

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

**Form 10-Q**

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

For the quarterly period ended March 31, 2021  
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 001-34820

**KKR**

**KKR & CO. INC.**

(Exact name of Registrant as specified in its charter)

**Delaware**  
(State or other Jurisdiction of  
Incorporation or Organization)

**26-0426107**  
(I.R.S. Employer  
Identification Number)

**30 Hudson Yards**  
**New York, New York 10001**  
**Telephone: (212) 750-8300**

(Address, zip code, and telephone number, including  
area code, of registrant's principal executive office.)

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

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock	KKR	New York Stock Exchange
6.75% Series A Preferred Stock	KKR PR A	New York Stock Exchange
6.50% Series B Preferred Stock	KKR PR B	New York Stock Exchange
6.00% Series C Mandatory Convertible Preferred Stock	KKR PR C	New York Stock Exchange
4.625% Subordinated Notes due 2061 of KKR Group Finance Co. IX LLC	KKRS	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 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, smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

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

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

As of May 7, 2021, there were 581,778,745 shares of common stock of the registrant outstanding.

**KKR & CO. INC.**

**FORM 10-Q**

**For the Quarter Ended March 31, 2021**

**TABLE OF CONTENTS**

	<u>Page</u>
<b><u>PART I — FINANCIAL INFORMATION</u></b>	
Item 1.	<a href="#">Financial Statements</a>
	<a href="#">Unaudited Condensed Consolidated Financial Statements</a>
	<a href="#">Condensed Consolidated Statements of Financial Condition (Unaudited) as of March 31, 2021 and December 31, 2020</a> 5
	<a href="#">Condensed Consolidated Statements of Operations (Unaudited) for the Three Months Ended March 31, 2021 and 2020</a> 9
	<a href="#">Condensed Consolidated Statements of Comprehensive Income (Loss) (Unaudited) for the Three Months Ended March 31, 2021 and 2020</a> 11
	<a href="#">Condensed Consolidated Statements of Changes in Equity (Unaudited) for the Three Months Ended March 31, 2021 and 2020</a> 12
	<a href="#">Condensed Consolidated Statements of Cash Flows (Unaudited) for the Three Months Ended March 31, 2021 and 2020</a> 13
	<a href="#">Notes to Financial Statements (Unaudited)</a> 16
Item 2.	<a href="#">Management's Discussion and Analysis of Financial Condition and Results of Operations</a> 113
Item 3.	<a href="#">Quantitative and Qualitative Disclosures About Market Risk</a> 179
Item 4.	<a href="#">Controls and Procedures</a> 182
<b><u>PART II — OTHER INFORMATION</u></b>	
Item 1.	<a href="#">Legal Proceedings</a> 184
Item 1A.	<a href="#">Risk Factors</a> 184
Item 2.	<a href="#">Unregistered Sales of Equity Securities and Use of Proceeds</a> 185
Item 3.	<a href="#">Defaults Upon Senior Securities</a> 186
Item 4.	<a href="#">Mine Safety Disclosures</a> 186
Item 5.	<a href="#">Other Information</a> 186
Item 6.	<a href="#">Exhibits</a> 186
	<a href="#">SIGNATURES</a> 188

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This report contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the "Securities Act"), and Section 21E of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), which reflect our current views with respect to, among other things, our operations and financial performance. You can identify these forward-looking statements by the use of words such as "outlook," "believe," "think," "expect," "potential," "continue," "may," "should," "seek," "approximately," "predict," "intend," "will," "plan," "estimate," "anticipate," the negative version of these words, other comparable words or other statements that do not relate strictly to historical or factual matters. Without limiting the foregoing, statements regarding the declaration and payment of dividends on common or preferred stock of KKR & Co. Inc.; the timing, manner and volume of repurchase of common stock pursuant to its repurchase program; expansion and growth opportunities and other synergies resulting from acquisitions, reorganizations or strategic partnerships may constitute forward-looking statements. Forward-looking statements are subject to various risks and uncertainties. Accordingly, there are or will be important factors that could cause actual outcomes or results to differ materially from those indicated in these statements or cause the anticipated benefits and synergies from transactions to not be realized. We believe these factors include those described under the section entitled "Risk Factors" in this report. These factors should be read in conjunction with the other cautionary statements that are included in this report and in our other filings with the U.S. Securities and Exchange Commission (the "SEC"). We do not undertake any obligation to publicly update or revise any forward-looking statement, whether as a result of new information, future developments or otherwise, except as required by law.

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In this report, references to "KKR," "we," "us" and "our" refer to KKR & Co. Inc. and its subsidiaries, including The Global Atlantic Financial Group LLC ("TGAFG" and, together with its subsidiaries, "Global Atlantic"), unless the context requires otherwise.

On January 1, 2020, KKR completed an internal reorganization (the "Reorganization"), which was undertaken to, among other purposes, simplify KKR's internal structure. In the Reorganization, KKR Management Holdings L.P. and KKR International Holdings L.P., which were former intermediate holdings companies for KKR's business, were combined with another intermediate holding company, KKR Fund Holdings L.P., which changed its name to KKR Group Partnership L.P. ("KKR Group Partnership") and became the sole intermediate holding company for KKR's business. On May 8, 2020, we amended and restated our certificate of incorporation and our bylaws to, among other things, rename Class A common stock of KKR & Co. Inc. as common stock, and reclassify Class B common stock and Class C common stock of KKR & Co. Inc. into Series I preferred stock and Series II preferred stock, respectively (the "Reclassification"). References to "KKR Group Partnership" for periods prior to the Reorganization mean KKR Fund Holdings L.P., KKR Management Holdings L.P. and KKR International Holdings L.P., collectively, and references to "KKR Group Partnership" for periods following the Reorganization mean KKR Group Partnership L.P. References to a "KKR Group Partnership Unit" mean (i) one Class A partner interest in each of KKR Fund Holdings L.P., KKR Management Holdings L.P. and KKR International Holdings L.P., collectively, for periods prior to the Reorganization and (ii) one Class A partner interest in KKR Group Partnership for periods following the Reorganization. References to "common stock" for periods prior to the Reclassification mean Class A common stock of KKR & Co. Inc. and references to "Series I preferred stock" and "Series II preferred stock" for periods prior to the Reclassification mean Class B common stock and Class C common stock of KKR & Co. Inc., respectively. References to the "Series I preferred stockholder" are to KKR Management LLP, the holder of the sole share of our Series I preferred stock. Contemporaneously with the Reorganization, KKR acquired KKR Capstone Americas LLC and its affiliates ("KKR Capstone") on January 1, 2020. References to "non-employee operating consultants" for periods prior to the acquisition mean employees of KKR Capstone, who were not employees of KKR during such periods. Prior to the acquisition, KKR Capstone was owned and controlled by its senior management and was not a subsidiary or affiliate of KKR.

Unless otherwise indicated, references to equity interests in KKR's business, or to percentage interests in KKR's business, reflect the aggregate equity interests in KKR Group Partnership and are net of amounts that have been allocated to our principals and other employees in respect of the carried interest from KKR's business as part of our "carry pool" and certain minority interests. References to "principals" are to our senior employees who hold interests in KKR's business through KKR Holdings L.P. ("KKR Holdings") or comparable equity structures, including KKR Holdings II L.P., and references to our "senior principals" are to our senior employees who hold interests in the Series I preferred stockholder.

On February 1, 2021, KKR completed its acquisition of Global Atlantic. KKR holds all of the voting interests in Global Atlantic and owns 61.1% of the economic equity interests in Global Atlantic, which percentage is subject to change due to certain post-closing purchase price adjustments. Global Atlantic conducts its insurance business through its subsidiaries that are regulated insurance companies.

In this report, the term "GAAP" refers to accounting principles generally accepted in the United States of America.

We disclose certain financial measures in this report that are calculated and presented using methodologies other than in accordance with GAAP, including after-tax distributable earnings, asset management segment revenues, distributable operating earnings, fee related earnings ("FRE"), book value and book value per adjusted share. We believe that providing these performance measures on a supplemental basis to our GAAP results is helpful to stockholders in assessing the overall performance of KKR's businesses. These non-GAAP financial measures should not be considered as a substitute for similar financial measures calculated in accordance with GAAP. We caution readers that these non-GAAP financial measures may differ from the calculations of other investment managers, and as a result, may not be comparable to similar measures presented by other investment managers. Reconciliations of these non-GAAP financial measures to the most directly comparable financial measures calculated and presented in accordance with GAAP, where applicable, are included under "Management's Discussion and Analysis of Financial Condition and Results of Operations—Reconciliations to GAAP Measures." This report also uses the terms AUM, fee paying assets under management ("FPAUM") and capital invested. You should note that our calculations of these and other operating metrics may differ from the calculations of other investment managers and, as a result, may not be comparable to similar metrics presented by other investment managers. These non-GAAP and operating metrics are defined in the section "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Non-GAAP Performance Measures and Other Operating Measures."

References to our "funds" or our "vehicles" refer to investment funds, vehicles and accounts that are advised, managed or sponsored by one or more subsidiaries of KKR, including collateralized loan obligations ("CLOs") and commercial real estate mortgage-backed securities ("CMBS") vehicles, unless the context requires otherwise. They do not include investment funds, vehicles or accounts of any hedge fund or other manager with which we have formed a strategic partnership where we have acquired an ownership interest.

Unless otherwise indicated, references in this report to our fully exchanged and diluted common stock outstanding, or to our common stock outstanding on a fully exchanged and diluted basis, reflect (i) actual shares of common stock outstanding, (ii) shares of common stock into which KKR Group Partnership Units held by KKR Holdings are exchangeable pursuant to the terms of the exchange agreement described in this report, (iii) shares of common stock into which all outstanding shares of Series C Mandatory Convertible Preferred Stock are convertible and (iv) shares of common stock issuable pursuant to any equity awards actually granted from the Amended and Restated KKR & Co. Inc. 2010 Equity Incentive Plan (the "2010 Equity Incentive Plan") or the Amended and Restated KKR & Co. Inc. 2019 Equity Incentive Plan (the "2019 Equity Incentive Plan" and, together with the 2010 Equity Incentive Plan, our "Equity Incentive Plans"). Our fully exchanged and diluted common stock outstanding does not include shares of common stock available for issuance pursuant to the Equity Incentive Plans for which equity awards have not yet been granted.

The use of any defined term in this report to mean more than one entities, persons, securities or other items collectively is solely for convenience of reference and in no way implies that such entities, persons, securities or other items are one indistinguishable group. For example, notwithstanding the use of the defined terms "KKR," "we" and "our" in this report to refer to KKR & Co. Inc. and its subsidiaries, each subsidiary of KKR & Co. Inc. is a standalone legal entity that is separate and distinct from KKR & Co. Inc. and any of its other subsidiaries. Any KKR entity referenced herein is responsible for its own financial, contractual and legal obligations.

## PART I - FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**KKR & CO. INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL CONDITION (UNAUDITED)**  
(Amounts in Thousands, Except Share and Per Share Data)

	March 31, 2021	December 31, 2020
<b>Assets</b>		
<i>Asset Management</i>		
Cash and Cash Equivalents	\$ 5,031,724	\$ 6,507,874
Restricted Cash and Cash Equivalents	79,017	485,583
Investments	76,156,229	69,274,715
Due from Affiliates	1,061,431	872,994
Other Assets	2,766,628	2,665,336
	<u>85,095,029</u>	<u>79,806,502</u>
<i>Insurance</i>		
Cash and Cash Equivalents	\$ 5,467,012	\$ —
Restricted Cash and Cash Equivalents	399,922	—
Investments	98,271,046	—
Reinsurance Recoverable	15,681,893	—
Insurance Intangible Assets	1,089,830	—
Other Assets	4,970,295	—
Separate Account Assets	5,470,087	—
	<u>131,350,085</u>	<u>—</u>
<b>Total Assets</b>	<u>\$ 216,445,114</u>	<u>\$ 79,806,502</u>
<b>Liabilities and Stockholders' Equity</b>		
<i>Asset Management</i>		
Debt Obligations	\$ 34,669,430	\$ 33,423,596
Due to Affiliates	322,511	325,177
Accrued Expenses and Other Liabilities	7,293,077	5,257,813
	<u>42,285,018</u>	<u>39,006,586</u>
<i>Insurance</i>		
Policy Liabilities	\$ 102,607,224	\$ —
Debt Obligations	1,400,338	—
Funds Withheld Payable at Interest	13,446,163	—
Accrued Expenses and Other Liabilities	4,511,576	—
Reinsurance Liabilities	422,078	—
Separate Account Liabilities	5,470,087	—
	<u>127,857,466</u>	<u>—</u>
<b>Total Liabilities</b>	<u>170,142,484</u>	<u>39,006,586</u>

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
<b>Commitments and Contingencies (See Note 23)</b>		
<b>Redeemable Noncontrolling Interests</b>	\$ 91,845	\$ —
<b>Stockholders' Equity</b>		
Series A and B Preferred Stock, \$0.01 par value. 13,800,000 and 6,200,000 shares, respectively, issued and outstanding as of March 31, 2021 and December 31, 2020.	\$ 482,554	\$ 482,554
Series C Mandatory Convertible Preferred Stock, \$0.01 par value. 23,000,000 shares issued and outstanding as of March 31, 2021 and December 31, 2020.	1,115,792	1,115,792
Series I Preferred Stock, \$0.01 par value. 1 share authorized, 1 share issued and outstanding as of March 31, 2021 and December 31, 2020.	—	—
Series II Preferred Stock, \$0.01 par value. 499,999,999 shares authorized, 273,367,712 and 275,626,493 shares, issued and outstanding as of March 31, 2021 and December 31, 2020, respectively.	2,733	2,756
Common Stock, \$0.01 par value. 3,500,000,000 shares authorized, 578,269,039 and 572,893,738 shares, issued and outstanding as of March 31, 2021 and December 31, 2020, respectively.	5,783	5,729
Additional Paid-In Capital	8,708,339	8,687,817
Retained Earnings	5,007,223	3,440,782
Accumulated Other Comprehensive Income (Loss)	(646,368)	(18,612)
<b>Total KKR &amp; Co. Inc. Stockholders' Equity</b>	<b>14,676,056</b>	<b>13,716,818</b>
Noncontrolling Interests	31,534,729	27,083,098
<b>Total Equity</b>	<b>46,210,785</b>	<b>40,799,916</b>
<b>Total Liabilities and Equity</b>	<b>\$ 216,445,114</b>	<b>\$ 79,806,502</b>

See notes to financial statements.

**KKR & CO. INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF FINANCIAL CONDITION (UNAUDITED) (Continued)**  
**(Amounts in Thousands)**

The following presents the portion of the consolidated balances presented in the consolidated statements of financial condition attributable to consolidated variable interest entities ("VIEs"). As of March 31, 2021 and December 31, 2020, KKR's consolidated VIEs consist primarily of (i) certain collateralized financing entities ("CFEs") holding collateralized loan obligations ("CLOs") (ii) certain investment funds and (iii) certain VIEs formed by Global Atlantic.

With respect to consolidated CLOs and certain investment funds, the following assets may only be used to settle obligations of these consolidated VIEs and the following liabilities are only the obligations of these consolidated VIEs and not generally to KKR. The noteholders, creditors and equity holders of these VIEs have no recourse to the assets of any other KKR entity. Additionally, KKR has no right to the benefits from, nor does KKR bear the risks associated with, the assets held by these VIEs beyond KKR's beneficial interest therein and any income generated from the VIEs. There are neither explicit arrangements nor does KKR hold implicit variable interests that would require KKR to provide any material ongoing financial support to the consolidated VIEs, beyond amounts previously committed to them, if any.

With respect to certain other VIEs consolidated by Global Atlantic, Global Atlantic has formed certain VIEs to hold investments, including railcar, aviation and other transportation equipment, renewable energy projects, fixed maturity securities, residential rental properties and student loans. These VIEs issue beneficial interests primarily to Global Atlantic's insurance companies.

	<b>March 31, 2021</b>			
	<b>Consolidated CLOs</b>	<b>Consolidated Funds</b>	<b>Other VIEs</b>	<b>Total</b>
<b>Assets</b>				
<i><b>Asset Management</b></i>				
Cash and Cash Equivalents	\$ 1,220,782	\$ 713,459	\$ —	\$ 1,934,241
Restricted Cash and Cash Equivalents	—	40,774	—	40,774
Investments	19,163,155	34,896,394	—	54,059,549
Other Assets	574,695	266,433	—	841,128
	<u>20,958,632</u>	<u>35,917,060</u>	<u>—</u>	<u>56,875,692</u>
<i><b>Insurance</b></i>				
Cash and Cash Equivalents	—	—	754,307	754,307
Investments	—	—	12,419,521	12,419,521
Other Assets	—	—	846,092	846,092
	<u>—</u>	<u>—</u>	<u>14,019,920</u>	<u>14,019,920</u>
<b>Total Assets</b>	<u>\$ 20,958,632</u>	<u>\$ 35,917,060</u>	<u>\$ 14,019,920</u>	<u>\$ 70,895,612</u>
<b>Liabilities</b>				
<i><b>Asset Management</b></i>				
Debt Obligations	\$ 18,640,854	\$ 3,635,845	\$ —	\$ 22,276,699
Accrued Expenses and Other Liabilities	1,705,659	582,754	—	2,288,413
	<u>20,346,513</u>	<u>4,218,599</u>	<u>—</u>	<u>24,565,112</u>
<i><b>Insurance</b></i>				
Accrued Expenses and Other Liabilities	—	—	1,081,574	1,081,574
<b>Total Liabilities</b>	<u>\$ 20,346,513</u>	<u>\$ 4,218,599</u>	<u>\$ 1,081,574</u>	<u>\$ 25,646,686</u>

	<b>December 31, 2020</b>		
	<u>Consolidated CLOs</u>	<u>Consolidated Funds</u>	<u>Total</u>
<b>Assets</b>			
<i>Asset Management</i>			
Cash and Cash Equivalents	\$ 749,395	\$ 263,024	\$ 1,012,419
Restricted Cash and Cash Equivalents	—	59,490	59,490
Investments	17,706,976	32,699,562	50,406,538
Other Assets	161,621	150,696	312,317
<b>Total Assets</b>	<u>\$ 18,617,992</u>	<u>\$ 33,172,772</u>	<u>\$ 51,790,764</u>
<b>Liabilities</b>			
<i>Asset Management</i>			
Debt Obligations	\$ 17,372,740	\$ 4,253,645	\$ 21,626,385
Accrued Expenses and Other Liabilities	782,056	412,410	1,194,466
<b>Total Liabilities</b>	<u>\$ 18,154,796</u>	<u>\$ 4,666,055</u>	<u>\$ 22,820,851</u>

See notes to financial statements.



**KKR & CO. INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS (UNAUDITED)**  
(Amounts in Thousands, Except Share and Per Share Data)

	Three Months Ended March 31,	
	2021	2020
<b>Revenues</b>		
<i>Asset Management</i>		
Fees and Other	\$ 493,311	\$ 380,572
Capital Allocation-Based Income (Loss)	2,684,647	(1,382,077)
	<u>3,177,958</u>	<u>(1,001,505)</u>
<i>Insurance</i>		
Premiums	1,176,142	—
Policy Fees	201,683	—
Net Investment Income	444,781	—
Net Investment (Losses) Gains	(455,702)	—
Other Income	18,144	—
	<u>1,385,048</u>	<u>—</u>
<b>Total Revenues</b>	<u>4,563,006</u>	<u>(1,001,505)</u>
<b>Expenses</b>		
<i>Asset Management</i>		
Compensation and Benefits	1,306,797	(262,137)
Occupancy and Related Charges	15,200	16,322
General, Administrative and Other	166,997	149,123
	<u>1,488,994</u>	<u>(96,692)</u>
<i>Insurance</i>		
Policy Benefits and Claims	1,485,318	—
Amortization of Policy Acquisition Costs	(20,478)	—
Interest Expense	10,672	—
Insurance Expenses	52,084	—
General, Administrative and Other	79,955	—
	<u>1,607,551</u>	<u>—</u>
<b>Total Expenses</b>	<u>3,096,545</u>	<u>(96,692)</u>
<b>Investment Income (Loss) - Asset Management</b>		
Net Gains (Losses) from Investment Activities	2,696,200	(3,944,504)
Dividend Income	75,746	168,699
Interest Income	367,455	353,455
Interest Expense	(251,756)	(261,469)
<b>Total Investment Income (Loss)</b>	<u>2,887,645</u>	<u>(3,683,819)</u>

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Income (Loss) Before Taxes</b>	4,354,106	(4,588,632)
<b>Income Tax Expense (Benefit)</b>	438,739	(360,679)
<b>Net Income (Loss)</b>	3,915,367	(4,227,953)
Net Income (Loss) Attributable to Redeemable Noncontrolling Interests	—	—
Net Income (Loss) Attributable to Noncontrolling Interests	2,245,531	(2,947,429)
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc.</b>	1,669,836	(1,280,524)
Series A Preferred Stock Dividends	5,822	5,822
Series B Preferred Stock Dividends	2,519	2,519
Series C Mandatory Convertible Preferred Stock Dividends	17,250	—
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc. Common Stockholders</b>	<b>\$ 1,644,245</b>	<b>\$ (1,288,865)</b>
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc. Per Share of Common Stock</b>		
Basic	\$ 2.85	\$ (2.31)
Diluted	\$ 2.68	\$ (2.31)
<b>Weighted Average Shares of Common Stock Outstanding</b>		
Basic	576,727,967	559,149,821
Diluted	620,888,491	559,149,821

See notes to financial statements.

**KKR & CO. INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME (LOSS) (UNAUDITED)**  
**(Amounts in Thousands)**

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Net Income (Loss)</b>	\$ 3,915,367	\$ (4,227,953)
Other Comprehensive Income (Loss), Net of Tax:		
Unrealized Losses on Available-For-Sale Securities and Other	(1,490,289)	—
Foreign Currency Translation Adjustments	(15,257)	(26,732)
<b>Comprehensive Income (Loss)</b>	2,409,821	(4,254,685)
Comprehensive Income (Loss) Attributable to Noncontrolling Interests	1,366,143	(2,961,543)
<b>Comprehensive Income (Loss) Attributable to KKR &amp; Co. Inc.</b>	<u>\$ 1,043,678</u>	<u>\$ (1,293,142)</u>

See notes to financial statements.

