13	22
Pennsylvania (effective January 1, 2022 and January 28, 2021)	—	—	20	70
Missouri (effective May 28, 2021)	—	—	—	22
Total general rate cases	<u>\$ 63</u>	<u>\$ —</u>	<u>\$ 111</u>	<u>\$ 114</u>
Infrastructure surcharges by state:				
Missouri (effective August 11, 2022 and February 1, 2022)	\$ 18	\$ —	\$ 30	\$ —
Tennessee (effective August 8, 2022 and January 1, 2021)	3	—	3	3
Pennsylvania (effective July 1, 2022, April 1, 2022 and January 1, 2021)	9	—	11	8
Kentucky (effective July 1, 2022 and July 1, 2021)	3	1	3	1
New Jersey (effective June 27, 2022 and June 28, 2021)	—	—	10	14
Indiana (effective March 21, 2022 and March 17, 2021)	—	—	8	8
West Virginia (effective March 1, 2022 and January 1, 2021)	—	—	3	5
Illinois (effective January 1, 2022 and January 1, 2021)	—	—	6	7
Total infrastructure surcharges	<u>\$ 33</u>	<u>\$ 1</u>	<u>\$ 74</u>	<u>\$ 46</u>

(a) Excludes authorized increase of \$7 million for the nine months ended September 30, 2021, for the Company’s New York subsidiary, which was sold on January 1, 2022. See Note 5—Acquisitions and Divestitures for additional information.

Effective October 1, 2022, the Company’s Pennsylvania subsidiary implemented an infrastructure surcharge for annualized incremental revenues of \$8 million.

On August 17, 2022, the Company’s New Jersey subsidiary was authorized additional annual revenues of \$61 million in its general rate case, effective September 1, 2022, excluding agreed to reductions for EADIT as a result of the Tax Cuts and Jobs Act of 2017 (the “TCJA”) (\$46 million including EADIT reductions). The order incorporated updated estimates of production costs, including chemicals, fuel and power costs. Beginning January 1, 2023, the Company’s New Jersey subsidiary will defer as a regulatory asset or liability, as appropriate, the difference between its pension expense and other post-employment benefits expense and those amounts included in base rates. The deferral period for this regulatory asset or liability will be two years or, if earlier, will end at the conclusion of the Company’s New Jersey subsidiary’s next general rate case. The Company’s New Jersey subsidiary also withdrew its request, without prejudice, to recover its existing authorized COVID-19-related regulatory asset in the general rate case and will seek recovery in a separate proceeding within the process established in the New Jersey Board of Public Utilities’ (the “NJBP”) generic COVID-19-related proceeding.

On February 24, 2022, the Company's West Virginia subsidiary ("WVAWC") was authorized additional annual revenues of \$15 million in its general rate case, effective February 25, 2022, excluding agreed to reductions for EADIT as a result of the TCJA. The EADIT reduction in revenues is \$2 million and the exclusion for infrastructure surcharges is \$10 million. Staff of the Public Service Commission of West Virginia moved for reconsideration of the final order on several grounds. WVAWC filed its response to the Staff's Petition for Reconsideration on March 28, 2022, in support of the authorized revenue requirement. On October 21, 2022, the Public Service Commission of West Virginia denied the motion for reconsideration.

On November 18, 2021, the California Public Utilities Commission (the "CPUC") unanimously approved a final decision in the test year 2021 general rate case filed by the Company's California subsidiary, which was retroactive to January 1, 2021. The Company's California subsidiary received authorization for additional annualized water and wastewater revenues of \$22 million, excluding agreed to reductions for EADIT as a result of the TCJA. The EADIT reduction in revenues is \$4 million and is offset by a like reduction in income tax expense. On February 16, 2022, the Company's California subsidiary received approval to increase rates by \$13 million in 2022 escalation increases, excluding \$4 million of reductions related to the TCJA, which was retroactive to January 1, 2022.

On March 2, 2021, an administrative law judge ("ALJ") in the Office of Administrative Law of New Jersey filed an initial decision with the NJBPU that recommended denial of a petition filed by the Company's New Jersey subsidiary, which sought approval of acquisition adjustments in rate base of \$29 million associated with the acquisitions of Shorelands Water Company, Inc. in 2017 and the Borough of Haddonfield's water and wastewater systems in 2015. On July 29, 2021, the NJBPU issued an order adopting the ALJ's initial decision without modification. The Company's New Jersey subsidiary filed a Notice of Appeal with the New Jersey Appellate Division on September 10, 2021. The Company's New Jersey subsidiary filed its brief in support of the appeal on March 4, 2022. Response and Reply briefs were filed on June 22, 2022, and August 4, 2022, respectively. There is no financial impact to the Company as a result of the NJBPU's order, since the acquisition adjustments are currently recorded as goodwill on the Consolidated Balance Sheets.

On February 25, 2021, the Company's Pennsylvania subsidiary was authorized additional annualized revenues of \$90 million, effective January 28, 2021, excluding agreed to reductions in revenues of \$19 million for EADIT as a result of the TCJA. The overall increase, net of TCJA reductions, is \$71 million in revenues combined over two steps. The first step was effective January 28, 2021 in the amount of \$70 million (\$51 million including TCJA reductions) and the second step was effective January 1, 2022 in the amount of \$20 million. The protected EADIT balance of \$200 million is being returned to customers using the average rate assumptions method, and the unprotected EADIT balance of \$116 million is being returned to customers over 20 years. The \$19 million annual reduction to revenue is comprised of both the protected and unprotected EADIT amortizations and a portion of catch-up period EADIT. A bill credit of \$11 million annually for two years returns to customers the remainder of the EADIT catch-up period amortization. The catch-up period of January 1, 2018, through December 31, 2020, covers the period from when the lower federal corporate income tax rate went into effect until new base rates went into effect and will be amortized over two years.

Pending General Rate Case Filings

On July 1, 2022, the Company's California subsidiary filed a general rate case requesting an increase in 2024 revenue of \$57 million and a total increase in revenue over the 2024 to 2026 period of \$99 million. The requested increase excludes proposed reductions for EADIT of \$1 million as a result of TCJA.

On July 1, 2022, the Company's Missouri subsidiary filed a general rate case requesting \$116 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA (\$105 million including EADIT reductions) and infrastructure surcharges.

On April 29, 2022, the Company's Pennsylvania subsidiary filed a general rate case requesting \$185 million in additional annualized water and wastewater revenues excluding proposed reductions for EADIT as a result of TCJA and infrastructure surcharges. On October 11, 2022, the Company's Pennsylvania subsidiary, the Pennsylvania Public Utility Commission's (the "PaPUC") Bureau of Investigation and Enforcement, the Pennsylvania Office of Consumer Advocate, and certain other parties to the general rate case jointly filed a petition for settlement with the PaPUC providing for a total annualized revenue increase of \$138 million. The petition for settlement provides for an annualized revenue increase of \$150 million excluding agreed to reductions for EADIT as a result of the TCJA (\$138 million including EADIT reductions). In addition, the petition for settlement incorporates updated estimates of pension and other post-employment benefits expense, as well as increases in chemicals, fuel and power costs. Furthermore, the petition for settlement includes recovery of the COVID-19 deferral balance. An ALJ will review the petition for settlement and render a recommended decision to the PaPUC on whether it should approve the settlement. After its review of the matter, the PaPUC will issue a final order, which the Company expects to occur by January 2023, with new rates to be effective as of January 28, 2023.

On February 10, 2022, the Company's Illinois subsidiary filed a general rate case requesting \$71 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA and infrastructure surcharges. The requested increase was subsequently updated in the Illinois subsidiary's June 29, 2022, rebuttal filing, with the request adjusted to \$85 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA (\$83 million including EADIT reductions) and infrastructure surcharges. The request was increased in the rebuttal filing to capture higher production costs and expected higher pension and other post-employment benefit costs. Evidentiary hearings were held on August 10, 2022, and on October 28, 2022, the ALJs issued a proposed order recommending \$69 million in additional annualized revenues, excluding proposed reductions for EADIT as a result of TCJA and infrastructure surcharges (\$67 million including EADIT reductions), on a proposed return on equity of 9.78%. The final order is expected in late 2022 or early January 2023, with rates effective in January 2023.

On November 15, 2021, the Company's Virginia subsidiary filed a general rate case requesting \$15 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA. Interim rates were effective on May 1, 2022, and the difference between interim and final approved rates is subject to refund. On September 26, 2022, a settlement agreement, supported by all parties except one, was filed with the Virginia State Corporation Commission for a \$12 million annual revenue increase excluding agreed to reductions for EADIT as a result of TCJA (\$11 million including EADIT reductions). Public hearings were held on September 27 and 28, 2022. A final decision on this matter is expected in the first quarter of 2023.

The Company's California subsidiary submitted its application on May 3, 2021, to set its cost of capital for 2022 through 2024. According to the CPUC's procedural schedule, a decision setting the authorized cost of capital is expected to be issued in the fourth quarter of 2022.

Pending Infrastructure Surcharge Filings

On September 9, 2022, the Company's Missouri subsidiary filed an infrastructure surcharge proceeding requesting \$13 million in additional annualized revenues.

On June 30, 2022, WVAWC filed an infrastructure surcharge proceeding requesting \$8 million in additional annualized revenues.

Other Regulatory Matters

In September 2020, the CPUC released a decision under its Low-Income Rate Payer Assistance program rulemaking that required the Company's California subsidiary to file a proposal to alter its water revenue adjustment mechanism in its next general rate case filing in 2022, which would become effective in January 2024. On October 5, 2020, the Company's California subsidiary filed an application for rehearing of the decision and following the CPUC's denial of its rehearing application in September 2021, the Company's California subsidiary filed a petition for writ of review with the California Supreme Court on October 27, 2021. On May 18, 2022, the California Supreme Court issued a writ of review for the Company's California subsidiary's petition and the petitions filed by other entities challenging the decision. Independent of the judicial challenge, California passed Senate Bill 1469, which allows the CPUC to consider and authorize the implementation of a mechanism that separates the water corporation's revenue and its water sales. Legislation was signed by the Governor on September 30, 2022, and will become effective on January 1, 2023. In response to the legislation, on October 10, 2022, the Company's California subsidiary filed a request for the CPUC to consider the continuation of its decoupling mechanism in its pending 2022 general rate case, which would be effective 2024 through 2026.

Note 4: Revenue Recognition

Disaggregated Revenues

The Company's primary business involves the ownership of utilities that provide water and wastewater services to residential, commercial, industrial, public authority, fire service and sale for resale customers, collectively presented as the "Regulated Businesses." The Company also operates other market-based businesses that provide water and wastewater services to the U.S. government on military installations, as well as municipalities, and utility customers, collectively included within "Market-Based Businesses and Other."

Presented in the table below are operating revenues disaggregated for the three months ended September 30, 2022:

	Revenues from Contracts with Customers	Other Revenues Not from Contracts with Customers (a)	Total Operating Revenues
Regulated Businesses:			
Water services:			
Residential	\$ 556	\$ 1	\$ 557
Commercial	207	1	208
Fire service	36	—	36
Industrial	41	1	42
Public and other	82	—	82
Total water services	922	3	925
Wastewater services:			
Residential	45	1	46
Commercial	12	—	12
Industrial	1	—	1
Public and other	7	—	7
Total wastewater services	65	1	66
Miscellaneous utility charges	9	—	9
Alternative revenue programs	—	1	1
Lease contract revenue	—	2	2
Total Regulated Businesses	996	7	1,003
Market-Based Businesses and Other	80	(1)	79
Total operating revenues	\$ 1,076	\$ 6	\$ 1,082

- (a) Includes revenues associated with provisional rates, alternative revenue programs, lease contracts and intercompany rent, which are outside the scope of Accounting Standards Codification Topic 606, *Revenue From Contracts With Customers* (“ASC 606”), and accounted for under other existing GAAP.

Presented in the table below are operating revenues disaggregated for the three months ended September 30, 2021:

	Revenues from Contracts with Customers	Other Revenues Not from Contracts with Customers (a)	Total Operating Revenues
Regulated Businesses:			
Water services:			
Residential	\$ 545	\$ —	\$ 545
Commercial	197	—	197
Fire service	38	—	38
Industrial	39	—	39
Public and other	72	—	72
Total water services	891	—	891
Wastewater services:			
Residential	38	—	38
Commercial	10	—	10
Industrial	1	—	1
Public and other	4	—	4
Total wastewater services	53	—	53
Miscellaneous utility charges	2	—	2
Alternative revenue programs	—	(4)	(4)
Lease contract revenue	—	2	2
Total Regulated Businesses	946	(2)	944
Market-Based Businesses and Other	148	—	148
Total operating revenues	\$ 1,094	\$ (2)	\$ 1,092

(a) Includes revenues associated with provisional rates, alternative revenue programs, lease contracts and intercompany rent, which are outside the scope of ASC 606, and accounted for under other existing GAAP.

Presented in the table below are operating revenues disaggregated for the nine months ended September 30, 2022:

	Revenues from Contracts with Customers	Other Revenues Not from Contracts with Customers (a)	Total Operating Revenues
Regulated Businesses:			
Water services:			
Residential	\$ 1,467	\$ 2	\$ 1,469
Commercial	534	1	535
Fire service	109	—	109
Industrial	115	1	116
Public and other	195	—	195
Total water services	2,420	4	2,424
Wastewater services:			
Residential	128	1	129
Commercial	33	—	33
Industrial	3	—	3
Public and other	14	—	14
Total wastewater services	178	1	179
Miscellaneous utility charges	27	—	27
Alternative revenue programs	—	10	10
Lease contract revenue	—	6	6
Total Regulated Businesses	2,625	21	2,646
Market-Based Businesses and Other	216	(1)	215
Total operating revenues	\$ 2,841	\$ 20	\$ 2,861

(a) Includes revenues associated with provisional rates, alternative revenue programs, lease contracts and intercompany rent, which are outside the scope of ASC 606, and accounted for under other existing GAAP.

Presented in the table below are operating revenues disaggregated for the nine months ended September 30, 2021:

	Revenues from Contracts with Customers	Other Revenues Not from Contracts with Customers (a)	Total Operating Revenues
Regulated Businesses:			
Water services:			
Residential	\$ 1,466	\$ —	\$ 1,466
Commercial	511	—	511
Fire service	112	—	112
Industrial	105	—	105
Public and other	172	—	172
Total water services	2,366	—	2,366
Wastewater services:			
Residential	112	—	112
Commercial	28	—	28
Industrial	3	—	3
Public and other	12	—	12
Total wastewater services	155	—	155
Miscellaneous utility charges	18	—	18
Alternative revenue programs	—	12	12
Lease contract revenue	—	5	5
Total Regulated Businesses	2,539	17	2,556
Market-Based Businesses and Other	424	(1)	423
Total operating revenues	\$ 2,963	\$ 16	\$ 2,979

(a) Includes revenues associated with provisional rates, alternative revenue programs, lease contracts and intercompany rent, which are outside the scope of ASC 606, and accounted for under other existing GAAP.

Contract Balances

Contract assets and contract liabilities are the result of timing differences between revenue recognition, billings and cash collections. In Market-Based Businesses and Other, certain contracts are billed as work progresses in accordance with agreed-upon contractual terms, either at periodic intervals or upon achievement of contractual milestones. Contract assets are recorded when billing occurs subsequent to revenue recognition and are reclassified to accounts receivable when billed and the right to consideration becomes unconditional. Contract liabilities are recorded when the Company receives advances from customers prior to satisfying contractual performance obligations, particularly for construction contracts, and are recognized as revenue when the associated performance obligations are satisfied.

Contract assets of \$76 million and \$71 million are included in unbilled revenues on the Consolidated Balance Sheets as of September 30, 2022, and December 31, 2021, respectively. There were \$124 million of contract assets added during the nine months ended September 30, 2022, and \$119 million of contract assets were transferred to accounts receivable during the same period. There were \$60 million of contract assets added during the nine months ended September 30, 2021, and \$31 million of contract assets were transferred to accounts receivable during the same period.

Contract liabilities of \$75 million and \$19 million are included in other current liabilities on the Consolidated Balance Sheets as of September 30, 2022, and December 31, 2021, respectively. There were \$150 million of contract liabilities added during the nine months ended September 30, 2022, and \$94 million of contract liabilities were recognized as revenue during the same period. There were \$141 million of contract liabilities added during the nine months ended September 30, 2021, and \$137 million of contract liabilities were recognized as revenue during the same period.

Remaining Performance Obligations

Remaining performance obligations (“RPOs”) represent revenues the Company expects to recognize in the future from contracts that are in progress. The Company enters into agreements for the provision of services to water and wastewater facilities for the U.S. military, municipalities and other customers. As of September 30, 2022, the Company’s operation and maintenance (“O&M”) and capital improvement contracts in Market-Based Businesses and Other have RPOs. Contracts with the U.S. government for work on various military installations expire between 2051 and 2073 and have RPOs of \$7.0 billion as of September 30, 2022, as measured by estimated remaining contract revenue. Such contracts are subject to customary termination provisions held by the U.S. government, prior to the agreed-upon contract expiration. Contracts with municipalities and commercial customers expire between 2026 and 2038 and have RPOs of \$542 million as of September 30, 2022, as measured by estimated remaining contract revenue. Some of the Company’s long-term contracts to operate and maintain the federal government’s, a municipality’s or other party’s water or wastewater treatment and delivery facilities include responsibility for certain maintenance for some of those facilities, in exchange for an annual fee. Unless specifically required to perform certain maintenance activities, the maintenance costs are recognized when the maintenance is performed.

Note 5: Acquisitions and Divestitures

Regulated Businesses

Acquisitions

On May 27, 2022, the Company’s Pennsylvania subsidiary acquired the public wastewater collection and treatment system assets from the York City Sewer Authority and the City of York for a purchase price of \$235 million, in cash, \$20 million of which was funded as a deposit to the seller in April 2021 in connection with the execution of the acquisition agreement. The system assets serve, directly and indirectly through bulk contracts, more than 45,000 customers. The acquisition was accounted for as a business combination and the preliminary purchase price allocation will be finalized once the valuation of assets acquired has been completed, no later than one year after the acquisition date. The preliminary purchase price allocation consisted primarily of \$231 million of utility plant and \$4 million of goodwill, which is reported in the Company’s Regulated Businesses segment.

In addition to the acquisition of the York wastewater system assets noted above, during the nine months ended September 30, 2022, the Company closed on the acquisition of 14 regulated water and wastewater systems for an aggregate purchase price of \$73 million. Two of these acquisitions were accounted for as a business combination. Assets acquired from these acquisitions consisted principally of utility plant.

The pro forma impact of the Company’s acquisitions was not material to the Consolidated Statements of Operations for the periods ended September 30, 2022 and 2021.

Pending Acquisitions

On October 11, 2022, the Company’s Pennsylvania subsidiary entered into an agreement to acquire the wastewater assets of the Butler Area Sewer Authority for a total purchase price of \$232 million in cash, subject to adjustment as provided for in the Asset Purchase Agreement. This system provides wastewater service for approximately 14,700 customer connections. The Company expects to close this acquisition by the end of 2023, pending regulatory approval.

On March 29, 2021, the Company’s New Jersey subsidiary entered into an agreement to acquire the water and wastewater assets of Egg Harbor City for \$22 million. The water and wastewater systems currently serve approximately 1,500 customers each, or 3,000 combined, and are being sold through the New Jersey Water Infrastructure Protection Act process. The Company expects to close this acquisition in late 2022 or early 2023.

Sale of New York American Water Company, Inc.

On January 1, 2022, the Company completed the previously disclosed sale of its regulated utility operations in New York to Liberty Utilities (Eastern Water Holdings) Corp. (“Liberty”), an indirect, wholly owned subsidiary of Algonquin Power & Utilities Corp. Liberty purchased from the Company all of the capital stock of the Company’s New York subsidiary for a purchase price of \$608 million in cash. During the first quarter of 2022, the Company recognized a loss on sale of \$2 million.

Sale of Michigan American Water Company

On February 4, 2022, the Company completed the sale of its operations in Michigan for \$6 million.

Sale of Homeowner Services Group

On December 9, 2021, the Company sold all of the equity interests in subsidiaries that comprised the Company's Homeowner Services Group ("HOS") to a wholly owned subsidiary of funds advised by Apax Partners LLP, a global private equity advisory firm (the "Buyer"), for total consideration of approximately \$1.275 billion, resulting in pre-tax gain on sale of \$748 million during the fourth quarter of 2021. The consideration was comprised of \$480 million in cash, a seller promissory note issued by the Buyer in the principal amount of \$720 million, and a contingent cash payment of \$75 million payable upon satisfaction of certain conditions on or before December 31, 2023. See Note 13—Fair Value of Financial Information for additional information relating to the seller promissory note and contingent cash payment. For the nine months ended September 30, 2022, the Company recorded post-closing adjustments, primarily related to working capital, of pre-tax income of \$20 million, which is included in Other, net on the Consolidated Statements of Operations.

The seller note has a five-year term, is payable in cash, and bears interest at a rate of 7.00% per year during the term. The Company recognized \$13 million and \$38 million of interest income during the three and nine months ended September 30, 2022, respectively, from the seller note.

The Company and the Buyer also entered into revenue share agreements, pursuant to which the Company is to receive 10% of the revenue generated from customers who are billed for home warranty services through an applicable Company subsidiary (an "on-bill" arrangement), and 15% of the revenue generated from any future on-bill arrangements entered into after the closing. Unless earlier terminated, this agreement has a term of up to 15 years, which may be renewed for up to two five-year periods. The Company recognized \$2 million and \$6 million of income during the three and nine months ended September 30, 2022, respectively, from the revenue share agreements, which is included in Other, net on the Consolidated Statements of Operations.

Note 6: Shareholders' Equity

Accumulated Other Comprehensive Loss

Presented in the table below are the changes in accumulated other comprehensive loss by component, net of tax, for the nine months ended September 30, 2022 and 2021, respectively:

	Defined Benefit Pension Plans			Loss on Cash Flow Hedges	Accumulated Other Comprehensive Loss
	Employee Benefit Plan Funded Status	Amortization of Prior Service Cost	Amortization of Actuarial Loss		
Balance as of December 31, 2021	\$ (107)	\$ 1	\$ 67	\$ (6)	\$ (45)
Other comprehensive income before reclassifications	—	—	—	4	4
Amounts reclassified from accumulated other comprehensive loss	—	—	2	—	2
Net other comprehensive income	—	—	2	4	6
Balance as of September 30, 2022	\$ (107)	\$ 1	\$ 69	\$ (2)	\$ (39)
Balance as of December 31, 2020	\$ (106)	\$ 1	\$ 63	\$ (7)	\$ (49)
Other comprehensive loss before reclassifications	—	—	—	1	1
Amounts reclassified from accumulated other comprehensive loss	—	—	3	—	3
Net other comprehensive income	—	—	3	1	4
Balance as of September 30, 2021	\$ (106)	\$ 1	\$ 66	\$ (6)	\$ (45)

The Company does not reclassify the amortization of defined benefit pension cost components from accumulated other comprehensive loss directly to net income in its entirety, as a portion of these costs have been deferred as a regulatory asset. These accumulated other comprehensive loss components are included in the computation of net periodic pension cost.

The amortization of the gain (loss) on cash flow hedges is reclassified to net income during the period incurred and is included in interest, net in the accompanying Consolidated Statements of Operations.

Dividends

On September 1, 2022, the Company paid a quarterly cash dividend of \$0.6550 per share to shareholders of record as of August 9, 2022.

On October 27, 2022, the Company's Board of Directors declared a quarterly cash dividend payment of \$0.6550 per share, payable on December 1, 2022, to shareholders of record as of November 8, 2022. Future dividends, when and as declared at the discretion of the Board of Directors, will be dependent upon future earnings and cash flows, compliance with various regulatory, financial and legal requirements, and other factors. See Note 10—Shareholders' Equity in the Notes to Consolidated Financial Statements in the Company's Form 10-K for additional information regarding the payment of dividends on the Company's common stock.

Note 7: Long-Term Debt

On May 5, 2022, American Water Capital Corp. ("AWCC"), issued \$800 million aggregate principal amount of 4.45% senior notes due 2032. At closing, AWCC received, after deduction of underwriting discounts and before deduction of offering expenses, net proceeds of approximately \$792 million. AWCC used the net proceeds of the offering: (i) to lend funds to the Company and its subsidiaries in its Regulated Businesses segment; (ii) to repay AWCC's commercial paper obligations; and (iii) for general corporate purposes.

In April 2022, the Company entered into several 10-year treasury lock agreements, with notional amounts totaling \$400 million, and an average fixed interest rate of 2.89%. The Company designated these treasury lock agreements as cash flow hedges, with their fair value recorded in accumulated other comprehensive gain or loss. In May 2022, the Company terminated the treasury lock agreements, realizing a net gain of approximately \$4 million, to be amortized through interest, net over a 10-year period, in accordance with the tenor of the debt issuance on May 5, 2022. No ineffectiveness was recognized on hedging instruments for the three and nine months ended September 30, 2022.

In addition to the senior notes issued by AWCC as described above, during the nine months ended September 30, 2022, the Company's regulated subsidiaries issued in the aggregate \$22 million of private activity bonds and government funded debt in multiple transactions with annual interest rates ranging from 0.00% to 1.75%, with a weighted average interest rate of 1.05%, maturing in 2027 through 2042. During the nine months ended September 30, 2022, AWCC and the Company's regulated subsidiaries made sinking fund payments for, or repaid at maturity, \$14 million in aggregate principal amount of outstanding long-term debt, with annual interest rates ranging from 0.00% to 12.25%, a weighted average interest rate of 2.18%, and maturity dates ranging from 2022 to 2051.

Note 8: Short-Term Debt

Liquidity needs for capital investment, working capital and other financial commitments are generally funded through cash flows from operations, public and private debt offerings, commercial paper markets and, if and to the extent necessary, borrowings under the AWCC revolving credit facility, and, in the future, issuances of equity. Additionally, proceeds from the aforementioned sales of HOS and the Company's New York subsidiary will be used primarily for capital investment in the Regulated Businesses.

The Company maintains an unsecured revolving credit facility with a diversified group of financial institutions. AWCC's revolving credit facility is used principally to support its commercial paper program, to provide additional liquidity support, and to provide a sublimit for the issuance of up to \$150 million in letters of credit. On October 26, 2022, AWCC and certain lenders amended and restated the credit agreement with respect to the revolving credit facility to, among other things, increase the maximum commitments under the facility to \$2.75 billion from \$2.25 billion and to extend the expiration date of the facility to October 2027 from March 2025. Subject to satisfying certain conditions, the credit agreement also permits AWCC to increase the maximum commitment under the facility by up to an aggregate of \$500 million and to request extensions of its expiration date for up to two one-year periods. Also, effective October 26, 2022, the maximum aggregate principal amount of short-term borrowings authorized for issuance under AWCC's commercial paper program was increased to \$2.60 billion from \$2.10 billion.

Short-term debt consists of commercial paper borrowings totaling \$634 million and \$584 million as of September 30, 2022, and December 31, 2021, respectively. The weighted-average interest rate on AWCC's outstanding short-term borrowings was approximately 3.22% and 0.20% at September 30, 2022 and December 31, 2021, respectively. As of September 30, 2022, and December 31, 2021, there were no borrowings outstanding under the revolving credit facility, and there were no commercial paper borrowings outstanding with maturities greater than three months.

Presented in the tables below is the aggregate credit facility commitments, commercial paper limit and letter of credit availability under the revolving credit facility, as well as the available capacity for each:

(In millions)	As of September 30, 2022		
	Commercial Paper Limit	Letters of Credit	Total (a)
Total availability	\$ 2,100	\$ 150	\$ 2,250
Outstanding debt	(634)	(75)	(709)
Remaining availability as of September 30, 2022	\$ 1,466	\$ 75	\$ 1,541

(a) Total remaining availability of \$1.54 billion as of September 30, 2022, may be accessed through revolver draws.

(In millions)	As of December 31, 2021		
	Commercial Paper Limit	Letters of Credit	Total (a)
Total availability	\$ 2,100	\$ 150	\$ 2,250
Outstanding debt	(584)	(76)	(660)
Remaining availability as of December 31, 2021	\$ 1,516	\$ 74	\$ 1,590

(a) Total remaining availability of \$1.59 billion as of December 31, 2021, may be accessed through revolver draws.

Presented in the table below is the Company's total available liquidity as of September 30, 2022 and December 31, 2021, respectively:

(In millions)	Cash and Cash Equivalents	Availability on Revolving Credit Facility	Total Available Liquidity
Available liquidity as of September 30, 2022	\$ 77	\$ 1,541	\$ 1,618
Available liquidity as of December 31, 2021	\$ 116	\$ 1,590	\$ 1,706

Note 9: Income Taxes

The Company's effective income tax rate was 19.1% and 18.2% for the three months ended September 30, 2022 and 2021, respectively, and 18.9% and 17.2% for the nine months ended September 30, 2022 and 2021, respectively. The increase in the Company's effective income tax rate for the three and nine months ended September 30, 2022, was primarily due to a decrease in the amortization of EADIT pursuant to regulatory orders.

Other Tax Matters

On July 8, 2022, Pennsylvania Governor Tom Wolf signed into law Act 53 of 2022, which reduces the Pennsylvania state corporate income tax rate in yearly increments starting January 1, 2023, with a new rate of 8.99% and ending effective January 1, 2031, with a rate of 4.99%. Under Accounting Standards Codification Topic 740, Income Taxes ("ASC 740"), the tax effects of changes in tax laws must be recognized in the period in which the law is enacted. ASC 740 also requires deferred tax assets and liabilities to be measured at the enacted tax rate expected to apply when temporary differences are to be realized or settled. As such, the Company's accumulated deferred income tax ("ADIT") balances for their Pennsylvania subsidiary were remeasured during the quarter ended September 30, 2022, to estimate the impacts of the recently enacted tax rate. The remeasurement reduces the ADIT liability by \$132 million and creates a corresponding regulatory liability since the EADIT is expected to be returned to customers in a future rate case. However, since the rate is declining in yearly increments, the total EADIT will be subject to change. The rate change impacts to the non-regulated companies have been deemed immaterial.

On September 27, 2022, Iowa's Department of Revenue announced a reduction in the state's top corporate rate from 9.8% to 8.4% effective January 1, 2023. The remeasurement reduces the ADIT liability for the Company's Iowa subsidiary by \$1 million and creates a corresponding regulatory liability since the EADIT balance is expected to be returned to customers in a future rate case. The rate impacts to the non-regulated companies have been deemed immaterial.

Note 10: Pension and Other Postretirement Benefits

Presented in the table below are the components of net periodic benefit credit:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
Components of net periodic pension benefit credit:				
Service cost	\$ 8	\$ 9	\$ 23	\$ 27
Interest cost	16	16	48	49
Expected return on plan assets	(31)	(31)	(92)	(95)
Amortization of prior service credit	(1)	(1)	(3)	(2)
Amortization of actuarial loss	5	7	15	20
Net periodic pension benefit credit	<u>\$ (3)</u>	<u>\$ —</u>	<u>\$ (9)</u>	<u>\$ (1)</u>
Components of net periodic other postretirement benefit credit:				
Service cost	\$ 1	\$ 1	\$ 3	\$ 3
Interest cost	3	2	8	6
Expected return on plan assets	(5)	(5)	(15)	(15)
Amortization of prior service credit	(8)	(8)	(24)	(24)
Net periodic other postretirement benefit credit	<u>\$ (9)</u>	<u>\$ (10)</u>	<u>\$ (28)</u>	<u>\$ (30)</u>

The Company contributed \$9 million and \$27 million for the funding of its defined benefit pension plans for the three and nine months ended September 30, 2022, respectively, and contributed \$10 million and \$28 million for the funding of its defined benefit pension plans for the three and nine months ended September 30, 2021, respectively. There were no material contributions and \$13 million of contributions for the funding of the Company's other postretirement benefit plans for the three and nine months ended September 30, 2022, respectively, and \$3 million of contributions for each of the three and nine months ended September 30, 2021. The Company expects to make pension contributions to the plan trusts of \$9 million during the remainder of 2022.

Note 11: Commitments and Contingencies
Contingencies

The Company is routinely involved in legal actions incident to the normal conduct of its business. As of September 30, 2022, the Company has accrued approximately \$4 million of probable loss contingencies and has estimated that the maximum amount of losses associated with reasonably possible loss contingencies that can be reasonably estimated is \$3 million. For certain matters, claims and actions, the Company is unable to estimate possible losses. The Company believes that damages or settlements, if any, recovered by plaintiffs in such matters, claims or actions, other than as described in this Note 11—Commitments and Contingencies, will not have a material adverse effect on the Company.

West Virginia Elk River Freedom Industries Chemical Spill

On June 8, 2018, the U.S. District Court for the Southern District of West Virginia granted final approval of a settlement class and global class action settlement (the "Settlement") for all claims and potential claims by all class members (collectively, the "West Virginia Plaintiffs") arising out of the January 2014 Freedom Industries, Inc. chemical spill in West Virginia. The effective date of the Settlement was July 16, 2018. Under the terms and conditions of the Settlement, WVAWC and certain other Company-affiliated entities did not admit, and will not admit, any fault or liability for any of the allegations made by the West Virginia Plaintiffs in any of the actions that were resolved.

The aggregate pre-tax amount contributed by WVAWC of the \$126 million portion of the Settlement with respect to the Company, net of insurance recoveries, is \$19 million. As of September 30, 2022, \$0.5 million of the aggregate Settlement amount of \$126 million has been reflected in accrued liabilities, and \$0.5 million in offsetting insurance receivables have been reflected in other current assets on the Consolidated Balance Sheets. The amount reflected in accrued liabilities as of September 30, 2022 reflects reductions in the liability and appropriate reductions to the offsetting insurance receivable reflected in other current assets, associated with payments made to the Settlement fund, the receipt of a determination by the Settlement fund's appeal adjudicator on all remaining medical claims and the calculation of remaining attorneys' fees and claims administration costs. The Company funded WVAWC's contributions to the Settlement through existing sources of liquidity.

Dunbar, West Virginia Water Main Break Class Action Litigation

On the evening of June 23, 2015, a 36-inch pre-stressed concrete transmission water main, installed in the early 1970s, failed. The water main is part of the West Relay pumping station located in the City of Dunbar, West Virginia and owned by WVAWC. The failure of the main caused water outages and low pressure for up to approximately 25,000 WVAWC customers. In the early morning hours of June 25, 2015, crews completed a repair, but that same day, the repair developed a leak. On June 26, 2015, a second repair was completed and service was restored that day to approximately 80% of the impacted customers, and to the remaining approximately 20% by the next morning. The second repair showed signs of leaking, but the water main was usable until June 29, 2015, to allow tanks to refill. The system was reconfigured to maintain service to all but approximately 3,000 customers while a final repair was being completed safely on June 30, 2015. Water service was fully restored by July 1, 2015 to all customers affected by this event.

On June 2, 2017, a complaint captioned *Jeffries, et al. v. West Virginia-American Water Company* was filed in West Virginia Circuit Court in Kanawha County on behalf of an alleged class of residents and business owners who lost water service or pressure as a result of the Dunbar main break. The complaint alleges breach of contract by WVAWC for failure to supply water, violation of West Virginia law regarding the sufficiency of WVAWC's facilities and negligence by WVAWC in the design, maintenance and operation of the water system. The *Jeffries* plaintiffs seek unspecified alleged damages on behalf of the class for lost profits, annoyance and inconvenience, and loss of use, as well as punitive damages for willful, reckless and wanton behavior in not addressing the risk of pipe failure and a large outage.

In February 2020, the *Jeffries* plaintiffs filed a motion seeking class certification on the issues of breach of contract and negligence, and to determine the applicability of punitive damages and a multiplier for those damages if imposed. In July 2020, the Circuit Court entered an order granting the *Jeffries* plaintiffs' motion for certification of a class regarding certain liability issues but denying certification of a class to determine a punitive damages multiplier. In August 2020, WVAWC filed a Petition for Writ of Prohibition in the Supreme Court of Appeals of West Virginia seeking to vacate or remand the Circuit Court's order certifying the issues class. On January 28, 2021, the Supreme Court of Appeals remanded the case back to the Circuit Court for further consideration in light of a decision issued in another case relating to the class certification issues raised on appeal. On July 5, 2022, the Circuit Court entered an order again certifying a class to address at trial certain liability issues but not to consider damages. On August 26, 2022, WVAWC filed another Petition for Writ of Prohibition in the Supreme Court of Appeals challenging this latest class certification order. The Writ Petition has been supported by an amicus brief filed by certain water and utility industry trade groups. The Supreme Court of Appeals will decide whether to accept the Writ Petition by issuing a Rule to Show Cause.

The Company and WVAWC believe that WVAWC has valid, meritorious defenses to the claims raised in this class action complaint. WVAWC is vigorously defending itself against these allegations. The Company cannot currently determine the likelihood of a loss, if any, or estimate the amount of any loss or a range of such losses related to this proceeding.

Chattanooga, Tennessee Water Main Break Class Action Litigation

On September 12, 2019, the Company's Tennessee subsidiary ("TAWC"), experienced a leak in a 36-inch water transmission main, which caused service fluctuations or interruptions to TAWC customers and the issuance of a boil water notice. TAWC repaired the main by early morning on September 14, 2019, and restored full water service by the afternoon of September 15, 2019, with the boil water notice lifted for all customers on September 16, 2019.

On September 17, 2019, a complaint captioned *Bruce, et al. v. American Water Works Company, Inc., et al.* was filed in the Circuit Court of Hamilton County, Tennessee against TAWC, the Company and American Water Works Service Company, Inc. ("Service Company" and, together with TAWC and the Company, collectively, the "Tennessee-American Water Defendants"), on behalf of a proposed class of individuals or entities who lost water service or suffered monetary losses as a result of the Chattanooga incident (the "Tennessee Plaintiffs"). The complaint alleged breach of contract and negligence against the Tennessee-American Water Defendants, as well as an equitable remedy of piercing the corporate veil. In the complaint as originally filed, the Tennessee Plaintiffs were seeking an award of unspecified alleged damages for wage losses, business and economic losses, out-of-pocket expenses, loss of use and enjoyment of property and annoyance and inconvenience, as well as punitive damages, attorneys' fees and pre- and post-judgment interest. In September 2020, the court dismissed all of the Tennessee Plaintiffs' claims in their complaint, except for the breach of contract claims against TAWC, which remain pending. In October 2020, TAWC answered the complaint, and the parties have been engaging in discovery. A hearing that had been originally scheduled for October 2022 to address the question of class certification has been postponed to January 2023.

TAWC and the Company believe that TAWC has meritorious defenses to the claims raised in this class action complaint, and TAWC is vigorously defending itself against these allegations. The Company cannot currently determine the likelihood of a loss, if any, or estimate the amount of any loss or a range of such losses related to this proceeding.

Alternative Water Supply in Lieu of Carmel River Diversions

Compliance with Orders to Reduce Carmel River Diversions—Monterey Peninsula Water Supply Project

Under a 2009 order (the “2009 Order”) of the State Water Resources Control Board (the “SWRCB”), the Company’s California subsidiary (“Cal Am”) is required to decrease significantly its yearly diversions of water from the Carmel River according to a set reduction schedule. In 2016, the SWRCB issued an order (the “2016 Order”) approving a deadline of December 31, 2021 for Cal Am’s compliance with these prior orders.

Cal Am is currently involved in developing the Monterey Peninsula Water Supply Project (the “Water Supply Project”), which includes the construction of a desalination plant, to be owned by Cal Am, and the construction of wells that would supply water to the desalination plant. In addition, the Water Supply Project also includes Cal Am’s purchase of water from a groundwater replenishment project (the “GWR Project”) between Monterey One Water and the Monterey Peninsula Water Management District (the “MPWMD”). The Water Supply Project is intended, among other things, to fulfill Cal Am’s obligations under the 2009 Order and the 2016 Order.

Cal Am’s ability to move forward on the Water Supply Project is subject to administrative review by the CPUC and other government agencies, obtaining necessary permits, and intervention from other parties. In September 2016, the CPUC unanimously approved a final decision to authorize Cal Am to enter into a water purchase agreement for the GWR Project and to construct a pipeline and pump station facilities and recover up to \$50 million in associated incurred costs plus an allowance for funds used during construction (“AFUDC”), subject to meeting certain criteria.