**KKR & CO. INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY (UNAUDITED)**  
(Amounts in Thousands, Except Share and Per Share Data)

	Three Months Ended March 31,			
	2021		2020	
	Amounts	Shares	Amounts	Shares
<b>Series A and B Preferred Stock</b>				
Beginning of Period	\$ 482,554	20,000,000	\$ 482,554	20,000,000
End of Period	482,554	20,000,000	482,554	20,000,000
<b>Series C Mandatory Convertible Preferred Stock</b>				
Beginning of Period	1,115,792	23,000,000	—	—
End of Period	1,115,792	23,000,000	—	—
<b>Series I Preferred Stock</b>				
Beginning of Period	—	1	—	1
End of Period	—	1	—	1
<b>Series II Preferred Stock</b>				
Beginning of Period	2,756	275,626,493	2,904	290,381,345
Cancellation of Series II Preferred Stock	(23)	(2,258,781)	(39)	(3,904,074)
End of Period	2,733	273,367,712	2,865	286,477,271
<b>Common Stock</b>				
Beginning of Period	5,729	572,893,738	5,600	560,007,579
Private Placement Share Issuance	9	964,871	—	—
Exchange of KKR Holdings Units	23	2,258,781	39	3,904,074
Net Delivery of Common Stock	37	3,657,470	—	—
Clawback of Transfer Restricted Shares	—	(4,263)	—	—
Repurchases of Common Stock	(15)	(1,501,558)	(102)	(10,209,673)
End of Period	5,783	578,269,039	5,537	553,701,980
<b>Additional Paid-In Capital</b>				
Beginning of Period	8,687,817		8,565,919	
Private Placement Share Issuance	38,454		—	
Exchange of KKR Holdings Units	58,501		72,331	
Tax Effects - Exchange of KKR Holdings Units and Other	4,627		(1,426)	
Net Delivery of Common Stock	(55,910)		—	
Repurchases of Common Stock	(71,351)		(246,058)	
Equity-Based Compensation	46,201		51,003	
Transfer of Interests Under Common Control	—		14,385	
End of Period	8,708,339		8,456,154	
<b>Retained Earnings</b>				
Beginning of Period	3,440,782		1,792,152	
Net Income (Loss) Attributable to KKR & Co. Inc.	1,669,836		(1,280,524)	
Series A Preferred Stock Dividends (\$0.421875 per share)	(5,822)		(5,822)	
Series B Preferred Stock Dividends (\$0.406250 per share)	(2,519)		(2,519)	
Series C Mandatory Convertible Preferred Stock Dividends (\$0.75 per share)	(17,250)		—	
Common Stock Dividends (\$0.135 and \$0.125 per share, respectively)	(77,804)		(69,741)	
End of Period	5,007,223		433,546	
<b>Accumulated Other Comprehensive Income (Loss) (net of tax)</b>				
Beginning of Period	(18,612)		(41,639)	
Other Comprehensive Income (Loss)	(626,158)		(12,618)	
Exchange of KKR Holdings Units	(1,598)		(437)	
End of Period	(646,368)		(54,694)	
<b>Total KKR &amp; Co. Inc. Stockholders' Equity</b>	<b>14,676,056</b>		<b>9,325,962</b>	
<b>Noncontrolling Interests (See Note 21)</b>	<b>31,534,729</b>		<b>17,264,068</b>	
<b>Total Equity</b>	<b>\$ 46,210,785</b>		<b>\$ 26,590,030</b>	
<b>Redeemable Noncontrolling Interests (See Note 22)</b>	<b>\$ 91,845</b>		<b>\$ —</b>	

See notes to financial statements.

**KKR & CO. INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED)**  
**(Amounts in Thousands)**

	Three Months Ended March 31,	
	2021	2020
<b>Operating Activities</b>		
Net Income (Loss)	\$ 3,915,367	\$ (4,227,953)
<b>Adjustments to Reconcile Net Income (Loss) to Net Cash Provided (Used) by Operating Activities:</b>		
Equity-Based and Other Non-Cash Compensation	88,162	71,379
Net Realized (Gains) Losses - Asset Management	(584,381)	(63,375)
Change in Unrealized (Gains) Losses - Asset Management	(2,111,819)	4,007,879
Capital Allocation-Based (Income) Loss - Asset Management	(2,684,647)	1,382,077
Net Realized (Gains) Losses - Insurance	441,553	—
Net Accretion and Amortization	82,607	(10,316)
Interest Credited to Policyholder Account Balances (net of Policy Fees) - Insurance	422,873	—
Other Non-Cash Amounts	2,297	459
Cash Flows Due to Changes in Operating Assets and Liabilities:		
Reinsurance Transactions and Acquisitions, Net of Cash Provided - Insurance	415,777	—
Change in Premiums, Notes Receivable and Reinsurance Recoverable, Net of Reinsurance Premiums Payable - Insurance	295,131	—
Change in Deferred Policy Acquisition Costs - Insurance	(73,201)	—
Change in Policy Liabilities and Accruals, Net - Insurance	(189,108)	—
Change in Consolidation	(21,149)	—
Change in Due from / to Affiliates	(212,300)	(183,129)
Change in Other Assets	308,439	(323,040)
Change in Accrued Expenses and Other Liabilities	1,135,268	(766,087)
Investments Purchased - Asset Management	(15,127,133)	(8,312,849)
Proceeds from Investments - Asset Management	13,823,098	7,018,549
Net Cash Provided (Used) by Operating Activities	(73,166)	(1,406,406)
<b>Investing Activities</b>		
Acquisition of Global Atlantic, Net of Cash Acquired (See Note 3)	(415,640)	—
Purchases of Fixed Assets	(27,727)	(41,371)
Investments Purchased - Insurance	(5,300,346)	—
Proceeds from Investments - Insurance	5,255,841	—
Other Investing Activities, Net - Insurance	111,836	—
Development of Oil and Natural Gas Properties	—	(4,073)
Net Cash Provided (Used) by Investing Activities	(376,036)	(45,444)
<b>Financing Activities</b>		
Series A and B Preferred Stock Dividends	(8,341)	(8,341)
Series C Mandatory Convertible Preferred Stock Dividends	(17,250)	—
Common Stock Dividends	(77,804)	(69,741)
Distributions to Noncontrolling Interests	(1,027,834)	(524,656)
Contributions from Noncontrolling Interests	3,164,049	1,120,966
Net Delivery of Common Stock (Equity Incentive Plans)	(55,873)	—
Repurchases of Common Stock	(71,366)	(246,160)
Private Placement Share Issuance	38,463	—
Proceeds from Debt Obligations	5,109,790	3,792,041
Repayment of Debt Obligations	(3,552,362)	(2,543,694)
Financing Costs Paid	(921)	(10,198)
Additions to Contractholder Deposit Funds	2,433,498	—
Withdrawals from Contractholder Deposit Funds	(1,475,176)	—
Other Financing Activity, Net	269	—
Net Cash Provided (Used) by Financing Activities	4,459,142	1,510,217

	Three Months Ended March 31,	
	2021	2020
Effect of exchange rate changes on cash, cash equivalents and restricted cash	(25,722)	(25,740)
<b>Net Increase/(Decrease) in Cash, Cash Equivalents and Restricted Cash</b>	<b>\$ 3,984,218</b>	<b>\$ 32,627</b>
Cash, Cash Equivalents and Restricted Cash, Beginning of Period	6,993,457	3,237,416
<b>Cash, Cash Equivalents and Restricted Cash, End of Period</b>	<b>\$ 10,977,675</b>	<b>\$ 3,270,043</b>
<b>Cash, Cash Equivalents and Restricted Cash are comprised of the following:</b>		
Beginning of the Period		
<i>Asset Management</i>		
Cash and Cash Equivalents	\$ 6,507,874	\$ 3,163,154
Restricted Cash and Cash Equivalents	485,583	74,262
<i>Total Asset Management</i>	<u>6,993,457</u>	<u>3,237,416</u>
<i>Insurance</i>		
Cash and Cash Equivalents	\$ —	\$ —
Restricted Cash and Cash Equivalents	—	—
<i>Total Insurance</i>	<u>—</u>	<u>—</u>
Cash, Cash Equivalents and Restricted Cash, Beginning of Period	<u>\$ 6,993,457</u>	<u>\$ 3,237,416</u>
End of the Period		
<i>Asset Management</i>		
Cash and Cash Equivalents	\$ 5,031,724	\$ 3,153,537
Restricted Cash and Cash Equivalents	79,017	116,506
<i>Total Asset Management</i>	<u>5,110,741</u>	<u>3,270,043</u>
<i>Insurance</i>		
Cash and Cash Equivalents	\$ 5,467,012	\$ —
Restricted Cash and Cash Equivalents	399,922	—
<i>Total Insurance</i>	<u>5,866,934</u>	<u>—</u>
Cash, Cash Equivalents and Restricted Cash, End of Period	<u>\$ 10,977,675</u>	<u>\$ 3,270,043</u>

See notes to financial statements.

**KKR & CO. INC.**  
**CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS (UNAUDITED) (Continued)**  
**(Amounts in Thousands)**

	Three Months Ended March 31,	
	2021	2020
<b>Supplemental Disclosures of Cash Flow Information</b>		
Payments for Interest	\$ 289,420	\$ 288,916
Payments for Income Taxes	\$ 11,044	\$ 24,836
Payments for Operating Lease Liabilities	\$ 9,846	\$ 13,243
<b>Supplemental Disclosures of Non-Cash Investing and Financing Activities</b>		
Equity-Based and Other Non-Cash Contributions	\$ 82,517	\$ 71,699
Non-Cash Contribution from Noncontrolling Interests	\$ 845,943	\$ —
Debt Obligations - Net Gains (Losses), Translation and Other	\$ 235,821	\$ 1,989,846
Tax Effects - Exchange of KKR Holdings L.P. Units and Other	\$ 4,627	\$ (1,426)
Right-of-Use Assets obtained in Exchange for new Operating Lease Liabilities	\$ 31,003	\$ 2,700
Investments Acquired through Reinsurance Agreements	\$ 368,328	\$ —
Policyholder Liabilities and Accruals Acquired through Reinsurance Agreements	\$ 1,112,370	\$ —
Contractholder Deposit Funds Acquired through Reinsurance Agreements	\$ 6,988	\$ —
<b>Change in Consolidation</b>		
Investments	\$ (49,403)	\$ —
Other Assets	\$ (32,689)	\$ —
Debt Obligations	\$ (26,165)	\$ —
Due to Affiliates	\$ (238)	\$ —
Accrued Expenses and Other Liabilities	\$ (10,350)	\$ —
Noncontrolling Interests	\$ (66,488)	\$ —

See notes to financial statements.

**KKR & CO. INC.**  
**NOTES TO FINANCIAL STATEMENTS (UNAUDITED)**  
**(All Amounts in Thousands, Except Share and Per Share Data, and Except Where Noted)**

**1. ORGANIZATION**

KKR & Co. Inc. (NYSE: KKR), through its subsidiaries (collectively, "KKR"), is a leading global investment firm that offers alternative asset management and capital markets and insurance solutions. KKR aims to generate attractive investment returns by following a patient and disciplined investment approach, employing world-class people, and supporting growth in its portfolio companies and communities. KKR sponsors investment funds that invest in private equity, credit and real assets and has strategic partners that manage hedge funds. KKR's insurance subsidiaries offer retirement, life and reinsurance products under the management of The Global Atlantic Financial Group LLC ("TGAFG" and, together with its subsidiaries, "Global Atlantic").

KKR & Co. Inc. is the parent company of KKR Group Holdings Corp., which is the general partner of KKR Group Partnership L.P. ("KKR Group Partnership"). KKR & Co. Inc. both indirectly controls KKR Group Partnership and indirectly holds Class A partner interests in KKR Group Partnership ("KKR Group Partnership Units") representing economic interests in KKR's business. The remaining KKR Group Partnership Units are held by KKR Holdings L.P. ("KKR Holdings"), which is not a subsidiary of KKR & Co. Inc., and holders of other exchangeable securities. As of March 31, 2021, KKR & Co. Inc. held indirectly approximately 67.8% of the KKR Group Partnership Units. The percentage ownership in KKR Group Partnership will continue to change as KKR Holdings and these holders exchange their KKR Group Partnership Units for shares of common stock of KKR & Co. Inc. or when KKR & Co. Inc. otherwise issues or repurchases shares of common stock of KKR & Co. Inc. KKR Group Partnership also has outstanding limited partner interests that provide for a carry pool and preferred units with economic terms that mirror the Series A Preferred Stock, Series B Preferred Stock and Series C Mandatory Convertible Preferred Stock issued by KKR & Co. Inc.

***Acquisition of Global Atlantic Financial Group***

In July 2020, KKR and Global Atlantic Financial Group Limited announced a strategic transaction whereby KKR agreed to acquire Global Atlantic, a leading retirement and life insurance and reinsurance company. The transaction, which closed on February 1, 2021, was funded with a combination of: (i) cash on hand, (ii) proceeds from syndication of the equity interests in Global Atlantic to minority co-investors, (iii) proceeds from the offering of \$1,150 million of 6.00% Series C Mandatory Convertible Preferred Stock by KKR & Co. Inc. and (iv) proceeds from the offering of \$750 million aggregate principal amount of 3.500% Senior Notes due 2050 by KKR Group Finance Co. VIII LLC.

Global Atlantic's results are included in KKR's consolidated financial statements commencing from the GA Acquisition Date. Refer to Note 3 "Acquisition of Global Atlantic" for additional information on the transaction.

References herein to "KKR," refer to KKR & Co. Inc. and its subsidiaries, including Global Atlantic, unless the context requires otherwise such as in sections where it refers to the asset management business only.



## 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

### Basis of Presentation

The accompanying unaudited financial statements of KKR & Co. Inc. have been prepared in accordance with accounting principles generally accepted in the United States of America ("GAAP") for interim financial information and the instructions to this Quarterly Report on Form 10-Q. The condensed consolidated financial statements (referred to hereafter as the "financial statements"), including these notes, are unaudited and exclude some of the disclosures required in annual financial statements. Management believes it has made all necessary adjustments (consisting of only normal recurring items) such that the financial statements are presented fairly and that estimates made in preparing the financial statements are reasonable and prudent. The operating results presented for interim periods are not necessarily indicative of the results that may be expected for any other interim period or for the entire year. The consolidated balance sheet data as of December 31, 2020 was derived from audited financial statements included in KKR's Annual Report on Form 10-K for the year ended December 31, 2020, filed with the Securities and Exchange Commission (the "SEC") on February 19, 2021, and the financial statements should be read in conjunction with the audited financial statements included therein. Additionally, in the accompanying financial statements, the condensed consolidated statements of financial condition are referred to hereafter as the "consolidated statements of financial condition"; the condensed consolidated statements of operations are referred to hereafter as the "consolidated statements of operations"; the condensed consolidated statements of comprehensive income (loss) are referred to hereafter as the "consolidated statements of comprehensive income (loss)"; the condensed consolidated statements of changes in equity and redeemable non-controlling interests are referred to hereafter as the "consolidated statements of changes in equity"; and the condensed consolidated statements of cash flows are referred to hereafter as the "consolidated statements of cash flows."

KKR consolidates the financial results of KKR Group Partnership and its consolidated entities, which include the accounts of KKR's investment management and capital markets companies, the general partners of certain unconsolidated investment funds, general partners of consolidated investment funds and their respective consolidated investment funds, certain other entities including CFEs and Global Atlantic. References in the accompanying financial statements to "principals" are to KKR's senior employees who hold interests in KKR's business through KKR Holdings. References to Global Atlantic hereafter includes the insurance companies of Global Atlantic, which are consolidated by KKR starting on the GA Acquisition Date (refer to Note 3 "Acquisition of Global Atlantic" for additional information on the transaction).

The presentations in the consolidated statement of financial condition and consolidated statement of operations reflect the significant industry diversification of KKR by its acquisition of Global Atlantic. Global Atlantic operates an insurance business, and KKR operates an asset management business, each of which possess distinct characteristics. As a result, KKR developed a two-tiered approach for the financial statements presentation, where Global Atlantic's insurance operations are presented separately from KKR's asset management business. KKR believes that these separate presentations provide a more informative view of the consolidated financial position and results of operations than traditional aggregated presentations and that reporting Global Atlantic's insurance operations separately is appropriate given, among other factors, the relative significance of Global Atlantic's policy liabilities, which are not obligations of KKR (other than the insurance companies that issued them). If a traditional aggregate presentation were to be used, KKR would expect to eliminate or combine several identical or similar captions, which would condense the presentations, but would also reduce the level of information presented. KKR also believes that using a traditional aggregate presentation would result in no new line items compared to the two-tier presentation included in the financial statements in this report.

In addition, in connection with the Global Atlantic acquisition, we organized our business into two segments: Asset Management and Insurance. Global Atlantic's operations constitute the Insurance segment. See Note 20 "Segment Reporting".

The summary of the significant accounting policies has been organized considering the two-tiered approach and includes a section for common accounting policies and an accounting policy section for each of the two tiers when a policy is specific to one of the tiers.

All intercompany transactions and balances have been eliminated.

**SIGNIFICANT ACCOUNTING POLICIES - COMMON AMONG ASSET MANAGEMENT AND INSURANCE****COVID-19 and Global Economic and Market Conditions**

The novel strain of coronavirus ("COVID-19") has caused, and continues to cause, severe disruptions to the U.S. and global economies. The outbreak of COVID-19 and the actions taken in response have had far reaching impact on the U.S. and global economies, contributing to significant volatility in the financial markets, resulting in increased volatility in equity prices (including our common stock) and lower interest rates, and causing furloughs and layoffs in the labor market. Although a number of vaccines for COVID-19 have been developed and are in the process of being deployed in certain countries, including the United States, the timing for widespread vaccination and immunity is uncertain, and these vaccines may be less effective against any new mutated strains of the virus that have started to spread globally.

Given the ongoing nature of the pandemic, at this time KKR cannot reasonably predict the magnitude of the ultimate impact that COVID-19 will have on KKR's business, financial performance and operating results. KKR believes COVID-19's adverse impact on KKR's business, financial performance and operating results will be significantly driven by a number of factors that KKR is unable to predict or control, including, for example: the severity and duration of the pandemic; the pandemic's impact on the U.S. and global economies; the timing, scope and effectiveness of additional governmental responses to the pandemic; the timing and speed of economic recovery, including the availability and distribution of treatments and vaccines for COVID-19; and the negative impact on our fund investors, vendors and other business partners that may indirectly adversely affect KKR.

**Use of Estimates**

The preparation of the financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues, expenses, and investment income (loss) during the reporting periods. Such estimates include but are not limited to (i) the valuation of investments and financial instruments, (ii) the determination of the income tax provision, (iii) the impairment of goodwill and intangible assets, (iv) the impairment of available-for-sale investments, (v) the valuation of insurance policy liabilities, (vi) the valuation of embedded derivatives, (vii) the determination of the allowance for loan losses, and (viii) amortization of deferred revenues and expenses associated with the insurance business. Actual results could differ from those estimates, and such differences could be material to the financial statements.

**Principles of Consolidation**

The types of entities KKR assesses for consolidation include (i) subsidiaries, including management companies, broker-dealers and general partners of investment funds that KKR manages, (ii) entities that have the attributes of an investment company, like investment funds, (iii) CFEs, (iv) Global Atlantic and its insurance companies beginning on February 1, 2021, and (v) other entities. Each of these entities is assessed for consolidation on a case by case basis depending on the specific facts and circumstances surrounding that entity. For further information on the acquisition accounting for Global Atlantic see Note 3 "Acquisition of Global Atlantic".

Pursuant to its consolidation policy, KKR first considers whether an entity is considered a VIE and therefore whether to apply the consolidation guidance under the VIE model. Entities that do not qualify as VIEs are assessed for consolidation as voting interest entities ("VOEs") under the voting interest model.

KKR's funds are, for GAAP purposes, investment companies and therefore are not required to consolidate their investments in portfolio companies even if majority-owned and controlled. Rather, the consolidated funds and vehicles reflect their investments at fair value as described below in "Fair Value Measurements."

An entity in which KKR holds a variable interest is a VIE if any one of the following conditions exist: (a) the total equity investment at risk is not sufficient to permit the legal entity to finance its activities without additional subordinated financial support, (b) the holders of the equity investment at risk (as a group) lack either the direct or indirect ability through voting rights or similar rights to make decisions about a legal entity's activities that have a significant effect on the success of the legal entity or the obligation to absorb the expected losses or right to receive the expected residual returns, or (c) the voting rights of some investors are disproportionate to their obligation to absorb the expected losses of the legal entity, their rights to receive the expected residual returns of the legal entity, or both and substantially all of the legal entity's activities either involve or are conducted on behalf of an investor with disproportionately few voting rights. Limited partnerships and other similar entities where unaffiliated limited partners have not been granted (i) substantive participatory rights or (ii) substantive rights to either dissolve the partnership or remove the general partner ("kick-out rights") are VIEs. KKR's investment funds that are not CFEs (i) are

**Notes to Financial Statements (Continued)**

generally limited partnerships, (ii) generally provide KKR with operational discretion and control, and (iii) generally have fund investors with no substantive rights to impact ongoing governance and operating activities of the fund, including the ability to remove the general partner, and, as such, the limited partners do not have kick-out rights. Accordingly, most of KKR's investment funds are categorized as VIEs.

KKR consolidates all VIEs in which it is the primary beneficiary. A reporting entity is determined to be the primary beneficiary if it holds a controlling financial interest in a VIE. A controlling financial interest is defined as (a) the power to direct the activities of a VIE that most significantly impact the VIE's economic performance and (b) the obligation to absorb losses of the VIE that could potentially be significant to the VIE or the right to receive benefits from the VIE that could potentially be significant to the VIE. The consolidation guidance requires an analysis to determine (i) whether an entity in which KKR holds a variable interest is a VIE and (ii) whether KKR's involvement, through holding interests directly or indirectly in the entity or contractually through other variable interests (for example, management and performance income), would give it a controlling financial interest. Performance of that analysis requires the exercise of judgment. Fees earned by KKR that are customary and commensurate with the level of effort required to provide those services, and where KKR does not hold other economic interests in the entity that would absorb more than an insignificant amount of the expected losses or returns of the entity, would not be considered to be variable interests. KKR factors in all economic interests including interests held through related parties, to determine if it holds a variable interest. KKR determines whether it is the primary beneficiary of a VIE at the time it becomes involved with a VIE and reconsiders that conclusion when facts and circumstances change.

For entities that are determined not to be VIEs, these entities are generally considered VOEs and are evaluated under the voting interest model. KKR consolidates VOEs it controls through a majority voting interest or through other means.