In September 2018, the CPUC unanimously approved another final decision finding that the Water Supply Project meets the CPUC’s requirements for a certificate of public convenience and necessity and an additional procedural phase was not necessary to consider alternative projects. The CPUC’s 2018 decision concludes that the Water Supply Project is the best project to address estimated future water demands in Monterey, and, in addition to the cost recovery approved in its 2016 decision, adopts Cal Am’s cost estimates for the Water Supply Project, which amounted to an aggregate of \$279 million plus AFUDC at a rate representative of Cal Am’s actual weighted average cost of capital. The 2018 final decision specifies the procedures for recovery of all of Cal Am’s prudently incurred costs associated with the Water Supply Project upon its completion, subject to the frameworks included in the final decision related to cost caps, operation and maintenance costs, financing, ratemaking and contingency matters. The reasonableness of the Water Supply Project costs will be reviewed by the CPUC when Cal Am seeks cost recovery for the Water Supply Project. Cal Am has incurred \$206 million in aggregate costs as of September 30, 2022 related to the Water Supply Project, which includes \$55 million in AFUDC.

In September 2021, Cal Am, Monterey One Water and the MPWMD reached an agreement on Cal Am’s purchase of additional water from an expansion to the GWR Project, which is not expected to produce additional water until 2024 at the earliest. The amended and restated water purchase agreement for the GWR Project expansion is subject to review and approval of the CPUC, and on November 29, 2021, Cal Am filed an application with the CPUC seeking review and approval of the amended and restated water purchase agreement. Cal Am is also requesting rate base treatment of the additional capital investment for certain Cal Am facilities required to maximize the water supply from the expansion to the GWR Project and a related Aquifer Storage and Recovery Project, totaling approximately \$81 million. This amount is in addition to, and consistent in regulatory treatment with, the prior \$50 million of cost recovery for facilities associated with the original water purchase agreement, which was approved by the CPUC in its 2016 final decision. In September 2022, the parties completed testimony related to this CPUC proceeding, and the parties are now meeting and conferring to set hearing dates during the fourth quarter of 2022.

On September 30, 2022, a CPUC-assigned ALJ issued a proposed decision that would, if adopted by the CPUC, authorize Cal Am to enter into the amended water purchase agreement, and specifically to increase pumping capacity and reliability of groundwater extraction from the Seaside Groundwater Basin. The proposed decision sets the cost cap for the proposed facilities at approximately \$45 million, and the remaining \$36 million of costs initially requested have been deferred to a subsequent filing. Under the proposed decision, Cal Am may seek recovery of amounts above the cost cap in a subsequent rate filing or general rate case. Additionally, the proposed decision recommended AFUDC be authorized at Cal Am’s actual weighted average cost of debt. On October 20, 2022, the parties filed their comments to the proposed decision. Cal Am currently expects a CPUC ruling to be issued by the end of 2022. After that, this matter will remain open as part of a Phase 2 proceeding to update supply and demand amounts for the Water Supply Project and to address certain of the deferred capital requests.

While Cal Am believes that its expenditures to date have been prudent and necessary to comply with the 2009 Order and the 2016 Order, as well as the CPUC’s 2016 and 2018 final decisions, Cal Am cannot currently predict its ability to recover all of its costs and expenses associated with the Water Supply Project and there can be no assurance that Cal Am will be able to recover all of such costs and expenses in excess of the \$50 million in construction costs previously approved by the CPUC in its 2016 final decision.

Coastal Development Permit Application

In June 2018, Cal Am submitted a coastal development permit application to the City of Marina (the “City”) for those project components of the Water Supply Project located within the City’s coastal zone. Members of the City’s Planning Commission, as well as City councilpersons, have publicly expressed opposition to the Water Supply Project. In May 2019, the City issued a notice of final local action based upon the denial by the Planning Commission of Cal Am’s coastal development permit application. Thereafter, Cal Am appealed this decision to the California Coastal Commission (the “Coastal Commission”), as permitted under the City’s code and the California Coastal Act. At the same time, Cal Am submitted an application to the Coastal Commission for a coastal development permit for those project components located within the Coastal Commission’s original jurisdiction. In October 2019, staff of the Coastal Commission issued a report recommending a denial of Cal Am’s application for a coastal development permit with respect to the Water Supply Project, largely based on a memorandum prepared by the general manager of the MPWMD that contradicted findings made by the CPUC in its final decision approving the Water Supply Project. In November 2019, discussions between staffs of the Coastal Commission and the CPUC took place regarding the Coastal Commission staff recommendation, at which time the CPUC raised questions about the Coastal Commission staff’s findings on water supply and demand, groundwater impacts and the viability of a project that the Coastal Commission staff believes may be a possible alternative to the Water Supply Project.

In August 2020, the staff of the Coastal Commission released a report again recommending denial of Cal Am’s application for a coastal development permit. Although the report concluded that the Water Supply Project would have a negligible impact on groundwater resources, the report also concluded it would impact other coastal resources, such as environmentally sensitive habitat areas and wetlands, and that the Coastal Commission staff believes that a feasible alternative project exists that would avoid those impacts. The staff’s report also noted disproportionate impacts to communities of concern. In September 2020, Cal Am withdrew its original jurisdiction application to allow additional time to address the Coastal Commission staff’s environmental justice concerns. The withdrawal of the original jurisdiction application did not impact Cal Am’s appeal of the City’s denial, which remains pending before the Coastal Commission. Cal Am refiled the original jurisdiction application in November 2020. In December 2020, the Coastal Commission sent to Cal Am a notice of incomplete application, identifying certain additional information needed to consider the application complete. In March 2021, Cal Am provided responses to the Coastal Commission’s notice of incomplete application. In June 2021, the Coastal Commission responded, acknowledging the responses and requesting certain additional information before the application could be considered complete. Cal Am responded with the requested additional information on January 11, 2022, and on February 8, 2022, the Coastal Commission requested additional information, and Cal Am responded with additional information. On September 1, 2022, the Coastal Commission deemed Cal Am’s application complete. A hearing on the application is expected in November 2022.

Cal Am continues to work constructively with all appropriate agencies to provide necessary information in connection with obtaining required approvals for the Water Supply Project. However, there can be no assurance that the Water Supply Project in its current configuration will be completed on a timely basis, if ever. Beginning in January 2022, Cal Am expects to be able to comply with the diversion reduction requirements contained in the 2016 Order, but continued compliance with the diversion reduction requirements for 2023 and future years will depend on successful development of alternate water supply sources, sufficient to meet customer demand. The 2009 Order and the 2016 Order remain in effect until Cal Am certifies to the SWRCB, and the SWRCB concurs, that Cal Am has obtained a permanent supply of water to substitute for past unauthorized Carmel River diversions. While the Company cannot currently predict the likelihood or result of any adverse outcome associated with these matters, further attempts to comply with the 2009 Order and the 2016 Order may result in material additional costs and obligations to Cal Am, including fines and penalties against Cal Am in the event of noncompliance with the 2009 Order and the 2016 Order.

Note 12: Earnings per Common Share

Presented in the table below is a reconciliation of the numerator and denominator for the basic and diluted EPS calculations:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
Numerator:				
Net income attributable to common shareholders	\$ 297	\$ 278	\$ 673	\$ 618
Denominator:				
Weighted-average common shares outstanding—Basic	182	182	182	182
Effect of dilutive common stock equivalents	—	—	—	—
Weighted-average common shares outstanding—Diluted	182	182	182	182

The effect of dilutive common stock equivalents is related to outstanding stock options, restricted stock units (“RSUs”) and performance stock units (“PSUs”) granted under the Company’s 2007 Omnibus Equity Compensation Plan and outstanding RSUs and PSUs granted under the Company’s 2017 Omnibus Equity Compensation Plan, as well as estimated shares to be purchased under the Company’s 2017 Nonqualified Employee Stock Purchase Plan. Less than one million share-based awards were excluded from the computation of diluted EPS for the three and nine months ended September 30, 2022 and 2021, because their effect would have been anti-dilutive under the treasury stock method.

Note 13: Fair Value of Financial Information

Fair Value of Financial Instruments

The following methods and assumptions were used by the Company in estimating its fair value disclosures for financial instruments:

Current assets and current liabilities—The carrying amounts reported on the Consolidated Balance Sheets for current assets and current liabilities, including revolving credit debt, due to the short-term maturities and variable interest rates, approximate their fair values.

Seller promissory note from the sale of HOS — The carrying amount reported on the Consolidated Balance Sheets for the seller promissory note from the sale of HOS is \$720 million as of September 30, 2022 and December 31, 2021. This amount represents the principal amount owed under the seller note, for which the Company expects to receive full payment. The accounting fair value measurement of the seller note approximated \$681 million and \$720 million as of September 30, 2022 and December 31, 2021, respectively. The accounting fair value measurement is an estimate that is reflective of changes in benchmark interest rates. The seller note is classified as Level 3 within the fair value hierarchy.

Preferred stock with mandatory redemption requirements and long-term debt—The fair values of preferred stock with mandatory redemption requirements and long-term debt are categorized within the fair value hierarchy based on the inputs that are used to value each instrument. The fair value of long-term debt classified as Level 1 is calculated using quoted prices in active markets. Level 2 instruments are valued using observable inputs and Level 3 instruments are valued using observable and unobservable inputs.

Presented in the tables below are the carrying amounts, including fair value adjustments previously recognized in acquisition purchase accounting, and the fair values of the Company’s financial instruments:

As of September 30, 2022					
Carrying Amount	At Fair Value				Total
	Level 1	Level 2	Level 3		
Preferred stock with mandatory redemption requirements	\$ 3	\$ —	\$ —	\$ 3	\$ 3
Long-term debt (excluding finance lease obligations)	11,205	8,378	47	1,397	9,822
As of December 31, 2021					
Carrying Amount	At Fair Value				Total
	Level 1	Level 2	Level 3		
Preferred stock with mandatory redemption requirements	\$ 4	\$ —	\$ —	\$ 6	\$ 6
Long-term debt (excluding finance lease obligations)	10,396	10,121	60	1,637	11,818

Recurring Fair Value Measurements

Presented in the tables below are assets and liabilities measured and recorded at fair value on a recurring basis and their level within the fair value hierarchy:

As of September 30, 2022				
	Level 1	Level 2	Level 3	Total
Assets:				
Restricted funds	\$ 28	\$ —	\$ —	\$ 28
Rabbi trust investments	20	—	—	20
Deposits	7	—	—	7
Other investments	23	—	—	23
Contingent cash payment from the sale of HOS	—	—	72	72
Total assets	78	—	72	150
Liabilities:				
Deferred compensation obligations	23	—	—	23
Total liabilities	23	—	—	23
Total assets	\$ 55	\$ —	\$ 72	\$ 127

As of December 31, 2021				
	Level 1	Level 2	Level 3	Total
Assets:				
Restricted funds	\$ 21	\$ —	\$ —	\$ 21
Rabbi trust investments	23	—	—	23
Deposits	27	—	—	27
Other investments	17	—	—	17
Contingent cash payment from the sale of HOS	—	—	72	72
Total assets	88	—	72	160
Liabilities:				
Deferred compensation obligations	27	—	—	27
Total liabilities	27	—	—	27
Total assets	\$ 61	\$ —	\$ 72	\$ 133

Restricted funds—The Company’s restricted funds primarily represent proceeds received from financings for the construction and capital improvement of facilities and from customers for future services under operation, maintenance and repair projects.

Rabbi trust investments—The Company’s rabbi trust investments consist of equity and index funds from which supplemental executive retirement plan benefits and deferred compensation obligations can be paid. The Company includes these assets in other long-term assets on the Consolidated Balance Sheets.

Deposits—Deposits include escrow funds and certain other deposits held in trust. The Company includes cash deposits in other current assets on the Consolidated Balance Sheets.

Deferred compensation obligations—The Company’s deferred compensation plans allow participants to defer certain cash compensation into notional investment accounts. The Company includes such plans in other long-term liabilities on the Consolidated Balance Sheets. The value of the Company’s deferred compensation obligations is based on the market value of the participants’ notional investment accounts. The notional investments are comprised primarily of mutual funds, which are based on observable market prices.

Mark-to-market derivative assets and liabilities—The Company employs derivative financial instruments in the form of variable-to-fixed interest rate swaps and treasury lock agreements, classified as economic hedges and cash flow hedges, respectively, in order to fix the interest cost on existing or forecasted debt. The Company may use fixed-to-floating interest rate swaps, typically designated as fair-value hedges, to achieve a targeted level of variable-rate debt as a percentage of total debt. The Company uses a calculation of future cash inflows and estimated future outflows, which are discounted, to determine the current fair value. Additional inputs to the present value calculation include the contract terms, counterparty credit risk, interest rates and market volatility. The Company had no mark-to-market derivatives outstanding as of September 30, 2022.

Other investments—Other investments primarily represent money market funds used for active employee benefits. The Company includes other investments in other current assets on the Consolidated Balance Sheets.

Contingent cash payment from the sale of HOS—The Company's contingent cash payment derivative included as part of the consideration from the sale of HOS is included in other long-term assets on the Consolidated Balance Sheets. The fair value of the contingent cash payment is \$72 million, which is reflective of changes in the benchmark interest rate and estimated using the probability of the outcome of receipt of the \$75 million, a Level 3 input.

Note 14: Leases

The Company has operating and finance leases involving real property, including facilities, utility assets, vehicles, and equipment. Certain operating leases have renewal options ranging from one to 60 years. The exercise of lease renewal options is at the Company's sole discretion. Renewal options that the Company was reasonably certain to exercise are included in the Company's right-of-use ("ROU") assets. Certain operating leases contain the option to purchase the leased property. The operating leases for real property, vehicles and equipment will expire over the next 37 years, six years, and four years, respectively.

The Company participates in a number of arrangements with various public entities ("Partners") in West Virginia. Under these arrangements, the Company transferred a portion of its utility plant to the Partners in exchange for an equal principal amount of Industrial Development Bonds ("IDBs") issued by the Partners under the Industrial Development and Commercial Development Bond Act. The Company leased back the utility plant under agreements for a period of 30 to 40 years. The Company has recorded these agreements as finance leases in property, plant and equipment, as ownership of the assets will revert back to the Company at the end of the lease term. The carrying value of the finance lease assets was \$146 million as of September 30, 2022 and December 31, 2021. The Company determined that the finance lease obligations and the investments in IDBs meet the conditions for offsetting, and as such, are reported net on the Consolidated Balance Sheets and excluded from the finance lease disclosure presented below.

The Company also enters into O&M agreements with the Partners. The Company pays an annual fee for use of the Partners' assets in performing under the O&M agreements. The O&M agreements are recorded as operating leases, and future annual use fees of \$1 million in 2022, \$4 million in 2023 through 2026, and \$48 million thereafter, are included in operating lease ROU assets and operating lease liabilities on the Consolidated Balance Sheets.

Rental expenses under operating and finance leases were \$3 million for each of the three months ended September 30, 2022 and September 30, 2021, and \$9 million and \$10 million for the nine months ended September 30, 2022 and September 30, 2021, respectively.

For the three and nine months ended September 30, 2022, cash paid for amounts in lease liabilities, which includes operating and financing cash flows from operating and finance leases, were \$3 million and \$9 million, respectively. For the nine months ended September 30, 2022, there were ROU assets obtained in exchange for new operating lease liabilities of \$4 million.

As of September 30, 2022, the weighted-average remaining lease term of the finance lease and operating leases were four years and 17 years, respectively, and the weighted-average discount rate of the finance lease and operating leases were 12% and 4%, respectively.

The future maturities of lease liabilities as of September 30, 2022 were \$3 million in 2022, \$10 million in 2023, \$9 million in 2024, \$9 million in 2025, \$8 million in 2026, and \$88 million thereafter. As of September 30, 2022, imputed interest was \$42 million.

Note 15: Segment Information

The Company's operating segments are comprised of the revenue-generating components of its businesses for which separate financial information is internally produced and regularly used by management to make operating decisions, assess performance and allocate resources. The Company operates its businesses primarily through one reportable segment, the Regulated Businesses segment. "Market-Based Businesses and Other" includes market-based businesses that, individually, do not meet the criteria of a reportable segment in accordance with GAAP, corporate costs that are not allocated to the Company's operating segments, eliminations of inter-segment transactions and fair value adjustments and associated income and deductions related to acquisitions that have not been allocated to the operating segments for evaluation of performance and allocation of resource purposes. The adjustments related to the acquisitions are reported in Market-Based Businesses and Other as they are excluded from segment performance measures evaluated by management.

As a result of the sale of HOS, the categories which were previously shown as "Market-Based Businesses" and "Other" have been combined and shown as "Market-Based Businesses and Other." Segment results for the three and nine months ended September 30, 2021, have been adjusted retrospectively to reflect this change.

Presented in the tables below is summarized segment information:

	As of or for the Three Months Ended September 30, 2022		
	Regulated Businesses	Market-Based Businesses and Other	Consolidated
Operating revenues	\$ 1,003	\$ 79	\$ 1,082
Depreciation and amortization	161	3	164
Total operating expenses, net	574	69	643
Interest expense	(81)	(30)	(111)
Interest income	1	13	14
Income before income taxes	373	(6)	367
Provision for income taxes	71	(1)	70
Net income (loss) attributable to common shareholders	302	(5)	297
Total assets	24,366	2,760	27,126
Cash paid for capital expenditures	598	4	602

	As of or for the Three Months Ended September 30, 2021		
	Regulated Businesses	Market-Based Businesses and Other	Consolidated
Operating revenues	\$ 944	\$ 148	\$ 1,092
Depreciation and amortization	151	10	161
Total operating expenses, net	563	112	675
Interest expense	(73)	(28)	(101)
Interest income	—	—	—
Income (loss) before income taxes	332	8	340
Provision for income taxes	60	2	62
Net income (loss) attributable to common shareholders	273	5	278
Total assets	22,818	2,515	25,333
Cash paid for capital expenditures	447	6	453

	As of or for the Nine Months Ended September 30, 2022		
	Regulated Businesses	Market-Based Businesses and Other	Consolidated
Operating revenues	\$ 2,646	\$ 215	\$ 2,861
Depreciation and amortization	473	12	485
Total operating expenses, net	1,658	191	1,849
Interest expense	(227)	(90)	(317)
Interest income	1	38	39
Income before income taxes	835	(5)	830
Provision for income taxes	154	3	157
Net income (loss) attributable to common shareholders	681	(8)	673
Total assets	24,366	2,760	27,126
Cash paid for capital expenditures	1,588	9	1,597

	As of or for the Nine Months Ended September 30, 2021		
	Regulated Businesses	Market-Based Businesses and Other	Consolidated
Operating revenues	\$ 2,556	\$ 423	\$ 2,979
Depreciation and amortization	449	27	476
Total operating expenses, net	1,658	345	2,003
Interest expense	(216)	(84)	(300)
Interest income	—	—	—
Income (loss) before income taxes	752	(6)	746
Provision (benefit) for income taxes	130	(2)	128
Net income (loss) attributable to common shareholders	623	(5)	618
Total assets	22,818	2,515	25,333
Cash paid for capital expenditures	1,191	14	1,205

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

The following discussion should be read together with the unaudited Consolidated Financial Statements and the Notes thereto included elsewhere in this Form 10-Q, and in the Company's Form 10-K for the year ended December 31, 2021. This discussion contains forward-looking statements that are based on management's current expectations, estimates and projections about the Company's business, operations and financial performance. The cautionary statements made in this Form 10-Q should be read as applying to all related forward-looking statements whenever they appear in this Form 10-Q. The Company's actual results may differ materially from those currently anticipated and expressed in such forward-looking statements as a result of a number of factors, including those that are discussed under "Forward-Looking Statements" and elsewhere in this Form 10-Q. The Company has a disclosure committee consisting of members of senior management and other key employees involved in the preparation of the Company's SEC reports. The disclosure committee is actively involved in the review and discussion of the Company's SEC filings.

Overview

American Water is the largest and most geographically diverse, publicly traded water and wastewater utility company in the United States, as measured by both operating revenues and population served. The Company's primary business involves the ownership of utilities that provide water and wastewater services to residential, commercial, industrial, public authority, fire service and sale for resale customers, collectively presented as the "Regulated Businesses." Services provided by the Company's utilities are subject to regulation by multiple state utility commissions or other entities engaged in utility regulation, collectively referred to as public utility commissions ("PUCs"). The Company also operates other market-based businesses not subject to economic regulation by state PUCs that provide water and wastewater services to the U.S. government on military installations, as well as municipalities, and utility customers, collectively included within "Market-Based Businesses and Other." See Part I, Item 1—Business in the Company's Form 10-K for additional information.

Financial Results

For the three and nine months ended September 30, 2022, diluted earnings per share, prepared in accordance with accounting principles generally accepted in the United States ("GAAP"), were \$1.63 and \$3.70, respectively, an increase of \$0.10 and \$0.30, respectively, as compared to the same periods in the prior year. These increases were primarily driven by the implementation of new rates in the Regulated Businesses from infrastructure investments, acquisitions and organic growth, offset somewhat by impacts from inflationary pressures on production costs and higher interest costs. Results for the three and nine months ended September 30, 2022, also reflect the favorable impact of weather, estimated at \$0.06 per share, primarily due to hot and dry weather in the third quarter of 2022 as compared to a \$0.01 per share unfavorable impact and \$0.02 per share favorable impact for the three and nine months ended September 30, 2021, respectively. Also, included in the results for the three and nine months ended September 30, 2022, are \$0.06 and \$0.18 per share, respectively, from interest income earned on the seller note and income earned on revenue share agreements, which compares to Homeowner Services Group ("HOS") operating results for the three and nine months ended September 30, 2021, of \$0.09 and \$0.25 per share, respectively. Lastly, the operating results for the Company's New York subsidiary, which was sold on January 1, 2022, were \$0.09 and \$0.10 per share, for the three and nine months ended September 30, 2021, respectively. See Note 5—Acquisitions and Divestitures in the Notes to Consolidated Financial Statements for additional information.

Growth Through Capital Investment in Infrastructure and Regulated Acquisitions

The Company continues to grow its businesses, with the majority of its growth to be achieved in the Regulated Businesses through (i) continued capital investment in the Company's infrastructure to provide safe, clean, reliable and affordable water and wastewater services to its customers, and (ii) regulated acquisitions to expand the Company's services to new customers. The Company plans to invest approximately \$2.5 billion across its footprint in 2022. During the first nine months of 2022, the Company invested \$1.9 billion, primarily in the Regulated Businesses, as discussed below:

Regulated Businesses - Growth and Optimization

- \$1.6 billion capital investment in the Regulated Businesses, the substantial majority for infrastructure improvements and replacements; and
- \$288 million to fund acquisitions in the Regulated Businesses, which added approximately 65,300 customers, in addition to approximately 14,000 customers added through organic growth. This includes the Company's Pennsylvania subsidiary's acquisition of the wastewater system assets from the York City Sewer Authority and the City of York on May 27, 2022, for a cash purchase price of \$235 million, \$20 million of which was funded as a deposit to the seller in April 2021 in connection with the execution of the acquisition agreement.

On October 11, 2022, the Company's Pennsylvania subsidiary entered into an agreement to acquire the wastewater assets of the Butler Area Sewer Authority for a total purchase price of \$232 million in cash, subject to adjustment as provided for in the Asset Purchase Agreement. This system provides wastewater service for approximately 14,700 customer connections. The Company expects to close this acquisition by the end of 2023, pending regulatory approval.

On March 29, 2021, the Company's New Jersey subsidiary entered into an agreement to acquire the water and wastewater assets of Egg Harbor City for \$22 million. The water and wastewater systems currently serve approximately 1,500 customers each, or 3,000 combined, and are being sold through the New Jersey Water Infrastructure Protection Act process. The Company expects to close this acquisition in late 2022 or early 2023.

As of September 30, 2022, the Company has entered into agreements for pending acquisitions in the Regulated Businesses, including the Egg Harbor City agreement discussed above, to add approximately 21,600 additional customers.

Sale of Homeowner Services Group

On December 9, 2021, the Company sold all of the equity interests in subsidiaries that comprised the Company's Homeowner Services Group ("HOS") to a wholly owned subsidiary of funds advised by Apax Partners LLP, a global private equity advisory firm (the "Buyer"), for total consideration of approximately \$1.275 billion, resulting in pre-tax gain on sale of \$748 million during the fourth quarter of 2021. The consideration was comprised of \$480 million in cash, a seller promissory note issued by the Buyer in the principal amount of \$720 million, and a contingent cash payment of \$75 million payable upon satisfaction of certain conditions on or before December 31, 2023. See Note 13—Fair Value of Financial Information for additional information relating to the seller promissory note and contingent cash payment. For the nine months ended September 30, 2022, the Company recorded post-close adjustments, primarily related to working capital, of pre-tax income of \$20 million, which is included in Other, net on the Consolidated Statements of Operations.

The seller note has a five-year term, is payable in cash, and bears interest at a rate of 7.00% per year during the term. The Company recognized \$13 million and \$38 million of interest income during the three and nine months ended September 30, 2022, respectively, from the seller note.

The Company and the Buyer also entered into revenue share agreements, pursuant to which the Company is to receive 10% of the revenue generated from customers who are billed for home warranty services through an applicable Company subsidiary (an "on-bill" arrangement), and 15% of the revenue generated from any future on-bill arrangements entered into after the closing. Unless earlier terminated, this agreement has a term of up to 15 years, which may be renewed for up to two five-year periods. The Company recognized \$2 million and \$6 million of income during the three and nine months ended September 30, 2022, respectively, from the revenue share agreements, which is included in Other, net on the Consolidated Statements of Operations.

Sale of New York American Water Company, Inc.

On January 1, 2022, the Company completed the previously disclosed sale of its regulated utility operations in New York to Liberty Utilities (Eastern Water Holdings) Corp. ("Liberty"), an indirect, wholly owned subsidiary of Algonquin Power & Utilities Corp. Liberty purchased from the Company all of the capital stock of the Company's New York subsidiary for a purchase price of \$608 million in cash.

Sale of Michigan American Water Company

On February 4, 2022, the Company completed the sale of its operations in Michigan for \$6 million.

Military Services Group

On June 30, 2022, MSG was awarded a contract for the ownership, operation, maintenance and replacement of the wastewater utility system assets at Naval Station Mayport in Jacksonville, Florida. The contract was effective July 1, 2022, and its total revenue is approximately \$341 million over a 50-year period, subject to an annual economic price adjustment. MSG operates and maintains water and/or wastewater systems and related capital programs as part of the U.S. government's Utilities Privatization Program. This contract represents the 18th installation in MSG's footprint and the first contract with respect to a U.S. Navy installation.

Environmental, Social Responsibility and Governance

The Company considers environmental, social responsibility and governance (“ESG”) principles fundamental to its corporate strategy and values. In September 2021, the Company issued its sixth biennial Sustainability Report, covering its sustainability performance for calendar years 2020 and 2019. The report can be accessed on the Company’s website.

On October 31, 2022, the Company added the following disclosures and announced the following goals to support its continued commitment to embedding ESG principles throughout its business:

- The Company created new medium- and long-term goals that are science-based and aligned with the Paris Agreement, for scope 1 (direct) and scope 2 (indirect, derived from the Company’s purchase of energy) greenhouse gas emissions reductions. The new goals aim to reduce absolute scope 1 and 2 emissions 50% by 2035 (2020 baseline year) and achieve net zero scope 1 and scope 2 emissions by 2050. They complement the Company’s existing short-term goal of reducing absolute scope 1 and 2 greenhouse gas emissions by more than 40% by 2025 (2007 baseline year).
- The Company worked with a third party to assist in evaluating and calculating an estimate of the Company’s scope 3 greenhouse gas emissions, which included estimating emissions from Categories 1 (Purchased Goods and Services), 2 (Capital Goods), 3 (Fuel and Energy Related Activities) and 6 (Business Travel).

Operational Excellence

The Company’s adjusted regulated operation and maintenance (“O&M”) efficiency ratio was 33.6% for the twelve months ended September 30, 2022, as compared to 33.9% for the twelve months ended September 30, 2021. The ratio reflects an increase in operating revenues for the Regulated Businesses, after considering the adjustment for the amortization of the excess accumulated deferred income taxes (“EADIT”) shown in the table below, as well as the continued focus on operating costs.

The Company’s adjusted regulated O&M efficiency ratio is a non-GAAP measure and is defined by the Company as its operation and maintenance expenses from the Regulated Businesses, divided by the operating revenues from the Regulated Businesses, where both operation and maintenance expenses and operating revenues were adjusted to eliminate purchased water expense. Operating revenues were further adjusted to exclude reductions for the amortization of the EADIT. Also excluded from operation and maintenance expenses is the allocable portion of non-O&M support services costs, mainly depreciation and general taxes, which is reflected in the Regulated Businesses segment as operation and maintenance expenses, but for consolidated financial reporting purposes, is categorized within other line items in the accompanying Consolidated Statements of Operations. The items discussed above were excluded from the O&M efficiency ratio calculation as they are not reflective of management’s ability to increase the efficiency of the Regulated Businesses.

The Company evaluates its operating performance using this ratio, and believes it is useful to investors because it directly measures improvement in the operating performance and efficiency of the Regulated Businesses. This information is derived from the Company’s consolidated financial information but is not presented in its financial statements prepared in accordance with GAAP. This information supplements and should be read in conjunction with the Company’s GAAP disclosures, and should be considered as an addition to, and not a substitute for, any GAAP measure. The Company’s adjusted regulated O&M efficiency ratio (i) is not an accounting measure that is based on GAAP; (ii) is not based on a standard, objective industry definition or method of calculation; (iii) may not be comparable to other companies’ operating measures; and (iv) should not be used in place of the GAAP information provided elsewhere in this Form 10-Q.

Presented in the table below is the calculation of the Company's adjusted regulated O&M efficiency ratio and a reconciliation that compares operation and maintenance expenses and operating revenues, each as determined in accordance with GAAP, to those amounts utilized in the calculation of its adjusted O&M efficiency ratio:

(Dollars in millions)	For the Twelve Months Ended September 30,	
	2022	2021
Total operation and maintenance expenses	\$ 1,647	\$ 1,715
Less:		
Operation and maintenance expenses—Market-Based Businesses and Other	315	406
Total operation and maintenance expenses—Regulated Businesses	1,332	1,309
Less:		
Regulated purchased water expenses	153	154
Allocation of non-operation and maintenance expenses	32	41
Adjusted operation and maintenance expenses—Regulated Businesses (i)	\$ 1,147	\$ 1,114
Total operating revenues	\$ 3,812	\$ 3,902
Less:		
Operating revenues—Market-Based Businesses and Other	338	559
Total operating revenues—Regulated Businesses	3,474	3,343
Less:		
Regulated purchased water revenues (a)	153	154
Revenue reductions from the amortization of EADIT	(92)	(93)
Adjusted operating revenues—Regulated Businesses (ii)	\$ 3,413	\$ 3,282
Adjusted O&M efficiency ratio—Regulated Businesses (i) / (ii)	33.6 %	33.9 %

(a) The calculation assumes regulated purchased water revenues approximate regulated purchased water expenses.

Regulatory Matters

General Rate Cases and Infrastructure Surcharges

Presented in the table below are annualized incremental revenues, excluding reductions for the amortization of EADIT that are generally offset in income tax expense, assuming a constant water sales volume, resulting from general rate case authorizations and infrastructure surcharge authorizations that became effective in the respective period:

(In millions)	During the Three Months Ended September 30,		During the Nine Months Ended September 30,	
	2022	2021	2022	2021
General rate cases by state (a):				
New Jersey (effective September 1, 2022)	\$ 61	\$ —	\$ 61	\$ —
Hawaii (effective July 1, 2022)	2	—	2	—
West Virginia (effective February 25, 2022)	—	—	15	—
California (effective January 1, 2022 and January 1, 2021)	—	—	13	22
Pennsylvania (effective January 1, 2022 and January 28, 2021)	—	—	20	70
Missouri (effective May 28, 2021)	—	—	—	22
Total general rate cases	\$ 63	\$ —	\$ 111	\$ 114
Infrastructure surcharges by state:				
Missouri (effective August 11, 2022 and February 1, 2022)	\$ 18	\$ —	\$ 30	\$ —
Tennessee (effective August 8, 2022 and January 1, 2021)	3	—	3	3
Pennsylvania (effective July 1, 2022, April 1, 2022 and January 1, 2021)	9	—	11	8
Kentucky (effective July 1, 2022 and July 1, 2021)	3	1	3	1
New Jersey (effective June 27, 2022 and June 28, 2021)	—	—	10	14
Indiana (effective March 21, 2022 and March 17, 2021)	—	—	8	8
West Virginia (effective March 1, 2022 and January 1, 2021)	—	—	3	5
Illinois (effective January 1, 2022 and January 1, 2021)	—	—	6	7
Total infrastructure surcharges	\$ 33	\$ 1	\$ 74	\$ 46

(a) Excludes authorized increase of \$7 million for the nine months ended September 30, 2021, for the Company's New York subsidiary, which was sold on January 1, 2022. See Note 5—Acquisitions and Divestitures for additional information.

Effective October 1, 2022, the Company's Pennsylvania subsidiary implemented an infrastructure surcharge for annualized incremental revenues of \$8 million.

On August 17, 2022, the Company's New Jersey subsidiary was authorized additional annual revenues of \$61 million in its general rate case, effective September 1, 2022, excluding agreed to reductions for EADIT as a result of the Tax Cuts and Jobs Act of 2017 (the "TCJA") (\$46 million including EADIT reductions). The order incorporated updated estimates of production costs, including chemicals, fuel and power costs. Beginning January 1, 2023, the Company's New Jersey subsidiary will defer as a regulatory asset or liability, as appropriate, the difference between its pension expense and other post-employment benefits expense and those amounts included in base rates. The deferral period for this regulatory asset or liability will be two years or, if earlier, will end at the conclusion of the Company's New Jersey subsidiary's next general rate case. The Company's New Jersey subsidiary also withdrew its request, without prejudice, to recover its existing authorized COVID-19-related regulatory asset in the general rate case and will seek recovery in a separate proceeding within the process established in the New Jersey Board of Public Utilities' (the "NJBP") generic COVID-19-related proceeding.

On February 24, 2022, the Company's West Virginia subsidiary ("WVAWC") was authorized additional annual revenues of \$15 million in its general rate case, effective February 25, 2022, excluding agreed to reductions for EADIT as a result of the TCJA. The EADIT reduction in revenues is \$2 million and the exclusion for infrastructure surcharges is \$10 million. Staff of the Public Service Commission of West Virginia moved for reconsideration of the final order on several grounds. WVAWC filed its response to the Staff's Petition for Reconsideration on March 28, 2022, in support of the authorized revenue requirement. On October 21, 2022, the Public Service Commission of West Virginia denied the motion for reconsideration.

On November 18, 2021, the California Public Utilities Commission (the "CPUC") unanimously approved a final decision in the test year 2021 general rate case filed by the Company's California subsidiary, which was retroactive to January 1, 2021. The Company's California subsidiary received authorization for additional annualized water and wastewater revenues of \$22 million, excluding agreed to reductions for EADIT as a result of the TCJA. The EADIT reduction in revenues is \$4 million and is offset by a like reduction in income tax expense. On February 16, 2022, the Company's California subsidiary received approval to increase rates by \$13 million in 2022 escalation increases, excluding \$4 million of reductions related to the TCJA, which was retroactive to January 1, 2022.

On March 2, 2021, an administrative law judge ("ALJ") in the Office of Administrative Law of New Jersey filed an initial decision with the NJBPU that recommended denial of a petition filed by the Company's New Jersey subsidiary, which sought approval of acquisition adjustments in rate base of \$29 million associated with the acquisitions of Shorelands Water Company, Inc. in 2017 and the Borough of Haddonfield's water and wastewater systems in 2015. On July 29, 2021, the NJBPU issued an order adopting the ALJ's initial decision without modification. The Company's New Jersey subsidiary filed a Notice of Appeal with the New Jersey Appellate Division on September 10, 2021. The Company's New Jersey subsidiary filed its brief in support of the appeal on March 4, 2022. Response and Reply briefs were filed on June 22, 2022, and August 4, 2022, respectively. There is no financial impact to the Company as a result of the NJBPU's order, since the acquisition adjustments are currently recorded as goodwill on the Consolidated Balance Sheets.

On February 25, 2021, the Company's Pennsylvania subsidiary was authorized additional annualized revenues of \$90 million, effective January 28, 2021, excluding agreed to reductions in revenues of \$19 million for EADIT as a result of the TCJA. The overall increase, net of TCJA reductions, is \$71 million in revenues combined over two steps. The first step was effective January 28, 2021 in the amount of \$70 million (\$51 million including TCJA reductions) and the second step was effective January 1, 2022 in the amount of \$20 million. The protected EADIT balance of \$200 million is being returned to customers using the average rate assumptions method, and the unprotected EADIT balance of \$116 million is being returned to customers over 20 years. The \$19 million annual reduction to revenue is comprised of both the protected and unprotected EADIT amortizations and a portion of catch-up period EADIT. A bill credit of \$11 million annually for two years returns to customers the remainder of the EADIT catch-up period amortization. The catch-up period of January 1, 2018, through December 31, 2020, covers the period from when the lower federal corporate income tax rate went into effect until new base rates went into effect and will be amortized over two years.

Pending General Rate Case Filings

On July 1, 2022, the Company's California subsidiary filed a general rate case requesting an increase in 2024 revenue of \$57 million and a total increase in revenue over the 2024 to 2026 period of \$99 million. The requested increase excludes proposed reductions for EADIT of \$1 million as a result of TCJA.

On July 1, 2022, the Company's Missouri subsidiary filed a general rate case requesting \$116 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA (\$105 million including EADIT reductions) and infrastructure surcharges.

On April 29, 2022, the Company's Pennsylvania subsidiary filed a general rate case requesting \$185 million in additional annualized water and wastewater revenues excluding proposed reductions for EADIT as a result of TCJA and infrastructure surcharges. On October 11, 2022, the Company's Pennsylvania subsidiary, the Pennsylvania Public Utility Commission's (the "PaPUC") Bureau of Investigation and Enforcement, the Pennsylvania Office of Consumer Advocate, and certain other parties to the general rate case jointly filed a petition for settlement with the PaPUC providing for a total annualized revenue increase of \$138 million. The petition for settlement provides for an annualized revenue increase of \$150 million excluding agreed to reductions for EADIT as a result of the TCJA (\$138 million including EADIT reductions). In addition, the petition for settlement incorporates updated estimates of pension and other post-employment benefits expense, as well as increases in chemicals, fuel and power costs. Furthermore, the petition for settlement includes recovery of the COVID-19 deferral balance. An ALJ will review the petition for settlement and render a recommended decision to the PaPUC on whether it should approve the settlement. After its review of the matter, the PaPUC will issue a final order, which the Company expects to occur by January 2023, with new rates to be effective as of January 28, 2023.

On February 10, 2022, the Company's Illinois subsidiary filed a general rate case requesting \$71 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA and infrastructure surcharges. The requested increase was subsequently updated in the Illinois subsidiary's June 29, 2022, rebuttal filing, with the request adjusted to \$85 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA (\$83 million including EADIT reductions) and infrastructure surcharges. The request was increased in the rebuttal filing to capture higher production costs and expected higher pension and other post-employment benefit costs. Evidentiary hearings were held on August 10, 2022, and on October 28, 2022, the ALJs issued a proposed order recommending \$69 million in additional annualized revenues, excluding proposed reductions for EADIT as a result of TCJA and infrastructure surcharges (\$67 million including EADIT reductions), on a proposed return on equity of 9.78%. The final order is expected in late 2022 or early January 2023, with rates effective in January 2023.

On November 15, 2021, the Company's Virginia subsidiary filed a general rate case requesting \$15 million in additional annualized revenues excluding proposed reductions for EADIT as a result of TCJA. Interim rates were effective on May 1, 2022, and the difference between interim and final approved rates is subject to refund. On September 26, 2022, a settlement agreement, supported by all parties except one, was filed with the Virginia State Corporation Commission for a \$12 million annual revenue increase excluding agreed to reductions for EADIT as a result of TCJA (\$11 million including EADIT reductions). Public hearings were held on September 27 and 28, 2022. A final decision on this matter is expected in the first quarter of 2023.

The Company's California subsidiary submitted its application on May 3, 2021, to set its cost of capital for 2022 through 2024. According to the CPUC's procedural schedule, a decision setting the authorized cost of capital is expected to be issued in the fourth quarter of 2022.

Pending Infrastructure Surcharge Filings

On September 9, 2022, the Company's Missouri subsidiary filed an infrastructure surcharge proceeding requesting \$13 million in additional annualized revenues.