The consolidation assessment, including the determination as to whether an entity qualifies as a VIE or VOE, depends on the facts and circumstances for each entity, and therefore certain of KKR's investment funds may qualify as VIEs whereas others may qualify as VOEs.

With respect to CLOs (which are generally VIEs), in KKR's role as collateral manager, KKR generally has the power to direct the activities of the CLO that most significantly impact the economic performance of the entity. In some, but not all cases, KKR, through its residual interest in the CLO may have variable interests that represent an obligation to absorb losses of, or a right to receive benefits from, the CLO that could potentially be significant to the CLO. In cases where KKR has both the power to direct the activities of the CLO that most significantly impact the CLO's economic performance and the obligation to absorb losses of the CLO or the right to receive benefits from the CLO that could potentially be significant to the CLO, KKR is deemed to be the primary beneficiary and consolidates the CLO.

KKR has invested approximately \$20 million in the sponsor shareholder of KKR Acquisition Holdings I Corp., a special purpose acquisition company ("SPAC"). The sponsor shareholder is a limited liability company whose only assets are equity securities of the SPAC. The investors in the sponsor shareholder are KKR and an unaffiliated investor. KKR is not the managing member of the sponsor shareholder, and KKR does not have the sole power to direct the activities that most significantly impact the sponsor shareholder. As such, KKR treats its investment in the sponsor shareholder as an equity method investment.

Global Atlantic has formed certain VIEs to hold investments, including railcar, aviation and other transportation equipment, renewable energy projects, fixed maturity securities, residential rental properties and student loans. These VIEs issue beneficial interests primarily to Global Atlantic's insurance companies and Global Atlantic maintains the power to direct the activities of the VIEs that most significantly impact their economic performance and bears the obligation to absorb losses or receive benefits from the VIEs that could potentially be significant. Accordingly, Global Atlantic is the primary beneficiary of these VIEs, which are consolidated in Global Atlantic's results. Where these VIEs or entities consolidated by these VIEs issue beneficial interests to third-party investors, they are reported as non-controlling interests by Global Atlantic.

For certain consolidated renewable energy partnerships consolidated by Global Atlantic's insurance companies, Global Atlantic uses hypothetical liquidation at book value method ("HLBV") to allocate income and cash flows based on third-party investors' claim to net assets, including those for the noncontrolling interests and redeemable noncontrolling interests.

KKR classifies certain noncontrolling interests with redemption features that are not solely within the control of KKR outside of permanent equity on its consolidated statements of financial condition. These redeemable non-controlling interests are reported using the greater of the carrying value at each reporting date as determined by the HLBV method or the estimated redemption value in each reporting period.

**Cash and Cash Equivalents**

KKR considers all liquid short-term investments with original maturities of 90 days or less when purchased to be cash equivalents. Cash and cash equivalents includes cash held at consolidated entities, which represents cash that, although not legally restricted, is not available generally to fund liquidity needs of KKR, as the use of such funds is generally limited to the investment activities of KKR's investment funds and CFEs. In prior periods, those amounts were classified in a separate line "*Cash and Cash Equivalents Held at Consolidated Entities*" on the statement of financial condition, and the comparable information have been recasted to current presentation.

**Restricted Cash and Cash Equivalents**

Restricted cash and cash equivalents primarily represent amounts that are held by third parties under certain of KKR's financing and derivative transactions. The duration of this restricted cash generally matches the duration of the related financing or derivative transaction. Global Atlantic's restricted cash principally includes certain cash and cash equivalents held in trusts formed for the benefit of ceding companies or held in connection with open derivative transactions.

**Fair Value Measurements**

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions. Where available, fair value is based on observable market prices or parameters or derived from such prices or parameters. Where observable prices or inputs are not available, valuation techniques are applied. These valuation techniques involve varying levels of management estimation and judgment, the degree of which is dependent on a variety of factors.

GAAP establishes a hierarchical disclosure framework which prioritizes and ranks the level of market price observability used in measuring financial instruments at fair value. Market price observability is affected by a number of factors, including the type of financial instrument, the characteristics specific to the financial instrument and the state of the marketplace, including the existence and transparency of transactions between market participants. Financial instruments with readily available quoted prices in active markets generally will have a higher degree of market price observability and a lesser degree of judgment used in measuring fair value.

Investments and financial instruments measured and reported at fair value are classified and disclosed based on the observability of inputs used in the determination of fair values, as follows:

**Level I** - Pricing inputs are unadjusted, quoted prices in active markets for identical assets or liabilities as of the measurement date. The types of financial instruments included in this category are publicly-listed equities, U.S. government and agencies securities, and securities sold short.

**Level II** - Pricing inputs are other than quoted prices in active markets, which are either directly or indirectly observable as of the measurement date, and fair value is determined through the use of models or other valuation methodologies. The types of financial instruments included in this category are credit investments, fixed-income securities held by consolidated insurance companies, investments and debt obligations of consolidated CLO entities, convertible debt securities indexed to publicly-listed securities, less liquid and restricted equity securities, certain funds withheld payable at interest, and certain over-the-counter derivatives such as foreign currency option and forward contracts.

**Level III** - Pricing inputs are unobservable for the financial instruments and include situations where there is little, if any, market activity for the financial instrument. The inputs into the determination of fair value require significant management judgment or estimation. The types of financial instruments generally included in this category are private portfolio companies, real assets investments, certain credit investments, equity method investments for which the fair value option was elected, certain fixed-income and structured securities held by the consolidated insurance subsidiaries, reinsurance recoverables carried at fair value, certain insurance policy liabilities carried at fair value, and certain embedded derivatives related to (i) certain funds withheld payable at interest, and (ii) annuities and indexed universal life products, which contain equity-indexed features.

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement in its entirety falls has been determined based on the lowest level input that is significant to the fair value measurement in its entirety. KKR's assessment of the significance of a particular input to the fair value measurement in its entirety requires judgment and consideration of factors specific to the asset.

**Notes to Financial Statements (Continued)**

A significant decrease in the volume and level of activity for the asset or liability is an indication that transactions or quoted prices may not be representative of fair value because in such market conditions there may be increased instances of transactions that are not orderly. In those circumstances, further analysis of transactions or quoted prices is needed, and a significant adjustment to the transactions or quoted prices may be necessary to estimate fair value.

The availability of observable inputs can vary depending on the financial asset or liability and is affected by a wide variety of factors, including, for example, the type of instrument, whether the instrument has recently been issued, whether the instrument is traded on an active exchange or in the secondary market, and current market conditions. To the extent that valuation is based on models or inputs that are less observable or unobservable in the market, the determination of fair value requires additional judgment. Accordingly, the degree of judgment exercised by KKR in determining fair value is greatest for instruments categorized in Level III. The variability and availability of the observable inputs affected by the factors described above may cause transfers between Levels I, II, and III, which KKR recognizes at the beginning of the reporting period.

Investments and other financial instruments that have readily observable market prices (such as those traded on a securities exchange) are stated at the last quoted sales price as of the reporting date. KKR does not adjust the quoted price for these investments, even in situations where KKR holds a large position and a sale could reasonably affect the quoted price.

Management's determination of fair value is based upon the methodologies and processes described below and may incorporate assumptions that are management's best estimates after consideration of a variety of internal and external factors.

***Level II Valuation Methodologies***

*Credit Investments, U.S. Municipal Securities, Corporate Bonds and Structured Securities:* These financial instruments generally have bid and ask prices that can be observed in the marketplace. Bid prices reflect the highest price that KKR and others are willing to pay for an instrument. Ask prices represent the lowest price that KKR and others are willing to accept for an instrument. For financial instruments whose inputs are based on bid-ask prices obtained from third party pricing services, fair value may not always be a predetermined point in the bid-ask range. KKR's policy is generally to allow for mid-market pricing and adjusting to the point within the bid-ask range that meets KKR's best estimate of fair value. KKR may also use model-derived valuations whose inputs are observable or whose significant value drivers are observable.

*Investments and Debt Obligations of Consolidated CLO Vehicles:* Investments of consolidated CLO vehicles are reported within Investments of Consolidated CFEs and are valued using the same valuation methodology as described above for credit investments. Under ASU 2014-13, KKR measures CLO debt obligations on the basis of the fair value of the financial assets of the CLO.

*Securities Indexed to Publicly-Listed Securities:* These securities are typically valued using standard convertible security pricing models. The key inputs into these models that require some amount of judgment are the credit spreads utilized and the volatility assumed. To the extent the company being valued has other outstanding debt securities that are publicly-traded, the implied credit spread on the company's other outstanding debt securities would be utilized in the valuation. To the extent the company being valued does not have other outstanding debt securities that are publicly-traded, the credit spread will be estimated based on the implied credit spreads observed in comparable publicly-traded debt securities. In certain cases, an additional spread will be added to reflect an illiquidity discount due to the fact that the security being valued is not publicly-traded. The volatility assumption is based upon the historically observed volatility of the underlying equity security into which the convertible debt security is convertible and/or the volatility implied by the prices of options on the underlying equity security.

*Equity Securities:* The valuation of certain equity securities is based on (i) an observable price for an identical security adjusted for the effect of a restriction or leverage that collateralized the equity securities and (ii) quoted prices for identical or similar instruments in markets that are not active.

*Derivatives:* The valuation incorporates observable inputs comprising yield curves, foreign currency rates, interest rate volatility and credit spreads.

**Level III Valuation Methodologies**

*Private Equity Investments:* KKR generally employs two valuation methodologies when determining the fair value of a private equity investment. The first methodology is typically a market comparables analysis that considers key financial inputs, which may take into account recent public and private transactions and other available measures. The second methodology utilized is typically a discounted cash flow analysis, which incorporates significant assumptions and judgments. Estimates of key inputs used in this methodology include the weighted average cost of capital for the investment and assumed inputs used to calculate terminal values, such as exit EBITDA multiples. The results of the discounted cash flow approach can be significantly impacted by these estimates. Other inputs are also used in both methodologies. In addition, when a definitive agreement has been executed to sell an investment, KKR generally considers a significant determinant of fair value to be the consideration to be received by KKR pursuant to the executed definitive agreement.

Upon completion of the valuations conducted using these methodologies, a weighting is ascribed to each method, and an illiquidity discount is typically applied where appropriate. The ultimate fair value recorded for a particular investment will generally be within a range suggested by the two methodologies, except that the value may be higher or lower than such range in the case of investments being sold pursuant to an executed definitive agreement.

When determining the weighting ascribed to each valuation methodology, KKR considers, among other factors, the availability of direct market comparables, the applicability of a discounted cash flow analysis, the expected hold period and manner of realization for the investment, and in the case of investments being sold pursuant to an executed definitive agreement, an estimated probability of such sale being completed. These factors can result in different weightings among investments in the portfolio and in certain instances may result in up to a 100% weighting to a single methodology.

When an illiquidity discount is to be applied, KKR seeks to take a uniform approach across its portfolio and generally applies a minimum 5% discount to all private equity investments. KKR then evaluates such private equity investments to determine if factors exist that could make it more challenging to monetize the investment and, therefore, justify applying a higher illiquidity discount. These factors generally include (i) whether KKR is unable to freely sell the portfolio company or conduct an initial public offering of the portfolio company due to the consent rights of a third party or similar factors, (ii) whether the portfolio company is undergoing significant restructuring activity or similar factors, and (iii) characteristics about the portfolio company regarding its size and/or whether the portfolio company is experiencing, or expected to experience, a significant decline in earnings. These factors generally make it less likely that a portfolio company would be sold or publicly offered in the near term at a price indicated by using just a market multiples and/or discounted cash flow analysis, and these factors tend to reduce the number of opportunities to sell an investment and/or increase the time horizon over which an investment may be monetized. Depending on the applicability of these factors, KKR determines the amount of any incremental illiquidity discount to be applied above the 5% minimum, and during the time KKR holds the investment, the illiquidity discount may be increased or decreased, from time to time, based on changes to these factors. The amount of illiquidity discount applied at any time requires considerable judgment about what a market participant would consider and is based on the facts and circumstances of each individual investment. Accordingly, the illiquidity discount ultimately considered by a market participant upon the realization of any investment may be higher or lower than that estimated by KKR in its valuations.

In the case of growth equity investments, enterprise values may be determined using the market comparables analysis and discounted cash flow analysis described above. A scenario analysis may also be conducted to subject the estimated enterprise values to a downside, base and upside case, which involves significant assumptions and judgments. A milestone analysis may also be conducted to assess the current level of progress towards value drivers that we have determined to be important, which involves significant assumptions and judgments. The enterprise value in each case may then be allocated across the investment's capital structure to reflect the terms of the security and subjected to probability weightings. In certain cases, the values of growth equity investments may be based on recent or expected financings or other transactions.

*Real Asset Investments:* Real asset investments in infrastructure, energy and real estate are valued using one or a combination of the discounted cash flow analysis, market comparables analysis and direct income capitalization methods, which in each case incorporates significant assumptions and judgments.

Infrastructure investments are generally valued using the discounted cash flow analysis. Key inputs used in this methodology can include the weighted average cost of capital and assumed inputs used to calculate terminal values, such as exit EBITDA multiples.

Energy investments are generally valued using a discounted cash flow approach, and where applicable, a market approach using comparable companies and transactions. Key inputs used in our valuations include (i) the weighted average cost of capital,

**Notes to Financial Statements (Continued)**

(ii) future commodity prices, as quoted on indices, and long-term commodity price forecasts, and (iii) the asset's projected future operating performance.

Real estate investments are generally valued using a combination of direct income capitalization and discounted cash flow analysis. Certain real estate investments are valued by KKR based on ranges of valuations determined by independent valuation firms. Key inputs used in such methodologies that require estimates include an unlevered discount rate and current capitalization rate. The valuations of real assets investments also use other inputs.

*Credit Investments:* Credit investments are valued using values obtained from dealers or market makers, and where these values are not available, credit investments are generally valued by KKR based on ranges of valuations determined by an independent valuation firm. Valuation models are based on discounted cash flow analyses, for which the key inputs are determined based on market comparables, which incorporate similar instruments from similar issuers.

*Real Estate Mortgage Loans:* Real estate mortgage loans are illiquid, structured investments that are specific to the property and its operating performance. KKR engages an independent valuation firm to estimate the fair value of each loan. KKR reviews the quarterly loan valuation estimates provided by the independent valuation firm. These loans are generally valued using a discounted cash flow model using discount rates derived from observable market data applied to the capital structure of the respective sponsor and estimated property value.

*Other Investments:* With respect to other investments including equity method investments, KKR generally employs the same valuation methodologies as described above for private equity, credit investments and real assets investments when valuing these other investments.

*Funds withheld at interest:* The funds withheld receivables and payables at interest carried at fair value are primarily valued based on the fair value of the underlying investments, which have quoted prices or other observable inputs to pricing. A portion of the funds withheld receivable and payables at interest carried at fair value represent embedded derivatives and are valued using present value techniques that consider inputs including contract duration.

*Reinsurance recoverables:* Reinsurance recoverables carried at fair value are valued using present value techniques that consider inputs including mortality and surrender rates for the associated policies, as well as estimates of policy expenses and the cost of capital held in support of the related closed block policy liabilities.

*Insurance liabilities and insurance embedded derivatives:* Policy liabilities carried at fair value are valued using present value techniques that discount estimated liability cash flows at a rate that reflects the riskiness of those cash flows and also consider policyholder behavior (including lapse rates, surrender rates and mortality). Closed block policy liabilities carried at fair value are valued using present value techniques that consider inputs including mortality and surrender rates for the respective policies, as well as estimates of policy expenses and the cost of capital held in support of the liabilities. The funds withheld payable at interest carried at fair value represents embedded derivatives and is valued based on the change in the fair value of the assets supporting the payable. Other embedded derivative liabilities are related to our fixed-indexed annuity, variable annuity and indexed universal life products, which contain equity-indexed features. The embedded derivative liabilities are calculated as the present value of future projected benefits in excess of the projected guaranteed benefits, using an option budget as the indexed account value growth rate and considering an adjustment to reflect the risk of nonperformance on our obligation and inputs such as projected withdrawal and surrender activity, and mortality. KKR calculates nonperformance risk using a blend of observable peer holding company credit spreads, adjusted to reflect the claims paying ability of our insurance entities, as well as an adjustment to reflect the priority of policyholder claims.

Key unobservable inputs that have a significant impact on KKR's Level III valuations as described above are included in Note 9 "Fair Value Measurements." KKR utilizes several unobservable pricing inputs and assumptions in determining the fair value of its Level III financial instruments. These unobservable pricing inputs and assumptions may differ by financial instruments and in the application of KKR's valuation methodologies. KKR's reported fair value estimates could vary materially if KKR had chosen to incorporate different unobservable pricing inputs and other assumptions or, for certain applicable investments, if KKR only used either the discounted cash flow methodology or the market comparables methodology instead of assigning a weighting to both methodologies.

There is inherent uncertainty involved in the valuation of Level III financial instruments and there is no assurance that, upon liquidation or sale, KKR will realize the values reflected in our valuations. Our valuations may differ significantly from the values that would have been used had an active market for the financial instruments existed, and it is reasonably possible that the difference could be material.



**Goodwill and Intangible Assets**

Goodwill represents the excess of acquisition cost over the fair value of net tangible and intangible assets acquired in connection with an acquisition. Goodwill is assessed for impairment annually in the third quarter of each fiscal year or more frequently if circumstances indicate impairment may have occurred. Goodwill is recorded in Other Assets in the accompanying consolidated statements of financial condition.

KKR has the option to either (i) perform a quantitative impairment test or (ii) first perform a qualitative assessment to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount, in which case the quantitative test would then be performed. When performing a quantitative impairment test, KKR compares the fair value of a reporting unit with its carrying amount, including goodwill. If the fair value of the reporting unit is less than its carrying amount, the goodwill impairment loss is equal to the excess of the carrying value over the fair value, limited to the carrying amount of goodwill allocated to that reporting unit. The estimated fair values of the reporting units are derived based on valuation techniques KKR believes market participants would use for each respective reporting unit. The estimated fair values are generally determined by utilizing a discounted cash flow methodology or methodologies that incorporate market multiples of certain comparable companies.

KKR tests goodwill for impairment at the reporting unit level, which is generally at the level of or one level below its reportable segments. Goodwill recorded as a result of the acquisition of Global Atlantic has been allocated to the Insurance Segment. See Note 20 "Segment Reporting".

Intangible assets, which primarily relate to intangible assets acquired in the GA Acquisition are recorded in Other Assets in the accompanying consolidated statements of financial condition and are amortized over their estimated useful lives and are reviewed for impairment on an interim basis when impairment indicators are present. Impairment losses are recorded within Insurance Expenses in the consolidated statements of operations. The finite lived intangible assets are amortized using the straight-line method over the useful life of the assets which is between 15 to 19 years. The indefinite lived intangible assets are not subject to amortization.

For additional details on the GA Acquisition and the acquisition accounting see Note 3 "Acquisition of Global Atlantic".

**Fixed Assets, Depreciation and Amortization**

Fixed assets consist primarily of corporate real estate, leasehold improvements, furniture and computer hardware. Such amounts are recorded at cost less accumulated depreciation and amortization and are included in Other Assets within the accompanying consolidated statements of financial condition. Depreciation and amortization are calculated using the straight-line method over the assets' estimated economic useful lives, which for leasehold improvements are the lesser of the lease term or the life of the asset, for KKR's owner occupied corporate real estate is up to forty years, and three to seven years for other fixed assets.

**Foreign Currency**

Consolidated entities that have a functional currency that differs from KKR's reporting currency are primarily KKR's investment management and capital markets companies located outside the United States and certain CFEs. Foreign currency denominated assets and liabilities are translated using the exchange rates prevailing at the end of each reporting period. Results of foreign operations are translated at the weighted average exchange rate for each reporting period. Translation adjustments are included as a component of accumulated other comprehensive income (loss) until realized. Foreign currency income or expenses resulting from transactions outside of the functional currency of a consolidated entity are recorded as incurred in general, administrative and other expense in the consolidated statements of operations.



**Leases**

At contract inception, KKR determines if an arrangement contains a lease by evaluating whether (i) the identified asset has been deployed in the contract explicitly or implicitly and (ii) KKR obtains substantially all of the economic benefits from the use of that underlying asset and directs how and for what purpose the asset is used during the term of the contract. Additionally, at contract inception KKR will evaluate whether the lease is an operating or finance lease. Right-of-use ("ROU") assets represent KKR's right to use an underlying asset for the lease term and lease liabilities represent KKR's obligation to make lease payments arising from the lease.

ROU assets and the associated lease liabilities are recognized at the commencement date based on the present value of the future minimum lease payments over the lease term. The discount rate implicit in the lease is generally not readily determinable. Consequently, KKR uses its incremental borrowing rate based on the information available including, but not limited to, collateral assumptions, the term of the lease, and the economic environment in which the lease is denominated at the commencement date in determining the present value of the future lease payments. The ROU assets are recognized as the initial measurement of the lease liabilities plus any initial direct costs and any prepaid lease payments less lease incentives received, if any. The lease terms may include options to extend or terminate the lease which are accounted for when it is reasonably certain that KKR will exercise that option. Certain leases that include lease and non-lease components are accounted for as one single lease component. In addition to contractual rent payments, occupancy lease agreements generally include additional payments for certain costs incurred by the landlord, such as building expenses and utilities. To the extent these are fixed or determinable, they are included as part of the lease payments used to measure the Operating Lease Liability.

Operating lease expense is recognized on a straight-line basis over the lease term and is recorded within Occupancy and Related Charges in the accompanying consolidated statements of operations. The ROU assets are included in Other Assets and the lease liabilities are included in Accrued Expenses and Other Liabilities in the accompanying consolidated statements of financial condition. See Note 14 "Other Assets and Accrued Expenses and Other Liabilities."

**Comprehensive Income (Loss)**

Comprehensive income is defined as the change in equity of a business enterprise during a period from transactions and other events and circumstances, excluding those resulting from contributions from and distributions to owners. In the accompanying consolidated financial statements, comprehensive income is comprised of (i) Net Income (Loss), as presented in the consolidated statements of operations, (ii) unrealized gains (losses) on available-for-sale securities and (iii) net foreign currency translation.

**Income Taxes**

KKR & Co. Inc. is a domestic corporation for U.S. federal income tax purposes and is subject to U.S. federal, state and local income taxes at the entity level on its share of taxable income. In addition, KKR Group Partnership and certain of its subsidiaries operate as partnerships for U.S. federal tax purposes but as taxable entities for certain state, local or non-U.S. tax purposes. Moreover, certain corporate subsidiaries of KKR, including certain Global Atlantic subsidiaries, are domestic corporations for U.S. federal income tax purposes and are subject to U.S. federal, state, and local income taxes.