On June 30, 2022, WVAWC filed an infrastructure surcharge proceeding requesting \$8 million in additional annualized revenues.

Other Regulatory Matters

In September 2020, the CPUC released a decision under its Low-Income Rate Payer Assistance program rulemaking that required the Company's California subsidiary to file a proposal to alter its water revenue adjustment mechanism in its next general rate case filing in 2022, which would become effective in January 2024. On October 5, 2020, the Company's California subsidiary filed an application for rehearing of the decision and following the CPUC's denial of its rehearing application in September 2021, the Company's California subsidiary filed a petition for writ of review with the California Supreme Court on October 27, 2021. On May 18, 2022, the California Supreme Court issued a writ of review for the Company's California subsidiary's petition and the petitions filed by other entities challenging the decision. Independent of the judicial challenge, California passed Senate Bill 1469, which allows the CPUC to consider and authorize the implementation of a mechanism that separates the water corporation's revenue and its water sales. Legislation was signed by the Governor on September 30, 2022, and will become effective on January 1, 2023. In response to the legislation, on October 10, 2022, the Company's California subsidiary filed a request for the CPUC to consider the continuation of its decoupling mechanism in its pending 2022 general rate case, which would be effective 2024 through 2026.

Consolidated Results of Operations

Presented in the table below are the Company's consolidated results of operations:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
(In millions)				
Operating revenues	\$ 1,082	\$ 1,092	\$ 2,861	\$ 2,979
Operating expenses:				
Operation and maintenance	416	436	1,156	1,286
Depreciation and amortization	164	161	485	476
General taxes	63	78	208	241
Total operating expenses, net	643	675	1,849	2,003
Operating income	439	417	1,012	976
Other income (expense):				
Interest expense	(111)	(101)	(317)	(300)
Interest income	14	—	39	—
Non-operating benefit costs, net	19	20	58	59
Other, net	6	4	38	11
Total other (expense) income	(72)	(77)	(182)	(230)
Income before income taxes	367	340	830	746
Provision for income taxes	70	62	157	128
Net income attributable to common shareholders	\$ 297	\$ 278	\$ 673	\$ 618

Segment Results of Operations

The Company's operating segments are comprised of the revenue-generating components of its business for which separate financial information is internally produced and regularly used by management to make operating decisions, assess performance and allocate resources. The Company operates its businesses primarily through one reportable segment, the Regulated Businesses segment. "Market-Based Businesses and Other" includes market-based businesses that, individually, do not meet the criteria of a reportable segment in accordance with GAAP, corporate costs that are not allocated to the Company's operating segments, eliminations of inter-segment transactions, and fair value adjustments and associated income and deductions related to acquisitions that have not been allocated to the operating segments for evaluation of performance and allocation of resource purposes. The adjustments related to the acquisitions are reported in Market-Based Businesses and Other as they are excluded from segment performance measures evaluated by management. This presentation is consistent with how management assesses the results of these businesses.

As a result of the sale of HOS, the categories which were previously shown as "Market-Based Businesses" and "Other" have been combined and shown as "Market-Based Businesses and Other." Segment results for the three and nine months ended September 30, 2021, have been adjusted retrospectively to reflect this change.

Regulated Businesses Segment

Presented in the table below is financial information for the Regulated Businesses:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
(In millions)				
Operating revenues	\$ 1,003	\$ 944	\$ 2,646	\$ 2,556
Operation and maintenance	355	338	991	983
Depreciation and amortization	161	151	473	449
General taxes	58	74	194	226
Other income (expenses)	(56)	(49)	(153)	(146)
Income before income taxes	373	332	835	752
Provision for income taxes	71	60	154	130
Net income attributable to common shareholders	<u>\$ 302</u>	<u>\$ 273</u>	<u>\$ 681</u>	<u>\$ 623</u>

Operating Revenues

Presented in the tables below is information regarding the main components of the Regulated Businesses' operating revenues:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
(In millions)				
Water services:				
Residential	\$ 557	\$ 545	\$ 1,469	\$ 1,466
Commercial	208	197	535	511
Fire service	36	38	109	112
Industrial	42	39	116	105
Public and other	83	68	205	184
Total water services	<u>926</u>	<u>887</u>	<u>2,434</u>	<u>2,378</u>
Wastewater services:				
Residential	46	38	129	112
Commercial	12	10	33	28
Industrial	1	1	3	3
Public and other	7	4	14	12
Total wastewater services	<u>66</u>	<u>53</u>	<u>179</u>	<u>155</u>
Other (a)	11	4	33	23
Total operating revenues	<u>\$ 1,003</u>	<u>\$ 944</u>	<u>\$ 2,646</u>	<u>\$ 2,556</u>

(a) Includes other operating revenues consisting primarily of miscellaneous utility charges, fees and rents.

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
(Gallons in millions)				
Billed water services volumes:				
Residential	51,841	53,526	124,006	133,282
Commercial	24,102	23,981	58,802	58,559
Industrial	10,326	10,400	28,451	26,843
Fire service, public and other	15,504	14,978	39,708	38,385
Total billed water services volumes	101,773	102,885	250,967	257,069

Included in operating revenues for the three months ended September 30, 2021, was \$45 million related to the Company's New York operations. Excluding the Company's New York operations, for the three months ended September 30, 2022, operating revenues increased \$104 million, primarily due to: (i) a \$56 million increase from authorized rate increases, including infrastructure surcharges, principally to fund infrastructure investment in various states; (ii) a \$13 million increase from water and wastewater acquisitions, as well as organic growth in existing systems; (iii) a \$19 million estimated net increase due to warmer and drier than normal weather in the third quarter of 2022, particularly in the Company's New Jersey and Missouri service territories; and (iv) a \$6 million net increase as a result of reduced amortization of EADIT, primarily in the Company's New Jersey subsidiary.

Included in operating revenues for the nine months ended September 30, 2021, was \$97 million related to the Company's New York operations. Excluding the Company's New York operations, for the nine months ended September 30, 2022, operating revenues increased \$187 million, primarily due to: (i) a \$128 million increase from authorized rate increases, including infrastructure surcharges, principally to fund infrastructure investment in various states; (ii) a \$25 million increase from water and wastewater acquisitions, as well as organic growth in existing systems; (iii) a \$13 million net increase as a result of reduced amortization of EADIT, primarily in the Company's New Jersey subsidiary; and (iv) a \$13 million estimated net increase primarily due to warmer and drier than normal weather in the third quarter of 2022 in the Company's New Jersey and Missouri service territories, which was offset by warmer and drier than normal weather in the second quarter of 2021 in the Northeast.

Operation and Maintenance

Presented in the table below is information regarding the main components of the Regulated Businesses' operation and maintenance expense:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
(In millions)				
Employee-related costs	\$ 126	\$ 132	\$ 378	\$ 391
Production costs	114	101	291	268
Operating supplies and services	62	56	174	171
Maintenance materials and supplies	22	19	64	66
Customer billing and accounting	17	17	44	49
Other	14	13	40	38
Total	\$ 355	\$ 338	\$ 991	\$ 983

Included in operation and maintenance expense for the three and nine months ended September 30, 2021, was \$12 million and \$36 million, respectively, related to the Company's New York operations. Excluding the Company's New York operations, for the three and nine months ended September 30, 2022, operation and maintenance expense increased \$29 million and \$44 million, respectively, primarily due to inflationary pressures which resulted in increased fuel, power, and chemicals costs.

Depreciation and Amortization

For the three and nine months ended September 30, 2022, depreciation and amortization increased \$10 million and \$24 million, respectively, primarily due to additional utility plant placed in service from capital infrastructure investments and acquisitions.

General Taxes

For the three and nine months ended September 30, 2022, general taxes decreased \$16 million and \$32 million, respectively, primarily related to the sale of the Company's New York operations.

Provision for Income Taxes

For the three and nine months ended September 30, 2022, the Regulated Businesses' provision for income taxes increased \$11 million and \$24 million, respectively. The Regulated Businesses' effective income tax rate was 19.0% and 18.1% for the three months ended September 30, 2022 and 2021, respectively, and 18.4% and 17.3% for the nine months ended September 30, 2022 and 2021, respectively. The Regulated Businesses' effective income tax rate for the three and nine months ended September 30, 2022, reflects the amortization of EADIT pursuant to regulatory orders.

Market-Based Businesses and Other

Presented in the table below is information for Market-Based Businesses and Other:

	For the Three Months Ended September 30,		For the Nine Months Ended September 30,	
	2022	2021	2022	2021
(In millions)				
Operating revenues	\$ 79	\$ 148	\$ 215	\$ 423
Operation and maintenance	61	98	165	303
Depreciation and amortization	3	10	12	27
Interest expense	(30)	(28)	(90)	(84)
Interest income	13	—	38	—
Income (loss) before income taxes	(6)	8	(5)	(6)
Provision (benefit) for income taxes	(1)	2	3	(2)
Net loss attributable to common shareholders	<u>\$ (5)</u>	<u>\$ 5</u>	<u>\$ (8)</u>	<u>\$ (5)</u>

Operating Revenues

For the three and nine months ended September 30, 2022, operating revenues decreased \$69 million and \$208 million, respectively, due primarily to the sale of HOS. HOS operating revenues for the three and nine months ended September 30, 2021, were \$79 million and \$233 million, respectively. Excluding the Company's HOS operations, for the three and nine months ended September 30, 2022, operating revenues increased \$9 million and \$25 million, respectively, largely driven by an increase in capital and O&M projects in MSG, primarily at Joint Base Lewis-McChord and the United States Military Academy at West Point, New York.

Operation and Maintenance

For the three and nine months ended September 30, 2022, operation and maintenance expense decreased \$37 million and \$138 million, respectively, primarily due to the sale of HOS. HOS operation and maintenance expenses for the three and nine months ended September 30, 2021, were \$49 million and \$151 million, respectively. Excluding the Company's HOS operations, for the three and nine months ended September 30, 2022, operation and maintenance expense increased \$12 million and \$13 million, respectively, largely driven by cost associated with increased capital and O&M projects in MSG, as discussed above.

Depreciation and Amortization

For the three and nine months ended September 30, 2022, depreciation and amortization decreased \$7 million and \$15 million, respectively, primarily due to the sale of HOS.

Interest Income

For the three and nine months ended September 30, 2022, interest income increased \$13 million and \$38 million, respectively, due to interest recognized on the seller note related to the sale of HOS. See Note 5—Acquisitions and Divestitures in the Notes to Consolidated Financial Statements for additional information.

Legislative Updates

During 2022, the Company's regulatory jurisdictions enacted the following legislation that has been approved and is effective as of October 31, 2022:

- Indiana passed Senate Enrolled Act 272, which requires public reporting of a non-jurisdictional utility's asset management programs. Non-jurisdictional utilities are exempt from the jurisdiction of the Indiana Utility Regulatory Commission (the "IURC"). The legislation also creates a water and wastewater research and extension program at a state university to serve as a repository for data collected from utilities. Additionally, the legislation establishes oversight and a receivership program in the IURC for non-jurisdictional utilities with violations that create environmental or human health and safety issues. Legislation was signed by the Governor on March 7, 2022, and became effective on July 1, 2022.
- Indiana passed water and wastewater utility asset financing legislation, Senate Enrolled Act 273, which authorizes the recovery of property tax in Distribution System Improvement Charge filings. The legislation also permits the IURC to allow recovery through tracking mechanisms for changes in property tax and for costs attributable to referenda or action by elected or appointed individuals. Legislation was signed by the Governor on March 10, 2022, and became effective on July 1, 2022.
- Virginia passed Senate Bill 500 and House Bill 182, which requires the Virginia State Corporation Commission, in any future ratemaking proceeding for an investor-owned water/wastewater utility, to evaluate the utility on a stand-alone basis and utilize the utility's actual end-of-test period capital structure and cost of capital without regard to the cost of capital, capital structure, or investments of any other entities with which the utility may be affiliated. Legislation was signed by the Governor on April 11, 2022, and became effective on July 1, 2022.
- Illinois passed House Bill 900/Public Act 102-0698, which contains appropriations to the Department of Commerce and Economic Opportunity of \$3 million for the purposes of the Water and Sewer Finance Assistance Act (H.B. 414/Public Act 102-0262) and \$55 million for the purposes of the federal Low-Income Household Water Assistance Program (LIHWAP). Legislation was signed by the Governor on April 19, 2022, with these provisions of the bill taking effect on July 1, 2022.
- Tennessee passed Senate Bill 2282 and House Bill 2346, which requires all utilities to implement a cyber security plan and update it every two years to provide for the protection of the utility's facilities from unauthorized use, alteration, ransom, or destruction of electronic data. The relevant regulatory body will verify if a utility has complied or impose reasonable sanctions if out of compliance. Utility compliance will be required by July 1, 2023. Legislation was signed by the Governor on June 1, 2022, and became effective immediately.
- The Missouri General Assembly passed state and local property tax tracker legislation, Senate Bill 745, which requires a utility to defer to a regulatory asset or liability account any difference in what was actually paid in state or local property taxes and what was used to set the revenue requirement in the utility's most recently completed general rate case. Legislation was signed by the Governor on June 29, 2022, and became effective on August 28, 2022.

During 2022, the Company's regulatory jurisdictions enacted the following legislation that has been approved but is not yet effective as of October 31, 2022:

- California passed Senate Bill 1469, which allows the CPUC to consider and authorize the implementation of a mechanism that separates the water corporation's revenue and its water sales. Legislation was signed by the Governor on September 30, 2022 and will become effective on January 1, 2023.

Condemnation and Eminent Domain

All or portions of the Regulated Businesses' utility assets could be acquired by state, municipal or other government entities through one or more of the following methods: (i) eminent domain (also known as condemnation); (ii) the right of purchase given or reserved by a municipality or political subdivision when the original certificate of public convenience and necessity (a "CPCN") was granted; and (iii) the right of purchase given or reserved under the law of the state in which the utility subsidiary was incorporated or from which it received its CPCN. The acquisition consideration related to such a proceeding initiated by a local government may be determined consistent with applicable eminent domain law, or may be negotiated or fixed by appraisers as prescribed by the law of the state or in the particular CPCN.

As such, the Regulated Businesses are periodically subject to condemnation proceedings in the ordinary course of business. For example, a citizens group in Monterey, California successfully added “Measure J” to the November 2018 election ballot asking voters to decide whether the Monterey Peninsula Water Management District (the “MPWMD”) should conduct a feasibility study concerning the potential purchase of the Monterey water service system assets (the “Monterey system assets”) of the Company’s California subsidiary, and, if feasible, to proceed with a purchase of those assets without an additional public vote. This service territory represents approximately 40,000 customers. In November 2018, Measure J was certified to have passed.

In August 2019, the MPWMD’s General Manager issued a report that recommends that the MPWMD board (1) develop criteria to determine which water systems should be considered for acquisition; (2) examine the feasibility of acquiring the Monterey system assets and consider public ownership of smaller systems only if the MPWMD becomes the owner of a larger system; (3) evaluate whether the acquisition of the Monterey system assets by the MPWMD is in the public interest and sufficiently satisfies the criterion of “feasible” as provided in Measure J; (4) ensure there is significant potential for cost savings before agreeing to commence an acquisition; and (5) develop more fully alternate operating plans before deciding whether to consider a Resolution of Necessity.

In November 2019, the MPWMD issued a preliminary valuation and cost of service analysis report, finding in part that (1) an estimate of the Monterey system assets’ total value plus adjustments would be approximately \$513 million, (2) the cost of service modeling results indicate significant annual reductions in revenue requirements and projected monthly water bills, and (3) the acquisition of the Monterey system assets by the MPWMD would be economically feasible. In November 2020, the MPWMD certified a final environmental impact report (“FEIR”), analyzing the environmental impacts of the MPWMD’s project to (1) acquire the Monterey system assets through the power of eminent domain, if necessary, and (2) expand its geographic boundaries to include all parts of this system. In February 2021, the MPWMD filed an application with the Local Agency Formation Commission of Monterey County (“LAFCO”) seeking approval to become a retail water provider and annex approximately 58 parcels of land into the MPWMD’s boundaries. In June 2021, LAFCO’s commissioners voted to require a third-party independent financial study as to the feasibility of an acquisition by the MPWMD of the Monterey system assets. On December 6, 2021, LAFCO’s commissioners denied the MPWMD’s application to become a retail water provider, determining that the MPWMD does not have the authority to proceed with a condemnation of the Monterey system assets, and on January 5, 2022, LAFCO’s commissioners confirmed the denial. On February 28, 2022, LAFCO’s commissioners voted to deny the MPWMD’s application for reconsideration of LAFCO’s confirmation of denial. On April 1, 2022, the MPWMD filed a lawsuit against LAFCO challenging its decision to deny the MPWMD’s application seeking approval to become a retail water provider. On June 17, 2022, the court granted, with conditions, a motion by Cal Am to intervene in the MPWMD’s lawsuit against LAFCO. By letter dated October 3, 2022, MPWMD notified Cal Am of MPWMD’s decision to appraise the Monterey system assets. MPWMD also requested access to a number of Cal Am’s properties and documents to assist MPWMD with such an appraisal. Cal Am is in the process of responding to this letter and intends to deny such request as it believes MPWMD does not have the right to appraise the Monterey system assets without first obtaining LAFCO approval to become a retail water provider.

Also, five municipalities in the Chicago, Illinois area (approximately 30,300 customers in total) formed a water agency and filed an eminent domain lawsuit against the Company in January 2013, seeking to condemn the water pipeline that serves those five municipalities. Before filing its eminent domain lawsuit, the water agency made an offer of \$38 million for the pipeline. The parties have filed with the court updated valuation reports. A valuation trial has been scheduled for January 2023.

Furthermore, the law in certain jurisdictions in which the Regulated Businesses operate provides for eminent domain rights allowing private property owners to file a lawsuit to seek just compensation against a public utility, if a public utility’s infrastructure has been determined to be a substantial cause of damage to that property. In these actions, the plaintiff would not have to prove that the public utility acted negligently. In California, lawsuits have been filed in connection with large-scale natural events such as wildfires. Some of these lawsuits have included allegations that infrastructure of certain utilities triggered the natural event that resulted in damage to the property. In some cases, the PUC has allowed certain costs or losses incurred by the utility to be recovered from customers in rates, but in other cases such recovery in rates has been disallowed. Also, the utility may have obtained insurance that could respond to some or all of such losses, although the utility would be at risk for any losses not ultimately subject to rate or insurance recovery or losses that exceed the limits of such insurance.

Tax Matters

On August 16, 2022, President Biden signed into law the Inflation Reduction Act of 2022 (the “IRA”). The IRA contains a Corporate Alternative Minimum Tax (“CAMT”) provision, effective January 1, 2023. To determine if a company is considered an applicable corporation subject to CAMT, the company’s average adjusted financial statement income (“AFSI”) for the three consecutive years preceding the tax year must exceed \$1 billion. An applicable corporation must make several adjustments to AFSI when determining CAMT under the new law. Due to the lack of guidance currently available regarding the implementation of the IRA, including adjustments to AFSI, it is premature to project the impact to the Company.

On July 8, 2022, Pennsylvania Governor Tom Wolf signed into law Act 53 of 2022, which reduces the Pennsylvania State Income Tax Rate in yearly increments starting January 1, 2023, with a new rate of 8.99% and ending effective January 1, 2031, with a rate of 4.99%. Under Accounting Standards Codification Topic 740, Income Taxes (“ASC 740”), the tax effects of changes in tax laws must be recognized in the period in which the law is enacted. ASC 740 also requires deferred tax assets and liabilities to be measured at the enacted tax rate expected to apply when temporary differences are to be realized or settled. As such, the Company’s accumulated deferred income tax (“ADIT”) balances for their Pennsylvania subsidiary were remeasured during the quarter ended September 30, 2022 to estimate the impacts of the recently enacted tax rate. The remeasurement reduces the ADIT liability by \$132 million and creates a corresponding regulatory liability since the EADIT is expected to be returned to customers in a future rate case. However, since the rate is declining in yearly increments, the total EADIT will be subject to change. The rate change impacts to the non-regulated companies have been deemed immaterial.

On September 27, 2022, Iowa’s Department of Revenue announced a reduction in the state’s top corporate rate from 9.8% to 8.4% effective January 1, 2023. The remeasurement reduces the ADIT liability for the Company’s Iowa subsidiary by \$1 million and creates a corresponding regulatory liability since the EADIT balance is expected to be returned to customers in a future rate case. The rate impacts to the non-regulated companies have been deemed immaterial.

Liquidity and Capital Resources

For a general overview of the sources and uses of capital resources, see the introductory discussion in Part II, Item 7—Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources in the Company’s Form 10-K.

Liquidity needs for capital investment, working capital and other financial commitments are generally funded through cash flows from operations, public and private debt offerings, commercial paper markets, and, if and to the extent necessary, borrowings under American Water Capital Corp.’s (AWCC) revolving credit facility, and, in the future, issuances of equity.

The Company expects to fund future maturities of long-term debt through a combination of external debt and, to the extent available, cash flows from operations. Since the Company expects its capital investments over the next few years to be greater than its cash flows from operating activities, the Company currently plans to fund the excess of its capital investments over its cash flows from operating activities for the next five years through a combination of long-term debt and equity in addition to the proceeds from the sales of HOS and the Company’s New York subsidiary. If necessary, the Company may delay certain capital investments or other funding requirements or pursue financing from other sources to preserve liquidity. In this event, the Company believes it can rely upon cash flows from operations to meet its obligations and fund its minimum required capital investments for an extended period of time.

The Company maintains an unsecured revolving credit facility with a diversified group of financial institutions. AWCC’s revolving credit facility is used principally to support its commercial paper program, to provide additional liquidity support, and to provide a sublimit for the issuance of up to \$150 million in letters of credit. On October 26, 2022, AWCC and certain lenders amended and restated the credit agreement with respect to the revolving credit facility to, among other things, increase the maximum commitments under the facility to \$2.75 billion from \$2.25 billion and to extend the expiration date of the facility to October 2027 from March 2025. Subject to satisfying certain conditions, the credit agreement also permits AWCC to increase the maximum commitment under the facility by up to an aggregate of \$500 million and to request extensions of its expiration date for up to two one-year periods. See Part II, Item 5—Other Information for additional information about the amendment and restatement of this credit agreement.

Also, effective October 26, 2022, the maximum aggregate principal amount of short-term borrowings authorized under AWCC’s commercial paper program was increased to \$2.60 billion from \$2.10 billion. As of September 30, 2022, and December 31, 2021, there were no borrowings outstanding under the revolving credit facility. Short-term debt consists of commercial paper borrowings totaling \$634 million and \$584 million outstanding as of September 30, 2022 and December 31, 2021, respectively. The weighted-average interest rate on AWCC’s outstanding short-term borrowings was approximately 3.22% and 0.20% at September 30, 2022 and December 31, 2021, respectively.

Presented in the tables below is the aggregate credit facility commitments, commercial paper limit and letter of credit availability under the revolving credit facility as of September 30, 2022 and December 31, 2021, as well as the available capacity for each:

(In millions)	As of September 30, 2022		
	Commercial Paper Limit	Letters of Credit	Total (a)
Total availability	\$ 2,100	\$ 150	\$ 2,250
Outstanding debt	(634)	(75)	(709)
Remaining availability as of September 30, 2022	<u>\$ 1,466</u>	<u>\$ 75</u>	<u>\$ 1,541</u>

(a) Total remaining availability of \$1.54 billion as of September 30, 2022, may be accessed through revolver draws.

(In millions)	As of December 31, 2021		
	Commercial Paper Limit	Letters of Credit	Total (a)
Total availability	\$ 2,100	\$ 150	\$ 2,250
Outstanding debt	(584)	(76)	(660)
Remaining availability as of December 31, 2021	<u>\$ 1,516</u>	<u>\$ 74</u>	<u>\$ 1,590</u>

(a) Total remaining availability of \$1.59 billion as of December 31, 2021, may be accessed through revolver draws.

Presented in the table below is the Company's total available liquidity as of September 30, 2022 and December 31, 2021, respectively:

(In millions)	Cash and Cash Equivalents	Availability on Revolving Credit Facility	Total Available Liquidity
Available liquidity as of September 30, 2022	\$ 77	\$ 1,541	\$ 1,618
Available liquidity as of December 31, 2021	\$ 116	\$ 1,590	\$ 1,706

The Company believes that its ability to access the debt and equity capital markets, the revolving credit facility and cash flows from operations will generate sufficient cash to fund the Company's short-term requirements. The Company believes it has sufficient liquidity and the ability to manage its expenditures, should there be a disruption of the capital and credit markets. However, there can be no assurance that the lenders will be able to meet existing commitments to AWCC under the revolving credit facility, or that AWCC will be able to access the commercial paper or loan markets in the future on acceptable terms or at all. See Note 8—Short-Term Debt in the Notes to Consolidated Financial Statements for additional information.

On May 5, 2022, AWCC issued \$800 million aggregate principal amount of its 4.45% senior notes due 2032. At closing, AWCC received, after deduction of underwriting discounts and before deduction of offering expenses, net proceeds of approximately \$792 million. AWCC used the net proceeds of the offering: (i) to lend funds to the Company and its subsidiaries in its Regulated Businesses segment; (ii) to repay AWCC's commercial paper obligations; and (iii) for general corporate purposes.

In April 2022, the Company entered into several 10-year treasury lock agreements, with notional amounts totaling \$400 million, and an average fixed interest rate of 2.89%. The Company designated these treasury lock agreements as cash flow hedges, with their fair value recorded in accumulated other comprehensive gain or loss. In May 2022, the Company terminated the treasury lock agreements, realizing a net gain of approximately \$4 million, to be amortized through interest, net over a 10-year period, in accordance with the tenor of the debt issuance on May 5, 2022. No ineffectiveness was recognized on hedging instruments for the three and nine months ended September 30, 2022.

Cash Flows from Operating Activities

Cash flows from operating activities primarily result from the sale of water and wastewater services and, due to the seasonality of demand, are generally greater during the warmer months. Presented in the table below is a summary of the major items affecting the Company's cash flows provided by operating activities:

(In millions)	For the Nine Months Ended September 30,	
	2022	2021
Net income	\$ 673	\$ 618
Add (less):		
Depreciation and amortization	485	476
Deferred income taxes and amortization of investment tax credits	13	121
Other non-cash activities (a)	(51)	(37)
Changes in working capital (b)	(316)	(118)
Pension and non-pension postretirement benefit contributions	(40)	(31)
Net cash provided by operating activities	<u>\$ 764</u>	<u>\$ 1,029</u>

(a) Includes provision for losses on accounts receivable, pension and non-pension postretirement benefits and other non-cash, net. Details of each component can be found on the Consolidated Statements of Cash Flows.

(b) Changes in working capital include changes to receivables and unbilled revenues, accounts payable, accrued liabilities, accrued taxes, and other current assets and liabilities, net.

For the nine months ended September 30, 2022, cash provided by operating activities decreased \$265 million, primarily due to changes in working capital and deferred taxes. The changes were driven by \$313 million of estimated tax payments for taxable gains on the sales of the Company's HOS business and its New York regulated operations, as well as the contribution of \$45 million to the American Water Charitable Foundation, partially offset by an increase in net income.

Cash Flows from Investing Activities

Presented in the table below is a summary of the major items affecting the Company's cash flows used in investing activities:

(In millions)	For the Nine Months Ended September 30,	
	2022	2021
Net capital expenditures	\$ (1,597)	\$ (1,205)
Acquisitions	(288)	(78)
Net proceeds from sale of assets	608	—
Other investing activities, net (a)	(85)	(70)
Net cash used in investing activities	<u>\$ (1,362)</u>	<u>\$ (1,353)</u>

(a) Includes removal costs from property, plant and equipment retirements.

For the nine months ended September 30, 2022, cash used in investing activities increased \$9 million, primarily due to increased payments for capital expenditures and acquisitions offset by proceeds of \$608 million received from the sale of the Company's New York operations. The Company plans to invest approximately \$2.5 billion across its footprint in 2022.

Cash Flows from Financing Activities

Presented in the table below is a summary of the major items affecting the Company's cash flows from financing activities:

(In millions)	For the Nine Months Ended September 30,	
	2022	2021
Proceeds from long-term debt	\$ 822	\$ 1,113
Repayments of long-term debt	(14)	(370)
Repayments of term loan	—	(500)
Net short-term borrowings (repayments) with maturities less than three months	50	(97)
Debt issuance costs and make-whole premium on early debt redemption	(7)	(26)
Dividends paid	(348)	(318)
Other financing activities, net (a)	63	46
Net cash provided by (used in) financing activities	\$ 566	\$ (152)

(a) Includes proceeds from issuances of common stock under various employee stock plans and the Company's dividend reinvestment and direct stock purchase plan, net of taxes paid, and advances and contributions in aid of construction, net of refunds.

For the nine months ended September 30, 2022, cash provided by financing activities increased \$718 million, primarily due to the repayment in full at maturity of the \$500 million term loan during the first quarter of 2021 and repayments of long-term debt due to the prepayment of \$327 million in aggregate principal amount of AWCC's outstanding senior notes during the second quarter of 2021 with no comparable repayments in 2022. These changes were partially offset by lower proceeds from long-term debt.

Debt Covenants

The Company's debt agreements contain financial and non-financial covenants. To the extent that the Company is not in compliance with these covenants, an event of default may occur under one or more debt agreements and the Company, or its subsidiaries, may be restricted in its ability to pay dividends, issue new debt or access the revolving credit facility. The long-term debt indentures contain a number of covenants that, among other things, prohibit or restrict the Company from issuing debt secured by the Company's assets, subject to certain exceptions. Failure to comply with any of these covenants could accelerate repayment obligations.

Covenants in certain long-term notes and the revolving credit facility require the Company to maintain a ratio of consolidated debt to consolidated capitalization (as defined in the relevant documents) of not more than 0.70 to 1.00. On September 30, 2022, the Company's ratio was 0.60 to 1.00 and therefore the Company was in compliance with the covenants.

Security Ratings

Presented in the table below are long-term and short-term credit ratings and rating outlooks as of October 31, 2022, as issued by the following rating agencies:

Securities	Moody's Investors Service	Standard & Poor's Ratings Service
Rating outlook	Stable	Stable
Senior unsecured debt	Baa1	A
Commercial paper	P-2	A-1

A security rating is not a recommendation to buy, sell or hold securities and may be subject to revision or withdrawal at any time by the assigning rating agency, and each rating should be evaluated independently of any other rating. Security ratings are highly dependent upon the ability to generate cash flows in an amount sufficient to service debt and meet investment plans. The Company can provide no assurances that its ability to generate cash flows is sufficient to maintain its existing ratings. None of the Company's borrowings are subject to default or prepayment as a result of the downgrading of these security ratings, although such a downgrading could increase fees and interest charges under its credit facility.

As part of its normal course of business, the Company routinely enters into contracts for the purchase and sale of water, energy, chemicals and other services. These contracts either contain express provisions or otherwise permit the Company and its counterparties to demand adequate assurance of future performance when there are reasonable grounds for doing so. In accordance with the contracts and applicable contract law, if the Company is downgraded by a credit rating agency, especially if such downgrade is to a level below investment grade, it is possible that a counterparty would attempt to rely on such a downgrade as a basis for making a demand for adequate assurance of future performance, which could include a demand that the Company must provide collateral to secure its obligations. The Company does not expect to post any collateral which will have a material adverse impact on the Company's results of operations, financial position or cash flows.

Access to the capital markets, including the commercial paper market, and respective financing costs in those markets, may be directly affected by the Company's securities ratings. The Company primarily accesses the debt capital markets, including the commercial paper market, through AWCC. However, the Company has also issued debt through its regulated subsidiaries, primarily in the form of mortgage bonds and tax-exempt securities or borrowings under state revolving funds, to lower the overall cost of debt.

Dividends

For discussion of the Company's dividends, see Note 6—Shareholders' Equity in the Notes to Consolidated Financial Statements for additional information.

Application of Critical Accounting Policies and Estimates

Financial condition of the Company, results of operations and cash flows, as reflected in the Company's Consolidated Financial statements, are impacted by the methods, assumptions and estimates used in the application of critical accounting policies. See Part II, Item 7—Management's Discussion and Analysis of Financial Condition and Results of Operations—Critical Accounting Policies and Estimates in the Company's Form 10-K for a discussion of its critical accounting policies. Additionally, see Note 2—Significant Accounting Policies in the Notes to Consolidated Financial Statements for updates, if any, to the significant accounting policies previously disclosed in the Company's Form 10-K.

Recent Accounting Standards

See Note 2—Significant Accounting Policies in the Notes to Consolidated Financial Statements for a description of new accounting standards recently adopted or pending adoption.

ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The Company is exposed to market risk in the normal course of business, including changes in commodity prices, equity prices and interest rates. For further discussion of its exposure to market risk, see Part II, Item 7A—Quantitative and Qualitative Disclosures about Market Risk in the Company's Form 10-K. There have been no significant changes to the Company's exposure to market risk since December 31, 2021.

The Company had no derivative instruments, which are exposed to market risk, outstanding as of September 30, 2022.

ITEM 4. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

American Water maintains disclosure controls and procedures that are designed to ensure that information required to be disclosed in its reports filed or submitted under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms, and that such information is accumulated and communicated to management, including the Chief Executive Officer and the Chief Financial Officer, to allow timely decisions regarding required disclosure. In designing and evaluating the disclosure controls and procedures, management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objective.

The Company's management, including the Chief Executive Officer and the Chief Financial Officer, conducted an evaluation of the effectiveness of its disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) of the Exchange Act) as of September 30, 2022.

Based on that evaluation, the Chief Executive Officer and the Chief Financial Officer have concluded that, as of September 30, 2022, the Company's disclosure controls and procedures were effective at a reasonable level of assurance.

Changes in Internal Control over Financial Reporting

The Company concluded that there have been no changes in internal control over financial reporting that occurred during the three months ended September 30, 2022, that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

ITEM 1. LEGAL PROCEEDINGS

The following information updates and amends the information provided in the Company's Form 10-K in Part I, Item 3—Legal Proceedings, and in our Quarterly Report on Form 10-Q for the quarter ended June 30, 2022 in Part II, Item 1—Legal Proceedings. Capitalized terms used but not otherwise defined herein have the meanings set forth in the Company's Form 10-K. In accordance with the SEC's disclosure rules, the Company has elected to disclose environmental proceedings involving the Company and a governmental authority if the amount of potential monetary sanctions, exclusive of interest and costs, that the Company reasonably believes will result from such proceeding is \$1 million or more.

Alternative Water Supply in Lieu of Carmel River Diversions

Monterey Peninsula Water Supply Project

CPUC Final Approval of Water Supply Project

In September 2022, the parties completed testimony in the CPUC proceeding to review and approve Cal Am's application to amend and restate the water purchase agreement for the GWR Project. The parties are now meeting and conferring to set hearing dates during the fourth quarter of 2022.

On September 30, 2022, a CPUC-assigned ALJ issued a proposed decision that would, if adopted by the CPUC, authorize Cal Am to enter into the amended water purchase agreement, and specifically to increase pumping capacity and reliability of groundwater extraction from the Seaside Groundwater Basin. The proposed decision sets the cost cap for the proposed facilities at approximately \$45 million, and the remaining \$36 million of costs initially requested have been deferred to a subsequent filing. Under the proposed decision, Cal Am may seek recovery of amounts above the cost cap in a subsequent rate filing or general rate case. Additionally, the proposed decision recommended AFUDC be authorized at Cal Am's actual weighted average cost of debt. On October 20, 2022, the parties filed their comments to the proposed decision. Cal Am currently expects a CPUC ruling to be issued by the end of 2022. After that, this matter will remain open as part of a Phase 2 proceeding to update supply and demand amounts for the Water Supply Project and to address certain of the deferred capital requests.

Coastal Development Permit Application

Cal Am responded to the Coastal Commission's February 8, 2022, request for additional information with respect to the original jurisdiction application that Cal Am had refiled in November 2020. On September 1, 2022, the Coastal Commission deemed Cal Am's application complete. A hearing on the application is expected in November 2022.

On October 5, 2022, Cal Am announced a phasing plan for its proposed desalination plant, part of the proposed Water Supply Project. The desalination plant and slant wells approved by the CPUC and currently pending before the Coastal Commission would produce up to 6.4 million gallons of desalinated water per day. Under the phased approach, the facilities would initially be constructed to produce up to 4.8 million gallons per day of desalinated water, enough to meet anticipated demand through about 2030, and limiting the number of slant wells initially constructed. As demand increases in the future, desalination facilities would be expanded to meet the additional demand. The phased approach seeks to meet near-term demand by allowing for additional supply as it becomes needed, while also providing an opportunity for regional future public participation and was developed by Cal Am based on feedback received from the community.

Dunbar, West Virginia Water Main Break Class Action Litigation

On August 26, 2022, WVAWC filed a Petition for Writ of Prohibition in the Supreme Court of Appeals of West Virginia challenging the West Virginia Circuit Court's July 5, 2022, order certifying a class to address at trial certain liability issues but not to consider damages. The Writ Petition has been supported by an amicus brief filed by certain water and utility industry trade groups. The Supreme Court of Appeals will decide whether to accept the Writ Petition by issuing a Rule to Show Cause.

Chattanooga, Tennessee Class Action Litigation

A hearing that had been originally scheduled for October 2022 to address the question of class certification has been postponed to January 2023.

Other Matters

On April 2, 2021, American Water Resources, LLC ("AWR"), which prior to the sale of HOS was one of the indirect, wholly owned subsidiaries comprising the Company's former HOS operations, received a grand jury subpoena in connection with an investigation by the U.S. Attorney's Office for the Eastern District of New York (the "EDNY") regarding AWR's operations and contractor network in the New York City metropolitan area. On September 9, 2022, a former employee of AWR pled guilty in U.S. District Court to two felony charges in connection with the matters being investigated by the EDNY. The Company continues to believe that the investigation is not focused on the Company and is cooperating fully with the investigation. While it is not possible at

this time to predict the outcome of the investigation or determine the amount, if any, of fines, penalties or other liabilities that may be incurred in connection with it, the Company does not currently believe that the investigation will have a material adverse effect on the Company's results of operations, financial condition or liquidity.

ITEM 1A. RISK FACTORS

In addition to the other information set forth in this report, readers should carefully consider the factors discussed in Part I, Item 1A—Risk Factors in the Form 10-K, and in the Company's other filings with the SEC, which could materially affect the Company's business, financial condition, cash flows or future results. There have been no material changes from the risk factors previously disclosed in Part I, Item 1A—Risk Factors in the Form 10-K.

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

In February 2015, the Board of Directors authorized an anti-dilutive stock repurchase program to mitigate the dilutive effect of shares issued through the Company's dividend reinvestment and direct stock purchase plan and employee stock purchase and executive compensation activities. The program allows the Company to purchase up to 10 million shares of its outstanding common stock over an unrestricted period of time in the open market or through privately negotiated transactions. The program is conducted in accordance with Rule 10b-18 of the Exchange Act, and, to facilitate these repurchases, the Company enters into Rule 10b5-1 stock repurchase plans with a third-party broker, which allow the Company to repurchase shares of its common stock at times when it otherwise might be prevented from doing so under insider trading laws or because of self-imposed trading blackout periods. Subject to applicable regulations, the Company may elect to amend or cancel the program or the stock repurchase parameters at its discretion to manage dilution.

The Company did not repurchase shares of common stock during the three months ended September 30, 2022. From April 1, 2015, the date repurchases under the anti-dilutive stock repurchase program commenced, through September 30, 2022, the Company repurchased an aggregate of 4,860,000 shares of common stock under the program, leaving an aggregate of 5,140,000 shares available for repurchase under this program.

ITEM 3. DEFAULTS UPON SENIOR SECURITIES

None.

ITEM 4. MINE SAFETY DISCLOSURES

None.

ITEM 5. OTHER INFORMATION

Amendment and Restatement of Credit Agreement

On October 26, 2022, the parent company and AWCC amended and restated that certain Second Amended and Restated Credit Agreement, dated as of March 21, 2018 (the "Existing Credit Agreement"), by entering into that certain Third Amended and Restated Credit Agreement, by and among the parent company, AWCC, each of the lenders party thereto (each, a "Lender"), Wells Fargo Bank, National Association, as administrative agent, JPMorgan Chase Bank, N.A., as syndication agent, and Mizuho Bank, Ltd., PNC Bank, National Association, and Bank of America, N.A., as co-documentation agents (the "Credit Agreement"), with respect to AWCC's unsecured revolving credit facility thereunder. See Part I, Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations for additional information about the revolving credit facility.

The parent company has executed the Credit Agreement solely to acknowledge and agree that (i) obligations owing by AWCC under the Credit Agreement will constitute "debt" under that certain Support Agreement, dated as of June 22, 2000, as amended by that First Amendment to Support Agreement dated as of July 26, 2000, by and between the parent company and AWCC (the "Support Agreement"), which serves as a functional equivalent of a guarantee by the parent company of AWCC's payment obligations under the Credit Agreement, and (ii) the Credit Agreement contains representations, warranties and covenants that relate to the parent company and that a breach of any of those representations or warranties, or a failure by AWCC to comply with such covenants, could result in an event of default under the Credit Agreement.

The Credit Agreement increases the total maximum commitments under the Existing Credit Agreement to \$2.75 billion from \$2.25 billion and extends the expiration of the Existing Credit Agreement to October 2027 from March 2025. AWCC may from time to time cause the total maximum commitments under the Credit Agreement to be increased, provided that the aggregate amount of all such commitment increases may not exceed \$500 million. AWCC may also request from the Lenders an extension of the expiration date of the Credit Agreement for up to two one-year periods. Such increases and extensions must satisfy certain conditions and, in the case of a request to extend the expiration date of the Credit Agreement, receive approval of the Required Lenders, all as set forth in the Credit Agreement. As of October 26, 2022, no amounts have been borrowed by AWCC under the Credit Agreement, except with respect to letters of credit previously issued under the Credit Agreement's \$150 million letter of credit sublimit.

The Credit Agreement contains certain representations and warranties made by AWCC and the parent company at the time it was entered into and, under its terms, AWCC must be in compliance with specified covenants, including (i) the requirement that AWCC maintains a ratio of total consolidated debt to consolidated total capitalization of not more than 0.70 to 1.0, computed in accordance with the terms of the Credit Agreement, (ii) a restriction on the incurrence of liens (other than liens permitted by the Credit Agreement) on the assets of the parent company, AWCC or any of the parent company's significant subsidiaries, (iii) restrictions on sale-leaseback transactions by AWCC, the parent company or any of the parent company's significant subsidiaries, (iv) not causing the Support Agreement to be canceled or terminated, or amended in such a way as to adversely affect the rights of the Lenders, and (v) AWCC engaging in any business, operations or activities other than financing activities for and on behalf of the parent company and its other subsidiaries. The Credit Agreement does not include any credit rating triggers. Certain of the financial covenants with respect to the facility were increased to reflect changes in American Water's size, business and operations since the execution and delivery of the Existing Credit Agreement.

The occurrence of an event of default under the Credit Agreement could result in the acceleration of the repayment obligations of AWCC thereunder. The events of default in the Credit Agreement include, but are not limited to (i) the failure of AWCC to pay when due principal or interest under the Credit Agreement, (ii) the failure to observe or perform AWCC's covenants contained in the Credit Agreement (including the covenants described in the preceding paragraph), subject in certain circumstances to grace periods and notice requirements provided in the Credit Agreement, (iii) any representation, warranty, certification or statement made by or on behalf of AWCC under the Credit Agreement or under any loan document or other document delivered pursuant to the Credit Agreement or a loan document being incorrect in any material respect when made, (iv) the failure of AWCC, the parent company or any significant subsidiary of the parent company to pay amounts due under certain other indebtedness, (v) the default of the parent company in the performance or observance of any obligation or condition under specified provisions of the Support Agreement, (vi) the occurrence of certain bankruptcy events, judgments or decrees against AWCC, the parent company or any of the parent company's significant subsidiaries, (vii) the failure of AWCC, the parent company or any of the parent company's significant subsidiaries to pay or otherwise discharge certain monetary judgments, (viii) the occurrence of certain events under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or with respect to certain employee pension benefit plans covered by ERISA, (ix) the unenforceability of any material provision of the Support Agreement, or the assertion by any court or governmental or regulatory body having jurisdiction over the parent company of the unenforceability of any such provision in writing, or the contesting by the parent company of the validity or enforceability of any such provision, (x) the occurrence of a change of control (as defined in the Credit Agreement) involving the parent company, or (xi) the parent company ceasing to own, directly or indirectly, all of the common stock of AWCC.

In the ordinary course of business, certain of the Lenders and their respective affiliates have from time to time engaged, and likely will in the future engage, in transactions with, and from time to time have performed various financial advisory, commercial banking, investment banking, treasury, trustee and other services for, and likely will in the future perform such services for, AWCC and American Water, for which they received, or will continue to receive, customary fees or compensation. In addition, affiliates of certain of the Lenders act as issuing and paying agent or dealer under AWCC's commercial paper program.

The foregoing description of the Credit Agreement does not purport to be complete and is subject to, and is qualified in its entirety by, the full text of the Credit Agreement, which is attached to this Form 10-Q as [Exhibit 10.1](#) and incorporated herein by reference.

Increase in Size of AWCC's Commercial Paper Program

On October 26, 2022, AWCC increased the size of its program to permit the issuance of short-term commercial paper notes by AWCC in an aggregate principal amount not to exceed \$2.60 billion outstanding at any time, an increase from the prior maximum size of \$2.10 billion. The notes issued by AWCC under the commercial paper program are considered "debt" for purposes of the Support Agreement. The offer and sale of the commercial paper notes and related obligations of the parent company under the Support Agreement have not been and will not be registered under the Securities Act in reliance upon the exemption provided by Section 4(a)(2) thereof, and may not be offered or sold absent registration or an applicable exemption from such registration requirements. The information contained in this Form 10-Q shall not constitute an offer to sell or the solicitation of an offer to buy commercial paper

notes issued by AWCC from time to time under its commercial paper program or the related support obligations of the parent company under the Support Agreement.

New 2022 Annual Performance Plan Goals

In alignment with the Company's commitment to inclusion, diversity and equity, in the first quarter of 2022, two new people-related goals were added to the Company's 2022 Annual Performance Plan: female percentage of the Company's overall workforce, and ethnic and racial percentage of the Company's overall workforce.

ITEM 6. EXHIBITS

Exhibit Number	Exhibit Description
3.1	Restated Certificate of Incorporation of American Water Works Company, Inc. (incorporated by reference to Exhibit 3.1 to American Water Works Company, Inc.'s Quarterly Report on Form 10-Q, File No. 001-34028, filed November 6, 2008).
3.2	Amended and Restated Bylaws of American Water Works Company, Inc. (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K, File No. 001-34028, filed December 10, 2020).
4.1	Indenture, dated as of December 4, 2009, between American Water Capital Corp. and Wells Fargo Bank, National Association (incorporated by reference to Exhibit 4.1 to American Water Works Company, Inc.'s Current Report on Form 8-K, File No. 001-34028, filed December 3, 2010).
4.2	Officers' Certificate of American Water Capital Corp., dated May 5, 2022, establishing the terms and authorizing the issuance of the 4.450% Senior Notes due 2032 (incorporated by reference to Exhibit 4.1 to American Water Works Company, Inc.'s Current Report on Form 8-K, File No. 001-34028, filed May 5, 2022).
*10.1	Third Amended and Restated Credit Agreement, dated as of October 26, 2022, by and among American Water Works Company, Inc., American Water Capital Corp., each of the Lenders party thereto, Wells Fargo Bank, National Association, as administrative agent, JPMorgan Chase Bank, N.A., as syndication agent, and Mizuho Bank, Ltd., PNC Bank, National Association, U.S. Bank National Association, and Bank of America, N.A., as co-documentation agents.
22.1	Guaranteed Securities (incorporated by reference to Exhibit 22.1 to American Water Works Company, Inc.'s Quarterly Report on Form 10-Q, File No. 001-34028, filed July 27, 2022).
*31.1	Certification of M. Susan Hardwick, President and Chief Executive Officer, pursuant to Section 302 of the Sarbanes-Oxley Act.
*31.2	Certification of John C. Griffith, Executive Vice President and Chief Financial Officer, pursuant to Section 302 of the Sarbanes-Oxley Act.
**32.1	Certification of M. Susan Hardwick, President and Chief Executive Officer, pursuant to Section 906 of the Sarbanes-Oxley Act.
**32.2	Certification of John C. Griffith, Executive Vice President and Chief Financial Officer, pursuant to Section 906 of the Sarbanes-Oxley Act.
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
101.SCH	Inline XBRL Taxonomy Extension Schema Document.
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document.
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document.
101.LAB	Inline XBRL Taxonomy Extension Label Linkbase Document.
101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document.
104	Cover Page Interactive Data File (formatted as Inline XBRL with applicable taxonomy extension information contained in Exhibits 101).

* Filed herewith. Certain exhibits to this document have been omitted pursuant to Item 601(a)(5) of Regulation S-K. The Company will furnish the omitted exhibits to the SEC upon request.

** Furnished herewith.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 31st day of October, 2022.

	AMERICAN WATER WORKS COMPANY, INC. (REGISTRANT)
By	/s/ M. SUSAN HARDWICK M. Susan Hardwick President and Chief Executive Officer (Principal Executive Officer)
By	/s/ JOHN C. GRIFFITH John C. Griffith Executive Vice President and Chief Financial Officer (Principal Financial Officer)
By	/s/ MELISSA K. WIKLE Melissa K. Wikle Chief Accounting Officer (Principal Accounting Officer)

U.S. \$2,750,000,000

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

dated as of October 26, 2022

by and among

AMERICAN WATER CAPITAL CORP.
as Borrower

THE LENDERS

and

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Administrative Agent

and

JPMORGAN CHASE BANK, N.A.
as Syndication Agent

and

MIZUHO BANK, LTD.
PNC BANK, NATIONAL ASSOCIATION
U.S. BANK NATIONAL ASSOCIATION
BANK OF AMERICA, N.A.
as Co-Documentation Agents

WELLS FARGO SECURITIES, LLC
JPMORGAN CHASE BANK, N.A.
MIZUHO BANK, LTD.
PNC CAPITAL MARKETS LLC
U.S. BANK NATIONAL ASSOCIATION
BOFA SECURITIES, INC.
ROYAL BANK OF CANADA
as Joint Lead Arrangers and Joint Bookrunners

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Exhibit E Form of Financial Services Agreement
Exhibit F-1 Form of U.S. Tax Compliance Certificate (Lender; Not Partnership)
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Exhibit F-3 Form of U.S. Tax Compliance Certificate (Participant; Partnership)
Exhibit F-4 Form of U.S. Tax Compliance Certificate (Lender; Partnership)

* The following exhibits to this Agreement have been omitted pursuant to Item 601(a)(5) of Regulation S-K. American Water Works Company, Inc. will furnish the omitted exhibits to the Securities and Exchange Commission upon request.

THIRD AMENDED AND RESTATED CREDIT AGREEMENT

THIS THIRD AMENDED AND RESTATED CREDIT AGREEMENT, dated as of October 26, 2022 (this “*Agreement*”), is by and among **AMERICAN WATER CAPITAL CORP.**, a Delaware corporation (the “*Borrower*”), the Lenders from time to time party hereto (collectively, the “*Lenders*”), and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, a national banking association, as Administrative Agent for the Lenders (in such capacity, together with its successors and assigns, the “*Administrative Agent*”).

WHEREAS, the Borrower, the Lenders and the Administrative Agent are parties to that certain Second Amended and Restated Credit Agreement dated as of March 21, 2018 (as amended and in effect immediately prior to the date hereof, the “Existing Credit Agreement”);

WHEREAS, the Borrower has requested the Lenders and the Administrative Agent amend and restate the Existing Credit Agreement to modify the Existing Credit Agreement in certain respects;

WHEREAS, the Borrower acknowledges and agrees that the Obligations represent, among other things, the amendment, restatement, renewal, extension, consolidation and modification of the Obligations (as defined in the Existing Credit Agreement) arising in connection with the Existing Credit Agreement and other Loan Documents (as defined in the Existing Credit Agreement) executed in connection therewith; and

WHEREAS, the Borrower intends that (a) the provisions of the Existing Credit Agreement and the other Loan Documents (as defined in the Existing Credit Agreement) executed in connection therewith, to the extent restated, renewed, extended, consolidated, amended and modified hereby, be hereby superseded and replaced by the provisions hereof and of the other Loan Documents; and (b) by entering into and performing its Obligations hereunder, this transaction shall not constitute a novation.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the parties hereto agree that the Existing Credit Agreement is hereby amended and restated, as follows:

ARTICLE I DEFINITIONS

Section 1.01 Certain Defined Terms. The terms defined in this Section 1.01 shall, for all purposes of this Agreement, have the meanings set forth herein:

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

“*Adjusted Term SOFR*” means, for purposes of any calculation, the rate per annum equal to (a) Term SOFR for such calculation plus (b) the Term SOFR Adjustment; provided that if Adjusted Term SOFR as so determined shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed to be the Floor.

“*Adjusted Term SOFR Market Index Rate*” means, for purposes of any calculation and with respect to any day, the daily floating rate per annum for one-month Term SOFR plus the Term SOFR Adjustment.

“*Administrative Agent*” has the meaning set forth in the preamble.

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

“**Affiliate**” means, with respect to any Person, any other Person directly or indirectly controlling (including but not limited to all directors and officers of such Person), controlled by, or under direct or indirect common control with such Person. A Person shall be deemed to control another entity if such Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

“**Agreement**” has the meaning set forth in the preamble.

“**Anti-Corruption Laws**” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“**Anti-Money Laundering Laws**” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to the Borrower or its Subsidiaries related to terrorism financing or money laundering, including any applicable provision of the Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“**Applicable Percentage**” means, with respect to the Facility Fee or any SOFR Loan, Base Rate Loan or Swingline Loan, at all times during which any Applicable Rating Level set forth below is in effect, the rate per annum for the Facility Fee or such Loan set forth below next to such Applicable Rating Level.

Applicable Rating Level	Applicable Percentage for Facility Fee	Applicable Percentage for SOFR Loans	Applicable Percentage for Base Rate Loans
1	0.060%	0.690%	0.000%
2	0.075%	0.800%	0.000%
3	0.100%	0.900%	0.000%
4	0.125%	1.000%	0.000%
5	0.175%	1.075%	0.075%

The Applicable Percentage shall be determined in accordance with the foregoing table based on the Applicable Rating Level as determined from the Borrower’s then-applicable Moody’s Rating and S&P Rating. Any change in the Applicable Percentages resulting from a change in the Applicable Rating Level shall become effective upon the date of announcement of any change in the Moody’s Rating or the S&P Rating of the Borrower that results in such change in the Applicable Rating Level.

“**Applicable Rating Level**” at any time shall be determined in accordance with the Borrower’s then-

applicable S&P Rating and the Borrower's then-applicable Moody's Rating as follows:

S&P Rating/Moody's Rating	Applicable Rating Level
S&P Rating AA- or higher or Moody's Rating Aa3 or higher	1
S&P Rating A+ or Moody's Rating A1	2
S&P Rating A or Moody's Rating A2	3
S&P Rating A- or Moody's Rating A3	4
S&P Rating BBB+ or below or Moody's Rating Baa1 or below	5

The Applicable Rating Level for any day shall be determined based upon the higher of the S&P Rating and the Moody's Rating of the Borrower in effect on such day. If the S&P Rating and the Moody's Rating of the Borrower are not the same (*i.e.*, a "split rating"), the higher of such ratings shall control, unless the S&P Rating is below BBB- or the Moody's Rating is below Baa3, in which case the lower of the two ratings shall control.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

"Assignee" means the assignee of all or a portion of a Lender's rights and obligations under this Agreement pursuant to the terms of Section 7.05(b).

"Assignment and Acceptance" means an Assignment and Acceptance executed in accordance with Section 7.05(b) in the form attached hereto as Exhibit C.

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

"Available Tenor" means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 2.18(c)(iv).

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

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

“Base Rate” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) Adjusted Term SOFR Market Index Rate in effect on such day plus 1.0%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR Market Index Rate, as applicable (provided that clause (c) shall not be applicable during any period in which Adjusted Term SOFR Market Index Rate is unavailable or unascertainable). Notwithstanding the foregoing, in no event shall the Base Rate be less than the Floor.

“Base Rate Loan” means a loan that bears interest based upon the Base Rate as provided in Section 2.08(a)(i).

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 2.18(c)(i).

“Benchmark Replacement” means, with respect to any Benchmark Transition Event, the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (b) the related Benchmark Replacement Adjustment; provided that, if such Benchmark Replacement as so determined would be less than the Floor, such Benchmark Replacement will be deemed to be the Floor for the purposes of this Agreement and the other Loan Documents.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement for any applicable Available Tenor, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earlier to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event,” the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof)

permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event,” the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

For the avoidance of doubt, the “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (a) or (b) with respect to any Benchmark upon the occurrence of the applicable event or events set forth therein with respect to all then-current Available Tenors of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Event**” means the occurrence of one or more of the following events with respect to the then-current Benchmark:

(a) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that such administrator has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof), permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof);

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the FRB, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are not, or as of a specified future date will not be, representative.

For the avoidance of doubt, a “Benchmark Transition Event” will be deemed to have occurred with respect to any Benchmark if a public statement or publication of information set forth above has occurred with respect to each then-current Available Tenor of such Benchmark (or the published component used in the calculation thereof).

“**Benchmark Transition Start Date**” means, in the case of a Benchmark Transition Event, the earlier of (a) the applicable Benchmark Replacement Date and (b) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of

such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication).

“Benchmark Unavailability Period” means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.18(c)(i), and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 2.18(c)(i).

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

“Beneficial Ownership Regulation” means 31 CFR § 1010.230.

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

“BHC Act Affiliate” of a party shall mean an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Borrower” has the meaning set forth in the preamble.

“Borrower Materials” has the meaning set forth in Section 5.01.

“Borrowing” means a borrowing hereunder consisting of Base Rate Loans or SOFR Loans made to the Borrower.

“Business Day” means a day of the year on which banks are not required or authorized to close in New York City or Charlotte, North Carolina.

“Capitalized Lease” of any Person means, subject to Section 1.02, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as finance leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

“Cash Collateral Account” has the meaning set forth in Section 6.02.

“Cash Collateralize” means, to pledge and deposit in the Cash Collateral Account, or to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the LC Issuing Banks, the Swingline Banks or the Lenders, as collateral for Letters of Credit, obligations of Lenders to fund participations in respect of Letters of Credit or for the obligations of Lenders to purchase their respective Pro Rata Shares in respect of Swingline Loans, cash or deposit account balances or, if the Administrative Agent and each applicable LC Issuing Bank or Swingline Bank, as applicable, shall agree in their reasonable discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent and each applicable LC Issuing Bank or Swingline Bank, as applicable. **“Cash Collateral”** shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**CERCLA**” means the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C., § 9601, *et seq.*, as amended from time to time, and any regulations promulgated thereunder.

“**Change in Law**” means the occurrence, after the Closing Date (or, if later, on or after the date the Administrative Agent or any Lender becomes the Administrative Agent or a Lender, respectively), 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 United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“**Closing Date**” means the date of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended from time to time, or any successor federal tax code. Any reference to any provision of the Code shall also be deemed to be a reference to any successor provision or provisions thereof.

“**Commitment**” means (i) with respect to each Lender, the commitment of such Lender to make its Pro Rata Percentage of Loans and to participate in Letters of Credit in an aggregate amount up to the amount set forth opposite the name of each Lender on Schedule I, subject to adjustment on account of assignment pursuant to Section 7.05(b), reduction of the Commitment pursuant to Section 2.10 or 2.24(d), or increase in the Commitment pursuant to Section 2.05, and (ii) with respect to the Lenders collectively, the aggregate amount of all such Commitments.

“**Commitment Letter**” means, that Commitment Letter, dated October 3, 2022 by and among the Borrower, the Parent, Wells Fargo, PNC Bank, National Association, and the Joint Lead Arrangers.

“**Common Stock**” means with respect to any Person, the voting securities or equivalent equity interests of such Person having general voting rights, including the right to vote in the election of members of the board of directors (or persons performing similar functions) of such Person.

“**Conforming Changes**” means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “Base Rate,” the definition of “Business Day,” the definition of “U.S. Government Securities Business Day,” the definition of “Interest Period” or any similar or analogous definition (or the addition of a concept of “interest period”), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of Section 2.13 and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

“Consolidated Tangible Total Assets” means, as at any applicable time of determination, Consolidated Total Assets less, without duplication, all intangible assets such as goodwill, trademarks, trade names, patents and unamortized debt discount and expense carried as an asset, in each case as set forth in the most recently available consolidated balance sheet of the Parent and its Subsidiaries.

“Consolidated Total Assets” means, as at any applicable time of determination, the total assets of Parent and its Subsidiaries as set forth in the most recently available consolidated financial statements of the Parent and its Subsidiaries.

“Consolidated Total Capitalization” means at any date of determination with respect to the Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, the sum of (without duplication) (i) Consolidated Total Debt of the Parent and its Subsidiaries, plus (ii) the sum of the capital stock (excluding treasury stock and capital stock subscribed for and unissued) and surplus (including earning surplus, capital surplus, translation adjustment, the balance of the current profit and loss account not transferred to surplus and accumulated other comprehensive income) accounts of the Parent and its Subsidiaries, in each case as shown on the most recent consolidated balance sheet of the Parent and its Subsidiaries delivered pursuant to Section 5.01(a).

“Consolidated Total Debt” means at any date of determination with respect to the Parent and its Subsidiaries, determined on a consolidated basis in accordance with GAAP, the sum of (without duplication) all then outstanding Debt of the Parent and its Subsidiaries as shown on the most recent consolidated balance sheet of the Parent delivered pursuant to Section 5.01(a).

“Continuing Directors” means the directors of the Parent on the Closing Date and each subsequent director of the Parent, if, in each case, such subsequent director’s election or nomination for election to the board of directors (or equivalent governing body) of the Parent is approved or ratified by at least a majority of the then “Continuing Directors”.

“Controlled Group” means, with respect to any Person, all trades or businesses (whether or not incorporated) that, together with such Person, are treated as a single employer under Section 414 of the Code.

“Convert”, **“Conversion”**, **“Converted”**, **“Continue”** and **“Continued”** each refers to a conversion of Loans of one Type into Loans of another Type or the selection of a new, or the renewal or continuation of the same, Interest Period for SOFR Loans, as the case may be, pursuant to Section 2.18(b). “Converting”, “Continuing” and “Continuation” have meanings correlative thereto.

“Covered Entity” shall mean any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Current Termination Date” has the meaning set forth in Section 2.06(b).

“Debt” means, for any Person, (without duplication), all (i) indebtedness for borrowed money, (ii) obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) obligations to pay the deferred purchase price of property or service (other than trade payables not overdue by more than 90 days incurred in the ordinary course of business), (iv) the Attributable Debt of such Person with respect to

such Person's obligations in respect of Capitalized Leases (regardless of whether accounted for as indebtedness under GAAP), (v) indebtedness of the type referred to in clauses (i) through (iv) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien or encumbrance on, or security interest in, property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness, and (vi) all obligations of such Person for indebtedness or obligations of others of the kinds referred to in clauses (i) through (v) above under direct or indirect Guarantees, excluding, in all cases, (a) advances for construction as set forth on the consolidated balance sheet of the Parent and its Subsidiaries, (b) reimbursement obligations (contingent or otherwise) in respect of outstanding letters of credit and (c) the Attributable Debt of such Person with respect to such Person's obligations in respect of Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP).

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

"Default" means any condition or event that constitutes an Event of Default or that with the giving of notice or lapse of time or both would, unless cured or waived in writing, become an Event of Default.

"Default Right" shall have the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means, subject to Section 2.24(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any LC Issuing Bank, any Swingline Bank or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent or any LC Issuing Bank or Swingline Bank in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity, (iii) indicated its consent to, approval of or acquiescence in any such proceeding or appointment, or (iv) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of

attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (e) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.24(b)) upon delivery of written notice of such determination to the Borrower, each LC Issuing Bank, each Swingline Bank and each Lender.

“Designated Lender” has the meaning set forth in Section 2.05(a).

“Dollars” or **“\$”** means dollars in lawful currency of the United States of America.

“EEA Financial Institution” means (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

“EEA Member Country” means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any credit institution or investment firm established in any EEA Member Country.

“Eligible Assignee” means (i) a Lender; (ii) an Affiliate of a Lender; (iii) an Approved Fund; and (iv) any bank or financial institution approved by (w) the Administrative Agent, (x) except for any Swingline Bank which is a Lender being replaced pursuant to Section 2.23(b), each Swingline Bank, (y) except for any LC Issuing Bank which (1) is a Lender being replaced pursuant to Section 2.23(b) and (2) has no Letters of Credit issued by it on such date of replacement, each LC Issuing Bank and (z) unless an Event of Default described in Section 6.01(a), 6.01(g) or 6.01(h) has occurred and is continuing at the time any assignment is effected in accordance with Section 7.05, the Borrower (each such approval not to be unreasonably withheld or delayed and such approval to be deemed given by the Borrower if no objection is received by the assigning Lender and the Administrative Agent from the Borrower within ten (10) Business Days after notice of such proposed assignment has been received by the Borrower); provided that (A) the Borrower or any of the Borrower’s Subsidiaries or Affiliates, (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B) and (C) any natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) shall not qualify as an Eligible Assignee.

“Environmental Liabilities” means any liabilities, whether accrued, contingent or otherwise, arising from and in any way associated with the compliance or non-compliance with any Environmental Requirement.

“Environmental Proceedings” means any judicial or administrative proceedings arising from or in any way associated with any Environmental Requirement.

“Environmental Requirement” means, with respect to any Person, any legal requirement relating to health, safety or the environment and applicable to such Person, or the Properties of such Person, including but not limited to any such requirement under CERCLA, RCRA or similar state legislation and all federal, state and local laws, ordinances, regulations, orders, writs, decrees and common law.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor law. Any reference to any provision of ERISA shall also be deemed to be a reference to any successor provision or provisions thereof.

“**Erroneous Payment**” has the meaning assigned thereto in Section 8.10(a).

“**Erroneous Payment Deficiency Assignment**” has the meaning assigned thereto in Section 8.10(d).

“**Erroneous Payment Impacted Class**” has the meaning assigned thereto in Section 8.10(d).

“**Erroneous Payment Return Deficiency**” has the meaning assigned thereto in Section 8.10(d).

“**EU Bail-In Legislation Schedule**” means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor Person), as in effect from time to time.

“**Event of Default**” has the meaning set forth in Section 6.01.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time.

“**Excluded Taxes**” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.23(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.17, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 2.17(g), and (d) any U.S. federal withholding Taxes imposed under FATCA.

“**Existing Credit Agreement**” has the meaning set forth in the recitals.

“**Existing Letters of Credit**” means the letters of credit set forth on Schedule 2.04(k).

“**Extension of Credit**” means (i) the making of a Loan or (ii) the issuance of a Letter of Credit or the amendment of any Letter of Credit having the effect of extending the stated termination date thereof or increasing the maximum amount to be drawn thereunder.

“**Extension Request**” has the meaning specified in Section 2.06(b).

“**Facility Fee**” has the meaning set forth in Section 2.09(a).

“**FATCA**” means Sections 1471 through 1474 of the Code, as of the Closing Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code.

“**Federal Funds Rate**” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“**Fee Letter**” means each of those certain fee letters, dated October 3, 2022, among the Borrower and each of the Joint Lead Arrangers and the other parties thereto.

“**Financial Officer**” of any Person means the chief financial officer, principal accounting officer, treasurer, assistant treasurer, controller or assistant controller of such Person.

“**Financial Services Agreement**” means any Financial Services Agreement between the Borrower and one or more of the Parent and the Operating Utilities, each in substantially the form of Exhibit E; provided that for purposes of Section 3.01(c)(i), the term “Financial Services Agreement” means the Financial Services Agreement dated as of June 15, 2000, between the Borrower and the Parent.

“**Fiscal Quarter**” means any fiscal quarter of the Borrower or the Parent, as applicable.

“**Fiscal Year**” means any fiscal year of the Borrower or the Parent, as applicable.

“**Floor**” means a rate of interest equal to 0%.

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

“**FRB**” means the Board of Governors of the Federal Reserve System of the United States.

“**Fronting Exposure**” means, at any time there is a Defaulting Lender, (a) with respect to any LC Issuing Bank, such Defaulting Lender’s Pro Rata Percentage of the LC Outstandings with respect to Letters of Credit issued by such LC Issuing Bank other than LC Outstandings as to which such Defaulting Lender’s participation obligation has been reallocated to Non-Defaulting Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to any Swingline Bank, such Defaulting Lender’s Pro Rata Percentage of outstanding Swingline Loans made by such Swingline Bank other than Swingline Loans as to which such Defaulting Lender’s participation obligation has been reallocated to Non-Defaulting Lenders or Cash Collateralized in accordance with the terms hereof.

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

“**GAAP**” means generally accepted accounting principles in the United States of America in effect from time to time.

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

“**Guarantee**” means, with respect to any Person, any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (i) to secure, purchase or pay (or advance or supply funds) for the purchase or payment of such Debt or other obligation (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to provide collateral security or to maintain financial statement conditions or otherwise) or (ii) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligation of the payment thereof or to protect such obligee against loss in respect thereof (in whole or in part); provided that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Guarantee shall be deemed to be the lower of (x) an amount equal to the stated or determinable amount of the obligation in respect of which such Guarantee is made and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guarantee, unless such obligation and the maximum amount for which such Person may be liable are not stated or determinable, in which case the amount of such Guarantee shall be such Person’s maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith. The term “Guarantee” used as a verb has a corresponding meaning.

“**Hazardous Materials**” means (i) solid or hazardous waste, as defined in the RCRA, or in any applicable state or local law or regulation, (ii) “hazardous substance”, “pollutant” or “contaminant” as defined in CERCLA, or in any applicable state or local law or regulation, (iii) gasoline, or any other petroleum product or by-product, including crude oil or any fraction thereof, (iv) “toxic substances”, as defined in the Toxic Substances Control Act of 1976, or in any applicable state or local law or regulation and (v) “insecticides”, “fungicides” or “rodenticides”, as defined in the Federal Insecticide, Fungicide, and Rodenticide Act of 1975 or in any applicable state or local law or regulation.

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

“**Indemnitee**” has the meaning set forth in Section 7.03(b).

“**Interest Period**” means, for each SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below. In the case of a SOFR Loan, the duration of each such Interest Period shall be one, three, or six months, in each case as the Borrower may select by notice to the Administrative Agent pursuant to Section 2.02(a) or 2.18(b); provided, that:

- (1) the Borrower may not select any Interest Period that ends after the stated Termination Date;

(2) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; provided, in the case of any Interest Period for a SOFR Loan, that if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day;

(3) any Interest Period for a SOFR Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the appropriate subsequent calendar month) shall end on the last Business Day of the appropriate subsequent calendar month at the end of such Interest Period;

(4) the Interest Period shall commence on the date of Loan of or Conversion to any SOFR Loan and, in the case of immediately successive Interest Periods, each successive Interest Period shall commence on the date on which the immediately preceding Interest Period expires; and

(5) there shall be no more than twelve (12) Interest Periods in effect at any time.

“Investment Company Act” has the meaning set forth in Section 4.08.

“IRS” means the United States Internal Revenue Service.

“Joint Lead Arranger” means each of Wells Fargo Securities, LLC, JPMorgan Chase Bank, N.A., Mizuho Bank, Ltd., PNC Capital Markets LLC, U.S. Bank National Association, BofA Securities, Inc., and Royal Bank of Canada, and their respective successors, in their capacity as joint lead arrangers and joint bookrunners.

“LC Commitment” means in the case of (a) an LC Issuing Bank described in clause (a) of the definition of such term, the amount set forth on Schedule 2.04 opposite such LC Issuing Bank’s name and (b) any other LC Issuing Bank, the amount set forth in the agreement executed by the Borrower, such relevant LC Issuing Bank and acknowledged (to evidence its consent as to the identity of such LC Issuing Bank) by the Administrative Agent, in each case, subject to adjustment on account of a reduction in the LC Commitments pursuant to Section 2.10. The aggregate LC Commitments of all the LC Issuing Banks on the Closing Date shall be \$150,000,000. The LC Commitment of each LC Issuing Bank shall be a part of and not in addition to such LC Issuing Bank’s Commitment as a Lender.

“LC Disbursement” has the meaning set forth in Section 2.04(e).

“LC Fee” has the meaning set forth in Section 2.09(b).

“LC Issuing Bank” means, as to any Letter of Credit, (a) each Lender listed on Schedule 2.04 and (b) any other Lender appointed by the Borrower and approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) that agrees pursuant to Section 2.04 to act as an LC Issuing Bank hereunder.

“LC Notice Date” has the meaning set forth in Section 2.04(f).

“LC Outstandings” means, on any date of determination, (i) the undrawn stated amounts of all Letters of Credit that are outstanding on such date, plus (ii) the aggregate principal amount of all unpaid Reimbursement Obligations on such date with respect to payments made by any LC Issuing Bank under any Letter of Credit.

“LC Payment Notice” has the meaning set forth in Section 2.04(f).

“LC Reimbursement Due Date” has the meaning set forth in Section 2.04(e).

“Lenders” means each of the Lenders identified on the signature pages hereto, and their successors and permitted assigns.

“Lending Office” means, with respect to any Lender, the office of such Lender maintaining such Lender’s Extensions of Credit.

“Letter of Credit” means any letter of credit issued by an LC Issuing Bank pursuant to Section 2.04.

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

“Loan” means a Base Rate Loan, a SOFR Loan, or a Swingline Loan, and **“Loans”** means Base Rate Loans, SOFR Loans, or Swingline Loans, or any or all of them, as the context shall require.

“Loan Documents” means this Agreement, the Support Agreement, each Fee Letter, the Notes and any other document evidencing, relating to or securing the Loans, and any other document or instrument delivered from time to time in connection with this Agreement, the Notes or the Loans.

“Margin Regulations” means Regulations T, U and X of the FRB, as in effect from time to time, together with all official rulings and interpretations issued thereunder.

“Margin Stock” has the meaning assigned to that term in the Margin Regulations.

“Material Adverse Change” means any (i) material adverse change with respect to the Properties, business, condition (financial or otherwise) or operations of the Borrower or of the Parent and its Subsidiaries, taken as a whole, or (ii) material adverse effect on the legality, validity or enforceability of the Loan Documents or on the ability of the Borrower or the Parent to perform its obligations thereunder.

“Moody’s” means Moody’s Investors Service, Inc.

“Moody’s Rating” means, with respect to any Person, on any date of determination, the debt rating most recently announced by Moody’s with respect to the senior unsecured, non-credit enhanced debt issued by such Person.

“Multiemployer Plan” means a plan as described in Section 4001(a)(3) of ERISA to which the Borrower, the Parent, any Significant Subsidiary of the Parent or any other member of the Controlled Group of the foregoing contributes or has an obligation to contribute.

“Non-Consenting Lender” has the meaning set forth in Section 7.04(b).

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

“Non-Extending Lender” has the meaning set forth in Section 2.06(b).

“**Note**” or “**Notes**” means each of the promissory notes of the Borrower, evidencing the obligation of the Borrower to repay the Loans to the Lenders substantially in the form of Exhibit D.

“**Notice of Borrowing**” has the meaning set forth in Section 2.02(a).

“**Notice of Swingline Borrowing**” has the meaning set forth in Section 2.03(a).

“**Obligations**” means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the LC Outstandings and any interest thereon and (c) all other fees (including reasonable and documented attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Borrower to the Lenders, the LC Issuing Banks or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against the Borrower or the Parent of any proceeding under any federal bankruptcy laws (as now or hereafter in effect) or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“**OFAC**” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“**Operating Lease**” means, as to any Person as determined in accordance with GAAP, any lease of Property (whether real, personal or mixed) by such Person as lessee which is not a Capitalized Lease.

“**Operating Utilities**” means, as of any date of determination, those Subsidiaries of the Parent that are operating water and/or wastewater utilities and that are party to a Financial Services Agreement with the Borrower and the Parent.

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

“**Other Taxes**” means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.23).

“**Outstanding Credits**” means, on any date of determination, an amount equal to the sum of (i) the aggregate principal amount of all Loans outstanding on such date plus (ii) the LC Outstandings on such date. The “Outstanding Credits” of any Lender means, on any date of determination, an amount equal to such Lender’s Pro Rata Share of the aggregate Outstanding Credits on such date.

“**Parent**” means American Water Works Company, Inc., a Delaware corporation.

“Parent Change of Control” means the occurrence of either of the following: (i) any entity, person (within the meaning of Section 14(d) of the Exchange Act) or group (within the meaning of Section 13(d) of the Exchange Act), that theretofore was beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act) of less than 45% of the Parent’s then outstanding Common Stock acquires direct or indirect beneficial ownership of shares of Common Stock of the Parent, in a transaction or series of transactions, that results in such entity, person or group directly or indirectly owning beneficially 45% or more of the Parent’s then outstanding Common Stock; or (ii) a majority of the board of directors (or equivalent governing body) of the Parent shall not be Continuing Directors.

“Participant” has the meaning set forth in Section 7.05(e).

“Participant Register” has the meaning set forth in Section 7.05(e).

“Participation Interest” means a purchase by a Lender of a participation in Loans as provided in Section 2.22.

“Payment Date” means each March 31, June 30, September 30 and December 31 and the Termination Date.

“Payment Recipient” has the meaning assigned thereto in Section 8.10(a).

“PBGC” means the Pension Benefit Guaranty Corporation pursuant to Subtitle A or Title IV of ERISA or any entity succeeding to any or all of its functions under ERISA.