*Deferred Income Taxes*

Income taxes are accounted for using the asset and liability method of accounting. Under this method, deferred tax assets and liabilities are recognized for the expected future tax consequences of differences between the carrying amounts of assets and liabilities and their respective tax basis, using tax rates in effect for the year in which the differences are expected to reverse. The effect on deferred assets and liabilities of a change in tax rates is recognized in the consolidated statements of operations in the period when the change is enacted.

Deferred tax assets, which are recorded in Other Assets within the statement of financial condition, are reduced by a valuation allowance when, based on the weight of available evidence, it is more likely than not that some portion or all of the deferred tax assets will not be realized. When evaluating the realizability of the deferred tax assets, all evidence, both positive and negative, is considered. Items considered when evaluating the need for a valuation allowance include the ability to carry back losses, future reversals of existing temporary differences, tax planning strategies, and expectations of future earnings.

For a particular tax-paying component of an entity and within a particular tax jurisdiction, deferred tax assets and liabilities are offset and presented as a single amount within Other Assets or Accrued and Other Liabilities, as applicable, in the accompanying statements of financial condition.

*Uncertain Tax Positions*

KKR analyzes its tax filing positions in all of the U.S. federal, state and local tax jurisdictions and foreign tax jurisdictions where it is required to file income tax returns, as well as for all open tax years in these jurisdictions. If, based on this analysis, KKR determines that uncertainties in tax positions exist, a reserve is established. The reserve for uncertain tax positions is recorded in Accrued and Other Liabilities in the accompanying statements of financial condition. KKR recognizes accrued interest and penalties related to uncertain tax positions within the provision for income taxes in the consolidated statements of operations.

KKR records uncertain tax positions on the basis of a two-step process: (a) determination is made whether it is more likely than not that the tax positions will be sustained based on the technical merits of the position and (b) those tax positions that meet the more-likely-than-not threshold are recognized as the largest amount of tax benefit that is greater than 50 percent likely to be realized upon ultimate settlement with the related tax authority.

**SIGNIFICANT ACCOUNTING POLICIES - ASSET MANAGEMENT**

The significant accounting policies applicable to KKR's asset management business are described below.

**Investments**

Investments consist primarily of private equity, credit, investments of consolidated CFEs, real assets, equity method and other investments. Investments denominated in currencies other than the entity's functional currency are valued based on the spot rate of the respective currency at the end of the reporting period with changes related to exchange rate movements reflected in the consolidated statements of operations. Security and loan transactions are recorded on a trade date basis. Further disclosure on investments is presented in Note 7 "Investments."

The following describes the types of securities held within each investment class.

*Private Equity* - Consists primarily of equity investments in operating businesses, including growth equity investments.

*Credit* - Consists primarily of investments in below investment grade corporate debt securities (primarily high yield bonds and syndicated bank loans), originated, distressed and opportunistic credit, real estate mortgage loans, and interests in unconsolidated CLOs.

*Investments of Consolidated CFEs* - Consists primarily of investments in below investment grade corporate debt securities (primarily high yield bonds and syndicated bank loans) held directly by the consolidated CLOs.

*Real Assets* - Consists primarily of investments in (i) energy related assets, principally oil and natural gas properties, (ii) infrastructure assets, and (iii) real estate, principally residential and commercial real estate assets and businesses.

*Equity Method - Other* - Consists primarily of (i) certain direct interests in operating companies in which KKR is deemed to exert significant influence under GAAP and (ii) certain interests in partnerships and joint ventures that hold private equity and real assets investments.

*Equity Method - Capital Allocation-Based Income* - Consists primarily of (i) the capital interest KKR holds as the general partner in certain investment funds, which are not consolidated and (ii) the carried interest component of the general partner interest, which are accounted for as a single unit of account.

*Other* - Consists primarily of investments in common stock, preferred stock, warrants and options of companies that are not private equity, real assets, credit or investments of consolidated CFEs.

**Investments held by Consolidated Investment Funds**

The consolidated investment funds are, for GAAP purposes, investment companies and reflect their investments and other financial instruments, including portfolio companies that are majority-owned and controlled by KKR's investment funds, at fair value. KKR has retained this specialized accounting for the consolidated investment funds in consolidation. Accordingly, the unrealized gains and losses resulting from changes in fair value of the investments and other financial instruments held by the consolidated investment funds are reflected as a component of Net Gains (Losses) from Investment Activities in the consolidated statements of operations.

Certain energy investments are made through consolidated investment funds, including investments in working and royalty interests in oil and natural gas properties as well as investments in operating companies that operate in the energy industry. Since these investments are held through consolidated investment funds, such investments are reflected at fair value as of the end of the reporting period.

Investments in operating companies that are held through KKR's consolidated investment funds are generally classified within private equity investments and investments in working and royalty interests in oil and natural gas properties are generally classified as real asset investments.

***Energy Investments held by KKR***

On August 18, 2020, KKR transferred all the working and royalty interests in oil and natural gas properties, which were directly held by KKR and not held through investment funds, into a consolidated investment fund. Before the transfer, oil and natural gas activities were accounted for under the successful efforts method of accounting and such working and royalty interests were consolidated based on the proportion of the working and royalty interests held by KKR. Subsequent to the transfer, such working and royalty interests are carried at fair value in accordance with ASC 946, Financial Services - Investment Companies, and recorded within investments in the consolidated statements of financial condition. Any changes in fair value are recorded within Net Gains (Losses) from Investment Activities in the consolidated statements of operations. No gain or loss has been recorded in the consolidated statement of operations as result of the transfer. KKR recognized the differential between the net carrying value of such working and royalty interests and the fair value at the time of the transfer within stockholders' equity. This transaction resulted in an adjustment to KKR Group Partnership's equity, and accordingly, both KKR's equity and noncontrolling interests held by KKR Holdings were adjusted for their proportionate share based on their ownership in KKR Group Partnership at the time of transfer. See the consolidated statements of changes in equity and Note 21 "Equity". The fair value has been determined in accordance with KKR's Level III Valuation Methodologies.

***Fair Value Option***

For certain investments and other financial instruments, KKR has elected the fair value option. Such election is irrevocable and is applied on a financial instrument by financial instrument basis at initial recognition. KKR has elected the fair value option for certain private equity, real assets, credit, investments of consolidated CFEs, equity method - other and other financial instruments not held through a consolidated investment fund. Accounting for these investments at fair value is consistent with how KKR accounts for its investments held through consolidated investment funds. Changes in the fair value of such instruments are recognized in Net Gains (Losses) from Investment Activities in the consolidated statements of operations. Interest income on interest bearing credit securities on which the fair value option has been elected is based on stated coupon rates adjusted for the accretion of purchase discounts and the amortization of purchase premiums. This interest income is recorded within Interest Income in the consolidated statements of operations.

***Equity Method***

For certain investments in entities over which KKR exercises significant influence but which do not meet the requirements for consolidation and for which KKR has not elected the fair value option, KKR uses the equity method of accounting. The carrying value of equity method investments, for which KKR has not elected the fair value option, is determined based on the amounts invested by KKR, adjusted for the equity in earnings or losses of the investee allocated based on KKR's respective ownership percentage, less distributions.

For equity method investments for which KKR has not elected the fair value option, KKR records its proportionate share of the investee's earnings or losses based on the most recently available financial information of the investee, which in certain cases may lag the date of KKR's financial statements by no more than three calendar months. As of March 31, 2021, equity method investees for which KKR reports financial results on a lag include Marshall Wace LLP ("Marshall Wace").

KKR evaluates its equity method investments for which KKR has not elected the fair value option for impairment whenever events or changes in circumstances indicate that the carrying amounts of such investments may not be recoverable.

The carrying value of investments classified as Equity Method - Capital Allocation-Based Income approximates fair value, because the underlying investments of the unconsolidated investment funds are reported at fair value.

***Financial Instruments held by Consolidated CFEs***

KKR measures both the financial assets and financial liabilities of the consolidated CFEs in its financial statements using the more observable of the fair value of the financial assets and the fair value of the financial liabilities which results in KKR's consolidated net income (loss) reflecting KKR's own economic interests in the consolidated CFEs including (i) changes in the fair value of the beneficial interests retained by KKR and (ii) beneficial interests that represent compensation for services rendered.

For the consolidated CLOs, KKR has determined that the fair value of the financial assets of the consolidated CLOs is more observable than the fair value of the financial liabilities of the consolidated CLOs. As a result, the financial assets of the consolidated CLOs are being measured at fair value and the financial liabilities are being measured in consolidation as: (1) the sum of the fair value of the financial assets and the carrying value of any nonfinancial assets that are incidental to the operations of the CLOs less (2) the sum of the fair value of any beneficial interests retained by KKR (other than those that represent compensation for services) and KKR's carrying value of any beneficial interests that represent compensation for services. The resulting amount is allocated to the individual financial liabilities (other than the beneficial interests retained by KKR).

**Due from and Due to Affiliates**

KKR considers its principals and their related entities, unconsolidated investment funds and the portfolio companies of its funds to be affiliates for accounting purposes. Receivables from and payables to affiliates are recorded at their current settlement amount.

**Freestanding Derivatives**

Freestanding derivatives are instruments that KKR and certain of its consolidated funds have entered into as part of their overall risk management and investment strategies. These derivative contracts are not designated as hedging instruments for accounting purposes. Such contracts may include forward, swap and option contracts related to foreign currencies and interest rates to manage foreign exchange risk and interest rate risk arising from certain assets and liabilities. All derivatives are recognized in Other Assets or Accrued Expenses and Other Liabilities and are presented on a gross basis in the consolidated statements of financial condition and measured at fair value with changes in fair value recorded in Net Gains (Losses) from Investment Activities in the accompanying consolidated statements of operations. KKR's derivative financial instruments contain credit risk to the extent that its counterparties may be unable to meet the terms of the agreements. KKR attempts to reduce this risk by limiting its counterparties to major financial institutions with strong credit ratings.

**Securities Sold Short**

Whether part of a hedging transaction or a transaction in its own right, securities sold short represent obligations of KKR to deliver the specified security at the contracted price at a future point in time, and thereby create a liability to repurchase the security in the market at the prevailing prices. The liability for such securities sold short, which is recorded in Accrued Expenses and Other Liabilities in the statement of financial condition, is marked to market based on the current fair value of the underlying security at the reporting date with changes in fair value recorded as unrealized gains or losses in Net Gains (Losses) from Investment Activities in the accompanying consolidated statements of operations. These transactions may involve market risk in excess of the amount currently reflected in the accompanying consolidated statements of financial condition.

**Revenues**

For the three months ended March 31, 2021 and 2020, respectively, revenues consisted of the following:

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
Management Fees	\$ 276,181	\$ 222,689
Fee Credits	(35,398)	(35,387)
Transaction Fees	165,893	98,996
Monitoring Fees	35,388	31,149
Incentive Fees	3,438	668
Expense Reimbursements	27,729	28,224
Oil and Gas Revenue	—	13,315
Consulting Fees	20,080	20,918
<b>Total Fees and Other</b>	<b>493,311</b>	<b>380,572</b>
Carried Interest	2,140,426	(1,210,925)
General Partner Capital Interest	544,221	(171,152)
<b>Total Capital Allocation-Based Income (Loss)</b>	<b>2,684,647</b>	<b>(1,382,077)</b>
<b>Total Revenues - Asset Management</b>	<b>\$ 3,177,958</b>	<b>\$ (1,001,505)</b>

**Fees and Other**

Fees and Other, as detailed above, are accounted for as contracts with customers. Under ASC 606, Revenue from Contracts with Customers ("ASC 606"), KKR is required to (a) identify the contract(s) with a customer, (b) identify the performance obligations in the contract, (c) determine the transaction price, (d) allocate the transaction price to the performance obligations in the contract, and (e) recognize revenue when (or as) KKR satisfies its performance obligation. In determining the transaction price, KKR has included variable consideration only to the extent that it is probable that a significant reversal in the amount of cumulative revenue recognized would not occur when the uncertainty associated with the variable consideration is resolved.

**Notes to Financial Statements (Continued)**

The following table summarizes KKR's revenues from contracts with customers:

Revenue Type	Customer	Performance Obligation	Performance Obligation Satisfied Over Time or Point In Time <sup>(1)</sup>	Variable or Fixed Consideration	Payment Terms	Subject to Return Once Recognized	Classification of Uncollected Amounts <sup>(2)</sup>
Management Fees	Investment funds, CLOs and other vehicles	Investment management services	Over time as services are rendered	Variable consideration since varies based on fluctuations in the basis of the management fee over time	Typically quarterly or annually in arrears	No	Due from Affiliates
Transaction Fees	Portfolio companies and third party companies	Advisory services and debt and equity arranging and underwriting	Point in time when the transaction (e.g. underwriting) is completed	Fixed consideration	Typically paid on or shortly after transaction closes	No	Due from Affiliates (portfolio companies) Other Assets (third parties)
Monitoring Fees							
<i>Recurring Fees</i>	<i>Portfolio companies</i>	<i>Monitoring services</i>	<i>Over time as services are rendered</i>	<i>Variable consideration since varies based on fluctuations in the basis of the recurring fee</i>	<i>Typically quarterly in arrears</i>	<i>No</i>	<i>Due from Affiliates</i>
<i>Termination Fees</i>	<i>Portfolio companies</i>	<i>Monitoring services</i>	<i>Point in time when the termination is completed</i>	<i>Fixed consideration</i>	<i>Typically paid on or shortly after termination occurs</i>	<i>No</i>	<i>Due from Affiliates</i>
Incentive Fees	Investment funds and other vehicles	Investment management services that result in achievement of minimum investment return levels	Over time as services are rendered	Variable consideration since contingent upon the investment fund and other vehicles achieving more than stipulated investment return hurdles	Typically paid shortly after the end of the performance measurement period	No	Due from Affiliates
Expense Reimbursements	Investment funds and portfolio companies	Investment management and monitoring services	Point in time when the related expense is incurred	Fixed consideration	Typically shortly after expense is incurred	No	Due from Affiliates
Oil and Gas Revenues	Oil and gas wholesalers	Delivery of oil liquids and gas	Point in time when delivery has occurred and title has transferred	Fixed consideration	Typically shortly after delivery	No	Other Assets
Consulting Fees	Portfolio companies and other companies	Consulting and other services	Over time as services are rendered	Fixed consideration	Typically quarterly in arrears	No	Due from Affiliates

(1) For performance obligations satisfied at a point in time, there were no significant judgments made in evaluating when a customer obtains control of the promised service.

(2) For amounts classified in Other Assets, see Note 14 "Other Assets and Accrued Expenses and Other Liabilities." For amounts classified in Due from Affiliates, see Note 19 "Related Party Transactions."

**Management Fees**

KKR provides investment management services to investment funds, CLOs, and other vehicles and entities in exchange for a management fee. Management fees are determined quarterly based on an annual rate and are generally based upon a percentage of the capital committed or capital invested during the investment period. Thereafter, management fees are generally based on a percentage of remaining invested capital, net asset value, gross assets or as otherwise defined in the respective contractual agreements. Since some of the factors that cause the fees to fluctuate are outside of KKR's control, management fees are considered to be constrained and are therefore not included in the transaction price. Additionally, after the contract is established there are no significant judgments made when determining the transaction price.

Management fees earned from KKR's consolidated investment funds and other vehicles and entities are eliminated in consolidation. However, because these amounts are funded by, and earned from, noncontrolling interests, KKR's allocated share of the net income from the consolidated investment funds and other vehicles is increased by the amount of fees that are

eliminated. Accordingly, the elimination of these fees does not impact the net income (loss) attributable to KKR or KKR stockholders' equity.

***Fee Credits***

Under the terms of the management agreements with certain of its investment funds, KKR is required to share with such funds an agreed upon percentage of certain fees, including monitoring and transaction fees earned from portfolio companies ("Fee Credits"). Investment funds earn Fee Credits only with respect to monitoring and transaction fees that are allocable to the fund's investment in the portfolio company and not, for example, any fees allocable to capital invested through co-investment vehicles. Fee Credits are calculated after deducting certain costs incurred in connection with pursuing potential investments that do not result in completed transactions ("broken-deal expenses") and generally amount to 80% for older funds formed on or prior to January 1, 2015, or 100% for newer funds, of allocable monitoring and transaction fees after broken-deal expenses are recovered, although the actual percentage may vary from fund to fund. Fee Credits are recognized and owed to investment funds concurrently with the recognition of monitoring fees, transaction fees and broken-deal expenses. Since Fee Credits are payable to investment funds, amounts owed are generally applied as a reduction of the management fee that is otherwise billed to the investment fund. Fee credits are recorded as a reduction of revenues in the consolidated statement of operations. Fee Credits owed to investment funds are recorded in Due to Affiliates on the consolidated statements of financial condition. See Note 19 "Related Party Transactions."

***Transaction Fees***

KKR (i) arranges debt and equity financing, places and underwrites securities offerings, and provides other types of capital markets services for companies seeking financing in its Capital Markets business line and (ii) provides advisory services in connection with successful Private Markets and Public Markets business line portfolio company investment transactions, in each case, in exchange for a transaction fee. Transaction fees are separately negotiated for each transaction and are generally based on (i) for Capital Markets business line transactions, a percentage of the overall transaction size and (ii) for Private Markets and Public Markets business line transactions, a percentage of either total enterprise value of an investment or a percentage of the aggregate price paid for an investment. After the contract is established, there are no significant judgments made when determining the transaction price.

***Monitoring Fees***

KKR provides services in connection with monitoring portfolio companies in exchange for a fee. Recurring monitoring fees are separately negotiated for each portfolio company. In addition, certain monitoring fee arrangements may provide for a termination payment following an initial public offering or change of control as defined in the contractual terms of the related agreement. These termination payments are recognized in the period when the related transaction closes. After the contract is established, there are no significant judgments made when determining the transaction price.

***Incentive Fees***

KKR provides investment management services to certain investment funds, CLOs and other vehicles in exchange for a management fee as discussed above and, in some cases an incentive fee when KKR is not entitled to a carried interest. Incentive fee rates generally range from 5% to 20% of investment gains. Incentive fees are considered a form of variable consideration as these fees are subject to reversal, and therefore the recognition of such fees is deferred until the end of each fund's measurement period when the performance-based incentive fees become fixed and determinable. Incentive fees are generally paid within 90 days of the end of the investment vehicles' measurement period. After the contract is established, there are no significant judgments made when determining the transaction price.

Incentive fees earned from KKR's consolidated investment funds, CLOs, and other vehicles are eliminated in consolidation. However, because these amounts are funded by, and earned from, noncontrolling interests, KKR's allocated share of the net income from the consolidated investment funds, CLOs, and other vehicles is increased by the amount of fees that are eliminated. Accordingly, the elimination of these fees does not impact the net income (loss) attributable to KKR or KKR stockholders' equity.

***Expense Reimbursements***

Providing investment management services to investment funds and monitoring KKR's portfolio companies require KKR to arrange for services on behalf of them. In those situations where KKR is acting as an agent on behalf of its investment funds or portfolio companies, it presents the cost of services on a net basis as a reduction of Revenues. In all other situations, KKR is primarily responsible for fulfilling the services and is therefore acting as a principal for those arrangements for accounting

purposes. As a result, the expense and related reimbursement associated with those services is presented on a gross basis. Costs incurred are classified within Expenses and reimbursements of such costs are classified as Expense Reimbursements within Revenues on the consolidated statements of operations. After the contract is established, there are no significant judgments made when determining the transaction price.

***Oil and Gas Revenue***

On August 18, 2020, KKR transferred all the working and royalty interests in oil and natural gas properties, which were directly held by KKR and not held through investment funds, into a consolidated investment fund. Before the transfer, oil and gas revenue was recognized when the performance obligations were satisfied, which occurred at the point in time when control of the product transferred to the customer. Performance obligations were typically satisfied through the monthly delivery of production. Revenue was recognized based on KKR's proportionate share of production from non-operated properties as marketed by the operator. After the contract was established, there were no significant judgments made when determining the transaction price. As result of the transfer of all the working and royalty interests into a consolidated investment fund, no oil and gas revenue has been recognized since the date of the transfer.

***Consulting Fees***

KKR provides consulting and other services to portfolio companies and other companies in exchange for a consulting fee. Consulting fees are separately negotiated with each company for which services are provided. After the contract is established, there are no significant judgments made when determining the transaction price.

**Capital Allocation-Based Income (Loss)**

Capital allocation-based income (loss) is earned from those arrangements where KKR has a general partner capital interest and is entitled to a disproportionate allocation of investment income (referred to hereafter as "carried interest"). KKR accounts for its general partner interests in capital allocation-based arrangements as financial instruments under ASC 323, Investments - Equity Method and Joint Ventures ("ASC 323") since the general partner has significant governance rights in the investment funds in which it invests, which demonstrates significant influence. In accordance with ASC 323, KKR records equity method income based on the proportionate share of the income of the investment fund, including carried interest, assuming the investment fund was liquidated as of each reporting date pursuant to each investment fund's governing agreements. Accordingly, these general partner interests are accounted for outside of the scope of ASC 606. Other arrangements surrounding contractual incentive fees through an advisory contract are separate and distinct and accounted for in accordance with ASC 606. In these incentive fee arrangements, accounted for in accordance with ASC 606, KKR's economics in the entity do not involve an allocation of capital. See "Incentive Fees" above.

Carried interest is allocated to the general partner based on cumulative fund performance to date, and where applicable, subject to a preferred return to the funds' limited partners. At the end of each reporting period, KKR calculates the carried interest that would be due to KKR for each investment fund, pursuant to the fund agreements, as if the fair value of the underlying investments were realized as of such date, irrespective of whether such amounts have been realized. As the fair value of underlying investments varies between reporting periods, it is necessary to make adjustments to amounts recorded as carried interest to reflect either (a) positive performance resulting in an increase in the carried interest allocated to the general partner or (b) negative performance that would cause the amount due to KKR to be less than the amount previously recognized, resulting in a negative adjustment to carried interest allocated to the general partner. In each case, it is necessary to calculate the carried interest on cumulative results compared to the carried interest recorded to date and to make the required positive or negative adjustments. KKR ceases to record negative carried interest allocations once previously recognized carried interest allocations for an investment fund have been fully reversed. KKR is not obligated to make payments for guaranteed returns or hurdles and, therefore, cannot have negative carried interest over the life of an investment fund. Accrued but unpaid carried interest as of the reporting date is reflected in Investments in the consolidated statements of financial condition.