“Permitted Liens” means:

- (i) Liens existing, or created pursuant to the terms of agreements existing, on the Closing Date;
- (ii) Liens consisting of (A) pledges or deposits in the ordinary course of business to secure obligations under workmen’s compensation laws or similar legislation, (B) deposits in the ordinary course of business to secure or in lieu of surety, appeal or customs bonds to which the Borrower, the Parent or a Significant Subsidiary of the Parent is a party, (C) Liens created by or resulting from any litigation or legal proceeding which is currently being contested in good faith by appropriate proceedings diligently conducted, (D) pledges or deposits in the ordinary course of business to secure performance in connection with bids, tenders or contracts (other than contracts for the payment of money) or (E) materialmen’s, mechanics’, carriers’, workmen’s, repairmen’s or other like Liens incurred in the ordinary course of business for sums not yet due or currently being contested in good faith by appropriate proceedings diligently conducted;
- (iii) Liens created to secure tax-exempt Debt or any other tax-exempt indebtedness, in connection with the financing or refinancing of the purchase, lease or construction of Properties or other assets;
- (iv) Liens on Properties or assets (A) of any Person existing at the time such Person is merged or consolidated with or into, or such asset is acquired by, the Borrower, the Parent or a Subsidiary of the Parent and (B) of the Borrower, the Parent or a Subsidiary of the Parent existing at the time such tangible property or tangible assets are purchased or otherwise acquired by the Borrower, the Parent or such Subsidiary; provided that, with respect to each of the foregoing clauses (A) and (B), (1) such Liens are not incurred in connection with, or in anticipation of, such event, purchase or other acquisition, and (2) such Liens do not attach to any other Property or asset of the

Borrower, the Parent or any such Subsidiary; and provided further that, with respect to the foregoing clause (B), (1) such Liens are applicable only to specific Property or assets, and (2) such Liens are not “blanket” or all asset Liens;

- (v) Liens created to secure sales of accounts receivable and other receivables;
- (vi) licenses of intellectual property granted by the Borrower, the Parent or a Subsidiary of the Parent in the ordinary course of business and not interfering in any material respect with the ordinary conduct of business;
- (vii) Liens of landlords arising under real property leases to the extent such Liens arise in the ordinary course of business and do not secure any past due obligation for the payment of money;
- (viii) any interest or title of a lessor or sublessor under any lease permitted by this Agreement;
- (ix) Liens, securing Debt which has neither been assumed by the Borrower, the Parent or a Subsidiary of the Parent nor upon which it customarily pays interest charges, existing upon real property, or rights in or relating thereto, which real property or rights were acquired for right-of-way purposes;
- (x) zoning laws and ordinances;
- (xi) Capitalized Leases;
- (xii) easements, rights-of-way, restrictions, conditions and other similar encumbrances, minor defects or irregularities of title, and alleys, streets and highways, which in the aggregate do not materially impair the usefulness of the mortgaged property in the present business of the Borrower, the Parent or any Subsidiary of the Parent;
- (xiii) leases of the Properties and other assets of the Borrower, the Parent or a Subsidiary of the Parent, in each case entered into in the ordinary course of business and that do not, individually or in the aggregate, (A) interfere in any material respect with the ordinary course of business or (B) materially impair the value of the property subject thereto;
- (xiv) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by the Borrower, the Parent or a Subsidiary of the Parent in the ordinary course of business in accordance with the past practices of the Borrower, the Parent or such Subsidiary of the Parent;
- (xv) bankers’ Liens, rights of setoff and other similar Liens existing solely with respect to cash and cash equivalents on deposit in one or more accounts maintained by the Borrower, the Parent or any Subsidiary of the Parent, in each case granted in the ordinary course of business in favor of the financial institution or institutions with which such accounts are maintained, securing amounts owing to such financial institution(s) with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Debt;

(xvi) Liens for taxes, assessments or governmental charges or levies not yet delinquent and which may subsequently be paid without interest or penalties and Liens for taxes, assessments or governmental charges or levies which are being contested in good faith by appropriate proceedings for which reserves have been established to the extent required by GAAP;

(xvii) purchase money Liens upon or in any fixed or capital assets, or other property created, acquired or constructed for use in connection therewith or related thereto, to secure the purchase price or the cost of construction or improvement of such fixed or capital assets or such other property or to secure Debt incurred solely for the purpose of financing the acquisition, construction or improvement of such fixed or capital assets or such other property (including Liens securing any Capitalized Leases) or Liens on any such assets or property existing at the time of acquisition thereof; provided, that (i) such Lien attaches to such asset or property prior to, concurrently or within 180 days (or within one year thereafter pursuant to a binding commitment for financing entered into with a lender or investor within such 180-day period) after the acquisition, improvement or completion of the construction thereof; (ii) such Lien does not extend to any other asset theretofore owned by the Borrower, the Parent or any Subsidiary of the Parent except (w) unimproved real property on which the property so constructed or the improvement is located, (x) other property (or improvement thereon) which is an improvement to or is acquired or constructed for use in connection therewith or related thereto, (y) any right and interest under any agreement or other document relating to the property being so constructed or improved or such other property and (z) the stock of any Subsidiary of the Parent created or maintained for the primary purpose of owning the property so constructed or improved; and (iii) the Debt secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets or such other property;

(xviii) Liens not permitted by the foregoing subsections (i) through (xvii) securing Debt or other obligations in the aggregate principal amount not to exceed 15% of Consolidated Tangible Total Assets;

(xix) Liens created for the sole purpose of refinancing, extending, renewing or replacing in whole or in part Debt or other obligations secured by any Lien, mortgage or security interest referred to in the foregoing subsections (i) through (xviii); provided that the principal amount of Debt or obligations secured thereby shall not exceed the principal amount of Debt or obligations so secured at the time of such refinancing, extension, renewal or replacement and the Lien securing such refinancing, extension, renewal or replacement, as the case may be, shall be limited to all or a part of the Property or assets that secured the Debt or other obligations so extended, renewed or replaced (and any improvements on such Property or assets); and

(xx) (i) Liens created pursuant to the Loan Documents (other than the Support Agreement) and (ii) Liens granted in favor of the Administrative Agent, the Swingline Banks and/or the LC Issuing Banks to Cash Collateralize any LC Issuing Bank's or Swingline Bank's Fronting Exposure.

"Person" means an individual, a corporation, a partnership (including a joint venture), an unincorporated association, a limited liability company, a trust or any other entity or organization, including, but not limited to, a government or political subdivision or an agency or instrumentality thereof.

"Plan" means at any time an employee pension benefit plan (other than a Multiemployer Plan) that is subject to the provisions of Title IV of ERISA or subject to the minimum funding standards under Section 412 of the Code and is maintained by a member of the Controlled Group for employees of a member of the Controlled Group.

“Platform” has the meaning set forth in Section 5.01.

“Prime Rate” means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day specified in the public announcement of such change. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

“Pro Rata Percentage” or **“Pro Rata Share”** means for each Lender, a fraction (expressed as a decimal) the numerator of which is the Commitment of such Lender at such time and the denominator of which is the aggregate Commitment of the Lenders at such time. The initial Pro Rata Percentages are set out on Schedule I. Notwithstanding the foregoing, if the Termination Date has occurred, the “Pro Rata Percentage” or “Pro Rata Share” shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Properties” means, with respect to, any Person, all real property owned, leased or otherwise used or occupied by such Person wherever located.

“Proposed Change” has the meaning set forth in Section 7.04(b).

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

“Public Lender” has the meaning set forth in Section 5.01.

“OFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

“QFC Credit Support” shall have the meaning assigned to such term in Section 7.18.

“RCRA” means the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq., as amended from time to time, and any regulations promulgated thereunder.

“Recipient” means (a) the Administrative Agent, (b) any Lender, (c) any Swingline Bank and (d) any LC Issuing Bank, as applicable.

“Register” has the meaning set forth in Section 7.05(c).

“Reimbursement Obligation” means the obligation of the Borrower to reimburse an LC Issuing Bank pursuant to Section 2.04(d) for amounts drawn under Letters of Credit issued by such LC Issuing Bank.

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

“Relevant Governmental Body” means the FRB or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the FRB or the Federal Reserve Bank of New York, or any successor thereto.

“Request for Issuance” means a request made pursuant to Section 2.04 in the form of Exhibit B.

“Required Lenders” means, at any time, Lenders holding in the aggregate more than 50% of the Outstanding Credits and unutilized Commitments at such time; provided that the Outstanding Credits of any Defaulting Lender shall be disregarded in determining Required Lenders at any time, provided, further that the amount of any participation in any Swingline Loan or Letter of Credit that such Defaulting Lender has failed to fund that has not been reallocated to and funded by another Lender, to the extent such Lender shall have been required to fund its participation in the outstanding Swingline Loan or Letter of Credit and failed to do so, shall be deemed to be held by the Lender that is the applicable Swingline Bank or LC Issuing Bank, as the case may be, in making such determination.

“Resignation Effective Date” has the meaning set forth in Section 8.08(a).

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

“Responsible Officer” means the chief executive officer, chief operating officer, president or any other Financial Officer of the Parent or the Borrower, and any other officer of the Parent or the Borrower with responsibility for the administration of the obligations of the Parent or the Borrower under this Agreement.

“S&P” means S&P Global Ratings, a subsidiary of S&P Global, Inc., or any successor thereto.

“S&P Rating” means, with respect to any Person, on any date of determination, the debt rating most recently announced by S&P with respect to the senior unsecured, non-credit enhanced debt issued by such Person.

“Sale and Leaseback Transaction” means, with respect to the Borrower, the Parent or any Subsidiary of the Parent, any arrangement (including any series of related arrangements), whereby it shall sell or transfer any Property (real or personal) to any other Person (other than the Borrower, the Parent or any Subsidiary of the Parent), and thereafter rent or lease such Property or portion thereof that it intends to use for substantially the same purpose or purposes as the Property sold or transferred.

“Sanctioned Country” means at any time, a country, region or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, His Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c) any Person owned or controlled by, or acting for, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any such Sanctions program.

“Sanctions” means any economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and restrictions and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, any European member state, His Majesty’s Treasury, or other relevant sanctions authority in any jurisdiction in which (a) the Borrower or any of its Subsidiaries or Affiliates is located or conducts business, (b) in which any of the proceeds of the Extensions of Credit will be used, or (c) from which repayment of the Extensions of Credit will be derived.

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

“**Significant Subsidiary**” means the Borrower and with respect to any other Person, a Subsidiary of such Person that is a “significant subsidiary” (within the meaning of Regulation S-X of the SEC). Each Significant Subsidiary of the Parent is set forth on Schedule II (as such Schedule may be updated pursuant to and in accordance with Section 5.01(c)(v)).

“**SOFR**” means a rate equal to the secured overnight financing rate as administered by the SOFR Administrator.

“**SOFR Administrator**” means the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“**SOFR Loan**” means a loan that bears interest based upon Adjusted Term SOFR as provided in Section 2.08(a)(ii).

“**Subsidiary**” means, with respect to any Person, any corporation or unincorporated entity of which more than 50% of the outstanding capital stock (or comparable interest) having ordinary voting power (irrespective of whether at the time capital stock (or comparable interest) of any other class or classes of such corporation or entity shall or might have voting power upon the occurrence of any contingency) is at any time directly or indirectly owned by said Person (whether directly or through one or more of the other Subsidiaries). In the case of an unincorporated entity, a Person shall be deemed to have more than 50% of interests having ordinary voting power only if such Person’s vote in respect of such interests comprises more than 50% of the total voting power of all such interests in the unincorporated entity.

“**Support Agreement**” means that certain Support Agreement, dated June 22, 2000, between the Parent and the Borrower, as amended by that certain First Amendment to Support Agreement dated as of July 26, 2000.

“**Swingline Bank**” means as to any Swingline Loan, (a) each Lender listed on Schedule 2.03 and (b) any other Lender appointed by the Borrower and approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed) that agrees pursuant to Section 2.03 to act as a Swingline Bank hereunder.

“**Swingline Borrowing**” means a borrowing hereunder consisting of Swingline Loans made to the Borrower.

“**Swingline Commitment**” means the commitment of each Swingline Bank to make Swingline Loans, in the case of (a) a Swingline Bank described in clause (a) of the definition of such term, in the amount of the unutilized Commitment of each such Swingline Bank as a Lender, and (b) any other Swingline Bank, in the amount set forth in the agreement executed by the Borrower, such relevant Swingline Bank and acknowledged (to evidence its consent as to the identity of such Swingline Bank) by the Administrative Agent, in each case, subject to adjustment on account of a reduction in the Swingline Commitments pursuant to Section 2.10. The Swingline Commitment of each Swingline Bank shall be a part of and not in addition to such Swingline Bank’s Commitment as a Lender.

“**Swingline Loan**” means a loan that bears interest as provided in Section 2.08(a)(iii).

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Termination Date” means the earliest to occur of (a) with respect to any Lender, October 26, 2027, unless, with respect to such Lender, such date is otherwise extended pursuant to Section 2.06, (b) the date of termination of the aggregate Commitments by the Borrower pursuant to Section 2.10, or (c) the date of termination of the aggregate Commitments pursuant to Section 6.01.

“Term SOFR” means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the **“Periodic Term SOFR Determination Day”**) that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

(b) for any calculation with respect to a Base Rate Loan or a Swingline Loan on any day, the Term SOFR Reference Rate for a tenor of one month on the day (such day, the **“Base Rate Term SOFR Determination Day”**) that is two (2) U.S. Government Securities Business Days prior to such day, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. on any Base Rate Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Base Rate Term SOFR Determination Day.

“Term SOFR Adjustment” means a percentage equal to 0.10% per annum.

“Term SOFR Administrator” means CME Group Benchmark Administration Limited (CBA) (or a successor administrator of the Term SOFR Reference Rate selected by the Administrative Agent in its reasonable discretion).

“Term SOFR Reference Rate” means the forward-looking term rate based on SOFR.

“**Type**” with respect to a Loan (other than a Swingline Loan), means any of the following, each of which shall be deemed to be a different “**Type**” of Loan: a Base Rate Loan and each SOFR Loan having the same Interest Period.

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

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

“**Unadjusted Benchmark Replacement**” means the applicable Benchmark Replacement excluding the related Benchmark Replacement Adjustment.

“**U.S. Government Securities Business Day**” means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.02, 2.12, and 2.19, in each case, such day is also a Business Day.

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

“**U.S. Tax Compliance Certificate**” has the meaning assigned to such term in Section 2.17(g).

“**Wells Fargo**” means Wells Fargo Bank, National Association, a national banking association, and its successors.

“**Withdrawal Liability**” means a liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as described in Part I of Subtitle E of Title IV of ERISA.

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

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

Section 1.02 Accounting Terms and Determinations. Unless otherwise specified herein, all terms of an accounting character used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP; provided that, if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision (including any definition) hereof to eliminate the effect

of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision occasioned by the promulgation of rules, regulations, pronouncements and opinions by or required by the Financial Accounting Standards Board or the American Institute of Certified Public Accounts (or successors thereto or agencies with similar functions), and such change affects the calculation of any component of any financial covenant, standard or term found in this Agreement (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith, and the Borrower and the Lenders agree to enter into negotiations in order to amend such provisions (with the agreement of the Required Lenders or, if required by Section 7.04, all of the Lenders) so as to equitably reflect such changes with the desired result that the criteria for evaluating any of the Parent and its Subsidiaries' financial condition shall be the same after such changes as if such changes had not been made; provided, further that (a) all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purpose of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as a Capitalized Lease in the financial statements and (b) all financial statements delivered to the Administrative Agent hereunder shall contain a schedule showing the modifications necessary to reconcile the adjustments made pursuant to clause (a) above with such financial statements. Notwithstanding the foregoing, the determination of compliance with any covenant contained herein (including the computation of any amounts and ratios) shall be made without giving effect to any election under FASB ASC Topic 825 and FASB ASC 470-20 (or any other Financial Accounting Standard having a similar result or effect) to value any Debt or other liabilities of the Borrower, the Parent or any of its Subsidiaries at "fair value", as defined therein, and Debt shall be measured at the outstanding principal amount thereof.

Section 1.03 Use of Defined Terms. All terms defined in this Agreement shall have the same meanings when used in any of the other Loan Documents (other than the Support Agreement), unless otherwise defined therein or unless the context shall otherwise require.

Section 1.04 Other Definitions and Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (d) the word "will" shall be construed to have the same meaning and effect as the word "shall", (e) any reference herein to any Person shall be construed to include such Person's successors and assigns, (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, and (i) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including".

Section 1.05 References to Agreement and Laws. Unless otherwise expressly provided herein, (a) references to formation documents, governing documents, agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments,

restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) references to any applicable law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such applicable law.

Section 1.06 Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit (at the time specified therefor in such applicable Letter of Credit and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

Section 1.07 Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.08 Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 2.18(c), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

Section 1.09 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its equity interests at such time.

ARTICLE II EXTENSIONS OF CREDIT

Section 2.01 Commitment to Extend Credit.

(a) Each Lender severally agrees, on the terms and conditions set forth herein, to make its Pro Rata Share of Loans (other than Swingline Loans) in Dollars to the Borrower from time to time before the Termination Date; provided that, immediately after each such Loan is made, (i) with respect to each Lender individually, the Outstanding Credits of such Lender shall not exceed such Lender's Commitment, and (ii) with respect to the Lenders collectively, the aggregate Outstanding Credits shall not exceed the Lenders' aggregate Commitment.

(b) Each Swingline Bank severally agrees, on the terms and conditions set forth herein, to make Swingline Loans in Dollars to the Borrower from time to time before the Termination Date; provided that, immediately after each such Swingline Loan is made: (i) the outstanding aggregate principal amount of the Swingline Loans made by such Swingline Bank shall not exceed such Swingline Bank's Swingline Commitment, (ii) the outstanding aggregate principal amount of the Swingline Loans shall not exceed \$200,000,000, (iii) the outstanding aggregate principal amount of the Swingline Loans made by such Swingline Bank, together with the Outstanding Credits (other than Swingline Loans) of the applicable Lender acting as a Swingline Bank shall not exceed such Lender's Commitment, (iv) with respect to each Lender individually, the Outstanding Credits of such Lender shall not exceed such Lender's Commitment, and (v) with respect to the Lenders collectively, the aggregate Outstanding Credits shall not exceed the Lenders' aggregate Commitment.

(c) Within the foregoing limits, the Borrower may borrow under this Section, repay or, to the extent permitted by Section 2.12, prepay Loans and reborrow under this Section at any time before the Termination Date.

Section 2.02 Method of Borrowing.

(a) Each Borrowing shall be made on a Business Day, upon notice from the Borrower to the Administrative Agent, given (i) in the case of a Borrowing that is a Base Rate Loan, not later than 1:00 P.M. on the date of the proposed Borrowing and (ii) in the case of a Borrowing that is a SOFR Loan, not later than 11:00 A.M. on the third U.S. Government Securities Business Day prior to the date of the proposed Borrowing. Each such notice of a Borrowing (a "***Notice of Borrowing***") by the Borrower shall be in substantially the form of Exhibit A, specifying therein the requested (A) date of such Borrowing, (B) Type of Loan to be made in connection with such Borrowing, (C) aggregate amount of such Borrowing and (D) in the case of a Borrowing comprising SOFR Loans, initial Interest Period for each such Loan. The Administrative Agent shall give notice to each Lender promptly upon receipt of each Notice of Borrowing pursuant to this Section 2.02(a), the contents thereof and each such Lender's Pro Rata Share of any Borrowing to be made pursuant thereto. Each Lender shall, before 1:00 P.M. on the date of such Borrowing (or 3:00 P.M. on the date of such Borrowing with respect to Base Rate Loans), make available to the Administrative Agent for the account of the Borrower in same day funds, the proceeds of such Borrowing. Such Borrowing will then be made available to the Borrower by the Administrative Agent by crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent (or at such other location as may be agreed by the Borrower and the Administrative Agent).

(b) Each Notice of Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to comprise SOFR Loans, the Borrower shall indemnify the applicable Lender against any loss, cost or expense incurred by such Lender as a result of any failure of the Borrower to fulfill on or before the date specified in such Notice of Borrowing for such Loans, the applicable conditions set forth in Article III, including any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or redeployment of deposits or other funds acquired by such Lender as part of such Borrowing when such Loan is not made on such date.

(c) Each Borrowing (whether for a Base Rate Loan or a SOFR Loan) shall be in an aggregate principal amount of \$5,000,000 or any multiple of \$1,000,000 in excess thereof (except that any such Borrowing may be in the aggregate amount of the unutilized Commitment on such date).

Section 2.03 Method of Swingline Borrowing.

(a) Each Swingline Borrowing shall be made on a Business Day, upon notice from the Borrower to the Administrative Agent and a Swingline Bank, given not later than 1:00 P.M. on the date of the proposed Swingline Borrowing. Each such notice of a Swingline Borrowing (a “**Notice of Swingline Borrowing**”) by the Borrower shall be in substantially the form of Exhibit A, specifying therein (i) the requested date of such Swingline Borrowing, (ii) the requested aggregate amount of such Swingline Borrowing and (iii) whether the interest rate for such Swingline Borrowing is to be based on the Base Rate or Adjusted Term SOFR Market Index Rate. The applicable Swingline Bank shall, before 3:00 P.M. on the date of such Swingline Borrowing, make available to the Administrative Agent for the account of the Borrower in same day funds, the proceeds of such Swingline Borrowing. Such Swingline Borrowing will then be made available to the Borrower by the Administrative Agent by crediting the account of the Borrower on the books of such office with the aggregate of the amounts made available to the Administrative Agent by such Swingline Bank and in like funds as received by the Administrative Agent. For purposes of determining the amount of Outstanding Credits of any Lender and the amount of unutilized Commitments, each Swingline Borrowing made by a Swingline Bank will be deemed to comprise outstanding Loans of the Lenders made in accordance with their Pro Rata Percentages. In addition to the Swingline Banks listed on Schedule 2.03, the Borrower may from time to time appoint one or more other Lenders (with the consent of such Lender (which consent may be withheld in the sole discretion of such Lender) and the Administrative Agent (such consent not to be unreasonably withheld or delayed)) to act as a Swingline Bank hereunder. Any such appointment and the terms thereof (including the Swingline Commitment of such Swingline Bank) shall be evidenced by a separate written agreement executed by the Borrower and such Swingline Bank and acknowledged (to evidence its consent as to the identity of such Swingline Bank) by the Administrative Agent. The Administrative Agent shall give prompt notice of any such appointment to the Lenders. Upon such appointment, if and for so long as such Lender shall have any obligation to make Swingline Loans hereunder or any Swingline Loan shall remain outstanding, such Lender shall be deemed to be, and shall have all the rights and obligations of, a “Swingline Bank” under this Agreement.

(b) Each Swingline Borrowing shall be in the aggregate principal amount of \$1,000,000 or any multiple of \$500,000 in excess thereof, or such lesser amount as shall be equal to the aggregate amount of the unutilized Commitment on such date.

(c) Notwithstanding anything in this Section 2.03 above to the contrary:

(i) the aggregate amount of the Swingline Loans outstanding at any time shall not exceed \$200,000,000;

(ii) the aggregate amount of the Swingline Loans of a Swingline Bank outstanding at any time shall not exceed the Swingline Commitment of such Swingline Bank;

(iii) no more than one Swingline Loan may be made on the same Business Day; and

(iv) each Swingline Loan shall be paid in full by the Borrower on the earlier to occur of (x) the fourteenth (14th) Business Day after the date the Swingline Loan is made and (y) the Termination Date; provided, that such payment shall not be made from the proceeds of any other Swingline Loans.

(d) Any Swingline Bank that has made a Swingline Loan may, at any time and from time to time in its sole and absolute discretion, on behalf of the Borrower (which hereby irrevocably directs the applicable Swingline Bank to act on its behalf), by written notice given no later than 11:00 a.m. on any Business Day request each Lender to make, and each Lender hereby agrees to make, a Base Rate Loan in an amount equal to such Lender's Pro Rata Percentage of the aggregate amount of the Swingline Loan outstanding on the date of such notice, to repay the applicable Swingline Bank. Each Lender shall make the amount of such Base Rate Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's office not later than 1:00 p.m. on the day specified in such notice. The proceeds of such Base Rate Loan shall be immediately made available by the Administrative Agent to the applicable Swingline Bank for application by the Swingline Bank to the repayment of the Swingline Loan. No Lender's obligation to fund its respective Pro Rata Percentage of a Swingline Loan shall be affected by any other Lender's failure to fund its Pro Rata Percentage of a Swingline Loan, nor shall any Lender's Pro Rata Percentage be increased as a result of any such failure of any other Lender to fund its Pro Rata Percentage of a Swingline Loan.

(e) On each date a Swingline Loan is made, each Lender shall be deemed to have purchased a risk participation in such Swingline Loan from the applicable Swingline Bank in an amount equal to such Lender's Pro Rata Percentage of such Swingline Loan. If for any reason any Swingline Loan cannot be refinanced with a Base Rate Loan pursuant to Section 2.03(d), upon request by a Swingline Bank with an outstanding Swingline Loan, and notwithstanding whether a Default or Event of Default shall have occurred and be continuing, each other Lender shall fund its risk participation in such Swingline Loan by making available to the Administrative Agent for the account of such Swingline Bank, by deposit to the Administrative Agent's account, in same day funds, an amount equal to its risk participation therein. If and to the extent that any Lender shall not have so made the amount of its risk participation in such Swingline Loan available to the Administrative Agent, such Lender agrees to pay to the Administrative Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by the applicable Swingline Bank until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate; provided, that if payment is not made within three (3) Business Days of demand, interest thereon shall accrue at the Base Rate plus the Applicable Percentage for Swingline Loans for each day thereafter until paid. If such Lender shall pay to the Administrative Agent such amount for the account of the applicable Swingline Bank, such amount so paid in respect of principal shall constitute a Swingline Loan by such Lender for purposes of this Agreement, and the outstanding principal amount of the Swingline Loan made by such Swingline Bank shall be reduced by such amount.

(f) Any Swingline Bank may and, if such Swingline Bank is a Lender being replaced pursuant to Section 2.23(b), such Swingline Bank shall, resign at any time by giving written notice thereof to the Administrative Agent, the Lenders and the Borrower, with any such resignation to become effective (i) if such Swingline Bank is the Administrative Agent and the Administrative Agent has given notice of its resignation or has been removed in accordance with Section 8.08, on the Resignation Effective Date or Removal Effective Date, as applicable, (ii) if such Swingline Bank is party to an Assignment and Acceptance whereby it intends to assign all of its Loans and Commitment to an Eligible Assignee pursuant to Section 2.23(b) or 7.05(b), on the effective date of such assignment or (iii) otherwise, on the later of (x) 30 days after delivery of such notice or (y) such date as agreed by such Swingline Bank; provided that if such resigning Swingline Bank is the only remaining Swingline Bank at the time of its resignation and there is no Administrative Agent, the Borrower shall have the right to appoint a successor Swingline Bank, which shall be a Lender or an Eligible Assignee reasonably acceptable to the Required Lenders. If no successor Swingline Bank shall have been so appointed by the Borrower, and shall have accepted such appointment, within 30 days after the retiring Swingline Bank's giving of notice of resignation, then the retiring Swingline Bank may, on behalf of the Borrower and the Lenders, appoint a successor Swingline Bank, which shall be a Lender or an Eligible Assignee acceptable to the Borrower. Upon the acceptance of any appointment as a Swingline Bank hereunder by a successor Swingline Bank, such successor Swingline Bank shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Swingline Bank.

(g) Each Lender's obligation to make a Base Rate Loan pursuant to Section 2.03(d) or to purchase and fund risk participations in Swingline Loans pursuant to Section 2.03(e) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the applicable Swingline Bank, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Lender's obligation to make Base Rate Loans pursuant to Section 2.03(d) is subject to the conditions set forth in Section 3.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swingline Loans, together with interest as provided herein.

Section 2.04 Letters of Credit.

(a) In addition to the LC Issuing Banks listed on Schedule 2.04, the Borrower may from time to time appoint one or more other Lenders (with the consent of any such Lender (which consent may be withheld in the sole discretion of such Lender) and the Administrative Agent (such consent not to be unreasonably withheld or delayed)) to act as an LC Issuing Bank hereunder. Any such appointment and the terms thereof shall be evidenced in a separate written agreement executed by the Borrower and the relevant LC Issuing Bank and acknowledged (to evidence its consent as to the identity of such LC Issuing Bank) by the Administrative Agent. The Administrative Agent shall give prompt notice of any such appointment to the other Lenders. Upon such appointment, if and for so long as such Lender shall have any obligation to issue any Letters of Credit hereunder or any Letter of Credit issued by such Lender shall remain outstanding, such Lender shall be deemed to be, and shall have all the rights and obligations of, an "LC Issuing Bank" under this Agreement.

(b) Subject to the terms and conditions hereof, each Letter of Credit shall be issued (or the stated maturity thereof extended or terms thereof modified or amended) on not less than one (1) Business Day's prior notice thereof by delivery of (x) a Request for Issuance to the Administrative Agent (which shall promptly distribute copies thereof to the Lenders) and the relevant LC Issuing Bank, and (y) if requested by such LC Issuing Bank, a letter of credit application or other standard form required by the relevant LC Issuing Bank to such LC Issuing Bank. Each Letter of Credit shall be issued in a form acceptable to the relevant LC Issuing Bank. Each Request for Issuance shall specify (i) the identity of the relevant LC Issuing Bank, (ii) the date (which shall be a Business Day) of issuance of such Letter of Credit (or the date of effectiveness of such extension, modification or amendment) and the stated expiry date thereof (which shall not be later than the earlier of (A) one year after the date of issuance of such Letter of Credit and (B) unless cash collateralized (in accordance with the procedures set forth in Section 2.25) in an amount equal to 102% of the LC Outstandings for such Letter of Credit prior to five (5) Business Days prior to the stated Termination Date for the applicable LC Issuing Bank, the fifth Business Day preceding such Termination Date); provided that a Letter of Credit may, upon the request of the Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of one year or less (but not beyond the date specified in clause (B) above) unless the relevant LC Issuing Bank notifies the Borrower and the beneficiary thereof at least 30 days prior to the then-applicable expiration date that such Letter of Credit will not be renewed, (iii) the proposed stated amount of such Letter of Credit, (iv) the name and address of the beneficiary of such Letter of Credit and (v) a statement of drawing conditions applicable to such Letter of Credit, and if such Request for Issuance relates to an amendment or modification of a Letter of Credit, it shall be accompanied by the consent of the beneficiary of the Letter of Credit thereto. Each Request for Issuance shall be delivered by the Borrower no later than 11:00 A.M. on the Business Day immediately prior to the proposed date of issuance (or effectiveness) specified therein. Not later than 2:00 P.M. on the proposed date of issuance (or effectiveness) specified in such Request for Issuance, and upon fulfillment of the

applicable conditions precedent and the other requirements set forth herein, the relevant LC Issuing Bank shall issue (or extend, amend or modify) such Letter of Credit and provide notice and a copy thereof to the Administrative Agent, which shall promptly furnish copies thereof to the Lenders; provided that the relevant LC Issuing Bank shall not issue or amend any Letter of Credit if such LC Issuing Bank has received notice from the Administrative Agent that the applicable conditions precedent have not been satisfied.

(c) No Letter of Credit shall be requested or issued hereunder if, after the issuance thereof, (i) the Outstanding Credits would exceed the aggregate Commitments, (ii) with respect to each Lender individually, the Outstanding Credits of such Lender would exceed such Lender's Commitment, (iii) the LC Outstandings would exceed \$150,000,000, or (iv) the LC Outstandings for all Letters of Credit issued by such LC Issuing Bank would exceed the LC Commitment of such LC Issuing Bank.

(d) By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount or extending the expiration date thereof), and without any further action on the part of the applicable LC Issuing Bank or the Lenders, such LC Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such LC Issuing Bank, a participation in such Letter of Credit equal to such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including any amendment, extension, reinstatement or renewal of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or reduction or termination of the Commitments. Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Letter of Credit at each time such Lender's Commitment is amended pursuant to the operation of Section 2.05 or Section 2.06, or as a result of an assignment in accordance with Section 7.05 or otherwise pursuant to this Agreement.

(e) The Borrower hereby agrees to pay (through the proceeds of a Borrowing or otherwise) to the Administrative Agent for the account of each LC Issuing Bank and each participating Lender, if applicable, no later than (i) if the Borrower shall have received notice of such LC Issuing Bank's payment pursuant to any Letter of Credit issued by it (such payment, an "**LC Disbursement**") not later than 11:00 A.M. on the date of such payment, on such date, or (ii) if such notice has not been received by the Borrower prior to such time on such date, on the Business Day immediately following the day that the Borrower receives such notice (such date referred to in clause (i) or such Business Day referred to in clause (ii)), the "**LC Reimbursement Due Date**"), a sum equal to the amount of the LC Disbursement plus interest on such amount from the date so paid by such LC Issuing Bank until repayment to such LC Issuing Bank in full at a fluctuating interest rate per annum equal to the interest rate applicable to Base Rate Loans plus, if any amount paid by such LC Issuing Bank under a Letter of Credit is not reimbursed by the Borrower on the LC Reimbursement Due Date, 2%, unless refinanced with a Loan.

(f) If any LC Issuing Bank shall not have been reimbursed in full for any LC Disbursement on the date payment is due from the Borrower pursuant to Section 2.04(e), such LC Issuing Bank shall give the Administrative Agent prompt notice thereof (an "**LC Payment Notice**") no later than 11:00 A.M. on the Business Day immediately succeeding such payment date (such date, the "**LC Notice Date**"). The Administrative Agent shall forward to each Lender no later than 1:00 P.M. on an LC Notice Date, the applicable LC Payment Notice. Each Lender severally agrees to fund its participation in the Reimbursement Obligation of the Borrower to such LC Issuing Bank by paying to the Administrative Agent for the account of such LC Issuing Bank an amount equal to such Lender's participation, plus interest, if applicable, on such amount at a rate per annum equal to the Federal Funds Rate from the LC Reimbursement Due Date to the date of payment to such LC Issuing Bank by such Lender. Each such

payment by a Lender shall be made not later than 3:00 P.M. on the applicable LC Notice Date. Each Lender's obligation to make each such payment to the Administrative Agent for the account of such LC Issuing Bank shall be several and shall not be affected by the occurrence or continuance of a Default or the failure of any other Lender to make any payment under this Section 2.04(f). Each Lender further agrees that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(g) The failure of any Lender to make any payment to the Administrative Agent for the account of any LC Issuing Bank in accordance with paragraph (f) above shall not relieve any other Lender of its obligation to make payment, but no Lender shall be responsible for the failure of any other Lender.

(h) The payment obligations of each Lender under Section 2.04(f) and of the Borrower under this Agreement in respect of any payment under any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following circumstances:

(i) any lack of validity or enforceability of this Agreement or any other agreement or instrument relating thereto or to such Letter of Credit;

(ii) any amendment or waiver of, or any consent to departure from, the terms of this Agreement or such Letter of Credit;

(iii) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary, or any transferee, of such Letter of Credit (or any Persons for whom any such beneficiary or any such transferee may be acting), any LC Issuing Bank, or any other Person, whether in connection with this Agreement, the transactions contemplated hereby, thereby or by such Letter of Credit, or any unrelated transaction;

(iv) any statement or any other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(v) payment in good faith by any LC Issuing Bank under the Letter of Credit issued by such LC Issuing Bank against presentation of a draft or certificate that does not comply with the terms of such Letter of Credit;

(vi) the use that may be made of any Letter of Credit by, or any act or omission of, the beneficiary of any Letter of Credit (or any Person for which the beneficiary may be acting); or

(vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(i) Without limiting any other provision of this Section 2.04, for purposes of this Section 2.04, any LC Issuing Bank may rely upon any oral, telephonic, telegraphic, facsimile, electronic, written or other communication believed in good faith to have been authorized by the Borrower, whether or not given or signed by an authorized Person of the Borrower.

(j) The Borrower assumes all risks of the acts and omissions of any beneficiary or transferee of any Letter of Credit. Neither any LC Issuing Bank, the Lenders nor any of their respective Related Parties shall be liable or responsible for (i) the use that may be made of such Letter of Credit or any acts or omissions of any beneficiary or transferee thereof in connection therewith; (ii) the validity, sufficiency

or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (iii) payment by any LC Issuing Bank against presentation of documents that do not comply with the terms of such Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (iv) any other circumstances whatsoever in making or failing to make payment under such Letter of Credit, except that the Borrower and each Lender shall have the right to bring suit against each LC Issuing Bank, and each LC Issuing Bank shall be liable to the Borrower and any Lender, to the extent of any direct, as opposed to consequential, damages suffered by the Borrower or such Lender that the Borrower or such Lender proves were caused by such LC Issuing Bank's willful misconduct or gross negligence as determined by a court of competent jurisdiction in a final and non-appealable judgment, including, in the case of the Borrower, such LC Issuing Bank's (x) failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof or (y) failure to make timely payment under such Letter of Credit following the presentation to it by the beneficiary thereof of a draft and accompanying certificate(s) that strictly comply with the terms and conditions of such Letter of Credit. In furtherance and not in limitation of the foregoing, each LC Issuing Bank may accept sight drafts and accompanying certificates presented under the Letter of Credit issued by such LC Issuing Bank that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and payment against such documents shall not constitute willful misconduct or gross negligence by such LC Issuing Bank. Notwithstanding the foregoing, no Lender (in its capacity as a Lender) shall be obligated to indemnify the Borrower for damages caused by any LC Issuing Bank's willful misconduct or gross negligence.

(k) Notwithstanding anything to the contrary set forth herein, on the Closing Date, the Existing Letters of Credit shall be deemed to be "Letters of Credit" issued hereunder, resulting in Extensions of Credit on such date hereunder.

(l) Any LC Issuing Bank may and, if such LC Issuing Bank is a Lender being replaced pursuant to Section 2.23(b), such LC Issuing Bank shall, resign at any time by giving written notice thereof to the Administrative Agent, the Lenders and the Borrower, with any such resignation to become effective (i) if such LC Issuing Bank is the Administrative Agent and the Administrative Agent has given notice of its resignation or has been removed in accordance with Section 8.08, on the Resignation Effective Date or Removal Effective Date, as applicable, (ii) if such LC Issuing Bank is party to an Assignment and Acceptance whereby it intends to assign all of its Loans and Commitment to an Eligible Assignee pursuant to Section 2.23(b) or 7.05(b), on the effective date of such assignment or (iii) otherwise, on the later of (x) 30 days after delivery of such notice and (y) such date as agreed by such LC Issuing Bank; provided that if such resigning LC Issuing Bank is the only LC Issuing Bank at the time of its resignation and there is no Administrative Agent, the Borrower shall have the right to appoint a successor LC Issuing Bank, which shall be a Lender or an Eligible Assignee reasonably acceptable to the Required Lenders. If no successor LC Issuing Bank shall have been so appointed by the Borrower, and shall have accepted such appointment, within 30 days after the retiring LC Issuing Bank's giving of notice of resignation, then the retiring LC Issuing Bank may, on behalf of the Borrower and Lenders, appoint a successor LC Issuing Bank, which shall be a Lender or an Eligible Assignee acceptable to the Borrower. Except as provided in the immediately succeeding sentence, upon the acceptance of any appointment as an LC Issuing Bank hereunder by a successor LC Issuing Bank, such successor LC Issuing Bank shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring LC Issuing Bank. Except as provided in Section 8.08(d) with respect to any LC Issuing Bank which is a resigning Administrative Agent, after the effective date of the resignation of an LC Issuing Bank hereunder, the retiring LC Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an LC Issuing Bank under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall no longer have an LC Commitment and shall not be required to issue additional Letters of Credit or to extend, renew or increase any existing Letter of Credit.

(m) No LC Issuing Bank shall be under any obligation to issue any Letter of Credit if the issuance of such Letter of Credit would violate such LC Issuing Bank's internal policies.

Section 2.05 Increase of the Commitments.

(a) After the Closing Date, the Borrower may on one or more occasions, by written notice to the Administrative Agent and executed by the Borrower and one or more financial institutions (any such financial institution referred to in this paragraph (a) being called a "**Designated Lender**"), which may include, in the Borrower's sole discretion, any Lender, cause new Commitments to be extended by the Designated Lenders (or cause the Commitments of the Designated Lenders to be increased, as the case may be); provided that (i) at no time shall the aggregate amount of all extensions of new Commitments and increases in existing Commitments effected pursuant to this paragraph (a) exceed \$500,000,000, (ii) each such requested increase shall be in a minimum principal amount of \$50,000,000, (iii) each Designated Lender shall (A) be subject to the approval of the Administrative Agent, each LC Issuing Bank and each Swingline Bank (which approval shall not be unreasonably withheld or delayed) and (B) if not an existing Lender, execute all such documentation as the Administrative Agent shall reasonably specify to evidence the Commitment or Commitments of such Designated Lender and/or its status as a Lender hereunder, (iv) immediately prior to and immediately after giving effect to such proposed increase, no Default or Event of Default shall have occurred and be continuing, and (v) the Borrower shall have delivered the documents and certificates required by clauses (1) – (3) below. Extensions of new Commitments and increases in existing Commitments pursuant to this paragraph (a) shall become effective on the date specified in the applicable notice delivered by the Borrower. The Borrower shall deliver (1) a certificate signed by a duly authorized officer of the Borrower to the Administrative Agent, dated as of the effective date of such additional Commitments, stating that all representations and warranties of the Borrower set forth in Article IV (other than the representations and warranties set forth in Sections 4.04 and 4.05(b)) (with all references in such Article to a Borrowing or Swingline Borrowing being deemed to be references to the increase of the Commitments) are true in all material respects as if made on and as of such effective date (other than with respect to any representation and warranty that expressly relates to an earlier date, in which case such representation and warranty shall be true in all material respects as of such earlier date, and except for any representation and warranty that is qualified by materiality or reference to Material Adverse Change, in which case such representation and warranty shall be true in all respects as of such earlier date), (2) evidence of appropriate corporate authorization on the part of the Borrower with respect to the increase in the Commitments and (3) if requested by a Designated Lender, such opinions of counsel for the Borrower with respect to the increase in the Commitments as the Administrative Agent may reasonably request. Any Lender or any other financial institution offered or approached to provide all or a portion of any increase in the Commitment pursuant to this paragraph (a) may elect or decline, in its sole discretion, to provide such Commitment.

(b) The Outstanding Credits will be reallocated on the effective date of such increase among the Lenders in accordance with their revised Pro Rata Shares (and, with respect to any outstanding Loans, the Lenders agree to make all payments and adjustments necessary to effect the reallocation and the Borrower shall pay any and all costs required pursuant to Section 2.13 in connection with such reallocation as if such reallocation were a repayment). Prepayments made under this paragraph (b) shall not be subject to the notice or minimum amount requirements of Section 2.12.

(c) Promptly following the effective date of any Commitment increase pursuant to this Section 2.05, the Administrative Agent shall distribute an amended Schedule I to this Agreement (which shall thereafter be incorporated into this Agreement) to reflect any changes in Lenders, the Commitments and each Lender's Pro Rata Percentage as of such effective date.

Section 2.06 Maturity of Loans; Extension and Termination of Commitment.

(a) Each outstanding Loan (other than Swingline Loans) shall mature, and the principal amount thereof shall be due and payable in full, and the Commitments and the Swingline Commitments shall terminate, on the Termination Date. Each Swingline Loan shall mature, and the principal amount thereof shall be due and payable in full, on the earlier to occur of (i) the fourteenth (14th) Business Day after the date the Swingline Loan is made and (ii) the Termination Date.

(b) The Borrower may request up to two one-year extensions of the Termination Date in effect on the date of any such request (the “**Current Termination Date**”) (notice of the exercise of which shall be given by the Borrower to the Administrative Agent in writing at least 30 days prior to any anniversary of the Closing Date). Upon the delivery of such a written request by an authorized officer of the Borrower (an “**Extension Request**”), the Administrative Agent promptly shall deliver a copy of such Extension Request to each of the Lenders. Each Lender, acting in its sole discretion, shall by notice made in writing and delivered to the Administrative Agent on a Business Day not more than 30 days following the date of such Extension Request, advise the Administrative Agent whether such Lender agrees to such extension (each Lender agreeing to an Extension Request within such timeframe being referred to herein as an “**Extending Lender**”, and each Lender declining to agree to an Extension Request within such timeframe being referred to herein as a “**Non-Extending Lender**”). Any Lender which has not provided written notice to the Administrative Agent indicating whether such Lender agrees to the requested Extension Request prior to the 30th day following the date of such Extension Request shall be deemed to be a Non-Extending Lender. The election of any Lender to agree to such extension shall not obligate any other Lender to agree.

(c) If Lenders constituting the Required Lenders shall not have agreed to the Extension Request on or prior to the 30th day following the date of such Extension Request, then the Current Termination Date shall not be so extended, the principal amount of all Loans and all other amounts payable under this Agreement shall be payable in full and the Commitment shall terminate on the Current Termination Date.

(d) If Lenders constituting the Required Lenders shall have agreed to the Extension Request on or prior to the 30th day following the date of such Extension Request (such date, the “**Extension Date**”), then the Termination Date applicable to Extending Lenders shall be extended to be the day that is one year after the Current Termination Date; provided, that the Termination Date shall in no event extend beyond the fifth anniversary of the Extension Date. In the event of such extension, (w) the Commitments of each Non-Extending Lender shall terminate on the Current Termination Date, (x) the principal amount of all Loans and other amounts payable to each Non-Extending Lender under this Agreement shall be payable in full on the Current Termination Date, (y) the Lenders’ aggregate Commitment shall be reduced by the amount of the Commitment of each Non-Extending Lender unless such Non-Extending Lender is replaced pursuant to paragraph (e) below and (z) the outstanding Reimbursement Obligations will be reallocated on the Current Termination Date among the Extending Lenders in accordance with their revised Pro Rata Shares (and the Lenders agree to make all payments and adjustments necessary to effect the reallocation). Prepayments made under this paragraph (d) shall not be subject to the notice or minimum amount requirements of Section 2.12.

(e) In the event that the Termination Date is extended under paragraph (d) above, the Borrower shall have the right, on or before the Current Termination Date, at the Borrower’s sole expense and effort, to require any Non-Extending Lender to assign to one or more Eligible Assignees all of its rights and obligations under this Agreement; provided, that such assignment shall be in accordance with, and subject to the requirements and restrictions contained in Section 7.05.

(f) Notwithstanding any of the foregoing provisions of this Section 2.06, no extension of the Termination Date shall become effective for any Lender unless, on the Extension Date, (i) the conditions set forth in Sections 3.02(b) and 3.02(c) (with all references in such Sections to a Borrowing or Swingline Borrowing being deemed to be references to the extension of the Termination Date) shall be satisfied, and the Administrative Agent shall have received a certificate to that effect, dated the Extension Date and executed on behalf of the Borrower by a Responsible Officer of the Borrower, and (ii) the Administrative Agent shall have received copies (certified to be true and complete by a Responsible Officer of the Borrower) of all governmental approvals (if any) required for each of the Borrower and the Parent in connection with such extension.

Section 2.07 Evidence of Loans.

(a) Each Lender shall maintain an account or accounts evidencing each Loan made by such Lender to the Borrower from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. Each Lender will make reasonable efforts to maintain the accuracy of its account or accounts, and to update promptly its account or accounts from time to time, as necessary.

(b) The Administrative Agent shall maintain the Register pursuant to Section 7.05(c) and a subaccount for each Lender, in which Register and subaccounts (taken together) shall be recorded (i) the date, amount and Interest Period, if applicable, of each Loan, and whether such Loan is a Base Rate Loan, a SOFR Loan or a Swingline Loan, (ii) the amount of any principal or interest due and payable or to become due and payable to each Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from or for the account of the Borrower and each Lender's percentage share thereof. The Administrative Agent will make reasonable efforts to maintain the accuracy of the subaccounts referred to in the preceding sentence and to update promptly such subaccounts from time to time, as necessary.

(c) The entries made in the Register and subaccounts maintained pursuant to Section 2.07(b), and the account or accounts maintained by the Lenders pursuant to Section 2.07(a) to the extent permitted by applicable law shall be prima facie evidence of the existence and amounts of such obligations of the Borrower therein recorded and shall be conclusive absent manifest error. The failure of the Administrative Agent or any Lender to maintain any such Register, subaccount or account, as applicable, or any error therein, shall not in any manner affect the obligations of the Borrower to repay the Loans in accordance with the terms thereof. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

(d) Upon the request of any Lender, which request shall be made through the Administrative Agent to the Borrower, the Borrower shall deliver to such Lender a duly executed Note in the form of Exhibit D.

Section 2.08 Interest Rates.

(a) The Borrower shall pay interest on the unpaid principal amount of each Loan from and including the date of such Loan to but excluding the date such Loan shall be paid in full (provided, that if the principal amount of any Loan is borrowed and repaid on the same day, the Borrower shall pay interest on such principal amount at the applicable interest rate for such day), at the following rates per annum:

(i) if such Loan is a Base Rate Loan, a variable rate per annum equal at all times to the Base Rate in effect from time to time plus the Applicable Percentage, payable quarterly in arrears on each Payment Date while such Base Rate Loan is outstanding, on the date of each prepayment to the extent required by Section 2.11(a) or 2.12, as applicable, and on the date such Base Rate Loan shall be Converted or paid in full;

(ii) if such Loan is a SOFR Loan, a fixed rate per annum during each Interest Period for such SOFR Loan equal to Adjusted Term SOFR for such Interest Period plus the Applicable Percentage, payable on the last day of the Interest Period (and, in the case of any Interest Period of more than three months' duration, on each day that occurs during such Interest Period every three months after the first day of such Interest Period), on the date of each prepayment to the extent required by Section 2.11(a) or 2.12, as applicable, and on the date such SOFR Loan shall be Converted or paid in full (provided that Adjusted Term SOFR shall not be available until three (3) U.S. Government Securities Business Days after the Closing Date unless the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 2.13 of this Agreement; and

(iii) if such Loan is a Swingline Loan, at the election of the Borrower, a variable rate per annum equal to (A) the Adjusted Term SOFR Market Index Rate plus the Applicable Percentage for SOFR Loans or (B) the Base Rate in effect from time to time plus the Applicable Percentage for Base Rate Loans, in each case, payable quarterly in arrears on each Payment Date while such Swingline Loan is outstanding, on the date of each prepayment to the extent required by Section 2.11(b) or 2.12, as applicable, and on the date such Swingline Loan shall be paid in full.

(b) Subject to Section 7.02, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), 6.01(g) or 6.01(h) (in the case of Section 6.01(g) and 6.01(h), with respect to the Borrower and the Parent only), or (ii) at the election of the Required Lenders, upon the occurrence and during the continuance of any other Event of Default, (A) the Borrower shall no longer have the option to request SOFR Loans, Swingline Loans, or Letters of Credit, (B) all outstanding SOFR Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Percentage) then applicable to SOFR Loans until the end of the applicable Interest Period and thereafter at a rate equal to two percent (2%) in excess of the rate (including the Applicable Percentage) then applicable to Base Rate Loans, (C) all outstanding Base Rate Loans and other Obligations shall bear interest at a rate per annum equal to two percent (2%) in excess of the rate (including the Applicable Percentage) then applicable to Base Rate Loans or such other Obligations and (D) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by the Borrower (as to itself) or against the Borrower (as a debtor) of any petition seeking any relief in bankruptcy or under any act or law pertaining to insolvency or debtor relief, whether state, federal or foreign.

(c) Term SOFR Conforming Changes. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower and the Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

Section 2.09 Fees.

(a) Except as set forth in Section 2.24, the Borrower shall pay the Administrative Agent, for the ratable benefit of the Lenders, a facility fee (the "**Facility Fee**") equal to the product of (i) the daily amount of the Commitments (regardless of usage), multiplied by (ii) a per annum percentage equal to the Applicable Percentage in effect from time to time. The Facility Fee shall accrue from and including the Closing Date to but excluding the Termination Date and shall be payable in arrears on each Payment Date. Subject to Section 2.24(a)(iii), the Administrative Agent shall, promptly following its receipt thereof, distribute to each Lender all Facility Fees received pursuant to this Section 2.09(a) in accordance with their respective Pro Rata Percentages.

(b) Except as set forth in Section 2.24, the Borrower shall pay to the Administrative Agent for the account of each Lender a fee (the “**LC Fee**”) with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such Letter of Credit multiplied by the Applicable Percentage with respect to SOFR Loans (determined on a per annum basis), payable in arrears on each Payment Date. Subject to Section 2.24(a)(iii), the Administrative Agent shall, promptly following its receipt thereof, distribute to each Lender all LC Fees received pursuant to this Section 2.09(b) in accordance with their respective Pro Rata Percentages.

(c) The Borrower shall pay to each LC Issuing Bank such normal and customary costs and expenses as are incurred or charged by such LC Issuing Bank in issuing, effecting payment under, amending or otherwise administering any letter of credit as may be separately agreed between the Borrower and such LC Issuing Bank.

(d) In addition to the fees provided for in paragraphs (a) through (c) above, the Borrower shall pay to the Administrative Agent, for the account of the Administrative Agent and the Joint Lead Arrangers, and to each LC Issuing Bank party thereto such other fees as are provided for in the Fee Letters.

Section 2.10 Termination or Reduction of Commitment.

(a) The Borrower may, upon at least three (3) Business Days’ notice to the Lenders, terminate at any time, or reduce from time to time, in each case without premium or penalty, by an aggregate amount of at least \$5,000,000 (and integrals of \$1,000,000 in excess thereof), the Commitment, the LC Commitment or the Swingline Commitment. If, after giving effect to any reduction of the Commitment, the aggregate LC Commitment, any LC Issuing Bank’s LC Commitment, or any Swingline Commitment exceeds the amount of the Commitment, such aggregate LC Commitment, LC Issuing Bank’s LC Commitment, or Swingline Commitment shall be automatically reduced by the amount of such excess.

(b) All accrued Facility Fees (as provided under Section 2.09) on the Commitment (in the case of a termination of the Commitment) or on the portion of the Commitment being reduced (in the case of a reduction of the Commitment) under this Section 2.10 shall be payable on the effective date of such reduction or termination.

(c) The Borrower hereby agrees to repay the outstanding principal amount of (i) all Loans in full on the Termination Date, (ii) all Swingline Loans in accordance with Section 2.03(c)(iv) (but, in any event, no later than the Termination Date) and (iii) all other Obligations in full on the Termination Date, together with, in each case, without duplication, all accrued but unpaid interest thereon in accordance with this Agreement.

Section 2.11 Mandatory Prepayments.

(a) On each date on which the Commitment is reduced pursuant to Section 2.10, the Borrower shall repay or prepay such principal amount of the outstanding Loans, if any (together with accrued interest thereon to the date of prepayment and any compensation payable pursuant to Section 2.13), and/or deposit funds in the Cash Collateral Account (in accordance with the procedures set forth in Section 2.25) in respect of undrawn Letters of Credit outstanding on such date, as may be necessary so that after such payment and/or deposit, the Outstanding Credits do not exceed the amount of the Commitment as then reduced.

(b) On each date on which any Swingline Commitment is reduced pursuant to Section 2.10, the Borrower shall repay or prepay such principal amount of the outstanding Swingline Loans, if any (together with accrued interest thereon to the date of prepayment), as may be necessary so that after such payment the aggregate unpaid principal amount of Swingline Loans does not exceed the amount of any Swingline Bank's Swingline Commitment as then reduced.

(c) On each date on which the LC Commitments are reduced pursuant to Section 2.10, the Borrower shall provide Cash Collateral (in accordance with the procedures set forth in Section 2.25) for each LC Issuing Bank in an amount equal to the amount by which the LC Outstandings for all Letters of Credit issued by such LC Issuing Bank exceeds the LC Commitment of such LC Issuing Bank as then reduced, if any.

Section 2.12 Optional Prepayments. The Borrower may, upon notice delivered to the Administrative Agent not later than 11:00 A.M. (a) on the date of prepayment in the case of any Base Rate Loan or Swingline Loan, and (b) at least three (3) U.S. Government Securities Business Days prior to such date in the case of any SOFR Loan, prepay any such Loan, without premium or penalty, in whole at any time, or from time to time in part in amounts aggregating at least \$5,000,000 (and integrals of \$1,000,000 in excess thereof) by paying the principal amount to be prepaid together with accrued interest thereon to the date of prepayment and any compensation payable pursuant to Section 2.13.

Section 2.13 Compensation after Prepayment or Conversion. The Borrower shall, upon the demand of any Lender, pay to such Lender any amounts which are required to compensate such Lender for any losses (excluding losses of anticipated profits), costs or expenses incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain any SOFR Loan, or from fees payable to terminate the deposits from which such funds were obtained, which may arise as a result of the optional or mandatory prepayment or Conversion of any SOFR Loan, on any date other than the last day of the applicable Interest Period, or the failure to prepay any Loan on the date of prepayment specified in any notice of prepayment, except if arising in connection with a Lender becoming a Defaulting Lender and the replacement of such Lender pursuant to Section 2.23(b), or the termination of the Commitment of such Lender pursuant to Section 2.24(d). The amount of such loss or expense shall be determined, in the applicable Lender's sole discretion, based upon the assumption that such Lender funded its Pro Rata Share of the SOFR Loans in the London interbank market and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical. A certificate of such Lender setting forth in reasonable detail the basis for determining such amount or amounts necessary to compensate such Lender delivered by such Lender to the Administrative Agent no later than twelve (12) months after the event giving rise to the claim for compensation (except that, if the Change in Law giving rise to such claim is retroactive, then the twelve-month period referred to above shall be extended to include the period of retroactive effect thereof) shall be promptly forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall (unless the subject of a good faith dispute by the Borrower) be payable within fifteen (15) days after demand and receipt by the Borrower of such written statement, unless such Lender shall have failed to timely give notice of such claim for compensation as provided herein, in which event the Borrower shall not have any obligation to pay such claim.

Section 2.14 General Provisions as to Payments.

(a) The Borrower shall make each payment of principal of, and interest on, the Loans, the LC Fee and the Facility Fees hereunder in Dollars not later than 1:00 P.M. on the date when due in federal or

other funds immediately available without setoff or counterclaim to the Administrative Agent for the account of each Lender at its Lending Office. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each Lender, at its Lending Office, its Pro Rata Share of such payment, including each Lender's Pro Rata Share of Swingline Loans purchased by such Lender in accordance with Section 2.03(d). If and to the extent that the Administrative Agent shall not have so distributed to any Lender, at its Lending Office, its Pro Rata Share of such payment, the Administrative Agent agrees to pay to such Lender forthwith on demand such amount together with interest thereon, for each day from the date of demand by such Lender until the date such amount is paid to such Lender, at the Federal Funds Rate.

(b) Subject to the qualifications set forth in the definition of "Interest Period", whenever any payment of principal of, or interest on, the Loans or of Facility Fees or the LC Fee payable hereunder shall be due on a day that is not a Business Day, the date for payment thereof shall be extended to the next succeeding Business Day. If the date for any payment of principal is extended by operation of law or otherwise, interest thereon shall be payable for such extended time.

Section 2.15 Computation of Interest and Fees. All computations of interest for Base Rate Loans and Swingline Loans determined by reference to the Base Rate, in each case when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed.

Section 2.16 Compensation, Additional Interest.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in SOFR), any Swingline Bank or any LC Issuing Bank;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of "Excluded Taxes" and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender, any Swingline Bank or any LC Issuing Bank or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender, Swingline Bank or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, Swingline Bank or such other Recipient of making, Converting to, Continuing or maintaining any Loan or of maintaining its obligation to make any such Loan, or to increase the cost to such Lender, such Swingline Bank, such LC Issuing Bank or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, Swingline Bank, LC Issuing Bank or other Recipient hereunder with respect to such Loan or Letter of Credit (whether of principal, interest or any other amount) then, upon request of such Lender, Swingline Bank, LC Issuing Bank or other Recipient, the Borrower will pay to such Lender, Swingline Bank, LC Issuing Bank or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, Swingline Bank, LC Issuing Bank or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender, Swingline Bank or LC Issuing Bank determines that any Change in Law affecting such Lender, Swingline Bank, or LC Issuing Bank or any lending office of such Lender, such Swingline Bank or such Lender's, Swingline Bank's or LC Issuing Bank's holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender's, Swingline Bank's or LC Issuing Bank's capital or on the capital of such Lender's, Swingline Bank's or LC Issuing Bank's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender, the Swingline Commitment of such Swingline Bank or the Loans made by, or participations in Letters of Credit or Swingline Loan held by, such Lender, or the Letters of Credit issued by any LC Issuing Bank, to a level below that which such Lender, Swingline Bank or LC Issuing Bank or such Lender's, Swingline Bank's or LC Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's, Swingline Bank's or LC Issuing Bank's policies and the policies of such Lender's, Swingline Bank's or LC Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrower will pay to such Lender, Swingline Bank or LC Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender, Swingline Bank or LC Issuing Bank or such Lender's, Swingline Bank's or LC Issuing Bank's holding company for any such reduction suffered.

(c) Certificates for Reimbursement. A certificate of a Lender, Swingline Bank, LC Issuing Bank or other Recipient setting forth in reasonable detail the basis, method and calculations upon which such Lender, Swingline Bank, LC Issuing Bank or other Recipient determined the amount or amounts necessary to compensate such Lender, Swingline Bank, LC Issuing Bank, other Recipient or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender, Swingline Bank or LC Issuing Bank, as the case may be, the amount shown as due on any such certificate within 15 days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender, Swingline Bank, LC Issuing Bank or other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's, Swingline Bank's, LC Issuing Bank's or other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate a Lender, Swingline Bank, LC Issuing Bank or other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than four (4) months prior to the date that such Person notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Person'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 four-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Subject to the requirements of Section 7.05(e), the provisions of this Section 2.16 shall be applicable with respect to any Participant or Assignee, and any calculations required by such provisions shall be based upon the circumstances of such Participant or Assignee.

Section 2.17 Taxes.

(a) Defined Terms. For purposes of this Section 2.17, the term "Lender" includes any LC Issuing Bank and the term "applicable law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant

Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section) the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) Payment of Other Taxes by the Borrower. The Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within 15 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate (together with a copy of the applicable documents from the Governmental Authority imposing such Indemnified Taxes) as to the amount of such payment or liability and setting forth in reasonable detail the basis for such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 7.05(e), relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.17, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders. (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative

Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Sections 2.17(g)(ii)(A), 2.17(g)(ii)(B) and 2.17(g)(ii)(D)) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

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

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

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

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

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

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

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

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

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

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.17 (including by the payment of additional amounts pursuant to this Section 2.17), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 2.17 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, Swingline Bank or LC Issuing Bank, the termination of the Commitments, Swingline Commitment and LC Commitments, and the repayment, satisfaction or discharge of all obligations under any Loan Document.

Section 2.18 Changed Circumstances.

(a) Circumstances Affecting Benchmark Availability. Subject to clause (c) below, in connection with any request for a SOFR Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for ascertaining Adjusted Term SOFR for the applicable Interest Period with respect to a proposed SOFR Loan on or prior to the first day of such Interest Period or (ii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period and, in the case of clause (ii), the Required Lenders have provided notice of such determination to the Administrative Agent, then, in each case, the Administrative Agent shall promptly give notice thereof to the Borrower. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to convert any Loan to or continue any Loan as a SOFR Loan, shall be suspended (to the extent of the affected SOFR Loans or the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in the amount specified therein and (B) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.13.

(b) Laws Affecting SOFR Availability. If, after the date hereof, the introduction of, or any change in, any applicable law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any SOFR Loan, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders (an "Illegality Notice"). Thereafter, until each affected Lender notifies the Administrative Agent and the Administrative Agent notifies the Borrower that the circumstances giving rise to such determination no longer exist, (i) any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to convert any Loan to a SOFR Loan or continue any Loan as a SOFR Loan, shall be suspended and (ii) if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate". Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to Base Rate Loans (in each case, if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 2.13.

(c) Benchmark Replacement Setting.

(i) Benchmark Replacement.

(A) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 2.18(c)(i)(A) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 2.18(c)(i)(A). Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 2.18(c)(i)(A), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 2.18(c)(i)(A).

(iv) Unavailability of Tenor of Benchmark. Notwithstanding anything to the contrary herein or in any other Loan Document, at any time (including in connection with the implementation of a Benchmark Replacement), (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable or non-representative tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) is not, or is no longer, subject to an announcement that it is not or will not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.

(v) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans and (B) any outstanding affected SOFR Loans will be deemed to have been converted to Base Rate Loans at the end of the applicable Interest Period. During any Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of the Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of the Base Rate.

Section 2.19 Conversion of Loans.

(a) The Borrower may on any Business Day, upon notice given to the Administrative Agent not later than 11:00 A.M. on the third U.S. Government Securities Business Day prior to the date of any proposed Conversion into or Continuation as SOFR Loans and on the Business Day of any proposed Conversion into Base Rate Loans subject to the provisions of Section 2.18, Convert all Loans of one Type into Loans of another Type or Types or Continue Loans of the same Type having the same or a new Interest Period; provided that no Loan shall be Converted to or Continued as a SOFR Loan if any Event of Default shall have occurred and be continuing. Each such notice of a Conversion or Continuation shall, within the restrictions specified above, specify (i) the date of such Conversion or Continuation, (ii) the Loans to be Converted or Continued and (iii) with respect to any Continuation, or if such Conversion is into, or with respect to SOFR Loans, the duration of the Interest Period for each such Loan.

(b) If the Borrower shall fail to select the Type of any Loan or the duration of any Interest Period for any SOFR Loan in accordance with the provisions contained in the definition of "Interest Period" and Section 2.19(a), or if any proposed Conversion of a Loan to a SOFR Loan upon Conversion shall not occur as a result of the circumstances described in Section 2.18 or 2.19(c), such Loan will automatically, on the last day of the then-existing Interest Period therefor, Convert into a Base Rate Loan.

(c) Each notice of Conversion or Continuation given pursuant to Section 2.19(a) shall be irrevocable and binding on the Borrower. In the case of any Loan that is to be Converted to a SOFR Loan, the Borrower shall indemnify the Lenders against any loss, cost or expense incurred by the Lenders as a result of any failure to fulfill on the date specified for such Conversion the applicable conditions set forth in Article III, including any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund such SOFR Loan, upon such Conversion, when such Conversion, as a result of such failure, does not occur. The Borrower's obligations under this paragraph (c) shall survive the repayment of all other amounts owing to the Lenders under this Agreement and the other Loan Documents and the termination of the Commitment.

(d) References in this Section 2.18(b) to "Loans" and "Types of Loans" shall not include the Swingline Loans.

Section 2.20 Setoff. Each Lender, Swingline Bank and LC Issuing Bank may at any time upon or after the occurrence and during the continuance of an Event of Default, and without notice to the Borrower, set-off against the Obligations of the Borrower under this Agreement the whole or any portion or portions of any or all deposits and other sums credited by or due from such Lender, Swingline Bank or LC Issuing Bank to the Borrower or subject to withdrawal by the Borrower, whether or not any other Person or Persons could also withdraw money therefrom; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.24 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the LC Issuing Banks, the Swingline Banks and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the obligations owing to such Defaulting Lender pursuant to this Agreement as to which it exercised such right of setoff. The rights of each Lender, Swingline Bank and LC Issuing Bank under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender or LC Issuing Bank may have in law or in equity. Each Lender, Swingline Bank and LC Issuing Bank agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

Section 2.21 Pro Rata Treatment. Except to the extent otherwise provided herein:

(a) Each payment or prepayment of principal of any Loan, and each payment of interest on the Loans, shall be allocated first, to the payment or prepayment of principal of, or interest on, the Swingline Loans (x) initially, if such payment is to satisfy the requirements of Section 2.03(c)(iv), to the applicable Swingline Bank in accordance with Section 2.03(c)(iv) and (y) then, pro rata among the Swingline Banks in accordance with the respective principal amounts of their outstanding Swingline Loans; and second, pro rata among the Lenders in accordance with the respective principal amounts of their outstanding Loans. Each payment of the Facility Fee and the LC Fee, each reduction of the Commitments and each Conversion or extension of any Loan shall be allocated pro rata among the Lenders in accordance with their Pro Rata Percentages.

(b) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a Borrowing that such Lender will not make the amount that would constitute its Pro Rata Share of such Borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate reasonably determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to the Loans made in connection with such Borrowing. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(c) The obligations of the Lenders under this Agreement to make Loans and issue or participate in Letters of Credit are several and are not joint or joint and several. The failure of any Lender to make available its Pro Rata Share of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Pro Rata Share of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Pro Rata Share of such Loan available on the borrowing date.

Section 2.22 Sharing of Payments. The Lenders agree among themselves that, in the event that any Lender shall obtain payment in respect of any Loan or any other obligation owing to such Lender under this Agreement through the exercise of a right of set-off, banker's lien or counterclaim, or pursuant to a secured claim under Section 506 of Title 11 of the United States Code or other security or interest arising from, or in lieu of, such secured claim, received by such Lender under any applicable bankruptcy, insolvency or other similar law or otherwise, or by any other means, in excess of its Pro Rata Share of such payment as provided for in this Agreement, such Lender shall promptly purchase from the other Lenders a Participation Interest in such Loans and other obligations in such amounts, and make such other adjustments from time to time, as shall be equitable to the end that all Lenders share such payment in accordance with their respective ratable shares as provided for in this Agreement. The Lenders further agree among themselves that if payment to a Lender obtained by such Lender through the exercise of a right of set-off, banker's lien, counterclaim or other event as aforesaid shall be rescinded or must otherwise be restored, each Lender which shall have shared the benefit of such payment shall, by repurchase of a Participation Interest theretofore sold, return its share of that benefit (together with its share of any accrued interest payable with respect thereto) to each Lender whose payment shall have been rescinded or otherwise restored. The Borrower agrees that any Lender so purchasing such a Participation Interest may, to the fullest extent permitted by law, exercise all rights of payment, including set-off, banker's lien or counterclaim, with respect to such Participation Interest as fully as if such Lender were a holder of such Loan or other obligation in the amount of such Participation Interest. Except as otherwise expressly provided in this Agreement, if any Lender or the Administrative Agent shall fail to remit to the Administrative Agent or any other Lender an amount payable by such Lender or the Administrative Agent to the Administrative Agent or such other Lender pursuant to this Agreement on the date when such amount is due, such payments shall be made together with interest thereon for each date from the date such amount is due until the date such amount is paid to the Administrative Agent or such other Lender at a rate per annum equal to the Federal Funds Rate. If under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 2.22 applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured claim in a manner consistent with the rights of the Lenders under this Section 2.22 to share in the benefits of any recovery on such secured claim. The provisions of this Section 2.22 shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 2.25 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant.

Section 2.23 Mitigation of Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 2.16, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, or any Lender delivers notice pursuant to Section 2.18(b), then such Lender shall (at the request of the Borrower) use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable

pursuant to Section 2.16 or 2.17, as the case may be, in the future, or would eliminate or reduce the effect of any Change in Law that resulted in such notice having been delivered by such Lender pursuant to Section 2.18(b), and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 2.16, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 2.23(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 7.05(b)), all of its interests, rights (other than its existing rights to payments pursuant to Section 2.16 or 2.17) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid (or caused to be paid) to the Administrative Agent the assignment fee (if any) specified in Section 7.05(b)(iv);

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 2.13 as though such assignment were a prepayment) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 2.16 or payments required to be made pursuant to Section 2.17, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with applicable law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

Section 2.24 Defaulting Lenders.

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 7.04.

(ii) *Defaulting Lender Waterfall.* Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VI or otherwise, and including any amounts made available to the Administrative Agent by such Defaulting Lender pursuant to Section 2.20) shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any LC Issuing Bank or Swingline Bank hereunder; third, subject to Section 2.24(a)(v), if so determined by the Administrative Agent or requested by any LC Issuing Bank or Swingline Bank, to Cash Collateralize the LC Issuing Banks' and Swingline Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.25; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the LC Issuing Banks' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.25; sixth, to the payment of any amounts owing to the Lenders, the LC Issuing Banks or the Swingline Banks as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any LC Issuing Bank or any Swingline Bank against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 3.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.24(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) *Certain Fees.*

(A) Such Defaulting Lender shall be entitled to receive a Facility Fee for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the aggregate outstanding principal amount of the Base Rate Loans and SOFR Loans funded by it, and (2) its Pro Rata Percentage of the stated amount of Letters of Credit and Swingline Loans for which it has provided Cash Collateral pursuant to Section 2.25 or Section 2.24(a)(ii).

(B) Such Defaulting Lender shall be entitled to receive LC Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Pro Rata Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.25 or Section 2.24(a)(ii).

(C) With respect to any Facility Fee or LC Fee not required to be paid to any Defaulting Lender pursuant to sub-clause (A) or (B) above, the Borrower shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC Disbursements or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to each LC Issuing Bank and Swingline Bank, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such LC Issuing Bank's or Swingline Bank's Fronting Exposure with respect to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) *Reallocation of Participations to Reduce Fronting Exposure.* For purposes of computing the amount of each Non-Defaulting Lender's obligation to acquire, purchase, refinance or fund participations in Letters of Credit or Swingline Loans pursuant to Sections 2.03 and 2.04, the "Pro Rata Percentage" and "Pro Rata Share" of each such Non-Defaulting Lender shall be computed without giving effect to the Commitment of any Defaulting Lender; provided, that, each such reallocation shall be given effect only to the extent that the aggregate amount of each Non-Defaulting Lender's obligation to acquire, purchase, refinance or fund participations in Letters of Credit and Swingline Loans shall not exceed the positive difference, if any, of (1) the Commitment of such Non-Defaulting Lender minus (2) the Outstanding Credits of such Non-Defaulting Lender at such time.

(v) *Cash Collateral, Repayment of Swingline Loans.* If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, at the Borrower's election, (A) prepay Swingline Loans in an amount equal to the Swingline Banks' Fronting Exposure or (B) Cash Collateralize the Swingline Banks' Fronting Exposure in accordance with the procedures set forth in Section 2.25 and (y) second, Cash Collateralize the LC Issuing Banks' Fronting Exposure in accordance with the procedures set forth in Section 2.25.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, each Swingline Bank and each LC Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with their Pro Rata Percentages (without giving effect to Section 2.24(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder in any Lender's status from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) no Swingline Bank shall be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) no LC Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

(d) Termination of Defaulting Lenders. The Borrower may terminate the unused amount of the Commitment of any Defaulting Lender upon not less than three (3) Business Days' prior notice to the Administrative Agent (which shall promptly notify the Lenders thereof), and in such event the provisions of Section 2.24(a)(ii) will apply to all amounts thereafter paid by the Borrower for the account of such Defaulting Lender under this Agreement (whether on account of principal, interest, fees, indemnity or other amounts); provided that such termination shall not be deemed to be a waiver or release of any claim the Borrower, the Administrative Agent, any LC Issuing Bank, any Swingline Bank or any other Lender may have against such Defaulting Lender.

(e) No Waiver. The rights and remedies against, and with respect to, a Defaulting Lender under this Section 2.24 are in addition to, and cumulative and not in limitation of, all other rights and remedies that the Administrative Agent and each Lender, each LC Issuing Bank, each Swingline Bank or the Borrower may at any time have against, or with respect to, such Defaulting Lender. In particular, subject to Section 7.15, no reallocation under Section 2.24(a)(iv) shall constitute a waiver or release of any claim the Borrower, the Administrative Agent, any LC Issuing Bank, any Swingline Bank or any Lender may have against a Defaulting Lender arising from such Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased Outstanding Credits following such reallocation.

Section 2.25 Cash Collateral.

(a) Defaulting Lenders Generally. At any time that there shall exist a Defaulting Lender, within two (2) Business Days following the written request of the Administrative Agent, any LC Issuing Bank (with a copy to the Administrative Agent), or any Swingline Bank (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the LC Issuing Banks' Fronting Exposure or the Swingline Bank's Fronting Exposure, as applicable, with respect to such Defaulting Lender (determined after giving effect to Section 2.24(a)(iv)) and any Cash Collateral provided by such Defaulting Lender) in an amount equal to 100% of such Fronting Exposure.

(b) Grant of Security Interest. Each of the Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the LC Issuing Banks and the Swingline Banks, as applicable, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligations to fund participations in respect of Letters of Credit and for the Defaulting Lenders' obligations to purchase their respective Pro Rata Shares in respect of Swingline Loans, as applicable, to be applied pursuant to paragraph (c) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, the Swingline Banks and/or the LC Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the outstanding Fronting Exposure, the Borrower or the applicable Defaulting Lender will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (in the case of the Borrower, after giving effect to any Cash Collateral provided by the Defaulting Lender).

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.25 or Section 2.24 in respect of Letters of Credit shall be applied to the satisfaction of the applicable Defaulting Lender's obligation to fund participations in respect of Letters of Credit (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 2.25 or Section 2.24 in respect of Swingline Loans shall be applied to the payment of the applicable Defaulting Lender's Pro Rata Percentage purchase of Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce any LC Issuing Bank's Fronting Exposure or Swingline Bank's Fronting Exposure shall be promptly released following (i) the elimination of the applicable Fronting Exposure, including by the termination of Defaulting Lender status of the applicable Lender (or, as applicable, its assignee following compliance with Section 7.05(b)(vi)), or (ii) the determination by the Administrative Agent and each LC Issuing Bank or Swingline Bank, as applicable, that there exists excess Cash Collateral; provided that, subject to Section 2.24 the Person providing Cash Collateral and each LC Issuing Bank or Swingline Bank, as applicable, may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations.

ARTICLE III CONDITIONS TO EXTENSIONS OF CREDIT

Section 3.01 *Conditions Precedent to Initial Extension of Credit*. The obligation of the Lenders to make Loans on the occasion of the initial Borrowing, of any Swingline Bank to make the initial Swingline Loan and of any LC Issuing Bank to issue the first Letter of Credit (including the deemed issuance of the Existing Letters of Credit hereunder) is subject to the condition that, on or prior to the date of such first Extension of Credit, the Administrative Agent shall have received the following, each dated as of the same date (unless otherwise indicated), and each in form and substance reasonably satisfactory to the Administrative Agent:

- (a) this Agreement, duly executed by the Borrower, each of the Lenders and the Administrative Agent and acknowledged by the Parent;
- (b) if requested by any Lender, a Note, payable to such Lender, duly completed and executed by the Borrower;
- (c) all documents that the Administrative Agent and the Lenders may reasonably request relating to the existence of the Borrower and the Parent, the corporate authority for and the validity of this Agreement and the other Loan Documents and any other matters relevant hereto, all in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, including a certificate of incumbency of each of the Borrower and the Parent, signed by the Secretary or an Assistant Secretary of the Borrower and the Parent, certifying as to the names, true signatures and incumbency of the officer or officers authorized to execute and deliver the Loan Documents (other than the Support Agreement) to which each is a party and attaching certified copies of the following items: (i) the Support Agreement and the Financial Services Agreement, (ii) the Borrower's and the Parent's Certificates of Incorporation, (iii) the Borrower's and the Parent's bylaws, (iv) the actions taken by the board of directors of the Borrower and the Parent authorizing the Borrower's and the Parent's execution, delivery and performance of this Agreement and the other Loan Documents (other than the Support Agreement) to which each is a party, and (v) all governmental and other third party consents or approvals (if any) required in connection with the execution, delivery and performance of the Loan Documents (other than the Support Agreement) by the Borrower and the Parent;
- (d) an opinion of Morgan, Lewis & Bockius LLP, counsel for the Borrower and the Parent;
- (e) certificates of the Secretary of State of Delaware as to the good standing of the Borrower and the Parent as Delaware corporations;

(f) (i) the unaudited balance sheet of the Borrower as of December 31, 2021 and the related unaudited statements of income and cash flows for the Fiscal Year then ended, and (ii) the audited financial statements referenced in Section 4.05(a).

(g) payment of all (i) fees due to the Administrative Agent, the Joint Lead Arrangers and the Lenders set forth in the Fee Letters and (ii) reasonable and documented fees and expenses of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent accrued and unpaid and invoiced to the Borrower prior to or on the Closing Date;

(h) at least five (5) Business Days prior to the Closing Date, all documentation and other information requested by the Administrative Agent or any Lender or required by regulatory authorities in order for the Administrative Agent and the Lenders to comply with requirements of any Anti-Money Laundering Laws, including the Act and any applicable “know your customer” rules and regulations, to the extent reasonably requested by the Administrative Agent or any Lender at least ten (10) Business Days prior to the Closing Date;

(i) at least five (5) Business Days prior to the Closing Date, to the Administrative Agent and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to the Borrower (or a certification that such Borrower qualifies for an express exclusion from the “legal entity customer” definition under the Beneficial Ownership Regulations), to the extent reasonably requested by the Administrative Agent or any Lender at least ten (10) Business Days prior to the Closing Date; and

(j) such other documents, approvals, and opinions as may be mutually agreed by the Borrower and the Administrative Agent.

Without limiting the generality of the provisions of Section 8.04, for purposes of determining compliance with the conditions specified in this Section 3.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Closing Date specifying its objection thereto.

Section 3.02 Conditions to All Extensions of Credit. The obligation of the Lenders to make (but not Continue or Convert) Loans on the occasion of each Borrowing, of each Swingline Bank to make a Swingline Loan and of each LC Issuing Bank to issue, extend or increase the stated amount of Letters of Credit, including the first Extension of Credit (including the deemed issuance of the Existing Letters of Credit hereunder), is subject to the satisfaction of the following conditions:

(a) the Administrative Agent shall have received a Notice of Borrowing, Notice of Swingline Borrowing or Request for Issuance, as applicable;

(b) all representations and warranties of the Borrower contained in Article IV (other than the representations and warranties set forth in Sections 4.04 and 4.05(b)) which shall only be made and need only be true on the Closing Date) shall be true in all material respects as if made on and as of the date of such Extension of Credit (except that (i) with respect to any representation and warranty that expressly relates to an earlier date, in which case such representation and warranty shall be true in all material respects as of such earlier date, and (ii) with respect to any representation and warranty that is qualified by materiality or reference to Material Adverse Change, in which case such representation and warranty shall be true in all respects as of such date (or earlier date, as applicable);

(c) immediately prior to and immediately after such Extension of Credit, no Default or Event of Default under this Agreement shall have occurred and be continuing; and

(d) immediately after such Extension of Credit, the Outstanding Credits will not exceed the aggregate Commitment.

The making of each Extension of Credit (other than any Conversion or Continuation of a Loan) shall be deemed to be a representation and warranty by the Borrower on the date of such Extension of Credit that the conditions specified in paragraphs (b), (c) and (d) above have been satisfied.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

The Borrower represents and warrants that:

Section 4.01 Corporate Existence and Status. Each of the Borrower, the Parent and each Significant Subsidiary of the Parent has been duly organized, is validly existing and in good standing under the laws of the jurisdiction of its incorporation and is duly qualified to transact business in every jurisdiction where, by the nature of its business, such qualification is necessary, except where the failure to be so qualified would not reasonably be expected to result in a Material Adverse Change. Each of the Borrower, the Parent and each Significant Subsidiary of the Parent has all corporate power and authority to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

Section 4.02 Corporate Power and Authority; Enforceability. The execution, delivery and performance by the Borrower and the Parent of this Agreement and the other Loan Documents to which the Borrower or the Parent is a party (i) are within the Borrower's and the Parent's respective corporate powers and (ii) have been duly authorized by all necessary corporate action. This Agreement and the other Loan Documents to which the Borrower or the Parent is a party constitute valid and binding agreements of the Borrower and the Parent, as the case may be, enforceable in accordance with their respective terms, and the Notes, if and when executed and delivered in accordance with this Agreement, will constitute valid and binding obligations of the Borrower, enforceable in accordance with their respective terms, except, in each case, as the enforceability hereof and thereof may be affected by bankruptcy, insolvency, reorganization, moratorium or similar laws applicable to creditors' rights or the collection of debtors' obligations generally and equitable principles of general applicability.