**Compensation and Benefits**

Compensation and Benefits expense includes (i) base cash compensation consisting of salaries and wages, (ii) benefits, (iii) carry pool allocations, (iv) equity-based compensation, and (v) discretionary cash bonuses.

To supplement base cash compensation, benefits, carry pool allocations, and equity-based compensation, KKR typically pays discretionary cash bonuses, which are included in Compensation and Benefits expense in the consolidated statements of operations, based principally on the level of (i) management fees and other fee revenues (including incentive fees), (ii) realized carried interest and (iii) realized investment income earned during the year. The amounts paid as discretionary cash bonuses, if



any, are at KKR's sole discretion and vary by individual to individual and from period to period, including having no cash bonus. KKR accrues discretionary cash bonuses when payment becomes probable and reasonably estimable which is generally in the period when KKR makes the decision to pay discretionary cash bonuses and is based upon a number of factors including the recognition of fee revenues, realized carried interest, realized investment income and other factors determined during the year.

KKR decides whether to pay a discretionary cash bonus and determines the percentage of applicable revenue components to pay compensation only upon the occurrence of the realization event. There is no contractual or other binding obligation that requires KKR to pay a discretionary cash bonus to its employees, except in limited circumstances.

While most cash bonuses paid to most employees are borne by KKR and result in customary compensation and benefits expense, certain cash bonuses that are paid to certain of KKR's principals can be borne by KKR Holdings. These bonuses can be funded with distributions that KKR Holdings receives on KKR Group Partnership Units held by KKR Holdings but are not then passed on to holders of unvested units of KKR Holdings. Because KKR principals are not entitled to receive distributions on units that are unvested, any amounts allocated to principals in excess of a principal's vested equity interests are reflected as employee compensation and benefits expense. These compensation charges, if any, are currently recorded based on the amount of cash expected to be paid by KKR Holdings.

#### *Carry Pool Allocation*

With respect to KKR's funds that provide for carried interest, KKR allocates a portion of the realized and unrealized carried interest that it earns to a carry pool established at KKR Associates Holdings L.P. (which is not a subsidiary of KKR), from which its employees and certain other carry pool participants are eligible to receive a carried interest allocation. The allocation is determined based upon a fixed arrangement between KKR Associates Holdings L.P. and KKR, and KKR does not exercise discretion on whether to make an allocation to the carry pool upon a realization event. These amounts are accounted for as compensatory profit sharing arrangements in Accrued Expenses and Other Liabilities within the accompanying consolidated statements of financial condition in conjunction with the related carried interest income and are recorded as compensation expense. Upon a reversal of carried interest income, the related carry pool allocation, if any, is also reversed. Accordingly, such compensation expense is subject to both positive and negative adjustments.

In February 2021, following the approval of a majority of KKR & Co. Inc.'s independent directors, KKR amended the percentage of carried interest that is allocable to the carry pool to 65% for (i) current investment funds for which no or de minimis amounts of carried interest was accrued as of December 31, 2020 and (ii) all future funds. For all other funds, the percentage of carried interest remains 40% or 43%, as applicable. The percentage of carried interest allocable to the carry pool may be increased above 65% only with the approval of a majority of KKR & Co. Inc.'s independent directors.

#### *Equity-based Compensation*

In addition to the cash-based compensation and carry pool allocations as described above, employees receive equity awards under the Amended and Restated KKR & Co. Inc. 2010 Equity Incentive Plan (the "2010 Equity Incentive Plan") and the Amended and Restated KKR & Co. Inc. 2019 Equity Incentive Plan (the "2019 Equity Incentive Plan" and, together with the 2010 Equity Incentive Plan, the "Equity Incentive Plans"). Most of these awards are subject to service-based vesting typically over a three to five-year period from the date of grant, while in certain cases vesting is subject to the achievement of market conditions. Certain of these awards are subject to transfer restrictions and minimum retained ownership requirements.

#### *Profit Sharing Plan*

KKR provides certain profit sharing programs for KKR employees. In particular, KKR provides a 401(k) plan for eligible employees in the United States. For certain employees who are participants in the 401(k) plan, KKR may, in its discretion, contribute an amount after the end of the plan year.

#### **General, Administrative and Other**

General, administrative and other expense consists primarily of professional fees paid to legal advisors, accountants, advisors and consultants, insurance costs, travel and related expenses, communications and information services, depreciation and amortization charges, expenses (including impairment charges) incurred by oil and gas entities that are consolidated, broken-deal expenses, placement fees and other general operating expenses. A portion of these general administrative and other expenses, in particular broken-deal expenses, are borne by fund investors.

**Investment Income**

Investment income consists primarily of the net impact of:

- (i) Realized and unrealized gains and losses on investments, securities sold short, derivatives and debt obligations of consolidated CFEs which are recorded in Net Gains (Losses) from Investment Activities. Upon disposition of an investment, previously recognized unrealized gains or losses are reversed and a realized gain or loss is recognized.
- (ii) Foreign exchange gains and losses relating to mark-to-market activity on foreign exchange forward contracts, foreign currency options and foreign denominated debt which are recorded in Net Gains (Losses) from Investment Activities.
- (iii) Dividends, which are recognized on the ex-dividend date, or, in the absence of a formal declaration of a record date, on the date it is received.
- (iv) Interest income, which is recognized as earned.
- (v) Interest expense, which is recognized as incurred.

**SIGNIFICANT ACCOUNTING POLICIES - INSURANCE**

The significant accounting policies applicable to KKR's insurance business, which is conducted by Global Atlantic, are described below.

**Investments**

In the normal course of business, Global Atlantic enters into transactions involving various types of investments.

Investments include the following: U.S. government and agency obligations; commercial mortgage-backed securities ("CMBS"), residential mortgage-backed securities ("RMBS"), CLOs, collateralized bond obligations ("CBOs") and all other structured securities (consisting primarily of asset-backed securities ("ABS") (collectively, "structured securities"); corporate bonds; state and political subdivision obligations; foreign government obligations; equity securities; mortgage and other loan receivables; policy loans; and other non-derivative investments. Investments are recorded on a trade-date basis.

**Available-for-sale fixed maturity securities**

Global Atlantic primarily accounts for its fixed maturity securities (including bonds, structured securities and redeemable preferred stock) as available-for-sale ("AFS"). AFS fixed maturity securities are carried at fair value. Impairment associated with AFS fixed maturity securities is recognized as an allowance for credit losses. The allowance for credit losses is established either by a charge to net investment losses in the consolidated statements of operations, for securities identified as credit impaired after purchase, or by a gross-up recognition of an initial allowance for purchased credit deteriorated ("PCD") securities.

PCD securities are those purchased by Global Atlantic that were assessed at acquisition as having experienced a more-than-insignificant deterioration in credit quality since their origination. Global Atlantic considers an AFS fixed maturity security to be PCD if there are indicators of a credit loss at the acquisition date or, in the case of structured securities, if there is a significant difference between contractual cash flows and expected cash flows at acquisition. PCD securities also include those AFS fixed maturity securities previously held by Global Atlantic that were similarly assessed at the time of the KKR acquisition. The initial amortized cost for a PCD security equals the purchase price plus the initial allowance for credit losses. The initial allowance for credit losses is determined using a discounted cash flow method based on the best estimate of the present value of cash flows expected to be collected. After purchase, the accounting for a PCD security is consistent with that applied to all other securities.

Unrealized gains and losses on AFS fixed maturity securities, net of tax and insurance intangible amortization, are reported in accumulated other comprehensive income in the consolidated statements of financial condition. Realized investment gains and losses are recognized on a first-in first-out basis and are reported in net investment losses in the consolidated statements of operations. The amortized cost of fixed maturity securities is adjusted for impairment charge-offs, amortization of premiums and accretion of discounts. Such amortization and accretion is calculated using the effective yield method and included in net investment income in the consolidated statements of operations.

**Notes to Financial Statements (Continued)**

For structured securities, Global Atlantic recognizes interest income using a constant effective yield based on estimated cash flows generated from internal models utilizing interest rate, default and prepayment assumptions. Effective yields for structured securities that are not of high credit quality are recalculated and adjusted prospectively based on changes in expected undiscounted future cash flows, after consideration of any appropriate recognition or release of an allowance for credit losses. For structured securities that are of high credit quality, effective yields are recalculated based on payments received and updated prepayment expectations, and amortized cost is adjusted to the amount that would have existed had the new effective yield been applied since acquisition with a corresponding charge or credit to net investment income. Prepayment fees are recorded when earned in net investment income in the consolidated statements of operations.

Global Atlantic generally suspends accrual of interest for securities that are more than 90 days past due and reverses any related accrued interest to net investment income in the Consolidated statements of operations. When a security is in non-accrual status, coupon payments are recognized as interest income as cash is received, subject to consideration as to the overall collectibility of the security. A security is returned to accrual status when Global Atlantic determines that the collection of amounts due is probable. The allowance for credit losses excludes accrued interest from the amortized cost basis for which losses are estimated.

**Trading fixed maturity securities**

Global Atlantic accounts for certain fixed maturity securities as trading at acquisition, based on intent or via the election of the fair value option. Trading securities are carried at fair value, with realized and unrealized gains and losses reported in net investment gains (losses) in the consolidated statements of operations. Interest income from these securities is reported in net investment income. These trading securities, for which investment results accrue to the benefit of either contractholders or reinsurance counterparties, are primarily used to match asset and liability accounting.

**Equity securities**

Global Atlantic accounts for its investments in equity securities (including common stock and non-redeemable preferred stock) that do not require equity method accounting or result in consolidation, at fair value. Realized and unrealized investment gains and losses are reported in net investment gains (losses) in the consolidated statements of operations.

**Mortgage and other loan receivables**

Global Atlantic purchases and originates mortgage and other loan receivables, and these loans are carried at cost, less the allowance for credit losses and as adjusted for amortization/accretion of premiums/discounts. The allowance for credit losses is established either by a charge to net investment losses in the consolidated statements of operations or, for PCD mortgage and other loan receivables, by a gross-up recognition of the initial allowance in the consolidated statements of financial condition.

PCD mortgage and other loan receivables are those purchased by Global Atlantic that were assessed at acquisition as having experienced a more-than-insignificant deterioration in credit quality since their origination. PCD mortgage and other loan receivables also include those mortgage and other loan receivables previously held by Global Atlantic that were similarly assessed at the time of the KKR acquisition. The initial amortized cost for a PCD mortgage or other loan receivable equals the purchase price plus the initial allowance for credit losses. The initial allowance for credit losses is determined using a method consistent with that used for other similar loans. See further discussion of allowance methods below. After purchase, the accounting for a PCD mortgage or other loan receivable is consistent with that applied to all other mortgage and other loan receivables. As part of the acquisition of Global Atlantic, Global Atlantic identified \$3.7 billion of PCD mortgage and other loan receivables with a related allowance of \$120.3 million. The allowance on the Non-PCD mortgage and other loan receivables, instead, had to be recognized outside the purchase accounting analysis and had an impact on the consolidated statement of operations of \$183.6 million.

Loan premiums or discounts are amortized or accreted using the effective yield method. Interest income is accrued on the principal balance of each loan based on its contractual interest rate. The accrual of interest is generally suspended when the collection of interest is no longer probable or the collection of any portion of principal is doubtful. Global Atlantic generally suspends accrual of interest for loans that are more than 90 days past due and reverses any related accrued interest to net investment income in the consolidated statements of operations. When a loan is in non-accrual status, coupon payments are generally recognized as interest income as cash is received, subject to consideration as to the overall collectibility of the loan. A loan is returned to accrual status when Global Atlantic determines that the collection of amounts due is probable. The allowance for credit losses excludes accrued interest from the amortized cost basis for which losses are estimated.

**Policy loans**

Policy loans are loans policyholders take out against their life insurance policies. Each policy loan is fully collateralized by the cash surrender value of the policyholder's life insurance policy. Policy loans are carried at unpaid principal balances. Interest income on such loans is recognized as earned using the contractually agreed upon interest rate and reflected in net investment income in the consolidated statements of operations. Generally, interest is capitalized on the associated policy's anniversary date.

**Other investments**

Other investments in the consolidated statements of financial condition include Global Atlantic's investments in investment partnerships, for which Global Atlantic does not have voting control or power to direct activities. These investments are accounted for using the equity method of accounting unless Global Atlantic's interest is so minor that it has virtually no influence over partnership operating or financial policies. The equity method of accounting requires that the investments be initially recorded at cost and the carrying amount of the investment subsequently be adjusted to recognize Global Atlantic's share of the earnings and losses of the investee. Where there is a difference between the cost of the investment and Global Atlantic's proportionate share of the equity method investee's net assets, this basis difference is accreted to net investment income over the life of the underlying assets. In applying the equity method, Global Atlantic uses financial information provided by the investee, generally on a one to three month lag due to the timing of the receipt of related financial statements.

The income from Global Atlantic's equity method investments is included in net investment income in the consolidated statements of operations. In limited circumstances, Global Atlantic elects to apply the fair value option to investment partnerships, which are carried at fair value with unrealized gains and losses reported in net investment gains (losses) in the consolidated statements of operations. The contributions to and distributions from investment partnerships are classified as investing activities within the consolidated statements of cash flows.

Global Atlantic consolidates investment partnerships and other entities when it is deemed to control or is considered the primary beneficiary of a VIE. The results of certain consolidated investment entities are reported on a one to three month lag and intervening events are evaluated for materiality and recognition by disclosure or otherwise, as appropriate.

Included in other investments are Global Atlantic's investments in renewable energy entities, including partnerships and limited liability companies. Respective investments are consolidated when Global Atlantic has control, or are accounted for using the equity method of accounting when Global Atlantic has the ability to exercise significant influence but not control. These investments involve tiered capital structures that facilitate a waterfall of returns and allocations to ensure the efficient use of tax credits. A conventional income statement oriented approach to the equity method of accounting, or to the recognition of non-controlling interests (when Global Atlantic is consolidating the investment), based on ownership percentages does not accurately reflect the proper allocation of income and cash flows for these investments. Instead, Global Atlantic uses the hypothetical liquidation at book value method ("HLBV") which is a balance sheet oriented approach to the equity method of accounting and to the recognition of non-controlling interests that allocates income and cash flows based on changes to each investor's claim to net assets assuming a liquidation of the investee as of each reporting date, including an assessment of the likelihood of liquidation in determining the contractual provisions to utilize when applying the HLBV method.

Investments in real assets included in other investments in the consolidated statements of financial condition relate to Global Atlantic's consolidated investments in renewable energy entities and investments in transportation assets. The income, as well as the depreciation and other expenses associated with these tangible assets is reported in net investment income in the consolidated statements of operations.

Income on consolidated investments in renewable energy entities is earned from the sale of the energy generated under long-term contracts. Income on investments in transportation assets is earned from the lease of these assets. Tangible assets associated with renewable energy entities primarily comprise solar energy systems, which are depreciated on a straight-line basis over their estimated useful lives of generally 35 years. Transportation assets are primarily aircraft and railcars, which are depreciated to their estimated salvage value on a straight-line basis over their remaining useful lives. These useful lives generally range up to 25 years for aircraft and 45 years for railcars, as determined from the date of manufacture.

Global Atlantic has investments in real estate, some of which are accounted for at cost less depreciation. The useful lives for these real estate investments generally range up to 30 years. Other investments in real estate held in consolidated investment companies that account for such real estate at fair value under investment company accounting. Net rental income on the investments in real estate is recognized in net investment income and changes in the fair value of real estate held in consolidated investment companies are recognized in net investment gains (losses) in the consolidated statements of operations.

Investments in Federal Home Loan Bank ("FHLB") common stock are also included in other investments in the consolidated statements of financial condition and are accounted at cost.

**Derivative instruments**

Derivatives are instruments that derive their values from underlying asset prices, indices, foreign exchange rates, reference rates and other inputs or a combination of these factors. Derivatives may be privately negotiated contracts, which are usually referred to as over-the-counter ("OTC") derivatives, or they may be listed and traded on an exchange ("exchange-traded"). Global Atlantic's derivative instruments are primarily used to hedge certain risks, including interest rate risk and equity market risk, and to a lesser extent foreign exchange and inflation risks. Where certain criteria are met, some of these hedging arrangements may achieve hedge accounting.

Derivative instruments are generally recognized at estimated fair value in either funds withheld receivable at interest, other assets, funds withheld payable at interest or accrued expenses and other liabilities in the consolidated statements of financial condition, with changes in fair value recorded in net investment gains (losses) in the consolidated statements of operations. Where certain qualifying criteria are met, some derivative instruments are designated as accounting hedges and are recognized at estimated fair value in derivative assets or accrued expenses and other liabilities in the consolidated statements of financial condition. For derivative instruments designated as fair value hedges, changes in fair value are recognized in the consolidated statements of operations, in the same line where the hedged item is reported. For derivative instruments designated as cash flow hedges, changes in fair value are initially recognized in accumulated other comprehensive income (loss) in the consolidated statements of financial condition and subsequently reclassified to the consolidated statements of operations, in the same line item where the hedged item is reported.

Derivative receivables and payables with a counterparty that are subject to an International Swaps and Derivatives Association Master Agreement ("ISDA") or other similar agreement that provides a legal right of setoff, are presented at their net amounts. Where the legal right of setoff exists, Global Atlantic also offsets the fair value of cash collateral received or posted under an ISDA, or other similar agreement with a counterparty, against the related derivative balances as appropriate.

**Investment credit losses and impairment****Available-for-sale fixed maturity securities**

One of the significant estimates related to AFS securities is the evaluation of those investments for credit losses. The evaluation of investments for credit losses is a quantitative and qualitative quarterly process that is subject to risks and uncertainties and involves significant estimates and judgments by management. Changes in the estimates and judgments used in such analysis can have a significant impact on the consolidated statements of operations.

Global Atlantic regularly reviews its AFS securities for declines in fair value below amortized cost that it determines to be due to credit losses. For fixed maturity securities, Global Atlantic first considers the intent to sell a security, or whether it is more-likely-than-not that it will be required to sell the security, before the recovery of its amortized cost. If Global Atlantic intends to sell an AFS fixed maturity security with an unrealized loss or it is more-likely-than-not that it will be required to sell an AFS fixed maturity security with an unrealized loss before recovery of its amortized cost basis, the amortized cost is written down to fair value and a corresponding charge is recognized to net investment losses.

For AFS fixed maturity securities in an unrealized loss position that Global Atlantic does not intend to sell, and will not be required to sell, Global Atlantic bifurcates the impairment into two components: credit impairment and non-credit impairment. Credit impairments are measured as the difference between the security's cost or amortized cost and its estimated recoverable value, which is the present value of its expected future cash flows discounted at the current effective interest rate. The estimated recoverable value is subject to a floor equal to the fair value of the security. The remaining difference between the security's fair value and the recoverable value, if any, is the non-credit impairment. Credit impairments are recognized in the allowance for credit losses on AFS fixed maturity securities, which is established via a charge to net investment losses in the consolidated statements of operations, and non-credit impairments are charged to accumulated other comprehensive income in the consolidated statements of financial condition.

The review of each AFS fixed maturity in an unrealized loss position for credit losses includes an analysis of gross unrealized losses by severity. A severe unrealized loss position on a fixed maturity security may not impact the recoverability of all contractual cash flows or the ability to recover an amount at least equal to the investment's amortized cost. The facts and circumstances available relevant to the severity of the loss position are analyzed, including changes in market interest rates, credit issues, changes in business climate, management changes, litigation, government actions, and other similar factors that may

impact the issuer's ability to meet current and future principal and interest obligations. Indicators of credit impairment may include changes in the issuers' credit ratings, the frequency of late payments, pricing levels and deterioration in any, or a combination of, key financial ratios, financial statements, revenue forecasts and cash flow projections.

In determining the estimated recoverable value, the review of expected future cash flows for structured securities includes assumptions about key systemic risks (e.g., unemployment rates, housing prices) and loan-specific information (e.g., delinquency rates, loan-to-value ratios). Estimating future cash flows is a quantitative and qualitative process that incorporates information received from third parties, along with assumptions and judgments about the future performance of the underlying collateral. For corporate and government bonds the recoverable value is determined using cash flow estimates that consider facts and circumstances relevant to the security and the issuer, including overall financial strength and secondary sources of repayment as well as pending restructuring or disposition of assets. Where information for such cash flow estimates is limited or deemed not reliable, fair value is considered the best estimate of the recoverable value.

In periods subsequent to the initial recognition of an allowance for credit losses on a fixed maturity security, whether for a PCD security or a security impaired since purchase, Global Atlantic continues to monitor credit loss expectations. Deterioration in the estimated recoverable value of a credit impaired security is recognized as an addition to the allowance for credit losses, as limited by the amount by which the security's fair value is less than amortized cost. Improvements in the estimated recoverable value of a credit impaired security or improvements in the fair value of a credit impaired security that limit the amount of the allowance result in reductions in the allowance for credit losses, which are recognized as a credit to net investment gains in the consolidated statements of income.

Amounts are charged off against the allowance for credit losses when deemed uncollectible or when Global Atlantic determines that it intends to sell, or more likely than not will be required to sell, the security. Charge-offs are reflected as a decrease in the allowance and a direct write down in the amortized cost of the security. If Global Atlantic recovers all or a portion of an amount previously written off on a credit impaired security, the recovery is recognized as a realized investment gain.

#### **Mortgage and other loan receivables**

Global Atlantic updates its estimate of the expected credit losses on its investments in mortgage and other loan receivables each quarter. For loans that share similar risk characteristics, expected credit losses are measured on a pool basis.

For commercial mortgage loans, the current expected credit losses are estimated using a model that evaluates the probability that each loan will default and estimates the amount of loss given the occurrence of such a default over the life of each loan in the portfolio. The model incorporates historical and current data on the relevant property market and projects potential future paths for each loan's collateral, considering both the net income to be generated by the collateral real estate and its market value. The model considers how macroeconomic forecasts (such as gross domestic product, unemployment, and interest rates) influence commercial real estate market factors (including vacancy rates, rental and income growth rates, property value changes), and in turn how commercial real estate market conditions, in combination with loan specific information (including debt service coverage and loan to value), drive commercial mortgage loan credit risk.

For residential mortgage loans and consumer loans, the current expected credit losses are primarily estimated using a discounted cash flow model. The model considers loan-specific information as well as current, historical and forecasted data relevant to the respective loans, including home prices, interest rates and unemployment. Expected cash flows are projected for each loan and are discounted using the effective interest rate of the respective loan. Any shortfalls between the discounted cash flows and the amortized cost of each individual loan are aggregated to determine the total allowances on the residential mortgage loan and consumer loan portfolios. For certain residential mortgage loans secured by single-family rental properties, current expected credit losses are determined using a model consistent with that described above for commercial mortgage loans.

With regard to the use of forecasts in the determination of Global Atlantic's current expected credit losses, the reversion of forecasts to historical data is based on reversion dynamics that depend on the specific variable and its interaction with the other parameters of the respective model; however, the forecasts generally tend to revert to a long-term equilibrium trend within two to three years from the forecast start date.

For the investment in other loan receivables, a variety of methodologies are used to estimate the respective current expected credit losses. These methodologies consider the terms specific to each loan, including the value of any collateral, and evaluate the risk of loss over the life of these loans.

Global Atlantic also assesses and measures an allowance for credit losses arising from off-balance sheet commitments, including loan commitments, that are not unconditionally cancellable by Global Atlantic. This allowance for credit losses for off-

balance sheet commitments is determined using methods consistent with those used for the associated mortgage and other loan receivable class, as described above, and is recognized in other liabilities in the consolidated statements of financial condition, since there is no funded asset for the committed amount.

When all or a portion of a loan is deemed uncollectible, the uncollectible portion of the carrying amount of the loan is charged off against the allowance. If Global Atlantic recovers all or a portion of an amount previously written off on a credit impaired loan, the recovery is recognized as a realized investment gain.

**Other investments**

The determination of the amount of impairment on other classes of investments also requires significant judgment and is based upon a periodic evaluation and assessment of known and inherent risks associated with the respective asset class. Such assessments are revised as conditions change and new information becomes available.

Impairment of consolidated renewable energy assets and transportation assets is assessed whenever events or changes in circumstances indicate that the carrying amount may not be recoverable. When indicators of impairment are present, a recoverability test is performed to determine if the sum of the estimated undiscounted future cash flows attributable to the assets is greater than the carrying amount. If the undiscounted estimated future cash flows are less than the carrying amount, an impairment loss is recognized based on the amount by which the carrying amount exceeds its estimated fair value.

Impairment of investments subject to the equity method of accounting is assessed whenever events or circumstances suggest that the carrying amount may not be recoverable. An impairment charge is recognized in earnings for a decline in value that is determined to be other than temporary and is measured as the difference between the carrying amount and the fair value of the equity method investment as of the balance sheet date.

**Deferral and amortization of certain revenues and expenses****Deferrals**

Deferred policy acquisition costs ("DAC") consist of commissions and other costs that are directly related to the successful acquisition of new or renewal life insurance or annuity contracts. Deferred sales inducements ("DSI") are generated by annuities that offer enhanced crediting rates or bonus payments to policyholders and is included in other assets in the consolidated statements of financial condition. DAC is recorded in insurance intangibles in the consolidated statements of financial condition.

Value of business acquired ("VOBA") represents the difference between the carrying value of the purchased in-force insurance contract liabilities at the time of the business combination and the estimated fair value of insurance and reinsurance contracts. VOBA can be either positive or negative. Positive VOBA is recorded in insurance intangibles. Negative VOBA is recorded in the same financial statement line in the consolidated statement of financial condition as the associated reserves.

Revenues from certain universal life insurance products are deferred to future periods and an unearned revenue reserve ("URR") liability is established. The amount deferred is equal to the excess of the revenue collected over an estimate of the ultimate future level of these revenues and included in policy liabilities in the consolidated statements of financial condition.

Deferred revenue liability ("DRL") represents the gross premium less the net premium on limited pay contracts (i.e., payout annuities.) DRL is included in policy liabilities in the consolidated statements of financial condition.

For certain preneed contracts, the gross premium is in excess of the benefit reserve plus additional insurance liability. An unearned front-end load ("UFEL") is established to defer the recognition of this front-end load. UFEL is included in policy liabilities in the consolidated statements of financial condition.

**Amortization**

For interest-sensitive products (fixed-indexed annuities and variable annuities, most universal life including preneed contracts, and variable universal life), DAC and DSI assets are generally amortized in proportion to actual historical gross profits and estimated future gross profits over the estimated lives of the contracts. The amount of gross profit consists principally of investment returns (including hedge gains and losses) in excess of the amounts credited to policyholders, asset-based and other policy fees, and surrender charges reduced by death and other excess benefits and expenses. Numerous factors including



**Notes to Financial Statements (Continued)**

mortality, benefit utilization, surrender activity, premium persistency, and the economic environment influence the level and timing of gross profits.

Estimated gross profits are updated each reporting period with actual gross profits as part of the amortization process for the interest-sensitive policies. When actual gross profits are higher in the period than had been previously estimated, more amortization is recognized than planned. When actual gross profits are lower than had been previously estimated, less amortization is recognized than planned. These relationships hold provided that future estimates of gross profits remain unchanged, which may not always be true.

VOBA is generally amortized on a constant level basis using policy count over the estimated lives of the contracts.

When a different basis of amortization is determined to be more representative of the economics, such as when negative estimated gross profits or margins occur, an alternative basis of amortization may be selected for DAC and VOBA.

For most term and whole life products, DAC is amortized in proportion to premium revenue recognized.

DRL is amortized on a straight-line basis for whole life and term life insurance policies. For annuities, universal life and indexed universal life policies, DRL is amortized in proportion to the pattern of policyholder death benefits in-force. For payout annuities, DRL is recognized in income in a constant relationship with the amount of expected future payments.

URR is amortized consistent with the amortization of DAC on similar products. UFEL is amortized consistent with the method used in the amortization of DAC for preneed contracts.

The key assumptions used in the calculation of the amortization of DAC, VOBA and DSI are periodically updated as part of the assumptions review process, which results in revisions to the estimated future gross profits. The effects of changes in assumptions are recorded as unlocking in the period in which the changes are made. The following are types of changes to future assumptions that would generally result in a negative unlocking (i.e., an acceleration of amortization resulting in a reduction to net income): lower equity returns, lower investment returns, higher operating expenses, higher mortality, and unfavorable lapses.

The carrying amounts of DAC, DSI, URR and UFEL are adjusted for the effects of realized and unrealized gains and losses on debt and equity securities classified as AFS and certain derivatives.

**Internal replacements**

An internal replacement is a modification in product benefits, features, rights, or coverages that occurs by the legal extinguishment of one contract and the issuance of another contract (a contract exchange), or by amendment, endorsement, or rider to a contract, or by the election of a benefit, feature, right, or coverage within a contract. If the modification does not substantially change the contract, Global Atlantic does not change the accounting and amortization of existing DAC and related actuarial balances (i.e., continuation of contract accounting). If an internal replacement represents a substantial change, the original contract is considered to be extinguished and any related DAC or other policy balances are charged or credited to income, and any new deferrable costs associated with the replacement contract are deferred.

**Separate accounts**

Separate account assets and liabilities represent segregated funds administered and invested by Global Atlantic for the benefit of variable annuities and variable universal life insurance contractholders and certain pension funds. Global Atlantic reports separately, as assets and liabilities, investments held in the separate accounts and liabilities of separate accounts if: (1) such separate accounts are legally recognized; (2) assets supporting the contract liabilities are legally insulated from Global Atlantic's general account liabilities; (3) investments are directed by the contract owner or participant; and (4) all investment performance, net of contract fees and assessments, is passed through to the contract owner.

Separate account assets consist principally of mutual funds at fair value. The investment income and gains and losses of these accounts generally accrue to the contractholders and therefore, are not included in Global Atlantic's net income. However, Global Atlantic's net income reflects fees assessed and earned on fund values of these contracts which are presented as a component of policy fees in the consolidated statements of operations. Realized investment gains and losses related to separate accounts that meet the conditions for separate account reporting accrue to and are borne by the contractholder.



**Policy liabilities**

Policy liabilities, or collectively, “reserves,” are the portion of past premiums or assessments received that are set aside to meet future policy and contract obligations as they become due. Interest accrues on these reserves and on future premiums, which may also be available to pay for future obligations. Global Atlantic establishes reserves to pay future policyholder benefits, claims, and certain expenses for its life policies and annuity contracts.

Reserves are estimates based on models that include many actuarial assumptions and projections. These assumptions and projections, which are inherently uncertain, involve significant judgment, including assumptions as to the levels and/or timing of premiums, benefits, claims, expenses, interest credits, investment results (including equity market returns), mortality, longevity, and persistency.

The assumptions on which reserves are based are intended to represent an estimation of experience for the period that policyholder benefits are payable. The adequacy of these reserves and the assumptions underlying those reserves are reviewed at least annually. Global Atlantic cannot, however, determine with precision the amount or the timing of actual policyholder benefit payments. If actual experience is better than or equal to the assumptions, then reserves would be adequate to provide for future policyholder benefits and expenses. If experience is worse than the assumptions, additional reserves may be required to meet future policy and contract obligations. This would result in a charge to Global Atlantic’s net income during the period in which excess policyholder benefits are paid or an increase in reserves occurs.

For a majority of Global Atlantic’s in-force policies, including its universal life policies and most annuity contracts, the base policy reserve is equal to the account value. For these products, the account value represents Global Atlantic’s obligation to repay to the policyholder the amounts held on deposit. However, there are several significant blocks of business where additional policyholder reserves are explicitly calculated, including variable annuities, fixed-indexed annuities, universal life with secondary guarantees, indexed universal life and preneed policies.

**Fixed-rate and fixed-indexed annuities**

Contractholder deposits fund reserves for fixed-indexed annuities earning a fixed rate of interest and certain other fixed-rate annuity products are computed under a retrospective deposit method and represent policyholder account balances before applicable surrender charges. For certain fixed-rate annuity products, an additional reserve was established for above market interest rate guarantees upon acquisition. These reserves are amortized on a straight-line basis over the remaining guaranteed interest rate period.

Certain of Global Atlantic’s fixed-indexed annuity products enable the policyholder to allocate contract value between a fixed crediting rate and strategies which reflect the change in the value of an index, such as the S&P 500 Index or other indices. These products are accounted for as investment-type contracts. The liability for these products consists of a combination of the underlying account value and an embedded derivative value. The liability for the underlying account value is primarily based on policy guarantees and its initial value is the difference between the premium payment and the fair value of the embedded derivative. Thereafter, the account value liability is determined in a manner consistent with the accounting for a deposit liability under the “constant yield method.” All future host balances are determined as: (1) the initial host balance; (2) plus interest; (3) less applicable policyholder benefits. The interest rate used in the prior roll forward is re-determined on each valuation date, per the constant yield method. The embedded derivative component’s fair value is based on an estimate of the policyholders’ expected participation in future increases in the relevant index. The fair value of this embedded derivative component includes assumptions, including those about future interest rates and investment yields, future costs for options used to hedge the contract obligations, projected withdrawal and surrender activity, benefit utilization and the level and limits on contract participation in any future increases in the respective index option. The account value liability and embedded derivative are recorded in policy liabilities in the consolidated statements of financial condition, with changes in value of the liabilities recorded in policy benefits and claims in the consolidated statements of operations.

Global Atlantic issues funding agreements to certain unaffiliated (and non-unconsolidated) special purpose entities that have issued debt securities for which payment of interest and principal is secured by such funding agreements. Global Atlantic’s funding agreements are considered investment type contracts and liabilities are calculated as the present value of future payments. Global Atlantic’s obligation is reported in policy liabilities in the consolidated statements of financial condition. Interest expense is calculated using the effective interest method and recorded in policy benefits and claims in the consolidated statements of income.

**Notes to Financial Statements (Continued)**

Contractholder deposit funds reserves for certain assumed blocks of fixed-indexed and fixed-rate annuity products are accounted for as investment-type contracts. A net liability (consisting of the benefit reserve plus deferred revenue liability less DAC) is established at inception and amortized under the constant yield method.

**Guaranteed benefits**

Certain fixed-rate and fixed-indexed annuity contracts provide the contractholder with guaranteed minimum death benefits ("GMDB") and/or guaranteed minimum withdrawal benefits ("GMWB"). The associated reserves for these benefits are calculated by estimating the present value of total expected (excess) benefit payments over the life of the contract divided by the present value of total expected assessments over the life of the contract, or the "benefit ratio," and multiplying this ratio by the cumulative assessments recorded from the contract inception through the balance sheet date less cumulative benefit payments plus interest on the reserves. The liabilities are included in policy liabilities in the consolidated statements of financial condition. The change in the reserve is included in policy benefits and claims in the consolidated statements of operations.

**Long-term care benefit riders**

Certain fixed-rate contracts provide the policyholder with long-term care benefit riders. The long-term care benefit rider permits access to the policy's account value, along with a supplemental rider benefit value, free of a surrender charge, to reimburse the policyholder for certain qualified long-term care expenses. Depending on the outcome of simplified underwriting, the rider benefit is capped at the return of account value plus one or two times the account value. The benefit rider paid to the policyholder is subject to a monthly maximum such that the benefit is typically paid out over a period of six years or longer. The liabilities for these benefits are calculated by using the benefit ratio multiplied by the cumulative assessments recorded from the contract inception through the balance sheet date less cumulative benefit payments plus interest on the reserves. The change in the reserve is included in policy benefits and claims in the consolidated statements of operations.

**Variable annuities**

Variable annuity contracts offered and assumed by Global Atlantic provide the contractholder with GMDB and/or GMWB. The liabilities for these benefits are included in policy liabilities in the consolidated statements of financial condition. The change in the liabilities for these benefits is included in policy benefits and claims in the consolidated statements of operations.

Global Atlantic issued variable annuity contracts with GMDB features. Global Atlantic elected the fair value option to measure the liability for certain of these variable annuity contracts. Fair value is calculated as the present value of the estimated death benefits less the present value of the GMDB fees, using 1,000 risk neutral scenarios. Global Atlantic discounts the cash flows using the U.S. Treasury rates plus an adjustment for own company credit risk.

Global Atlantic also issues variable annuity contracts with a GMWB. The GMWB feature represents an embedded derivative. The embedded derivative is required to be bifurcated and measured at fair value. This liability is calculated as the present value of the excess GMWB claims less the present value of GMWB fees, using 1,000 risk neutral scenarios. Global Atlantic discounts the cash flows using U.S. Treasury rates plus an adjustment for own company credit risk.

**Payout annuities**

Payout annuities include single premium immediate annuities, annuitizations of deferred annuities and structured settlements. These contracts subject the insurer to risks over a period that extends beyond the period or periods in which premiums are collected. These contracts may be either non-life contingent or life contingent. Non-life contingent annuities are accounted for as financial instruments. For life contingent annuities, Global Atlantic records a liability at the present value of future annuity payments and estimated future expenses calculated using expected mortality and costs, and interest assumptions. Any gross premiums received in excess of the net premium is the DRL and is recognized in income in a constant relationship with the amount of expected future payments. The liabilities are recorded in policy liabilities in the consolidated statements of financial condition.

Also included under payout annuities are liabilities for disability income benefits which pertain primarily to disability income policies that are already in claim payout status. Liabilities for disability income benefits are calculated as the present value of future disability payments and estimated future expenses using expected mortality and costs, and interest assumptions. The liabilities are recorded in policy liabilities in the consolidated statements of financial condition.

**Universal life policies**

For universal life policies, the base benefit reserves are deemed to be equal to the policyholder account value.

Policy liabilities for indexed universal life with returns linked to the performance of a specified market index are equal to the sum of two components: (1) the fair value of the embedded derivative; and (2) the host (or guaranteed) component. The fair value of the embedded derivative component is based on the fair value of the policyholders' expected participation in future increases in the relevant index over the life of the contract. The fair value of this embedded derivative component includes assumptions, including those about future interest rates and investment yields, future costs for options used to hedge the contract obligations, projected benefits, benefit utilization and the level and limits on contract participation in any future increases in the respective index option.

The initial host balance is established at the time of premium payment and is equal to the total account value less the embedded derivative component. Thereafter, the balance of the host component is determined in a manner consistent with the accounting for a deposit liability under the "constant yield method." All future host balances are determined as: (1) the initial host balance; (2) plus interest; (3) less applicable policyholder benefits. The interest rate used in the prior roll forward is re-determined on each valuation date, per the constant yield method.

Global Atlantic holds additional liabilities for universal life products with secondary guarantees, sometimes referred to as no-lapse guarantees. For these products, the fair value of the embedded derivative is the present value of the best estimate option budget projection minus the guaranteed surrender benefits over the life of the contract. The additional liabilities are measured using the benefit ratio approach where excess benefits are spread over the life of the contract based on assessments collected from the policyholder. Generally, total expected excess benefit payments are the aggregate of death claims after the policyholder account value is exhausted. The exception is when the cost of insurance charges are insufficient to produce consistently positive earnings in the future. In this case, all death benefits are deemed to be excess benefits.

**Variable universal life policies**

Certain assumed variable universal life policies include several forms of secondary guarantees. Global Atlantic holds additional liabilities for its secondary guarantees as discussed above.

**Preneed policies**

Global Atlantic's preneed life insurance contracts are accounted for as universal life-type contracts which require that the retrospective deposit method be used. That accounting method establishes a liability for policyholder benefits in an amount determined by the account or contract balance that accrues to the benefit of the policyholder. This account value is deemed to be equal to the contract's statutory cash surrender value. The majority of Global Atlantic's preneed insurance contracts feature death benefits with a discretionary death benefit growth rate. Global Atlantic has the discretion to adjust these rates up or down. Global Atlantic has established an additional reserve for expected future discretionary benefits which is reflected as policy liabilities in the consolidated statements of financial condition. Global Atlantic has also issued preneed insurance contracts with crediting rates tied to inflation as measured by the U.S. Consumer Price Index.

**Whole and term life**

Global Atlantic has established liabilities for amounts payable under insurance policies, including whole life insurance and term life insurance policies. Generally, liabilities for these policies are calculated as the present value of future expected benefits to be paid reduced by the present value of future expected net premiums. Principal assumptions used in the establishment of liabilities for future policyholder benefits are mortality, policy lapse, renewal, investment returns, inflation, expenses and other contingent events as appropriate for the respective product. These assumptions, which include provisions for adverse deviations, are established at the time the policy is issued and are intended to estimate the experience for the period the policyholder benefits are payable. By utilizing these assumptions, liabilities are established on a block-of-business basis. For whole life and term long-duration insurance contracts, assumptions such as mortality, morbidity and interest rates are locked-in upon the issuance of new business. However, significant adverse changes in experience on such contracts may require Global Atlantic to establish premium deficiency reserves. Premium deficiency reserves are established, if necessary, when the liability for future policyholder benefits plus the present value of expected future gross premiums are determined to be insufficient to provide for expected future policyholder benefits and expenses. Such reserves are determined based on assumptions at the time the premium deficiency reserve is established and do not include a provision for adverse deviation.

**Notes to Financial Statements (Continued)**

Policy liabilities for participating whole life insurance policies are equal to the aggregate of: (1) net level premium reserves for death and endowment policyholder benefits (calculated based upon the non-forfeiture interest rate, and mortality rated guarantee in calculating the cash surrender values described in such contracts); and (2) the liability for terminal dividends.

Policy liabilities for non-participating whole life and term life insurance policies are equal to the aggregate of the present value of expected future policyholder benefit payments and related expenses less the present value of expected future net premiums. Assumptions as to the mortality and persistency are based upon Global Atlantic's experience when the basis of the liability is established, and are periodically updated. Interest rate assumptions for the aggregate policy liabilities are calculated based on the portfolio rate, net of investment expenses.

**Outstanding claims**

Outstanding claims include amounts payable relating to in course of settlement and incurred but not reported claim liabilities. In course of settlement claim liabilities are established for policies when Global Atlantic is notified of the death of the policyholder but the claim has not been paid as of the reporting date. Incurred but not reported claim liabilities are determined using studies of past experience and are estimated using actuarial assumptions of historical claims expense, adjusted for current trends and conditions. These estimates are continually reviewed and the ultimate liability may vary significantly from the amounts initially recognized, which are reflected in net income in the period in which they are determined. Changes in policyholder and contract claims are recorded in policy benefits and claims in the consolidated statements of operations.

**Closed blocks**

Through its insurance companies, Global Atlantic has acquired several closed blocks of participating life insurance policies. Global Atlantic has elected to account for the closed block policy liabilities using the fair value option.

The assets and cash flow generated by the closed blocks inure solely to the benefit of the holders of policies included in the closed blocks. All closed block assets will ultimately be paid out as policyholder benefits and through policyholder dividends. In the event that the closed blocks' assets are insufficient to meet the benefits of the closed blocks' benefits, general assets of Global Atlantic would be used to meet the contractual benefits to the closed blocks' policyholders.

The closed block liabilities are measured at fair value, which comprises the fair value of the closed block assets plus the present value of projected expenses including commissions and the cost of capital charges associated with the closed blocks. In calculating the present value, Global Atlantic used a discount rate based on current U.S. Treasury rates, with a risk margin to reflect uncertainties in the closed block liability and a provision for Global Atlantic's nonperformance risk.

**Reinsurance**

Consistent with the overall business strategy, Global Atlantic assumes certain policy risks written by other insurance companies on a coinsurance, modified coinsurance or funds withheld coinsurance basis. Reinsurance accounting is applied for ceded and assumed transactions when risk transfer provisions have been met. To meet risk transfer requirements, a long-duration reinsurance contract must transfer mortality or morbidity risks, and subject the reinsurer to a reasonable possibility of a significant loss. Those contracts that do not meet risk transfer requirements are accounted for using deposit accounting. Global Atlantic seeks to diversify risk and limits its overall financial exposure through reinsurance.

With respect to ceded reinsurance, Global Atlantic values reinsurance recoverables on reported claims at the time the underlying claim is recognized in accordance with contract terms. For future policyholder benefits, Global Atlantic estimates the amount of reinsurance recoverables based on the terms of the reinsurance contracts and historical reinsurance recovery information. The reinsurance recoverables are based on what Global Atlantic believes are reasonable estimates and the balance is reported as an asset in the consolidated statements of financial condition. However, the ultimate amount of the reinsurance recoverable is not known until all claims are settled.