Section 4.03 Non-Violation.

(a) The execution, delivery and performance by the Borrower and the Parent of this Agreement and the other Loan Documents to which the Borrower or the Parent is a party (i) do not conflict with, result in a breach of or constitute a default under any provision of the certificate of incorporation or bylaws (or other analogous formation documents) of the Borrower or the Parent, (ii) do not conflict with, result in a breach of or constitute a default under any provision of any material contract, agreement, judgment, injunction, order, decree or other instrument binding upon the Borrower or the Parent, except to the extent such conflict, breach or default would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Change and (iii) do not result in the creation or imposition of any Lien on any asset of the Borrower, the Parent or any Significant Subsidiary of the Parent (other than Permitted Liens).

(b) The execution and delivery by the Borrower and the Parent of this Agreement and the other Loan Documents to which the Borrower or the Parent is a party, the incurring and repayment by the Borrower of the Obligations, and the performance by the Parent of the Support Agreement do not violate any law, rule or regulation applicable to the Borrower or the Parent, as applicable.

(c) The performance by the Borrower of its other obligations under this Agreement and the other Loan Documents to which it is a party does not violate any law, rule or regulation applicable to the Borrower except where such violation would not reasonably be expected to have a Material Adverse Change.

Section 4.04 Litigation. There are no pending or, to the knowledge of the Borrower, threatened actions or proceedings (including any Environmental Proceedings) affecting the Borrower, the Parent or any Subsidiary of the Parent before any court, governmental agency or arbitrator, that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Change.

Section 4.05 Financial Information.

(a) The consolidated balance sheet of the Parent and its Subsidiaries, as of December 31, 2021, and the related statements of income and cash flows for the Fiscal Year then ended, reported on by independent public accountants of nationally recognized standing (copies of which have been delivered to the Lenders), fairly present, in conformity with GAAP, the consolidated financial position of the Parent and its Subsidiaries, as of such date, and of their results of operations and cash flows for such period stated.

(b) Since December 31, 2021, there has been no Material Adverse Change.

Section 4.06 Approvals. The execution, delivery and performance by the Borrower and the Parent of this Agreement and the other Loan Documents to which the Borrower or the Parent is a party require no action by or in respect of, or filing with, any governmental body, agency or official or any other Person except where the failure to obtain such approval or such violation would not reasonably be expected to result in a Material Adverse Change.

Section 4.07 Use of Proceeds. The proceeds of the Loans and the Letters of Credit will be used by the Borrower for working capital and other general corporate purposes of the Parent and its Subsidiaries. The Borrower and its Subsidiaries shall not use the proceeds of the Loans and the Letters of Credit (a) in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country or (c) in any manner that results in the violation of any Sanctions applicable to any party hereto.

Section 4.08 Investment Company Act; Margin Regulations. Each of Parent and the Borrower is either not an “investment company” under the Investment Company Act of 1940 (the “*Investment Company Act*”) or is exempt from all provisions of the Investment Company Act. Neither the Borrower, the Parent nor any Subsidiary of the Parent will apply the proceeds of any of the Loans, directly or indirectly, for the purpose, either immediate, incidental or ultimate, of purchasing or carrying any Margin Stock, except in compliance with Section 5.02(d).

Section 4.09 Compliance with Laws. Each of the Borrower, the Parent and each Subsidiary of the Parent is in compliance with all applicable laws, regulations and similar requirements of Governmental Authorities (including the Act, Anti-Corruption Laws, Anti-Money Laundering Laws, applicable Sanctions and all Environmental Requirements), except where the failure to be in compliance would not reasonably be expected to result in a Material Adverse Change.

Section 4.10 Compliance with ERISA.

(a) Except as would not reasonably be expected to result in a Material Adverse Change, the Borrower, the Parent, each Significant Subsidiary of the Parent and each other member of the Controlled Group of the foregoing have fulfilled their respective obligations under the minimum funding standards of ERISA and the Code with respect to each Plan and are in compliance in all material respects with the presently applicable provisions of ERISA and the Code with respect to each Plan and have not incurred any liability to the PBGC (other than for current premiums, which have been paid when due) or a Plan under Title IV of ERISA (other than liabilities for benefits and administration and operational expenses incurred in the ordinary course of Plan operations). As of the valuation date immediately preceding the Closing Date, no Plan of the Borrower, the Parent, any Significant Subsidiary of the Parent or any other member of the Controlled Group of the foregoing has been determined to be in “at risk” status (within the meaning of Section 430 of the Code or Section 303 of ERISA), and as of the Closing Date, no such Plan is reasonably expected to become an “at-risk” plan. No Multiemployer Plan is, or is expected to be, insolvent (within the meaning of ERISA Section 4245) or in “critical” status (within the meaning of ERISA Section 304).

(b) All contributions (if any) that the Borrower, the Parent, any Significant Subsidiary of the Parent or any other member of the Controlled Group of the foregoing have been required to make to a Multiemployer Plan have been duly and timely made and none of Borrower, Parent, any Significant Subsidiary of the Parent or any other member of the Controlled Group of the foregoing has incurred any material liability with respect to any Multiemployer Plan other than to make contributions as and when due. None of the Borrower, the Parent, any Significant Subsidiary of the Parent nor any member of the Controlled Group of the foregoing has incurred any Withdrawal Liability that has not been fully paid.

Section 4.11 Environmental Matters. Neither the Borrower, the Parent nor any Significant Subsidiary of the Parent is subject to any Environmental Liability that, individually or in the aggregate, would reasonably be expected to result in a Material Adverse Change.

Section 4.12 Taxes. There have been filed on behalf of the Borrower, the Parent and each Significant Subsidiary of the Parent all United States federal, state, provincial and local income, excise, property and other material tax returns that are required to be filed by the Borrower, the Parent and such Significant Subsidiary of the Parent, and all taxes shown to be due pursuant to such returns or pursuant to any assessment received by or on behalf of the Borrower, the Parent and such Significant Subsidiary of the Parent have been, or within the times required by law will be, paid except (i) where the amount or validity thereof currently is being contested in good faith by appropriate proceedings and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower, the Parent or such Significant Subsidiary of the Parent, as the case may be, or (ii) where failure to file or nonpayment would not reasonably be expected to result in a Material Adverse Change.

Section 4.13 No Defaults. Neither the Borrower, the Parent nor any Significant Subsidiary of the Parent is in default under or with respect to any material agreement, instrument or undertaking (other than in respect of Debt) to which it is a party, or by which it or any of its properties is bound which would reasonably be expected to result in a Material Adverse Change. No Default or Event of Default has occurred and is continuing.

Section 4.14 Ownership of Borrower and Operating Utilities. The Parent owns directly or indirectly (i) 100% of the Common Stock of the Borrower and (ii) at least 50% of the Common Stock of each Operating Utility, in each case, free and clear of any Lien other than Permitted Liens.

Section 4.15 Ownership of Properties and Assets. Each of the Borrower, the Parent and each Significant Subsidiary of the Parent has title to its properties and assets sufficient for the conduct of its respective business, except where the failure to have such title would not reasonably be expected to result in a Material Adverse Change.

Section 4.16 Full Disclosure. No written information (other than projections, other forward-looking information and information of a general economic or industry specific nature) furnished by the Borrower and the Parent to the Administrative Agent and the Lenders for purposes of or in connection with this Agreement and the Loan Documents or any transaction contemplated hereby or thereby (when taken as a whole for the purposes for which such information is given and read together with all other previously provided information), contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained therein not materially misleading in light of the circumstances under which such statements were made; provided that in the case of projections, such projections were prepared in good faith based on estimates and assumptions believed by the Borrower and the Parent to be reasonable at the time made. As of the Closing Date (or the date of the delivery of any subsequent update), all of the information included in the Beneficial Ownership Certification is true and correct.

Section 4.17 Anti-Corruption Laws and Sanctions. The Borrower and the Parent have implemented and maintain in effect policies and procedures designed to ensure compliance in all material respects by the Borrower, the Parent, the Subsidiaries of the Parent and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, and the Borrower, the Parent, the Subsidiaries of the Parent and their respective directors, officers and employees and to the knowledge of the Borrower its agents, are in compliance with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions. None of (a) the Borrower, the Parent, any Subsidiary of the Parent nor any of their respective directors, officers, employees or affiliates, or (b) to the knowledge of the Borrower or the Parent, any agent or representative of the Borrower, the Parent or any Subsidiary of the Parent that will act in any capacity in connection with or benefit from the credit facility established hereby is a Sanctioned Person or currently the subject or target of any Sanctions.

Section 4.18 Margin Stock. The Borrower is not 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.

ARTICLE V COVENANTS

Section 5.01 Affirmative Covenants. So long as any Loan shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower agrees as follows:

(a) **Parent Financial Reporting.** The Borrower will cause the Parent to deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(i) as soon as available and in any event within 90 days after the end of each Fiscal Year, a consolidated balance sheet of the Parent and its Subsidiaries as of the end of such Fiscal Year and the related consolidated statements of income and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by independent public accountants of nationally recognized standing, with such report to be free of any “going concern” or similar qualification or exception or any qualification as to the scope of such audit;

(ii) as soon as available and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, a consolidated balance sheet of the Parent and its Subsidiaries as of the end of such Fiscal Quarter and the related consolidated statement of income and cash flows for such Fiscal Quarter and for the portion of the Fiscal Year ended at the end of such Fiscal Quarter, setting forth in each case in comparative form the figures for the corresponding Fiscal Quarter and the corresponding portion of the previous Fiscal Year, all certified by a Financial Officer of the Parent to present fairly in all material respects the financial condition of the Parent and its Subsidiaries on a consolidated basis as of their respective dates and the results of operations of the Parent and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes; and

(iii) no later than five (5) Business Days following the delivery of each set of financial statements referred to in Sections 5.01(a)(i) and 5.01(a)(ii), a certificate of a Financial Officer of the Parent demonstrating and certifying compliance with the financial covenant set forth in Section 5.01(i).

(b) Borrower Financial Reporting. The Borrower will deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(i) as soon as available and in any event within 90 days after the end of each Fiscal Year, a balance sheet of the Borrower as of the end of such Fiscal Year and the related statements of income and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all certified by a Financial Officer of the Borrower to present fairly in all material respects the financial condition of the Borrower as of the date indicated and the results of operations of the Borrower for such Fiscal Year;

(ii) as soon as available and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, a balance sheet of the Borrower as of the end of such Fiscal Quarter and the related statement of income and cash flows for such Fiscal Quarter and for the portion of the Fiscal Year ended at the end of such Fiscal Quarter, setting forth in each case in comparative form the figures for the corresponding Fiscal Quarter and the corresponding portion of the previous Fiscal Year, all certified by a Financial Officer of the Borrower to present fairly in all material respects the financial condition of the Borrower as of their respective dates and the results of operations of the Borrower for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes; and

(iii) simultaneously with the delivery of each set of financial statements referred to in Sections 5.01(b)(i) and 5.01(b)(ii), a certificate of a Financial Officer of the Borrower stating whether, to the knowledge of such Financial Officer, any Default or Event of Default exists on the date of such certificate and, if any Default or Event of Default then exists, setting forth the details thereof and the action which the Borrower or the Parent, as applicable, is taking or proposes to take with respect thereto.

(c) Other Reporting Requirements. The Borrower will, and will cause the Parent to, deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(i) within five (5) Business Days after a Responsible Officer of the Borrower or the Parent becomes aware of the occurrence of any Default or Event of Default, a certificate of a Financial Officer of the Borrower or the Parent, as applicable, setting forth the details thereof and the action which the Borrower or the Parent, as applicable, is taking or proposes to take with respect thereto;

(ii) promptly upon the filing thereof with the SEC, copies of all reports with respect to material litigation which the Borrower, the Parent or any Subsidiary of the Parent files with the SEC;

(iii) within five (5) Business Days after the furnishing thereof, copies of all financial statements and reports sent to the stockholders of the Parent generally, and promptly upon the filing thereof with the SEC, notice by electronic mail of the filing of any financial statements and reports which the Parent filed with the SEC (other than reports referred to in Sections 5.01(a)(i), 5.01(a)(ii) and 5.01(c)(ii));

(iv) promptly upon receipt thereof, notice of any downgrade in the S&P Rating or the Moody's Rating of the Borrower;

(v) simultaneously with the delivery of the certificate referred to in Section 5.01(a)(iii), if any Subsidiary has become or ceased to be a Significant Subsidiary, a revised Schedule II disclosing the Significant Subsidiaries as of the date of such certificate;

(vi) prompt notice of any proposed waiver, amendment, supplement or other modification of any term or condition of the Support Agreement;

(vii) promptly upon the request thereof, such other information and documentation required by bank regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations (including the Act), as from time to time reasonably requested by the Administrative Agent or any Lender;

(viii) if reasonably requested by any Lender (through the Administrative Agent) or the Administrative Agent, the Borrower will furnish to the Administrative Agent evidence of compliance with the Margin Regulations; and

(ix) from time to time such additional information regarding the business, financial condition or results of operations of the Borrower, the Parent or the Significant Subsidiaries of the Parent as the Administrative Agent and the Lenders may reasonably request.

(d) Compliance with Laws and Contractual Obligations.

(i) The Borrower will, and will cause the Parent and the Subsidiaries of the Parent to, comply with the requirements of all applicable laws (including the Act, ERISA, Anti-Corruption Laws, Anti-Money Laundering Laws, applicable Sanctions and Environmental Requirements), rules, regulations and orders, except where the failure to so comply would not reasonably be expected to result in a Material Adverse Change. Not in limitation of the foregoing, the Borrower will, and will cause the Parent, each Significant Subsidiary of the Parent and each other member of the Controlled Group of the foregoing to make all payments to each Plan of the Borrower, the Parent, any Significant Subsidiary of the Parent or any other member of the Controlled Group of the foregoing necessary to meet the minimum funding requirements of Section 412 of the Code and Section 302 of ERISA.

(ii) The Borrower will, and will cause the Parent and the Significant Subsidiaries of the Parent to, comply with the requirements of all material contractual obligations (other than

Debt) to which it is a party, except (A) where the necessity of such compliance currently is being contested in good faith by appropriate proceedings and reserves in conformity with, and to the extent required by, GAAP with respect thereto have been provided on the books of the Borrower, the Parent or any Significant Subsidiary of the Parent, as the case may be, or (B) where the failure to so comply would not reasonably be expected to result in a Material Adverse Change.

(e) Payment of Taxes. The Borrower will, and will cause the Parent and each Significant Subsidiary of the Parent to, pay promptly when due all taxes, assessments, governmental charges, claims for labor, supplies, rent and other obligations (other than Debt) which, if unpaid, might become a Lien against the Properties of the Borrower, the Parent or such Significant Subsidiary, except (i) liabilities that are currently being contested in good faith by appropriate proceedings and reserves in conformity with, and to the extent required by, GAAP with respect thereto have been provided on the books of the Borrower, the Parent or such Significant Subsidiary, as the case may be, or (ii) where the failure to pay would not reasonably be expected to result in a Material Adverse Change.

(f) Maintenance of Insurance. The Borrower will, and will cause the Parent and each Significant Subsidiary of the Parent to, maintain with financially sound and reputable insurance companies, insurance on its Properties in at least such amounts and against at least such risks as are usually insured against in the same general area by companies of established repute engaged in the same or similar business as the Borrower, the Parent or such Significant Subsidiary of the Parent, as the case may be.

(g) Maintenance of Properties; Inspection of Property, Books and Records.

(i) Except as permitted by Section 5.02(b), the Borrower will, and will cause the Parent and the Significant Subsidiaries of the Parent to, maintain all of its Properties and assets necessary and material to its business in good condition, repair and working order, ordinary wear and tear excepted, in accordance with standards observed by companies engaged in the same or similar business and similarly situated as the Borrower, the Parent or such Subsidiaries of the Parent, as the case may be, except where the failure to so maintain its respective Properties and assets would not reasonably be expected to result in a Material Adverse Change; provided that nothing in this Section 5.01(g)(i) shall prevent the Borrower, the Parent or any Significant Subsidiary of the Parent from discontinuing the operation or maintenance of any such Properties or assets or disposing of such Properties or assets if such discontinuance is, in the judgment of the Borrower, desirable in the conduct of its business or the business of the Parent or any such Significant Subsidiary.

(ii) The Borrower will, and will cause the Parent and each Significant Subsidiary of the Parent to, (A) keep proper books of record and account in which full, true and correct entries in conformity with GAAP shall be made of all dealings and transactions in relation to its respective business and activities and (B) permit representatives of the Administrative Agent (and any Lender in attendance with the Administrative Agent) to visit and inspect any of its Properties at reasonable business hours upon reasonable notice, to examine and make abstracts from any of its books and records and to discuss its affairs, finances and accounts with its respective officers, employees and independent public accountants; provided that (w) excluding any such visits and inspections during the continuation of an Event of Default, the Administrative Agent shall conduct such visits and inspections at its (and the applicable Lenders') expense and not exercise such rights more often than one (1) time during any calendar year; (x) upon the occurrence and during the continuance of an Event of Default, the Administrative Agent and any Lender may do any of the foregoing at the expense of the Borrower and at any time without advance notice; (y) any such visits or inspections shall be subject to such conditions as the Borrower, the Parent and

each Significant Subsidiary of the Parent, as the case may be, shall deem necessary based on reasonable considerations of safety and security; and (z) neither the Borrower, the Parent or any Significant Subsidiary of the Parent shall be required to disclose any information that is subject to the attorney-client privilege or attorney work-product privilege properly asserted by the applicable person to prevent the loss of such privilege or which is prevented from disclosure pursuant to a confidentiality agreement with third parties.

(h) Maintenance of Existence.

(i) The Borrower will, and will cause the Parent to, maintain its corporate existence except as permitted under Section 5.02(b).

(ii) The Borrower will, and will cause the Parent and each Significant Subsidiary of the Parent to maintain all rights, franchises, licenses and privileges necessary to the conduct of its business, except (x) as permitted under Section 5.02(b) and (y) where the failure to take such action would not reasonably be expected to result in a Material Adverse Change.

(i) Debt Capitalization. The Borrower will cause the Parent to maintain at the end of each Fiscal Quarter a ratio of Consolidated Total Debt to Consolidated Total Capitalization of not more than 0.70 to 1.0.

(j) Compliance with Anti-Corruption Laws and Sanctions; Beneficial Ownership Regulation. The Borrower and the Parent will (i) maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrower, the Parent, the Subsidiaries of the Parent and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (ii) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification (or a certification that the Borrower qualifies for an express exclusion to the “legal entity customer” definition under the Beneficial Ownership Regulation) of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein (or, if applicable, the Borrower ceasing to fall within an express exclusion to the definition of “legal entity customer” under the Beneficial Ownership Regulation) and (iii) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or directly to such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

Documents required to be delivered pursuant to Sections 5.01(a), 5.01(b) and 5.01(c) (other than Section 5.01(c)(ii)) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower’s website on the Internet at the website address listed in Section 7.01; or (ii) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent by facsimile or electronic mail (which shall promptly provide notice to the Lenders in accordance with its customary practice) of the posting of any such documents. Notwithstanding anything contained herein, in every instance the Parent and the Borrower shall be required to provide paper copies of the compliance certificates required by Sections 5.01(a)(iii) and 5.01(b)(iii) to the Administrative Agent. Except for such compliance certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain

copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower and the Parent hereby acknowledge that (a) the Administrative Agent and/or the Joint Lead Arrangers will make available to the Lenders and the LC Issuing Banks materials and/or information provided by or on behalf of the Borrower and the Parent hereunder (collectively, the “**Borrower Materials**”) by posting the Borrower Materials on SyndTrak Online or another similar electronic system (the “**Platform**”) and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower, the Parent or their respective securities) (each, a “**Public Lender**”). The Borrower hereby agrees that if (x) the Borrower has clearly and conspicuously marked any Borrower Materials “PUBLIC”, which, at a minimum, shall mean that the word “PUBLIC” shall appear prominently on the first page thereof or (y) the Borrower Materials have been filed with the SEC without a request of confidential treatment, (A) the Borrower shall be deemed to have authorized the Administrative Agent, the Joint Lead Arrangers, the LC Issuing Banks and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower, the Parent or their respective securities for purposes of United States Federal and state securities laws (provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 7.06); (B) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor”; and (C) the Administrative Agent and the Joint Lead Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor”. Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials “PUBLIC”.

Section 5.02 Negative Covenants. So long as any Loan shall remain unpaid, any Letter of Credit shall remain outstanding or any Lender shall have any Commitment hereunder, the Borrower agrees as follows:

(a) Restrictions on Liens. The Borrower shall not, and shall not cause or permit the Parent or any Significant Subsidiary of the Parent to create, incur, assume or suffer to exist, any Lien on or with respect to any of its respective Property, whether now owned or hereafter acquired, except Permitted Liens.

(b) Consolidations; Mergers; Etc. Neither the Borrower nor the Parent shall consolidate or merge with or into, or sell, lease or otherwise transfer all or substantially all of its assets, taken as a whole, to any other Person; provided that (i) the Parent may consolidate or merge with another Person so long as (A) the Parent is the Person surviving or continuing after the completion of such consolidation or merger; (B) after giving effect to such consolidation or merger, the S&P Rating and the Moody’s Rating of the Parent is BBB-/Baa3 or higher; and (C) immediately after giving effect to such consolidation or merger, no Default or Event of Default shall have occurred and be continuing and (ii) the Borrower may consolidate or merge with, or sell, lease or otherwise transfer all or substantially all of its assets to, the Parent so long as (A) in the case of a consolidation or merger, the Parent is the Person surviving or continuing after the completion of such consolidation or merger; (B) the Parent directly assumes all of the Borrower’s obligations under the Loan Documents in accordance with documentation reasonably acceptable to the Administrative Agent; and (C) immediately after giving effect to such consolidation, merger, sale, lease or transfer, no Default or Event of Default shall have occurred and be continuing.

(c) Sale-Leaseback Transactions. The Borrower will not, and will not allow Parent or any Significant Subsidiary of the Parent to, enter into any Sale and Leaseback Transaction unless:

(i) the aggregate amount of the Attributable Debt of the Borrower, the Parent and the Significant Subsidiaries of the Parent in respect of Sale and Leaseback Transactions then outstanding would not exceed 15% of Consolidated Tangible Total Assets, or

(ii) the Borrower, the Parent or such Significant Subsidiary, within six (6) months of the applicable Sale and Leaseback Transaction, retires an amount of secured Debt which is not subordinate to the Obligations in an amount equal to the greater of (A) the net proceeds of the sale or transfer of the property or other assets that are the subject of such Sale and Leaseback Transaction or (B) the fair market value of the property leased pursuant to such Sale and Leaseback Transaction; provided that this Section 5.02(c) shall not apply to any Sale and Leaseback Transaction which (x) is for an initial term of three (3) years or less or (y) which has a sale price of (A) \$1,000,000 or less, individually or (B) \$20,000,000 or less in the aggregate.

(d) Use of Proceeds.

(i) No part of the proceeds of any of the Loans or Letters of Credit will be used for any purpose which violates the provisions of the Margin Regulations. The proceeds of the Loans shall not be used for any purpose other than as specified in Section 4.07.

(ii) The Borrower will not request any Extension of Credit, and the Borrower shall not use, and shall ensure that the Parent and its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Extension of Credit (x) 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 Laws or Anti-Money Laundering Laws, (y) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (z) in any manner that would result in the violation of any Sanctions applicable to any party hereto or any Anti-Corruption Laws or Anti-Money Laundering Laws.

(e) Support Agreement. Subject to Section 7.04(a)(viii), the Borrower shall not, and shall not cause or permit the Parent to: (i) cancel or terminate the Support Agreement or (ii) amend or otherwise modify the terms of the Support Agreement, except for amendments and modifications that do not adversely affect the rights of the Lenders hereunder, in each case, without the prior written consent of the Lenders.

(f) Change in Nature of Business. Except as permitted by Section 5.02(b), the Borrower shall not engage in any business, operations or activities (whether directly, through a joint venture, in connection with a permitted acquisition or otherwise) other than financing activities for and on behalf of the Parent and one or more of the other Subsidiaries of the Parent.

ARTICLE VI DEFAULTS

Section 6.01 *Events of Default.* If one or more of the following events ("*Events of Default*") shall have occurred and be continuing:

(a) the Borrower shall fail to pay (i) any principal of any Loan or Reimbursement Obligation on the date such payment is due, or (ii) interest on any Loan or Reimbursement Obligation or any other Obligation, within five (5) Business Days of the date such payment is due; or

(b) the Borrower shall fail to observe or perform (or shall fail to cause the Parent and its Subsidiaries or Significant Subsidiaries, as applicable, to observe or perform) any covenant or agreement contained in Section 5.01(c)(i), 5.01(h)(i), 5.01(i), or 5.02; or

(c) the Borrower shall fail to observe or perform (or shall fail to cause the Parent and its Subsidiaries or Significant Subsidiaries, as applicable, to observe or perform) any covenant or agreement contained in this Agreement (other than those covered by Section 6.01(a) or 6.01(b)) and such failure shall continue for a period of thirty (30) days after the earlier of (i) the Borrower's delivery of notice thereof to the Administrative Agent and (ii) written notice thereof has been given to the Borrower by the Administrative Agent or any Lender; or

(d) any representation, warranty, certification or statement made or deemed made by the Borrower in Article IV or by the Borrower or the Parent under any other Loan Document or in any certificate, financial statement or other document delivered pursuant to this Agreement or any other Loan Document shall prove to have been incorrect in any material respect (or for any representation, warranty, certification or statement that is qualified by materiality or reference to Material Adverse Change, in any respect) when made (or deemed made); or

(e) the Borrower, the Parent or any Significant Subsidiary of the Parent shall fail to pay any principal of or premium or interest on any Debt (excluding Debt evidenced by this Agreement and any Notes, but including, for purposes of this provision, obligations of the Parent under Section 4 of the Support Agreement) in an aggregate amount in excess of (i) \$125,000,000, in the case of the Borrower, (ii) \$125,000,000, in the case of the Parent or any Significant Subsidiary other than the Borrower or (iii) \$250,000,000, in the aggregate, in the case of all of the Significant Subsidiaries of the Parent, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of (with the giving of notice and/or lapse of time, if required), the maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; provided that if such failure, default, event or condition shall be cured by the Borrower, the Parent or such Significant Subsidiary or waived by the holders of such Debt and any acceleration of maturity having resulted from such failure, default, event or condition shall be rescinded or annulled, in each case in accordance with the terms of such agreement or instrument, without any modification of the terms of such Debt requiring the Borrower, the Parent or such Significant Subsidiary to furnish additional or other security therefor, furnish additional or other guarantees thereof, reduce the average life to maturity thereof, increase the principal amount thereof or the interest rate thereon, or any agreement by the Borrower, the Parent or such Significant Subsidiary to furnish additional or other security therefor, furnish additional or other guarantees thereof, or to issue Debt in lieu thereof which is secured by additional or other collateral or additional or other guarantees or with a shorter average life to maturity or in a greater principal amount or with a greater interest rate thereon, then any default hereunder by reason thereof shall be deemed likewise to have been thereupon cured or waived unless payment of the Loans hereunder has been accelerated prior to such cure or waiver; or

(f) the Parent shall default in the performance or observance of any obligation or condition under Section 3 of the Support Agreement as of the last day of any Fiscal Year or Fiscal Quarter of the Borrower; provided that any such default shall not be an Event of Default unless the Borrower has tangible net worth (total assets less liabilities less intangible assets as of such last day), as determined for purposes of the Support Agreement and after giving effect to period-end adjustments in accordance with GAAP, of less than negative \$100,000, and, if such default is capable of being cured, such default shall continue for a period of ten (10) days after a Financial Officer of either the Borrower or the Parent first has actual knowledge of such default; or

(g) the Borrower, the Parent or any Significant Subsidiary of the Parent shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally, or shall admit in writing its inability, to pay its debts as they become due, or shall take any corporate action to authorize any of the foregoing; or

(h) an involuntary case or other proceeding shall be commenced against the Borrower, the Parent or any Significant Subsidiary of the Parent seeking liquidation, reorganization or other relief with respect to it or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days; or an order for relief in such case or proceeding shall be entered against the Borrower, the Parent or any such Significant Subsidiary under the federal bankruptcy laws as now or hereafter in effect; or

(i) one or more judgments or orders for the payment of money in an aggregate amount (to the extent not paid or insured) in excess of (i) \$125,000,000, in the case of the Borrower, (ii) \$125,000,000, in the case of the Parent or any Significant Subsidiary other than the Borrower or (iii) \$250,000,000, in the aggregate, in the case of all of the Significant Subsidiaries of the Parent, shall be rendered against the Borrower, the Parent or any such Significant Subsidiary, and such judgment or order shall continue without having been discharged, vacated or stayed for a period of sixty (60) consecutive days after the entry thereof; or

(j) (i) the PBGC shall institute proceedings under Title IV of ERISA to terminate or to cause a trustee to be appointed to administer any Plan of the Borrower, the Parent, any Significant Subsidiary or any other member of the Controlled Group of the foregoing or any Multiemployer Plan or a proceeding shall be instituted by a fiduciary of any such Plan or Multiemployer Plan against the Borrower or any member of its Controlled Group to enforce Section 515 or 4219(c)(5) of ERISA and such proceeding shall not have been dismissed within 30 days thereafter; or (ii) a condition shall exist by reason of which the PBGC would be entitled to obtain a decree adjudicating that any such Plan or Multiemployer Plan must be terminated; or (iii) the Borrower, the Parent or any such Significant Subsidiary, or any member of the Controlled Group of the foregoing shall incur any Withdrawal Liability with respect to one or more Multiemployer Plans, in each case that results or is reasonably likely to result in liability to the Borrower or any Significant Subsidiary in the aggregate in excess of \$125,000,000; or

(k) any material provision of the Support Agreement shall become unenforceable, or any court or governmental or regulatory body having jurisdiction over the Parent, shall assert the unenforceability of any such provision in writing, or the Parent contests in any manner the validity or enforceability of any such provision; or

(l) a Parent Change of Control shall occur; or

(m) except as permitted by Section 5.02(b), the Parent shall cease to own, directly or indirectly, 100% of the Common Stock of the Borrower;

then, and in every such event, the Administrative Agent, on behalf of the Lenders, the Swingline Banks and the LC Issuing Banks, may, with the consent of the Required Lenders (or shall at the request of the Required Lenders), by notice to the Borrower: terminate the Commitment, the Swingline Commitment and the LC Commitment and each shall thereupon terminate and declare the Loans (together with accrued interest thereon) and the Reimbursement Obligations and all other Obligations to be, and the Loans (together with all accrued interest thereon), Reimbursement Obligations and all other Obligations shall thereupon become, immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; provided that if any Event of Default specified in Section 6.01(g) or 6.01(h) occurs with respect to the Borrower or the Parent, without any notice to the Borrower or any other act by the Administrative Agent or any Lender, Swingline Bank or LC Issuing Bank, the Commitment, the Swingline Commitment and the LC Commitment shall thereupon automatically terminate and the Loans (together with accrued interest thereon) and all other Obligations shall automatically become immediately due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower.

Section 6.02 Cash Collateral Account. Notwithstanding anything to the contrary contained herein, no notice given or declaration made by the Administrative Agent pursuant to Section 6.01 shall affect the obligation of any LC Issuing Bank to make any payment under any Letter of Credit in accordance with the terms of such Letter of Credit; provided that upon the occurrence and during the continuance of any Event of Default, the Administrative Agent shall at the request, or may with the consent, of the Required Lenders, upon notice to the Borrower, require the Borrower to deposit with the Administrative Agent an amount in the cash collateral account (the “**Cash Collateral Account**”) described below equal to 102% of the aggregate maximum amount available to be drawn under all Letters of Credit outstanding at such time. Such Cash Collateral Account shall at all times be free and clear of all rights or claims of third parties. The Cash Collateral Account shall be maintained with the Administrative Agent in the name of, and under the sole dominion and control of, the Administrative Agent, and amounts deposited in the Cash Collateral Account shall bear interest at a rate equal to the rate generally offered by the Administrative Agent for deposits equal to the amount deposited by the Borrower in the Cash Collateral Account, for a term to be determined by the Administrative Agent in its sole discretion. The Borrower hereby grants to the Administrative Agent for the benefit of the Lenders, the LC Issuing Banks and the Swingline Banks, a Lien on, and hereby assigns to the Administrative Agent for the benefit of the Lenders, the LC Issuing Banks and the Swingline Banks all of its right, title and interest in, the Cash Collateral Account and all funds from time to time on deposit therein to secure its Reimbursement Obligations in respect of Letters of Credit or repayment obligations in respect of the Swingline Loans, as applicable. If any drawings then outstanding or thereafter made are not reimbursed in full immediately upon demand or, in the case of subsequent drawings, upon being made, then, in any such event, the Administrative Agent may, and, upon the Borrower’s request, shall, apply the amounts then on deposit in the Cash Collateral Account, in such priority as the Administrative Agent shall elect, toward the payment in full of any or all of the Borrower’s Obligations hereunder as and when such Obligations shall become due and payable. Upon the earlier to occur of (a) payment in full, after the termination of the Letters of Credit, of all Obligations and (b) the date on which all Events of Default shall have been cured or waived, the Administrative Agent will repay and reassign to the Borrower any cash then on deposit in the Cash Collateral Account, and the Lien of the Administrative Agent on the Cash Collateral Account and the funds therein shall automatically terminate.

Section 6.03 Administrative Agent May File Proofs of Claim. In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or Letters of Credit shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, Letters of Credit and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Sections 2.09 and 7.03) allowed in such judicial proceeding; and

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

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 7.03.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender any plan of reorganization, arrangement, adjustment or composition affecting the obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

ARTICLE VII MISCELLANEOUS

Section 7.01 Notices.

(a) All notices, requests and other communications to any party hereunder shall be in writing (including electronic transmission or similar writing) and shall be given to such party at its address, or facsimile number or other electronic transmission set forth, in the case of the Borrower, the Parent, the Administrative Agent, the Lenders, the Swingline Banks and the LC Issuing Banks on the signature pages hereto (including, in the case of the Borrower, the Borrower's website) or such other address or facsimile number as such party may hereafter specify for the purpose by notice to the Borrower and the Administrative Agent. Each such notice, request or other communication shall be effective (i) if given by facsimile, when such facsimile is transmitted to the facsimile number specified as provided in this Section and the appropriate confirmation is received, (ii) if given by e-mail, when transmitted to the email address specified in this Section and a written confirmation of such communication is also given by some other method specified in this Section, (iii) if given by mail, 72 hours after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (iv) if given by any other means, when delivered at the address specified as provided in this Section; provided that (x) Notices of Borrowings to the Administrative Agent and Notices of Swingline Borrowings to the applicable Swingline Bank under Article II shall not be effective until received and (y) notices delivered by facsimile or e-mail, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient.

(b) Notices and other communications to the Lenders and the LC Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender or LC Issuing Bank pursuant to Article II if such Lender or LC Issuing Bank, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under

such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

Section 7.02 No Waivers. No failure or delay by the Administrative Agent or any Lender in exercising any right, power or privilege hereunder or under any of the other Loan Documents shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by law.

Section 7.03 Expenses; Indemnification.

(a) The Borrower shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, the Syndication Agent, the Joint Lead Arrangers and their Affiliates (including the reasonable and documented fees and expenses of counsel for the Administrative Agent), in connection with the syndication of the credit facility evidenced by this Agreement, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents (other than the Support Agreement) or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) without duplication of any fees separately agreed to by the Borrower, all reasonable and documented out of pocket expenses incurred by any LC Issuing Bank (other than overhead expenses and other similar expenses) in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all documented out of pocket expenses incurred by the Administrative Agent, any Lender, any Swingline Bank or any LC Issuing Bank (including the reasonable and documented fees and expenses of any counsel for the Administrative Agent, any Lender, any Swingline Bank or any LC Issuing Bank), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loan made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit; provided that the Borrower shall only be required to pay the fees and expenses for (x) one (1) outside counsel for the Administrative Agent, the Syndication Agent, the Joint Lead Arrangers, the Lenders, the Swingline Banks and the LC Issuing Banks, (y) any local and/or regulatory counsel in any applicable jurisdiction for the Administrative Agent, the Syndication Agent, the Joint Lead Arrangers, the Lenders, the Swingline Banks and the LC Issuing Banks and (z) in the case of an actual or potential conflict of interest, such additional counsel as may be reasonably necessary.

(b) The Borrower shall indemnify the Administrative Agent, each Joint Lead Arranger, each Lender, each Swingline Bank and each LC Issuing Bank, and each Related Party of any of the foregoing Persons (each such Person being called an “**Indemnitee**”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related reasonable and documented out of pocket costs and expenses (including the reasonable and documented fees and expenses of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or the Parent) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any LC Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower, the Parent or any of its Subsidiaries, or any Environmental

Proceeding or Environmental Liability related in any way to the Borrower, the Parent or any of its Subsidiaries, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower, the Parent or any of its Subsidiaries, and regardless of whether any Indemnatee is a party thereto, or (v) any claim (including any claim arising from an Environmental Proceeding or Environmental Liability), investigation, litigation or other proceeding (whether or any Indemnatee is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including reasonable and documented attorneys' fees; provided that such indemnity shall (x) not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related costs and expenses are determined by a court of competent jurisdiction by final and nonappealable judgment (1) to have resulted from the gross negligence or willful misconduct of such Indemnatee or (2) to have resulted from a claim brought by the Borrower or the Parent against an Indemnatee for breach in bad faith of such Indemnatee's obligations hereunder or under any other Loan Document, (y) not be available for any claim, litigation, loss or proceeding that is brought by an Indemnified Person against another Indemnified Person not arising from or in connection with any action or omission of the Borrower, the Parent or any of their respective Subsidiaries or Affiliates (other than against any of the Joint Lead Arrangers, the Administrative Agent or the Co-Documentation Agents in their capacities as such) and (z) be limited in the case of attorneys' fees and expenses to (1) one (1) outside counsel for the Administrative Agent, the Syndication Agent, the Joint Lead Arrangers, the Lenders, the Swingline Banks and the LC Issuing Banks, (2) any local and/or regulatory counsel in any applicable jurisdiction for the Administrative Agent, the Syndication Agent, the Joint Lead Arrangers, the Lenders, the Swingline Banks and the LC Issuing Banks and (3) in the case of an actual or potential conflict of interest, such additional counsel as may be reasonably necessary. This Section 7.03(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under paragraph (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any LC Issuing Bank, any Swingline Bank or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such LC Issuing Bank, such Swingline Bank or such Related Party, as the case may be, such Lender's Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the aggregate outstanding Commitments, or if there are no Commitments outstanding, the outstanding principal amount of the Loans, at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to any LC Issuing Bank or Swingline Bank solely in its capacity as such, only the Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Lenders' Pro Rata Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought); and provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such LC Issuing Bank or such Swingline Bank in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such LC Issuing Bank or any such Swingline Bank in connection with such capacity. The obligations of the Lenders under this paragraph (c) are subject to the provisions of Section 2.21(c).

(d) To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, any claim against any Indemnatee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof. To the fullest extent permitted

by applicable law, no Indemnitee shall assert, and each Indemnitee hereby waives, any claim against the Borrower, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, the transactions contemplated hereby or thereby, any Loan or Letter of Credit, or the use of the proceeds thereof; provided that this waiver shall in no way limit the Borrower's indemnification obligations in Section 7.03(b) to the extent of any claim by any Person other than the Borrower, the Parent or any Indemnitee or its Related Parties for any of the foregoing to the extent such claim would be covered by Section 7.03(b).

Section 7.04 Amendments, Waivers and Consents.