The cost of reinsurance, which is the difference between the amount paid for a reinsurance contract and the amount of the liabilities for policy benefits relating to the underlying reinsured contracts, is deferred and amortized over the reinsurance contract period for short-duration contracts, or over the terms of the reinsured policies on a basis consistent with the reporting of those policies for long-duration contracts. Cost of reinsurance assets and liabilities are reported in insurance intangibles and policy liabilities in the consolidated statements of financial condition, respectively and includes certain variable incentive compensation directly related to reinsurance contract acquisition. Reinsurance contracts do not relieve Global Atlantic from its obligations to policyholders, and failure of reinsurers to honor their obligations could result in losses to Global Atlantic; consequently, allowances are established for expected credit losses, via a charge to policy benefits and claims in the consolidated statements of

operations. Global Atlantic's funds withheld receivable at interest and reinsurance recoverable assets are reviewed for expected credit losses by considering credit ratings for each reinsurer, historical insurance industry specific default rate factors, rights of offset, expected recovery rates upon default and the impact of other terms specific to the reinsurance arrangement.

**Recognition of insurance revenue and related benefits**

Premiums related to whole life and term life insurance contracts and payout contracts with life contingencies are recognized in premiums in the consolidated statements of operations when due from the contractholders.

Amounts received as payment for universal life and investment-type contracts are reported as deposits to contractholder account balances and recorded in policy liabilities in the consolidated statements of financial condition. Amounts received as payment for Global Atlantic's fixed fund variable annuities are reported as a component of policy liabilities in the consolidated statements of financial condition. Revenues from these contracts consist primarily of fees assessed against the contractholder account balance for mortality, policy administration, separate account administration and surrender charges, and are reported in policy fees in the consolidated statements of operations. Additionally, Global Atlantic earns investment income from the investment of contract deposits in Global Atlantic's insurance companies' general account portfolio, which is reported in net investment income in the consolidated statements of operations.

Fees assessed that represent compensation to Global Atlantic for benefits to be provided in future periods and certain other fees are established as an unearned revenue reserve liability and amortized into revenue over the expected life of the related contracts in proportion to estimated gross profits in a manner consistent with DAC for these contracts. Unearned revenue reserves are reported in policy liabilities in the consolidated statements of financial condition and amortized into policy fees in the consolidated statements of operations. Benefits and expenses for these products include claims in excess of related account balances, expenses for contract administration and interest credited to contractholder account balances in the consolidated statements of operations.

**Other income**

Other income is primarily comprised of administration, management fees and distribution fees.

**Insurance expenses**

Insurance expenses are primarily comprised of commissions expense, premium taxes, amortization of acquired distribution and trade name intangibles, and other expenses related to insurance products and reinsurance transactions.

**General, administrative and other expenses**

General, administrative and other expenses are primarily comprised of employee compensation and benefit expenses, administrative and professional services and other operating expenses.

**Equity-based, incentive and other deferred compensation**

Global Atlantic has established a long-term incentive plan to foster and promote its long-term financial success. Compensation expense for Global Atlantic's incentive awards is recognized only when vesting is deemed to be probable.

Global Atlantic measures compensation cost for service-based, equity-classified share-based payment awards at fair value as of the grant date and recognizes it in general, administrative and other expenses in the consolidated statements of operations as compensation expense over the requisite service period for awards expected to vest. Global Atlantic recognizes the expense using the straight-line attribution method, with adjustments for estimated forfeitures. For awards with performance-based vesting, expense recognition is deferred until the performance factor occurs or becomes probable.

Global Atlantic measures compensation cost for liability-classified share-based payment awards or other deferred compensation plans using the fair value method, beginning on the grant date, and re-measures the fair value of the awards at each reporting period until the awards are settled. Accrued compensation expense is recognized, net of an estimated forfeiture rate, in general, administrative and other expenses in the consolidated statements of operations and within accrued expenses and other liabilities in the consolidated statements of financial condition, respectively.

**Recently Issued Accounting Pronouncements**

The following recently issued accounting pronouncements apply to both Asset Management and Insurance.

***Adopted in 2021******Simplifying the Accounting for Income Taxes***

On December 18, 2019, the Financial Accounting Standards Board (the "FASB") issued ASU No. 2019-12, which modifies ASC 740 to simplify the accounting for income taxes. The ASU, among other changes, (i) provides a policy election to not allocate consolidated income taxes when a member of a consolidated tax return is not subject to income tax and (ii) provides guidance to evaluate whether a step-up in tax basis of goodwill relates to a business combination in which book goodwill was recognized or a separate transaction. The guidance is effective for fiscal periods beginning after December 15, 2020. The adoption did not have a material impact on the financial statements.

***Facilitation of the Effects of Reference Rate Reform on Financial Reporting***

On March 12, 2020, the FASB issued ASU No. 2020-04, which provides temporary optional expedients and exceptions to the guidance in GAAP on contract modifications and hedge accounting to ease the financial reporting burdens related to the expected market transition from the London Interbank Offered Rate (LIBOR) and other interbank offered rates to alternative reference rates. The temporary optional expedients and exceptions can be elected through December 31, 2022. For the quarter ended March 31, 2021, KKR has not elected to apply the temporary optional expedients and exceptions and will be reevaluating the application each quarter.

***Effective on January 1, 2022 and Thereafter******Targeted improvements to the accounting for long-duration contracts***

In August 2018, the FASB issued new guidance for insurance and reinsurance companies that issue long-duration contracts such as life insurance and annuities. The objective of this guidance is to improve, simplify and enhance the financial reporting of long-duration contracts by providing financial statement users with useful information in a timely and transparent manner. The primary changes include: (1) more timely recognition of assumption changes in the liability for future policy benefits and use of a current rate for the discounting of future cash flows; (2) standardization and improvement in the accounting for certain market-based options or guarantees associated with deposit (or account balance) contracts (referred to as market risk benefits); (3) simplification of the amortization of deferred acquisition costs; and (4) enhanced disclosures.

The guidance is effective for public business entities that meet the definition of a SEC filer for fiscal years beginning after December 15, 2022, including interim periods within those fiscal years. Early adoption is permitted. For changes related to the liability for future policy benefits and deferred acquisition costs, the new guidance requires adoption using a modified retrospective approach upon transition with an option to elect a retrospective approach. For changes related to market risk benefits, the new guidance requires a retrospective approach.

KKR intends to implement this standard to Global Atlantic's insurance business using the retrospective approach for the liability for future policy benefits, deferred acquisition costs and market risk benefits with an adoption date of January 1, 2023. Global Atlantic has completed the design and planning phase of its implementation effort and has begun detailed implementation activities. Global Atlantic continues to evaluate the impact of this guidance but anticipates that the new standard will have a material impact on the consolidated financial statements. The new guidance is expected to increase financial statement volatility primarily due to the requirement to measure market risk benefits at fair value, which is recorded in net income, except for changes in value attributable to changes in an entity's non-performance risk, which is recorded in other comprehensive income. In addition, the new guidance is expected to have a significant impact on Global Atlantic's systems, processes and controls.

### 3. ACQUISITION OF GLOBAL ATLANTIC

On July 7, 2020, indirect subsidiaries of KKR & Co. Inc., namely Magnolia Parent LLC and Magnolia Merger Sub Limited, entered into an Agreement and Plan of Merger (the "GA Merger Agreement") with Global Atlantic Financial Group Limited ("GAFG"), Global Atlantic Financial Life Limited ("GAFLL"), LAMC LP, and Goldman Sachs & Co. LLC, solely in its capacity as the Equity Representative (as defined in the GA Merger Agreement). Pursuant to the GA Merger Agreement, at the closing of the acquisition of Global Atlantic by KKR (the "GA Acquisition"), among other things, Global Atlantic Financial Group Limited continued as the surviving entity in its merger with Magnolia Merger Sub Limited and became a direct subsidiary of Magnolia Parent LLC, which subsequently changed its name to The Global Atlantic Financial Group LLC ("TGAFG").

On February 1, 2021 (or the "GA Acquisition Date"), the GA Acquisition was completed, and KKR acquired all of the voting interests in Global Atlantic and an economic ownership of 61.1% of Global Atlantic at closing (and which economic ownership percentage is subject to change based on certain post-closing purchase price adjustments) after taking into account GA Rollover Investors' and GA Co-Investors' (each as defined below) equity ownership of Global Atlantic. In addition to entering into the retirement and life insurance business through KKR's indirect ownership of Global Atlantic's insurance companies, KKR's flagship investment management company became the investment adviser for Global Atlantic's insurance companies, which increases KKR's presence in the insurance community. Furthermore, the transaction allows Global Atlantic to gain access to KKR's origination and asset management capabilities.

Under the GA Merger Agreement, KKR agreed to pay former shareholders of Global Atlantic Financial Group Limited an amount in cash equal to 1.0x U.S. GAAP Shareholders' Equity of Global Atlantic Financial Group Limited, excluding Accumulated Other Comprehensive Income and subject to certain other purchase price adjustments ("GA Book Value," determined as \$4.7 billion as of February 1, 2021 for purposes of the purchase price determination). The amount of consideration payable by KKR was reduced by the amount of equity rolled over by certain former shareholders of Global Atlantic Financial Group Limited who elected to continue their equity ownership in Global Atlantic at closing ("GA Rollover Investors"). In addition, KKR syndicated equity interests in Global Atlantic to minority co-investors ("GA Co-Investors"), which also had the effect of reducing the amount of consideration payable by KKR at closing. The purchase price is as follows (in thousands):

Cash consideration paid by KKR	\$	2,859,252
GA Co-Investors and GA Rollover Investors		1,821,303
<b>Total Purchase Price</b>	<b>\$</b>	<b>4,680,555</b>

The purchase price paid at closing is subject to certain post-closing adjustments, which we expect will require us to pay an incremental amount less than the \$150 million maximum provided under the terms of the GA Merger Agreement, which would represent an adjustment to the preliminary determination of goodwill recorded.

The GA Acquisition was accounted for as a business combination under FASB Accounting Standards Codification Topic 805, Business Combinations ("Topic 805"). The purchase price has been allocated to Global Atlantic's assets acquired and liabilities assumed based on estimates of their fair values as of the GA Acquisition Date. The fair value of assets acquired and liabilities assumed represent a provisional allocation as our evaluation of facts and circumstances available as of February 1, 2021 is ongoing.

Goodwill of \$451 million has been recorded based on the amount that the purchase price exceeds the fair value of the net assets acquired less the amounts attributable to noncontrolling interests. Goodwill is primarily attributable to the scale, skill sets, operations, and synergies that can be achieved subsequent to the GA Acquisition. The goodwill recorded is not expected to be deductible for tax purposes and it has been allocated to the Insurance Segment.

Pursuant to Topic 805, the financial statements will not be retrospectively adjusted for any changes to the provisional values of assets acquired and liabilities assumed that occur in subsequent periods. Rather, we will recognize any adjustments as we obtain information not available as of the completion of this preliminary fair value calculation. We will also be required to record, in the same period as the financial statements, the effect on earnings of changes in depreciation, amortization, or other income effects, if any, as a result of any change to the provisional amounts, calculated as if the accounting had been completed at the GA Acquisition Date. We expect to finalize the purchase price allocation as soon as practicable, but no later than one year from the GA Acquisition Date.



The following table summarizes the provisional fair value amounts recognized for the assets acquired and liabilities assumed and resulting goodwill as of the GA Acquisition Date:

	<b>February 1, 2021</b>	
<i>(\$ in thousands)</i>		
<b>Consideration Transferred</b>		
Cash Consideration paid by KKR	\$	2,859,252
GA Co-Investors		975,360
GA Rollover Investors		845,943
Settlement of pre-existing relationships <sup>(1)</sup>		(60,200)
<b>Total Consideration Transferred<sup>(2)</sup></b>	<b>\$</b>	<b>4,620,355</b>
<b>Recognized Amounts of Identifiable Assets Acquired and Liabilities Assumed:</b>		
Cash and Cash Equivalents	\$	3,073,974
Restricted Cash and Cash Equivalents		284,798
Investments		99,519,110
Reinsurance Recoverable		15,753,030
Insurance Intangible Assets		1,024,520
Other Assets		3,259,222
Separate Account Assets		5,371,060
Policy Liabilities		(100,311,752)
Debt Obligations		(1,450,920)
Funds Withheld Payable at Interest		(13,800,969)
Accrued Expenses and Other Liabilities		(2,718,648)
Reinsurance Liabilities		(180,573)
Separate Account Liabilities		(5,371,060)
<b>Total Identifiable Net Assets</b>		<b>4,451,792</b>
Redeemable non-controlling interests <sup>(3)</sup>		(91,845)
Other Noncontrolling interests <sup>(3)</sup>		(190,405)
<b>Goodwill</b>	<b>\$</b>	<b>450,813</b>

(1) Represents KKR debt obligations held by Global Atlantic at the GA Acquisition Date.

(2) At the GA Acquisition Date, the transaction was funded with a combination of (i) cash on hand by KKR, (ii) cash proceeds from syndication of the equity interests in Global Atlantic to minority co-investors and equity rolled over from certain former Global Atlantic shareholders. The equity held by GA co-investors and rollover investors are presented as noncontrolling interests in the financial statements. Acquisition of Global Atlantic, Net of Cash Acquired in the consolidated statements of cash flows represents the Total Consideration Transferred (excluding GA Rollover Investors) net of acquired Cash and Cash Equivalents and Restricted Cash and Cash Equivalents.

(3) Represents the fair value of Noncontrolling Interests in consolidated renewable energy entities held by Global Atlantic on the GA Acquisition Date. Such interests do not represent ownership interests held by GA Rollover Investors or GA Co-Investors in Global Atlantic's equity.

KKR performed a valuation of the acquired investments, policy liabilities, VOBA, other identifiable intangibles, and funds withheld at interest payables and receivables. The following is a summary of significant inputs to the valuation:

#### *Investments*

Global Atlantic's investment portfolio primarily consists of fixed maturity securities, mortgage and other loan receivables, and also includes equity securities, and investments in real assets, such as renewable energy and transportation assets. All of the assets included within the investment portfolio were measured and reported at their fair values on the GA Acquisition Date consistent with the valuation methodologies discussed in Note 2. As a result, the cost basis of each respective investment was reset to equal fair value on the GA Acquisition Date.

#### *Policy liabilities*

Policy liabilities were remeasured based on generally accepted actuarial methods and reported at their fair values on the GA Acquisition Date. Assumptions for future mortality, persistency, policyholder behavior, expenses, investment return and



other actuarial factors were based on an evaluation of Global Atlantic's recent experience, industry experience, and anticipated future trends. These assumptions are intended to be representative of market assumptions used by buyers and sellers in similar transactions. The approach employed to develop these projection assumptions is described below:

- Discount rates used to calculate fair value ranged from 11% to 15%, depending on product;
- Mortality and persistency assumptions are based on both Global Atlantic and general industry experience;
- Expenses were projected reflecting Global Atlantic's unit expenses with an allocation of a portion of overhead expenses to in-force business;
- Future investment income reflects a runoff of the existing asset portfolios and reinvestment strategies based on Global Atlantic's assumptions for asset yield, quality, and maturity. The projections are based on forward interest rates implied by the Treasury yield curve. Credit rates reflect Global Atlantic's target spreads;
- Separate account and index account growth rates are based on long-term return expectations for different fund types and on the underlying mix of funds; and
- Statutory reserves underlying the valuation reflect Global Atlantic's current reserving methodologies.

*Value of business acquired*

VOBA represents the estimated fair value of future net cash flows from in-force life and annuity insurance contracts acquired at the GA Acquisition Date.

*Other identifiable intangible assets*

Other identifiable intangible assets represent distribution relationships, trade names and state insurance licenses. The distribution relationships were valued using the excess earnings method, which derives value based on the present value of the cash flow attributable to the distribution relationships, less returns for contributory assets. The trade name intangible asset represents the Global Atlantic trade name, and was valued using the relief-from-royalty method giving consideration to publicly available third-party trade name royalty rates as well as expected premiums generated by the use of the trade name over its anticipated life. The state insurance licenses represent Global Atlantic's jurisdictional insurance licenses, which include 52 insurance licenses, encompassing all 50 states, the District of Columbia, and the U.S. Virgin Islands. They were protected through registration and were valued using the market approach based on third-party market transactions from which the prices paid for state insurance licenses could be derived.

*Funds withheld at interest receivables and payables*

Funds withheld at interest receivables and payables were remeasured at fair value based on the fair value of assets held in the underlying portfolios supporting those receivables or payables.

The fair value and weighted average estimated useful lives of Value of Business Acquired and Other Identifiable Intangible Assets acquired in the Acquisition consist of the following (dollars in thousands):

	<u>Fair Value</u> <u>(\$ in thousands)</u>	<u>Average Useful Life</u> <u>(in years)</u>
VOBA (included within Insurance Intangible Assets)	\$ 1,024,520	28.6
Negative VOBA (included within Policy Liabilities)	(1,273,414)	22.2
<b>Total VOBA</b>	<u>\$ (248,894)</u>	
Value of Distribution Agreements Acquired	\$ 200,000	18
Trade Names	50,000	16
State Insurance Licenses	10,000	Indefinite
<b>Total Identifiable Other Intangible Assets (included within Other Assets)</b>	<u>\$ 260,000</u>	

As of the GA Acquisition Date, Global Atlantic's financial results are reflected in these financial statements. Global Atlantic's revenues and net loss of \$1.4 billion and \$(203.9) million, respectively, are included in the consolidated statement of operations for the three months ended March 31, 2021.

#### **Pro- Forma Financial Information**

Unaudited pro-forma financial information for the three months ended March 31, 2021 and March 31, 2020 is presented below. Pro-forma financial information presented does not include adjustments to reflect any potential revenue synergies or cost savings that may be achievable in connection with the GA Acquisition and assume the GA Acquisition occurred as of January 1, 2020. The unaudited pro forma financial information is presented for informational purposes only, and is not necessarily indicative of future operations or results had the GA Acquisition been completed as of January 1, 2020.

	<b>Three Months Ended</b> <b>March 31,</b>	
	<b>2021</b>	<b>2020</b>
Total Revenues	\$ 5,077,184	\$ (109,906)
Net Income Attributable to KKR & Co. Inc. Common Stockholders	\$ 1,738,106	\$ (1,214,078)

Amounts above reflect certain pro forma adjustments that were directly attributable to the GA Acquisition. These adjustments include the following:

- adjustment to reflect the elimination of historical amortization of Global Atlantic's intangibles and the additional amortization of intangibles measured at fair value as of the GA Acquisition Date;
- adjustment to reflect the prospective reclassification from accumulated other comprehensive earnings of the unrealized gains on available-for-sale securities to a premium which will be amortized into income based on the expected life of the investment securities;
- adjustments to reflect the KKR pro-rata economic ownership as well as financing consummated by KKR to complete the acquisition; and
- adjustments to reflect the adoption of ASC 326 "Financial Instruments - Credit Losses" in 2020 by Global Atlantic.

**Notes to Financial Statements (Continued)**
**4. NET GAINS (LOSSES) FROM INVESTMENT ACTIVITIES - ASSET MANAGEMENT**

Net Gains (Losses) from Investment Activities in the consolidated statements of operations consist primarily of the realized and unrealized gains and losses on investments (including foreign exchange gains and losses attributable to foreign denominated investments and related activities) and other financial instruments, including those for which the fair value option has been elected. Unrealized gains or losses result from changes in the fair value of these investments and other financial instruments during a period. Upon disposition of an investment or financial instrument, previously recognized unrealized gains or losses are reversed and an offsetting realized gain or loss is recognized in the current period.

The following table summarizes total Net Gains (Losses) from Investment Activities:

	Three Months Ended March 31, 2021			Three Months Ended March 31, 2020		
	Net Realized Gains (Losses)	Net Unrealized Gains (Losses)	Total	Net Realized Gains (Losses)	Net Unrealized Gains (Losses)	Total
Private Equity <sup>(1)</sup>	\$ 756,347	\$ 794,318	\$ 1,550,665	\$ —	\$ (1,282,404)	\$ (1,282,404)
Credit <sup>(1)</sup>	33,916	(4,509)	29,407	(40,697)	(905,607)	(946,304)
Investments of Consolidated CFEs <sup>(1)</sup>	(2,628)	128,143	125,515	(40,852)	(2,112,541)	(2,153,393)
Real Assets <sup>(1)</sup>	39,749	234,398	274,147	53,363	(851,015)	(797,652)
Equity Method - Other <sup>(1)</sup>	5,187	396,514	401,701	4,405	(445,023)	(440,618)
Other Investments <sup>(1)</sup>	(226,899)	433,080	206,181	(11,453)	(667,719)	(679,172)
Foreign Exchange Forward Contracts and Options <sup>(2)</sup>	(5,643)	15,192	9,549	83,239	331,051	414,290
Securities Sold Short <sup>(2)</sup>	50,623	50,996	101,619	14,655	21,523	36,178
Other Derivatives <sup>(2)</sup>	(30,521)	29,334	(1,187)	(226)	811	585
Debt Obligations and Other <sup>(3)</sup>	(35,750)	34,353	(1,397)	941	1,903,045	1,903,986
<b>Net Gains (Losses) From Investment Activities</b>	<b>\$ 584,381</b>	<b>\$ 2,111,819</b>	<b>\$ 2,696,200</b>	<b>\$ 63,375</b>	<b>\$ (4,007,879)</b>	<b>\$ (3,944,504)</b>

(1) See Note 7 "Investments."

(2) See Note 8 "Derivatives" and Note 14 "Other Assets and Accrued Expenses and Other Liabilities."

(3) See Note 16 "Debt Obligations."

**5. NET INVESTMENT INCOME - INSURANCE**

Net investment income for Global Atlantic is comprised primarily of interest income, including amortization of premiums and accretion of discounts, based on yields that change due to expectations in projected cash flows, dividend income from common and preferred stock, earnings from investments accounted for under equity method accounting, and lease income on other investments.

The components of net investment income were as follows:

	<b>Three Months Ended March 31, 2021</b>
Fixed maturity securities – interest and other income	\$ 351,540
Mortgage and other loan receivables	122,466
Investments in transportation and other leased assets	36,743
Short-term and other investment income	5,113
Policy loans	1,847
Investments in real estate	1,084
Investments in renewable energy	796
Equity securities – dividends and other income	(484)
Income from funds withheld at interest	(16,366)
Gross investment income	502,739
Less investment expenses:	
Investment management and administration	33,946
Transportation and renewable energy asset depreciation and maintenance	23,509
Interest expense on derivative collateral and repurchase agreements	503
<b>Net investment income</b>	<b>\$ 444,781</b>

**6. NET INVESTMENT (LOSSES) GAINS - INSURANCE**

Net investment (losses) gains from insurance operations primarily consists out of (i) realized gains and (losses) from the disposal of investments, (ii) unrealized gains and (losses) from investments held for trading, equity securities, or with fair value remeasurements recognized in earnings as a result of the election of a fair-value option, (iii) unrealized gains and (losses) on funds withheld at interest, (iv) unrealized gains and (losses) from derivatives not designated in an hedging relationship, and (v) allowances for credit losses, and other impairments of investments.