(a) Neither this Agreement nor any other Loan Document (other than the Support Agreement (except as provided in clause (viii) below)) nor any of the terms hereof or thereof may be amended, changed, waived, discharged or terminated unless such amendment, change, waiver, discharge or termination is in writing and signed by the Required Lenders, the Borrower and the Parent; provided that no such amendment, change, waiver, discharge or termination shall without the consent of each Lender affected thereby:

- (i) extend the final maturity of any Loan, or any portion thereof (except pursuant to Section 2.06),
- (ii) reduce the rate or extend the time of payment of interest (other than a waiver or rescission of the application of the default rate of interest) or fees hereunder;
- (iii) reduce or waive repayment of the principal amount of any Loan,
- (iv) extend the Commitment of a Lender or increase the Commitment of a Lender over the amount thereof in effect (it being understood and agreed that none of (A) a waiver of any Default or Event of Default, (B) the extension of the Commitment of any other Lender in accordance with Section 2.06 or (C) the increase of the Commitment of any other Lender in accordance with Section 2.05, shall, in any case, constitute a change in the terms of the Commitment of such Lender),
- (v) release the Borrower from all its obligations under the Loan Documents except as permitted hereby,
- (vi) reduce any percentage specified in, or otherwise modify, the definition of "Required Lenders",
- (vii) consent to the assignment or transfer by the Borrower of any of its respective rights and obligations under (or in respect of) the Loan Documents except as permitted hereby or thereby,
- (viii) (x) terminate or otherwise cancel the Support Agreement or (y) amend or otherwise modify the terms of the Support Agreement in any manner that, in the case of this clause (y), adversely affects the rights of such Lender,
- (ix) amend or otherwise modify this Section 7.04; or
- (x) change Section 2.21 or Section 2.22 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender.

Notwithstanding anything to the contrary herein, (i) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender; (ii) no amendment, waiver or consent shall, unless in writing and signed by the LC Issuing Banks in addition to the Lenders required above, affect the rights or duties of the LC Issuing Banks under this Agreement or any Letter of Credit issued or to be issued by it; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Banks in addition to the Lenders required above, affect the rights or duties of the Swingline Banks under this Agreement; (iv) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (v) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto.

(b) In connection with any proposed amendment, change or waiver (a “**Proposed Change**”) requiring the consent of all Lenders or all affected Lenders, if the consent of the Required Lenders to such Proposed Change is obtained, but the consent to such Proposed Change of other Lenders whose consent is required is not obtained (any such Lender whose consent is not obtained as described in paragraph (a) above being referred to as a “**Non-Consenting Lender**”), then, so long as the Lender that is acting as Administrative Agent is not a Non-Consenting Lender, the Borrower may, at its sole expense and effort, upon notice to such Non-Consenting Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate (or to execute a Power of Attorney to the Administrative Agent for the Administrative Agent to assign and delegate on such Non-Consenting Lender’s behalf) without recourse (in accordance with and subject to the restrictions contained in Section 7.05), all its interests, rights and obligations under this Agreement to an Eligible Assignee that shall assume such obligations; provided that (i) such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letter of Credit payments that have not been reimbursed, accrued interest thereon, accrued fees and all other amounts payable to it hereunder from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (ii) the Borrower or such assignee shall have paid to the Administrative Agent the processing and recordation fee specified in Section 7.05(b) (iv). Notwithstanding anything to the contrary in this Agreement, the return of the Note held by any such Non-Consenting Lender is not a condition to the effectiveness of any assignment pursuant to this Section 7.04(b).

(c) Notwithstanding anything to the contrary in this Section 7.04, if the Administrative Agent and the Borrower shall have jointly identified (each in its sole discretion) an obvious error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents (other than the Support Agreement), then the Administrative Agent and the Borrower shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following the posting of such amendment to the Lenders.

Section 7.05 Benefit of Agreement.

(a) This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided that, except as permitted by Section 5.02(b), the Borrower may not assign or transfer any of its interests and obligations without prior written consent of each of the Lenders; and provided further that the rights of each Lender to transfer, assign or grant participations in its rights and/or obligations hereunder shall be limited as set forth in this Section 7.05.

(b) Each Lender may assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Loans, its Notes, and its Commitment); provided that:

(i) each such assignment shall be to an Eligible Assignee;

(ii) except in the case of an assignment to another Lender, an Affiliate of an existing Lender or any Approved Fund or an assignment of all of a Lender's rights and obligations under this Agreement, any such partial assignment shall be in an amount at least equal to \$10,000,000 (or, if less, the remaining amount of the Commitment being assigned by such Lender) or an integral multiple of \$1,000,000 in excess thereof;

(iii) each such assignment by a Lender of any portion of its Loans shall be accompanied by an assignment of a constant, and not varying, percentage of all of such Loans, and each such assignment by a Lender of any portion of its Loans shall be accompanied by an assignment of a constant, and not varying, percentage of all of such Lender's Loans;

(iv) the parties to such assignment shall execute and deliver to the Administrative Agent for its acceptance an Assignment and Acceptance, together with any Note subject to such assignment and a processing fee of \$3,500;

(v) except for any (A) Swingline Bank which is a Lender being replaced pursuant to Section 2.23(b), and (B) any LC Issuing Bank which (1) is a Lender being replaced pursuant to Section 2.23(b) and (2) has no Letters of Credit issued by it on such date of replacement, the consents of each LC Issuing Bank and Swingline Bank (such consent not to be unreasonably withheld or delayed) shall be required for any assignment; and

(vi) in connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the Pro Rata Share previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, each LC Issuing Bank, each Swingline Bank and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share and participations in Letters of Credit and Swingline Loans in accordance with its Pro Rata Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Upon execution, delivery, and acceptance of such Assignment and Acceptance, the assignee thereunder shall be a party hereto and, to the extent of such assignment, have the obligations, rights, and benefits of a Lender hereunder and the assigning Lender shall, to the extent of such assignment, relinquish its rights and be released from its obligations under this Agreement; provided, that except to the extent otherwise

expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon the consummation of any assignment pursuant to this Section 7.05, the assignor, the Administrative Agent and the Borrower shall make appropriate arrangements so that, if required, new Notes are issued to the assignor and the assignee. Each assignee shall deliver to the Borrower and the Administrative Agent certification as to an exemption from or reduction of withholding of Taxes in accordance with Section 2.17(g). To the extent that an assignment of all or any portion of a Lender's Commitment pursuant to this Section 7.05 would, at the time of such assignment, result in increased costs under Section 2.16 or 2.17 from those being charged by the respective assigning Lender prior to such assignment, then the Borrower shall not be obligated to pay such increased costs (although the Borrower shall be obligated to pay any other increased costs of the type described above resulting from changes after the date of the respective assignment).

(c) The Administrative Agent shall maintain at its address referred to in Section 7.01 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Loans owing to, each Lender from time to time (the "**Register**"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Administrative Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice. Any assignment of any Loan or other obligations shall be effective only upon an entry with respect thereto being made in the Register.

(d) Upon its receipt of an Assignment and Acceptance executed by the parties thereto, together with any Note subject to such assignment and payment of the processing fee, the Administrative Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the parties thereto.

(e) Each Lender may sell participations to one or more Persons (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower, or any of the Borrower's Affiliates or Subsidiaries, or any Defaulting Lender) (each a "**Participant**") in all or a portion of its rights, obligations or rights and obligations under this Agreement (including all or a portion of its Commitment or its Loans); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrower shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement, and such Lender shall retain the sole right to enforce the obligations of the Borrower hereunder owing to such Lender and to approve any amendment, modification, or waiver of any provision of this Agreement (other than amendments, modifications, or waivers decreasing the amount of principal of or the rate at which interest is payable on such Loans or Notes, extending any scheduled principal payment date or date fixed for the payment of interest on such Loans or Notes, or extending its Commitment). The Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.13, 2.16 and 2.17 (subject to the requirements and limitations therein, including the requirements under Section 2.17(g) (it being understood that the documentation required under Section 2.17(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.23 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 2.13, 2.16 or 2.17, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in

Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) A Participant shall not be entitled to receive any greater payment under Section 2.13, 2.16 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent.

(g) Notwithstanding any other provision set forth in this Agreement, any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central banking authority for such Lender; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(h) Any Lender may furnish any information concerning the Borrower in the possession of such Lender from time to time to assignees and participants (including prospective assignees and Participants), subject, however, to the provisions of Section 7.06.

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

Section 7.06 Confidentiality. Each of the Administrative Agent, the Lenders, the Swingline Banks and the LC Issuing Banks agree to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed and required to keep such Information confidential and not to use such Information except in connection with the transactions contemplated by the Loan Documents, and it being further understood that each of the Administrative Agent, the Lenders, the Swingline Banks and the LC Issuing Banks will be responsible for any disclosure or use of such Information by its Affiliates and its employees, officers and directors in a manner not permitted by this Section); (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners); provided that except in connection with any routine bank examination of the Administrative Agent, such Lender, such Swingline Bank or such LC Issuing Bank, such Person or Related Party shall (to the extent permitted by any regulatory authority), at the expense of the Borrower,

provide the Borrower and the Parent with prompt (and to the extent practicable, prior) notice of such requested disclosure so that the Borrower or Parent may seek a protective order or other appropriate remedy and, in any event, such Person or Related Party shall provide only that portion of such Information that in the reasonable judgment of such Person or Related Party, as the case may be, is relevant, advisable or legally required to be provided, to the extent practicable; (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process; provided that the Administrative Agent, such Lender, such Swingline Bank or such LC Issuing Bank, as applicable, shall (to the extent legally permitted to do so), at the expense of the Borrower, provide the Borrower and the Parent with prompt (and to the extent practicable, prior) notice of such requested disclosure so that the Borrower or Parent may seek a protective order or other appropriate remedy and, in any event, the Administrative Agent, such Lender, such LC Issuing Bank or such LC Issuing Bank shall provide only that portion of such Information that in the reasonable judgment of such Person is relevant, advisable or legally required to be provided, to the extent practicable; (d) to any other party hereto; (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder and, in any event, only with respect to that portion of Information that is relevant, advisable or legally required in such Person's reasonable judgment to such exercise of remedies, action or proceeding or enforcement of rights; (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement; (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or this Agreement or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to this Agreement; (h) with the consent of the Borrower; or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section, or (y) becomes available to the Administrative Agent, any Lender, any LC Issuing Bank or any of their respective Affiliates on a nonconfidential basis from a source other than any Borrower Party (as defined below) that is not known by the Administrative Agent, such Lender, such Swingline Bank, such LC Issuing Bank or such Affiliate to be prohibited from disclosing such information to it by a contractual, legal or fiduciary obligation to the Borrower, the Parent or any of their respective Subsidiaries or Affiliates. Notwithstanding the foregoing, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent or any Lender in connection with the administration of this Agreement, the other Loan Documents, and the Commitments.

For purposes of this Section, "**Information**" means all information received from any Borrower Party relating to the Borrower, the Parent or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any LC Issuing Bank on a nonconfidential basis prior to disclosure by any Borrower Party. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information. For purposes of this Section, "**Borrower Party**" means the Borrower, the Parent or any Subsidiary, Affiliate, attorney, accountant, auditor, advisor or agent of the Borrower or the Parent.

Section 7.07 Representation by Lender. Each Lender hereby represents that it is a commercial lender or financial institution which makes loans in the ordinary course of its business and that it will make its Loans hereunder for its own account in the ordinary course of such business; provided that, subject to Sections 2.23 and 7.05, the disposition of the Loans owed to such Lender and the Notes held by such Lender shall at all times be within its exclusive control.

Section 7.08 Governing Law. This Agreement and the Notes shall be construed in accordance with and governed by the law of the State of New York.

Section 7.09 Consent to Jurisdiction; Waiver of Jury Trial.

(a) Submission to Jurisdiction. Each of the parties hereto irrevocably and unconditionally agrees that any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against any other party hereto or any Related Party of such Person in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, shall be brought and maintained in the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court.

(b) Waiver of Venue. Each party hereto irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (a) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Service of Process. Each party hereto irrevocably consents to service of process effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the address provided for notices in Section 7.01. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by applicable law.

(d) Waiver of Jury Trial. THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWINGLINE BANKS, THE LC ISSUING BANKS AND THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT AND ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN), OR ACTIONS OF THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWINGLINE BANKS, THE LC ISSUING BANKS, THE BORROWER OR THE PARENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE ADMINISTRATIVE AGENT, THE LENDERS, THE SWINGLINE BANKS AND THE LC ISSUING BANKS ENTERING INTO THIS AGREEMENT.

Section 7.10 Interpretation. No provision of this Agreement or any other Loan Document shall be construed against or interpreted to the disadvantage of any party hereto by any court or other governmental or judicial authority by reason of such party having or being deemed to have structured or dictated such provision.

Section 7.11 Counterparts; Effectiveness; Electronic Execution.

(a) Counterparts; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Assignments. The words “execution”, “signed”, “signature” and words of like import in any Assignment and Acceptance shall be deemed to include electronic signatures

or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 7.12 Entire Agreement. This Agreement and the other Loan Documents embody the entire agreement and understanding between the parties hereto and thereto in respect of the transactions contemplated hereby and thereby and supersede all prior negotiations, understandings and agreements between such parties or any of them in respect of such transactions.

Section 7.13 USA PATRIOT Act. The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the Act or any other Anti-Money Laundering Laws, it is required to obtain, verify and record information that identifies the Borrower and the Parent, which information includes the name, address, and taxpayer identification number of the Borrower, the Parent and their Subsidiaries, and other information that will allow such Lender to identify the Borrower, the Parent and their Subsidiaries in accordance with the Act or such Anti-Money Laundering Laws.

Section 7.14 Reaffirmation. This Agreement constitutes an amendment and restatement of the Existing Credit Agreement. Each of the parties hereto acknowledges and agrees that the Obligations represent, among other things, the amendment, restatement, renewal, extension, consolidation and modification of the Obligations (as defined in the Existing Credit Agreement) of the Borrower under the Existing Credit Agreement. Each of the parties hereto further acknowledges and agrees that this Agreement supersedes and replaces the Existing Credit Agreement but does not extinguish the Obligations (as defined in the Existing Credit Agreement) thereunder and that by entering into and performing its Obligations hereunder, this transaction shall not constitute a novation.

Section 7.15 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
 - (i) a reduction in full or in part or cancellation of any such liability;
 - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
 - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any Resolution Authority.

Section 7.16 Lender Matters.

(a) Each Lender represents and warrants, as of the date such Person became a Lender party hereto, to, and covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, the Parent, or any of their Subsidiaries or Affiliates, that at least one of the following is and will be true:

(i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iii) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent and the Joint Lead Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, the Parent, or any of their Subsidiaries or Affiliates that:

(i) none of the Administrative Agent or the Joint Lead Arrangers or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto);

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E);

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations);

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder; and

(v) no fee or other compensation is being paid directly to the Administrative Agent or any Joint Lead Arranger or any their respective affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Administrative Agent and the Joint Lead Arrangers hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

Section 7.17 No Fiduciary or Advisory Relationship Established By Loan Documents. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees, and acknowledges the Parent's and their Affiliates' understanding, that: (a) (i) no fiduciary, advisory or agency relationship between the Borrower, the Parent and their Subsidiaries and Affiliates and any Joint Lead Arranger, the Administrative Agent, any LC Issuing Bank, any Swingline Bank or any Lender is intended to be or has been created in respect of the transactions contemplated hereby or by the other Loan Documents, irrespective of whether any Joint Lead Arranger, the Administrative Agent, any LC Issuing Bank, any Swingline Bank or any Lender has advised or is advising the Borrower, the Parent or any of their Affiliates or Subsidiaries on other matters, (ii) the arranging and other services regarding this Agreement provided by the Joint Lead Arrangers, the Administrative Agent, the LC Issuing Banks, the Swingline Banks and the Lenders are arm's-length commercial transactions between the Borrower, the Parent and their Subsidiaries and Affiliates, on the one hand, and the Joint Lead Arrangers, the Administrative Agent, the LC Issuing Banks, the Swingline

Banks and the Lenders, on the other hand, (iii) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent that it has deemed appropriate and (iv) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; and (b) (i) the Joint Lead Arrangers, the Administrative Agent, the LC Issuing Banks, the Swingline Banks and the Lenders each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, the Parent or any of their Subsidiaries or Affiliates, or any other Person; (ii) none of the Joint Lead Arrangers, the Administrative Agent, the LC Issuing Banks, the Swingline Banks and the Lenders has any obligation to the Borrower, the Parent or any of their Subsidiaries or Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Joint Lead Arrangers, the Administrative Agent, the LC Issuing Banks, the Swingline Banks and the Lenders and their respective Affiliates may be engaged, for their own accounts or the accounts of customers, in a broad range of transactions that involve interests that differ from those of the Borrower, the Parent, and their Subsidiaries and Affiliates, and none of the Joint Lead Arrangers, the Administrative Agent, the LC Issuing Banks, the Swingline Banks and the Lenders has any obligation to disclose any of such interests to the Borrower, the Parent or their Subsidiaries or Affiliates. To the fullest extent permitted by applicable law, the Borrower hereby waives and releases any claims that it may have against any of the Joint Lead Arrangers, the Administrative Agent, the LC Issuing Banks, the Swingline Banks and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

Section 7.18 Acknowledgment Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for hedging agreements or any other agreement or instrument that is a QFC (such support “**QFC Credit Support**” and each such QFC a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

ARTICLE VIII AGENCY PROVISIONS

Section 8.01 Appointment. Each Lender, Swingline Bank and LC Issuing Bank hereby designates and appoints Wells Fargo, as Administrative Agent of such Person to act as specified herein and the other Loan Documents, and each such Lender, Swingline Bank and LC Issuing Bank hereby authorizes the Administrative Agent to take such action on its behalf under the provisions of this Agreement and the other Loan Documents and to exercise such powers and perform such duties as are expressly delegated by the terms hereof and of the other Loan Documents, together with such other powers as are reasonably incidental thereto. Notwithstanding any provision to the contrary elsewhere herein and in the other Loan Documents, the Administrative Agent shall not have any duties or responsibilities, except those expressly set forth herein and therein, or any fiduciary relationship with any Lender, Swingline Bank or LC Issuing Bank and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any of the other Loan Documents, or shall otherwise exist against the Administrative Agent. The provisions of this Section are solely for the benefit of the Administrative Agent, the Lenders, the Swingline Banks and the LC Issuing Banks and neither the Borrower nor the Parent shall have any rights as a third party beneficiary of the provisions hereof. In performing its functions and duties under this Agreement and the other Loan Documents, the Administrative Agent shall act solely as Administrative Agent of the Lenders, the Swingline Banks and the LC Issuing Banks and, does not assume and shall not be deemed to have assumed any obligation or relationship of agency or trust with or for the Borrower, the Parent or any of their respective Affiliates.

Section 8.02 Delegation of Duties. The Administrative Agent may execute any of its duties hereunder or under the other Loan Documents by or through agents or attorneys-in-fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

Section 8.03 Exculpatory Provisions. The Administrative Agent and its officers, directors, employees, agents, attorneys-in-fact or affiliates shall not be (i) liable for any action lawfully taken or omitted to be taken by it or such Person under or in connection herewith or in connection with any of the other Loan Documents (except for its or such Person's own gross negligence, bad faith or willful misconduct), or (ii) responsible in any manner to any of the Lenders, the Swingline Banks or the LC Issuing Banks for any recitals, statements, representations or warranties made by the Borrower or the Parent contained herein or in any of the other Loan Documents or in any certificate, report, document, financial statement or other written or oral statement referred to or provided for in, or received by the Administrative Agent under or in connection herewith or in connection with the other Loan Documents, or enforceability or sufficiency therefor of any of the other Loan Documents, or for any failure of the Borrower or the Parent to perform its obligations hereunder or thereunder. The Administrative Agent shall not be responsible to any Lender, Swingline Bank or LC Issuing Bank for the effectiveness, genuineness, validity, enforceability, collectability or sufficiency of this Agreement, or any of the other Loan Documents or for any representations, warranties, recitals or statements made herein or therein or made by the Borrower or the Parent in any written or oral statement or in any financial or other statements, instruments, reports, certificates or any other documents in connection herewith or therewith furnished or made by the Administrative Agent to the Lenders, the Swingline Banks or the LC Issuing Banks or by or on behalf of the Borrower or the Parent to the Administrative Agent, any Lender, any Swingline Bank or any LC Issuing Bank or be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained herein or therein or as to the use of the proceeds of the Loans or of the existence or possible existence of any Default or Event of Default or to inspect the properties, books or records of the Borrower, the Parent or any of their respective Affiliates.

Section 8.04 Reliance on Communications. The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any note, writing, resolution, notice, consent, certificate, affidavit, letter, facsimile, statement, order or other document or conversation believed by it in good faith to be genuine and correct and to have been signed, sent or made by the proper Person or Persons and upon advice and statements of legal counsel (including counsel to the Borrower, independent accountants and other experts selected by the Administrative Agent with reasonable care). The Administrative Agent may deem and treat the Lenders, the Swingline Banks and the LC Issuing Banks as the owner of their respective interests hereunder for all purposes unless a written notice of assignment, negotiation or transfer thereof shall have been filed with the Administrative Agent in accordance with Section 7.05. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or under any of the other Loan Documents unless it shall first receive such advice or concurrence of the Required Lenders (or such other number or percentage of the Lenders, Swingline Banks or LC Issuing Banks as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 6.01, 6.02 and 7.04) as it deems appropriate or it shall first be indemnified to its satisfaction by the Lenders, the Swingline Banks and/or the LC Issuing Banks, as applicable, against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. The Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any of the other Loan Documents in accordance with a request of the Required Lenders (or to the extent specifically provided in Section 7.04, all the Lenders, all affected Lenders, all Swingline Banks or all LC Issuing Banks, as applicable) and such request and any action taken or failure to act pursuant thereto shall be binding upon all the Lenders, the Swingline Banks and the LC Issuing Banks, as applicable (including their respective successors and assigns).

Section 8.05 Notice of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default hereunder unless the Administrative Agent has received notice from a Lender, a Swingline Bank, an LC Issuing Bank, the Borrower or the Parent referring to the Loan Document, describing such Default or Event of Default and stating that such notice is a “notice of default”. In the event that the Administrative Agent receives such a notice, the Administrative Agent shall give prompt notice thereof to the Lenders, the Swingline Banks and the LC Issuing Banks. The Administrative Agent shall take such action with respect to such Default or Event of Default as shall be reasonably directed by the Required Lenders.

Section 8.06 Non-Reliance on Administrative Agent and Other Lenders. Each Lender, Swingline Bank and LC Issuing Bank expressly acknowledges that each of the Administrative Agent and its officers, directors, employees, agents, attorneys-in-fact or Affiliates has not made any representations or warranties to it and that no act by the Administrative Agent or any Affiliate thereof hereinafter taken, including any review of the affairs of the Borrower, the Parent or any of their respective Affiliates, shall be deemed to constitute any representation or warranty by the Administrative Agent to any Lender, Swingline Bank or LC Issuing Bank. Each Lender, Swingline Bank and LC Issuing Bank represents to the Administrative Agent that it has, independently and without reliance upon the Administrative Agent or any other Lender, Swingline Bank or LC Issuing Bank, and based on such documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Borrower, the Parent or their respective Affiliates and made its own decision to make its Loans hereunder and enter into this Agreement. Each Lender, Swingline Bank and LC Issuing Bank also represents that it will, independently and without reliance upon the Administrative Agent or any other Lender, Swingline Bank or LC Issuing Bank and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement, and to make such investigation as it deems necessary to inform itself as to the business, assets, operations, property, financial and other conditions, prospects and creditworthiness of the Borrower, the Parent and their respective Affiliates. Except for notices, reports and other documents

expressly required to be furnished to the Lenders, the Swingline Banks and the LC Issuing Banks by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender, Swingline Bank or LC Issuing Bank with any credit or other information concerning the business, operations, assets, property, financial or other conditions, prospects or creditworthiness of the Borrower, the Parent or their respective Affiliates which may come into the possession of the Administrative Agent or any of its officers, directors, employees, agents, attorneys-in-fact or affiliates.

Section 8.07 Administrative Agent in its Individual Capacity. The Administrative Agent and its Affiliates may make loans to, accept deposits from and generally engage in any kind of business with the Borrower, the Parent, their respective Subsidiaries or their respective Affiliates as though the Administrative Agent were not the Administrative Agent hereunder. With respect to the Loans and all obligations of the Borrower and the Parent hereunder and under the other Loan Documents, the Administrative Agent shall have the same rights and powers under this Agreement as any Lender, any Swingline Bank and any LC Issuing Bank, in such capacity, and may exercise the same as though it were not the Administrative Agent, and the terms “Lender”, “Lenders”, “Swingline Bank”, “Swingline Banks”, “LC Issuing Bank” and “LC Issuing Banks” shall include the Administrative Agent in its individual capacity, as applicable.

Section 8.08 Successor Agent.

(a) The Administrative Agent may resign at any time by giving written notice thereof to the Lenders, the Swingline Banks, the LC Issuing Banks and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. Such successor shall be subject to the approval of the Borrower, such approval not to be unreasonably withheld or delayed; provided that such approval shall not be necessary if at the time such successor is appointed there shall have occurred and be continuing an Event of Default described in Section 6.01(a), 6.01(g) or 6.01(h). If no successor Administrative Agent shall have been so appointed by the Required Lenders, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent’s giving of notice of resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may, (but shall not be obligated to), on behalf of the Lenders, the Swingline Banks and the LC Issuing Banks, appoint a successor Administrative Agent, which shall be a Lender or shall be another commercial bank or trust company organized under the laws of the United States of America or of any State thereof and having a combined capital and surplus of at least \$500,000,000. Such successor shall be subject to the approval of the Borrower, such approval not to be unreasonably withheld or delayed; provided that such approval shall not be necessary if at the time such successor is appointed there shall have occurred and be continuing an Event of Default described in Section 6.01(a), 6.01(g) or 6.01(h). Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent (x) is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person, or (y) no longer has any Commitment as a Lender, the Borrower may, to the extent permitted by applicable law, by notice in writing to the Lenders and such Person, remove such Person as Administrative Agent. In connection with such removal, the Required Lenders shall appoint a successor Administrative Agent, subject to the approval of the Borrower, such approval not to be unreasonably withheld or delayed; provided that such approval shall not be necessary if at the time such successor is appointed there shall have occurred and be continuing an Event of Default described in Section 6.01(a), 6.01(g) or 6.01(h). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after its removal (or such earlier day as shall be agreed by the Required Lenders (in the case of a removal pursuant to clause (x) of this Section 8.08(b)) or the Borrower (in the case of a removal pursuant to clause (y) of this Section 8.08(b))) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) Upon the acceptance of any appointment as Administrative Agent hereunder by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent, shall be discharged from its duties and obligations under this Agreement. After any retiring Administrative Agent's resignation or removal as Administrative Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement. In the event that no successor has been appointed on the Resignation Effective Date or Removal Effective Date, as applicable, any Cash Collateral held by the retiring Administrative Agent shall continue to be held by such Person, for the benefit of the Lenders, the Swingline Banks and the LC Issuing Banks, as applicable, until a successor Administrative Agent has been appointed hereunder.

(d) Any resignation by or removal of Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as an LC Issuing Bank and Swingline Bank. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of Wells Fargo as the retiring LC Issuing Bank and Swingline Bank, (ii) the retiring LC Issuing Bank and Swingline Bank shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the Borrower shall (at the expense of (x) the retiring Administrative Agent, in the case of a resignation by the Administrative Agent and (y) the Borrower in the case of a removal of the Administrative Agent) (A) use commercially reasonable efforts to cause an LC Issuing Bank to issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or (B) make other arrangements satisfactory to the retiring LC Issuing Bank to cause the obligations of the retiring LC Issuing Bank with respect to such Letters of Credit to be Cash Collateralized.

Section 8.09 Other Agents. No Joint Lead Arranger nor any Lender identified as an "Agent" (other than the Administrative Agent) shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than, in the case of any such Person which is also a Lender, Swingline Bank or LC Issuing Bank, those applicable to all Lenders, Swingline Banks or LC Issuing Banks, as applicable, as such. Without limiting the foregoing, none of the Lenders so identified shall have or be deemed to have any fiduciary relationship with any other Lender, Swingline Bank or LC Issuing Bank. Each Lender, Swingline Bank and LC Issuing Bank acknowledges that it has not relied, and will not rely, on any of the Lenders so identified in deciding to enter into this Agreement or in taking or not taking action hereunder.

Section 8.10 Erroneous Payments.

(a) Each Lender, each Issuing Lender, and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Lender or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender or Issuing Lender (each such recipient, a "**Payment Recipient**") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice

of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 8.10(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an “**Erroneous Payment**”), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on “discharge for value” or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an “**Erroneous Payment Return Deficiency**”), then at the sole discretion of the Administrative Agent and upon the Administrative Agent’s written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) of the relevant Type with respect to which such Erroneous Payment was made (the “**Erroneous Payment Impacted Class**”) to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent’s applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify) (such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the “**Erroneous Payment Deficiency Assignment**”) plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 7.05 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 8.10 or under the indemnification provisions of this Agreement, (y) the receipt of an Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received; provided that this Section 8.10(e) shall not be interpreted to increase (or accelerate the due date for), or have the effect of increasing (or accelerating the due date for), the Obligations of the Borrower relative to the amount (and/or timing for payment) of the Obligations that would have been payable had such Erroneous Payment not been made by the Administrative Agent; provided, further, that for the avoidance of doubt, immediately preceding clauses (x), (y) and (z) shall not apply to the extent any such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making a payment on the Obligations.

(f) Each party's obligations under this Section 8.10 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Nothing in this Section 8.10 will constitute a waiver or release of any claim of the Administrative Agent hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

ARTICLE IX ACKNOWLEDGEMENT

Section 9.01 Parent Acknowledgment. The Parent hereby acknowledges that (a) Obligations owing by the Borrower under this Agreement will constitute "Debt" under the Support Agreement and (b) this Agreement contains representations and warranties and covenants that relate to the Parent and that a breach of any of those representations or warranties, or a failure by the Borrower to comply with such covenants, could result in an Event of Default under this Agreement. Notwithstanding the acknowledgement contained in this Section 9.01, each of the Administrative Agent, each LC Issuing Bank, each Swingline Bank and each Lender acknowledges and agrees that it will have no recourse against the Parent under this Agreement, and the rights and remedies of the Administrative Agent, each LC Issuing Bank, each Swingline Bank and each Lender against Parent shall be solely pursuant to and in accordance with the Support Agreement.

[Remainder of page intentionally left blank; signature pages follow]

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

BORROWER:

AMERICAN WATER CAPITAL CORP.

By: /s/James S. Merante
Name: James S. Merante
Title: Vice President and Treasurer

Address for Notices:

1 Water Street
Camden, NJ 08102-1658
Attention: James S. Merante
e-mail: james.merante@amwater.com
website: www.amwater.com

PARENT:

Acknowledged and agreed solely as to Section 9.01 of the Credit Agreement.

AMERICAN WATER WORKS COMPANY, INC.

By: /s/James S. Merante
Name: James S. Merante
Title: Vice President and Treasurer

Address for Notices:

1 Water Street
Camden, NJ 08102-1658
Attention: James S. Merante
e-mail: james.merante@amwater.com

ADMINISTRATIVE AGENT

AND LENDERS: WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, an LC Issuing Bank, a Swingline Bank and a Lender

By: /s/Gregory R. Gredvig
Name: Gregory R. Gredvig
Title: Director

Address for Notices:

For Loan Operations Notices:

MAC D1109-019
1525 West W.T. Harris Blvd.
Charlotte, NC 28262
Attention: Syndication Agency Services
Facsimile No.: (704) 715-0017
Email: agencyservices.requests@wellsfargo.com

For Credit Notices:

MAC: N9305-156
90 S. 7th Street, 15th Floor
Minneapolis, MN 55402
Attention: Greg Gredvig
Facsimile No.: (612) 667-4832
Email: gregory.r.gredvig@wellsfargo.com

JPMORGAN CHASE BANK, N.A., as an LC Issuing Bank, and a Lender

By: /s/Nancy R. Barwig
Name: Nancy R. Barwig
Title: Executive Director

Address for Notices:

For Loan Operation Notices:

10 South Dearborn, Floor L2
Chicago, IL 60603-2300
Attention: Non-Agented Servicing Team
Facsimile No.: (214) 307-6874
Email: cls.chicago.non.agented.servicing@jomchase.com

For Credit Notices:

8181 Communications Parkway
Plano, TX 75024
Attention: Nancy R. Barwig
Email: nancy.r.barwig@jpmorgan.com

Signature page to American Water Third Amended and Restated Credit Agreement

BANK OF AMERICA, N.A., as a Lender

By: /s/Dilcia P. Hill
Name: Dilcia P. Hill
Title: Senior Vice President

Address for Notices:

194 Wood Avenue South
Mail Code: NJ7-550-04-02
Iselin, NJ 08830
Attention: Dilcia P. Hill
Email: dilcia.p.hill@bofa.com

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MIZUHO BANK, LTD., as an LC Issuing Bank and a Lender

By: /s/Edward Sacks
Name: Edward Sacks
Title: Authorized Signatory

Address for Notices:

For Loan Operations Notices:

1800 Plaza Ten Harborside Financial Ctr.
Jersey City, NJ 07311
Attention: Ankit Anand
Facsimile No.: 201-626-9935
Email: LAU_USCorp3@mizuhogroup.com

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PNC BANK, NATIONAL ASSOCIATION, as an LC Issuing Bank and a Lender

By: /s/Meredith L. Jermann
Name: Meredith L. Jermann
Title: Vice President

Address for Notices:

For Loan Operation Notices:

Attention: Dana Brackins
Facsimile No.: (877) 733-1196
Email: Dana.Brackins@pnc.com

For Credit Notices:

1600 Market St
F2-F070-22-4
Philadelphia, PA 19103
Attention: Denise DiSimone
Email: Denise.Disimone@pnc.com

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ROYAL BANK OF CANADA, as a Lender

By: /s/Martina Wellik
Name: Martina Wellik
Title: Authorized Signatory

Address for Notices:
Royal Bank of Canada
200 Vesey Street
New York, NY 10281
Attention: Global Loans Administration
Email:

For Loan Operation Notices:
Attention: John Fernandes
Facsimile No.: (212) 428-2372
Email: rbcnewyorkgla3@rbc.com

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U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: /s/James P. O'Shaughnessy
Name: James P. O'Shaughnessy
Title: Vice President

Address for Notices:

1095 Avenue of the Americas
15th Floor
New York, NY 10036
Attention: Ann Marie Griffiths
Email: annmarie.gordon@usbank.com

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TD BANK, N.A., as a Lender

By: /s/Steve Levi

Name: Steve Levi

Title: Senior Vice President

Address for Notices:

TD North Tower, 26th Floor, 77 King St. West
Toronto, ON M5K 2A1, Canada

Attention: Jolanta Sedzik

Facsimile No.: 705-797-6913

Email: TDBNANotices@tdsecurities.com

Paul.Yoon@tdsecurities.com

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TRUIST BANK, as a Lender

By: /s/Justin Lien
Name: Justin Lien
Title: Director

Address for Notices:

For Loan Operation Notices:
101 S Stratford Rd
Winston Salem, NC 27104
Attention: Shana Pask
Facsimile No.:
Email: CapitalMarkets-W-S@truist.com

For Credit Notices:

2001 Ross Ave, Suite 2700
Dallas, TX 75201
Attention: Justin Lien
Email: Justin.Li@truist.com

REGIONS BANK, as a Lender

By: /s/Daniel Capps
Name: Daniel Capps
Title: Director

Address for Notices:

615 S. College Street, Suite 400
Charlotte, NC 28202
Attention: Daniel Capps
Facsimile No.: (704) 338-1034
Email: Daniel.Capps@Regions.com

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THE BANK OF NOVA SCOTIA, as a Lender

By: /s/ David Dewar
Name: David Dewar
Title: Director

Address for Notices:

250 Veset Street, 23rd floor
New York, New York 10281
Attention: Anne Vincelli
Email: anne.vincelli@scotiabank.com

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THE HUNTINGTON NATIONAL BANK, as a Lender

By: /s/Nolan Woodbury
Name: Nolan Woodbury
Title: Assistant Vice President

Address for Notices:

41 S High Street., 5th Floor
Columbus, OH 43287
Attention: Nolan Woodbury
Email: nolan.woodbury@huntington.com

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THE BANK OF NEW YORK MELLON, as a Lender

By: /s/ Molly H. Ross
Name: Molly H. Ross
Title: Vice President

Address for Notices:

500 Grant Street, 36th Floor
Pittsburgh, PA 15258
Attention: Molly H. Ross
Email: molly.ross@bnymellon.com

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THE NORTHERN TRUST COMPANY, as a Lender

By: /s/Andrew D. Holtz
Name: Andrew D. Holtz
Title: Senior Vice President

Address for Notices:

The National Loan Servicing
Loan Processors
333 S. Wabash, WB-31
Chicago, IL 60604
Facsimile No: (312) 630.1566

Signature page to American Water Third Amended and Restated Credit Agreement

SCHEDULE I
LENDERS AND COMMITMENTS

LENDER	COMMITMENT	PRO RATA PERCENTAGE
Wells Fargo Bank, National Association	\$246,000,000.00	8.945454545%
JPMorgan Chase Bank, N.A.	\$246,000,000.00	8.945454545%
Bank of America, N.A.	\$246,000,000.00	8.945454545%
Mizuho Bank, Ltd.	\$246,000,000.00	8.945454545%
PNC Bank, National Association	\$246,000,000.00	8.945454545%
Royal Bank of Canada	\$246,000,000.00	8.945454545%
U.S. Bank National Association	\$246,000,000.00	8.945454545%
TD Bank, N.A.	\$202,000,000.00	7.345454545%
Truist Bank	\$202,000,000.00	7.345454545%
Regions Bank	\$167,000,000.00	6.072727273%
The Bank of Nova Scotia	\$167,000,000.00	6.072727273%
The Huntington National Bank	\$140,000,000.00	5.090909091%
The Bank of New York Mellon	\$75,000,000.00	2.727272727%
The Northern Trust Company	\$75,000,000.00	2.727272727%
AGGREGATE COMMITMENT	\$2,750,000,000.00	100.000000000%

SCHEDULE II

SIGNIFICANT SUBSIDIARIES

1. New Jersey-American Water Company, Inc.
 2. Pennsylvania-American Water Company
 3. Missouri-American Water Company
 4. American Water Capital Corp.
 5. American Water Enterprises, LLC
-

SCHEDULE 2.03
SWINGLINE BANKS

SWINGLINE BANKS

Wells Fargo Bank, National Association

SCHEDULE 2.04

LC ISSUING BANKS AND LC COMMITMENTS

LC ISSUING BANK	LC COMMITMENT
Wells Fargo Bank, National Association	\$21,428,571.43
JPMorgan Chase Bank, N.A.	\$21,428,571.43
Bank of America, N.A.	\$21,428,571.43
Mizuho Bank, Ltd.	\$21,428,571.43
PNC Bank, National Association	\$21,428,571.43
U.S. Bank National Association	\$21,428,571.43
Royal Bank of Canada	\$21,428,571.42
AGGREGATE LC COMMITMENT	\$150,000,000.00

SCHEDULE 2.04(K)
EXISTING LETTERS OF CREDIT

[Delivered separately to the Lenders]

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER

(Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002)

I, M. Susan Hardwick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of American Water Works Company, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 31, 2022

By: /s/ M. SUSAN HARDWICK

M. Susan Hardwick
President and Chief Executive Officer
(Principal Executive Officer)

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER

(Pursuant to Rule 13a-14(a) of the Securities Exchange Act of 1934, as amended,
as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002)

I, John C. Griffith, certify that:

1. I have reviewed this quarterly report on Form 10-Q of American Water Works Company, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the consolidated financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: October 31, 2022

By: /s/ JOHN C. GRIFFITH

John C. Griffith

Executive Vice President and Chief Financial Officer
(Principal Financial Officer)

AMERICAN WATER WORKS COMPANY, INC.
CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of American Water Works Company, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, M. Susan Hardwick, President and Chief Executive Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ M. SUSAN HARDWICK

M. Susan Hardwick
President and Chief Executive Officer
(Principal Executive Officer)
October 31, 2022

AMERICAN WATER WORKS COMPANY, INC.
CERTIFICATION
PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the quarterly report of American Water Works Company, Inc. (the "Company") on Form 10-Q for the period ended September 30, 2022, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, John C. Griffith, Executive Vice President and Chief Financial Officer of the Company, hereby certify pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

By: /s/ JOHN C. GRIFFITH

John C. Griffith
Executive Vice President and Chief Financial Officer
(Principal Financial Officer)
October 31, 2022