Net investment (losses) gains were as follows:

	<b>Three Months Ended March 31, 2021</b>
Trading fixed maturity securities	\$ (355,314)
Allowance for loan losses provision	(183,641)
AFS fixed maturity securities	(45,640)
Allowance losses for AFS fixed maturity securities	(21,351)
Equity securities and other investments	(19,155)
Allowance for loan commitment losses provision	(14,610)
Derivatives	148,532
Funds withheld receivable at interest	31,238
Mortgage and other loans receivables	4,239
<b>Net investment (losses) gains</b>	<b>\$ (455,702)</b>

**Notes to Financial Statements (Continued)**
**Allowance for credit losses**
*Available-for-sale fixed maturity securities*

The table below presents a roll-forward of the allowance for credit losses recognized for available-for-sale fixed maturity securities held by Global Atlantic:

	<b>Three Months Ended March 31, 2021</b>		
	<b>Corporate</b>	<b>Structured</b>	<b>Total</b>
Balance, as of beginning of period <sup>(1)</sup>	\$ —	\$ 120,895	\$ 120,895
Initial impairments for credit losses recognized on securities not previously impaired	—	27,423	27,423
Initial credit loss allowance recognized on PCD securities	—	222	222
Accretion of initial credit loss allowance on PCD securities	—	321	321
Reductions due to sales (or maturities, pay downs or prepayments) during the period of securities previously identified as credit impaired	—	(2,537)	(2,537)
Net additions / reductions for securities previously impaired	—	(6,072)	(6,072)
<b>Balance, as of end of period</b>	<b>\$ —</b>	<b>\$ 140,252</b>	<b>\$ 140,252</b>

(1) Includes securities designated as purchased credit deteriorated as of the time of the acquisition of Global Atlantic.

*Mortgage and other loan receivables*

Changes in the allowance for credit losses on mortgage and other loan receivables held by Global Atlantic are summarized below:

	<b>Three Months Ended March 31, 2021</b>			<b>Total</b>
	<b>Commercial Mortgage Loans</b>	<b>Residential Mortgage Loans</b>	<b>Consumer and Other Loan Receivables</b>	
Balance, as of beginning of period <sup>(1)</sup>	\$ 58,203	\$ 62,056	\$ —	\$ 120,259
Net provision (release)	21,853	16,683	145,105	183,641
<b>Balance, as of end of period</b>	<b>\$ 80,056</b>	<b>\$ 78,739</b>	<b>\$ 145,105</b>	<b>\$ 303,900</b>

(1) Includes loans designated as purchased credit deteriorated as of the time of the acquisition of Global Atlantic.

**Proceeds and gross gains and losses from voluntary sales**

The proceeds from voluntary sales and the gross gains and losses on those sales of AFS fixed maturity securities were as follows:

	<b>Three Months Ended March 31, 2021</b>
AFS fixed maturity securities:	
Proceeds from voluntary sales	\$ 1,903,120
Gross gains	4,776
Gross losses	(50,972)

**7. INVESTMENTS**

Investments consist of the following:

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
<i>Asset Management</i>		
Private Equity	\$ 21,334,284	\$ 20,470,123
Credit	11,692,746	11,203,905
Investments of Consolidated CFEs	19,163,155	17,706,976
Real Assets	7,107,290	6,096,618
Equity Method - Other	4,747,822	4,471,441
Equity Method - Capital Allocation-Based Income	9,078,783	6,460,430
Other Investments	3,032,149	2,865,222
<b>Investments - Asset Management</b>	<b>\$ 76,156,229</b>	<b>\$ 69,274,715</b>
<i>Insurance</i>		
Fixed maturity securities, available-for-sale, at fair value <sup>(1)</sup>	\$ 60,263,115	\$ —
Mortgage and other loan receivables	16,808,024	—
Fixed maturity securities, trading, at fair value <sup>(1)</sup>	10,627,755	—
Other investments	6,530,279	—
Funds withheld receivable at interest	3,094,837	—
Policy loans	831,459	—
Equity securities at fair value	115,577	—
<b>Investments - Insurance</b>	<b>\$ 98,271,046</b>	<b>\$ —</b>
<b>Total Investments</b>	<b>\$ 174,427,275</b>	<b>\$ 69,274,715</b>

(1) Amortized cost, net of credit loss allowances, of \$62.1 billion and \$10.9 billion, for available-for-sale and trading fixed maturity securities, respectively.

As of March 31, 2021 and December 31, 2020, there were no investments which represented greater than 5% of total investments.

For certain disclosures a comparison to prior period is not provided when the amounts relate to investments held by Global Atlantic, which was acquired by KKR on February 1, 2021.

**Notes to Financial Statements (Continued)**
**Fixed maturity securities**

The cost or amortized cost and fair value for AFS fixed maturity securities were as follows:

As of March 31, 2021	Cost or amortized cost	Allowance for Credit Losses <sup>(2)</sup>	Gross unrealized		Fair value
			gains	losses	
AFS fixed maturity securities portfolio by type:					
U.S. government and agencies	\$ 1,347,935	\$ —	\$ 64	\$ (20,308)	\$ 1,327,691
U.S. state, municipal and political subdivisions	4,818,330	—	4,038	(233,723)	4,588,645
Corporate	35,534,168	—	40,207	(1,619,680)	33,954,695
RMBS	8,607,008	(118,290)	73,322	(53,570)	8,508,470
CBOs	3,350,520	(12,818)	3,244	(9,852)	3,331,094
CMBS	3,372,554	(561)	5,778	(50,781)	3,326,990
CLOs	2,528,002	(1,738)	6,294	(3,630)	2,528,928
All other structured securities <sup>(1)</sup>	2,680,900	(6,845)	37,544	(14,997)	2,696,602
<b>Total AFS fixed maturity securities</b>	<b>\$ 62,239,417</b>	<b>\$ (140,252)</b>	<b>\$ 170,491</b>	<b>\$ (2,006,541)</b>	<b>\$ 60,263,115</b>

(1) Includes primarily asset-backed securities ("ABS").

(2) Represents the cumulative amount of credit impairments that have been recognized in the consolidated statement of operations (as net investment (losses) gains) or that were recognized as a gross-up of the purchase price of PCD securities. Amount excludes unrealized losses related to non-credit impairment.

Actual maturities may differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without call or prepayment penalties, or Global Atlantic may have the right to put or sell the obligations back to the issuers.

The maturity distribution for AFS fixed maturity securities is as follows:

As of March 31, 2021	Cost or amortized cost (net of allowance)	Fair value
Due in one year or less	\$ 322,548	\$ 321,244
Due after one year through five years	6,647,278	6,595,710
Due after five years through ten years	9,883,484	9,636,001
Due after ten years	24,847,123	23,318,076
Subtotal	41,700,433	39,871,031
RMBS	8,488,718	8,508,470
CBOs	3,337,702	3,331,094
CMBS	3,371,993	3,326,990
CLOs	2,526,264	2,528,928
All other structured securities	2,674,055	2,696,602
<b>Total AFS fixed maturity securities</b>	<b>\$ 62,099,165</b>	<b>\$ 60,263,115</b>

**Purchased credit deteriorated securities**

Certain securities purchased by Global Atlantic were assessed at acquisition as having experienced a more-than-insignificant deterioration in credit quality since their origination. These securities are identified as PCD, and a reconciliation of the difference between the purchase price and the par value of these PCD securities is below:

**Notes to Financial Statements (Continued)**

	<b>March 31, 2021</b>
Purchase price of PCD securities acquired during the current period	\$ 1,591,176
Allowance for credit losses at acquisition	121,117
Discount (premium) attributable to other factors	277,480
Par value	<u>\$ 1,989,773</u>

**Securities in a continuous unrealized loss position**

The following tables provide information about AFS fixed maturity securities that have been continuously in an unrealized loss position:

	Less than 12 months		12 months or more		Total	
	Fair value	Unrealized losses	Fair value	Unrealized losses	Fair value	Unrealized losses
<b>As of March 31, 2021</b>						
AFS fixed maturity securities portfolio by type:						
U.S. government and agencies	\$ 1,300,371	\$ (20,308)	\$ —	\$ —	\$ 1,300,371	\$ (20,308)
U.S. state, municipal and political subdivisions	4,393,429	(233,723)	—	—	4,393,429	(233,723)
Corporate	31,609,240	(1,619,680)	—	—	31,609,240	(1,619,680)
RMBS	2,476,369	(53,570)	—	—	2,476,369	(53,570)
CMBS	2,695,782	(50,781)	—	—	2,695,782	(50,781)
CLOs	1,127,040	(3,630)	—	—	1,127,040	(3,630)
CBOs	2,298,426	(9,852)	—	—	2,298,426	(9,852)
All other structured securities	1,232,009	(14,997)	—	—	1,232,009	(14,997)
<b>Total AFS fixed maturity securities in a continuous loss position</b>	<u>\$ 47,132,666</u>	<u>\$ (2,006,541)</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 47,132,666</u>	<u>\$ (2,006,541)</u>

Unrealized gains and losses can be created by changing interest rates or several other factors, including changing credit spreads. Global Atlantic had gross unrealized losses on below investment grade AFS fixed maturity securities of \$33.5 million as of March 31, 2021. The single largest unrealized loss on AFS fixed maturity securities was \$12.3 million as of March 31, 2021. Global Atlantic had 4,499 securities in an unrealized loss position as of March 31, 2021.

**Mortgage and other loan receivables**

Mortgage and other loan receivables consist of the following:

	<b>As of March 31, 2021</b>
Commercial mortgage loans <sup>(1)</sup>	\$ 7,824,769
Residential mortgage loans <sup>(1)</sup>	4,838,764
Consumer loans	3,667,846
Other loan receivables <sup>(1)(2)(3)</sup>	780,545
Total mortgage and other loan receivables	17,111,924
Allowance for credit losses	(303,900)
<b>Total mortgage and other loan receivables, net of allowance for loan losses</b>	<u>\$ 16,808,024</u>

- (1) Includes \$607.5 million of loans carried at fair value using the fair value option as of March 31, 2021. The fair value option was elected for these loans for asset-liability matching purposes. These loans had unpaid principal balances of \$599.0 million as of March 31, 2021.
- (2) As of March 31, 2021, other loan receivables consisted primarily of renewable energy development loans of \$724.5 million.
- (3) Includes \$575.6 million of related party loans carried at fair value using the fair value option as of March 31, 2021. These loans had unpaid principal balances of \$575.9 million as of March 31, 2021.



**Notes to Financial Statements (Continued)**

The maturity distribution by contractual maturity for residential and commercial mortgage loans was as follows as of March 31, 2021:

Years	Residential	Commercial	Total mortgage loans
Remainder of 2021	\$ 206,369	\$ 679,876	\$ 886,245
2022	306,111	871,324	1,177,435
2023	390,673	1,045,921	1,436,594
2024	256,919	1,090,084	1,347,003
2025	17,759	372,484	390,243
2026	356,746	941,273	1,298,019
2027 and thereafter	3,304,187	2,823,807	6,127,994
<b>Total</b>	<b>\$ 4,838,764</b>	<b>\$ 7,824,769</b>	<b>\$ 12,663,533</b>

Actual maturities could differ from contractual maturities, because borrowers may have the right to prepay (with or without prepayment penalties) and loans may be refinanced.

The mortgage loan portfolio is diversified by both geographic region and property type to reduce concentration risk. The following tables present the mortgage loans by geographic region and property type:

<b>Mortgage loans - carrying value by geographic region as of March 31,</b>	<b>2021</b>
Pacific	\$ 3,402,898
West South Central	2,266,001
South Atlantic	1,918,774
Middle Atlantic	1,382,565
East North Central	394,052
Mountain	629,604
New England	619,592
East South Central	585,943
West North Central	215,585
Other regions	1,248,519
<b>Total by geographic region</b>	<b>\$ 12,663,533</b>

<b>Mortgage loans - carrying value by property type as of March 31,</b>	<b>2021</b>
Residential	\$ 4,859,931
Office building	2,742,478
Apartment	1,846,722
Industrial	1,584,127
Retail	794,029
Other property types	692,936
Warehouse	143,310
<b>Total by property type</b>	<b>\$ 12,663,533</b>

As of March 31, 2021, Global Atlantic had \$241.3 million of mortgage loans that were 90 days or more past due or in the process of foreclosure. Global Atlantic ceases accrual of interest on loans that are more than 90 days past due and recognizes income as cash is received. As of March 31, 2021, there were \$178.4 million of mortgage loans that were non-income producing.

As of March 31, 2021, 5% of residential mortgage loans and less than 1% of consumer loans have been granted forbearance due to COVID-19. This forbearance, which generally involves a 3-month period in which payments are not required (though must subsequently be made up), is not considered to result in troubled debt restructurings for the three months ended March 31, 2021. Interest continues to accrue on loans in temporary forbearance.

**Notes to Financial Statements (Continued)**

As of March 31, 2021, Global Atlantic had \$6.7 million of consumer loans that were delinquent by more than 120 days or in default.

***Purchased credit deteriorated loans***

Certain residential mortgage loans purchased by Global Atlantic were assessed at acquisition as having experienced a more-than-insignificant deterioration in credit quality since their origination. These loans are identified as PCD, and a reconciliation of the difference between the purchase price and the par value of these PCD loans is below:

	<b>March 31, 2021</b>
Purchase price of PCD loans acquired during the current period	\$ 3,694,867
Allowance for credit losses at acquisition	120,259
Discount (premium) attributable to other factors	(146,694)
<b>Par value</b>	<b>\$ 3,668,432</b>

**Credit quality indicators**
***Mortgage and loan receivable performance status***

The following table represents the portfolio of mortgage and loan receivables by origination year and performance status:

Performance status	<b>March 31,</b>						
	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>Prior</b>	<b>Total</b>
<b>Commercial mortgage loans</b>							
Current	\$ 471,616	\$ 1,157,366	\$ 2,115,463	\$ 1,475,096	\$ 838,964	\$ 1,766,264	\$ 7,824,769
30 to 59 days past due	—	—	—	—	—	—	—
60 to 89 days past due	—	—	—	—	—	—	—
Over 90 days past due	—	—	—	—	—	—	—
Total commercial mortgage loans	471,616	1,157,366	2,115,463	1,475,096	838,964	1,766,264	7,824,769
<b>Residential mortgage loans</b>							
Current	30,542	1,326,352	742,234	426,154	45,788	1,841,103	4,412,173
30 to 59 days past due	—	8,928	10,610	512	—	117,416	137,466
60 to 89 days past due	—	1,697	4,318	971	36	40,791	47,813
Over 90 days past due	—	13,706	17,701	1,662	—	208,243	241,312
Total residential mortgage loans	30,542	1,350,683	774,863	429,299	45,824	2,207,553	4,838,764
<b>Total mortgage loans</b>	<b>\$ 502,158</b>	<b>\$ 2,508,049</b>	<b>\$ 2,890,326</b>	<b>\$ 1,904,395</b>	<b>\$ 884,788</b>	<b>\$ 3,973,817</b>	<b>\$ 12,663,533</b>

The following table represents the portfolio of consumer loan receivables by performance status:

Performance status	<b>March 31, 2021</b>
<b>Consumer loans</b>	
Current	\$ 3,633,368
30 to 59 days past due	17,606
60 to 89 days past due	9,536
Over 90 days past due	7,336
<b>Total consumer loans</b>	<b>\$ 3,667,846</b>

**Notes to Financial Statements (Continued)**
**Loan-to-value ratio on mortgage loans**

The loan-to-value ratio is expressed as a percentage of the current amount of the loan relative to the value of the underlying collateral. The following table summarizes the loan-to-value ratios for commercial mortgage loans as of March 31, 2021:

<b>Loan-to-value as of March 31, 2021, by year of origination</b>	<b>Carrying value loan-to-value 70% and less</b>	<b>Carrying value loan-to-value 71% - 90%</b>	<b>Carrying value loan-to-value over 90%</b>	<b>Total carrying value</b>
2021	\$ 471,616	\$ —	\$ —	\$ 471,616
2020	874,212	246,106	37,048	1,157,366
2019	1,913,929	201,534	—	2,115,463
2018	1,178,386	296,710	—	1,475,096
2017	764,668	74,296	—	838,964
2016	380,561	12,210	—	392,771
Prior	1,373,493	—	—	1,373,493
<b>Total commercial mortgage loans</b>	<b>\$ 6,956,865</b>	<b>\$ 830,856</b>	<b>\$ 37,048</b>	<b>\$ 7,824,769</b>

Changing economic conditions affect the valuation of commercial mortgage loans. Changing vacancies and rents are incorporated into the discounted cash flow analysis that Global Atlantic performs for monitored loans and may contribute to the establishment of (or increase or decrease in) a commercial mortgage loan valuation allowance for credit losses. In addition, Global Atlantic continuously monitors its commercial mortgage loan portfolio to identify risk. Areas of emphasis are properties that have exposure to specific geographic events, or have deteriorating credit.

The weighted average loan-to-value ratio for the residential mortgage loans was 73% as of March 31, 2021.

**Other investments**

Other investments consist of the following:

	<b>As of March 31, 2021</b>
Investments in renewable energy <sup>(1)(2)</sup>	\$ 3,419,467
Investments in transportation and other leased assets <sup>(3)</sup>	2,184,283
Other investment partnerships	365,428
Investments in real estate	423,557
FHLB common stock and other investments	137,544
<b>Total other investments</b>	<b>\$ 6,530,279</b>

(1) Net of accumulated depreciation attributed to consolidated renewable energy assets of \$99.9 million as of March 31, 2021.

(2) Includes an equity investment in a related party, Origis USA, LLC, of \$48.1 million carried at fair value using the fair value option as of March 31, 2021.

(3) Net of accumulated depreciation of \$17.1 million as of March 31, 2021.

The total amount of other investments accounted for using the equity method of accounting was \$1.4 billion as of March 31, 2021. Global Atlantic's maximum exposure to loss related to these equity method investments is limited to the carrying value of these investments plus unfunded commitments of \$26.1 million as of March 31, 2021.

In addition, Global Atlantic has investments that would otherwise require the equity method of accounting for which the fair value option has been elected. The carrying amount of these investments was \$165.5 million as of March 31, 2021.

**Funding agreements**

Certain Global Atlantic subsidiaries are members of regional banks in the FHLB system. These subsidiaries have also entered into funding agreements with their respective FHLB. The funding agreements are issued in exchange for cash. The funding agreements require that Global Atlantic pledge eligible assets, such as commercial mortgage loans, as collateral. With respect to certain classes of eligible assets, the FHLB holds the pledged eligible assets in custody at the respective FHLB. The

**Notes to Financial Statements (Continued)**

liabilities for the funding agreements are included in policy liabilities in the consolidated statements of financial condition. Information related to the FHLB investment and funding agreements as of March 31, 2021 is as follows:

<b>As of March 31, 2021</b>	<b>Investment in common stock</b>	<b>Funding agreements issued to FHLB member banks</b>	<b>Collateral</b>
FHLB Indianapolis	\$ 74,790	\$ 1,593,207	\$ 2,599,7
FHLB Des Moines	24,600	615,424	978,0
FHLB Boston	10,000	313,347	543,0
<b>Total</b>	<b>\$ 109,390</b>	<b>\$ 2,521,978</b>	<b>\$ 4,121,0</b>

In addition, in January 2021, Global Atlantic launched an inaugural funding-agreement backed note ("FABN") program, through which GA Global Funding Trust, a special purpose, unaffiliated statutory trust, was established to offer its senior secured medium-term notes. Net proceeds from each sale of the aforementioned notes are used to purchase one or more funding agreements from Forethought Life Insurance Company, a Global Atlantic insurance company subsidiary. As of March 31, 2021, Global Atlantic had \$650 million of such funding agreements outstanding, with \$9.35 billion of remaining capacity.

**Repurchase agreement transactions**

As of March 31, 2021, Global Atlantic participated in third-party repurchase agreements with a notional value of \$300.7 million. As collateral for these transactions, as of March 31, 2021, Global Atlantic posted fixed maturity securities with a fair value and amortized cost of \$316.7 million and \$319.2 million, respectively, which are included in Insurance - Investments in the consolidated statements of financial condition.

The gross obligation for repurchase agreements is reported in Other Liabilities in the consolidated statements of financial condition. The gross obligations by class of collateral pledged for repurchase agreements accounted for as secured borrowings as of March 31, 2021 is presented in the following table:

<b>As of March 31, 2021</b>	<b>Overnight</b>	<b>&lt;30 Days</b>	<b>30 - 90 Days</b>	<b>&gt; 90 Days</b>	<b>Total</b>
Corporate Securities	\$ —	\$ —	\$ 159,343	\$ 157,316	\$ 316,6
Total borrowing	\$ —	\$ —	\$ 159,343	\$ 157,316	\$ 316,6

**Other**

As of March 31, 2021, the cost or amortized cost and fair value of the assets on deposit with various state and governmental authorities were \$184.5 million and \$174.6 million.

## 8. DERIVATIVES

### Asset Management

As discussed in Note 2 "Summary of Significant Accounting Policies", KKR and certain of its consolidated funds have entered into derivative transactions as part of their overall risk management for the asset management business and investment strategies. These derivative contracts are not designated as hedging instruments for accounting purposes. Such contracts may include forward, swap and option contracts related to foreign currencies and interest rates to manage foreign exchange risk and interest rate risk arising from certain assets and liabilities. All derivatives are recognized in Other Assets or Accrued Expenses and Other Liabilities and are presented on a gross basis in the consolidated statements of financial condition and measured at fair value with changes in fair value recorded in Net Gains (Losses) from Investment Activities in the accompanying consolidated statements of operations. KKR's derivative financial instruments contain credit risk to the extent that its counterparties may be unable to meet the terms of the agreements. KKR attempts to reduce this risk by limiting its counterparties to major financial institutions with strong credit ratings.

### Insurance

Global Atlantic holds derivative instruments that are primarily used in its hedge program. Global Atlantic has established a hedge program that seeks to mitigate economic impacts primarily from interest rate and equity price movements, while taking into consideration accounting and capital impacts.

For exchange traded derivatives, Global Atlantic offsets asset and liability positions in similar instruments executed with the same clearing member and the same clearing house where there is legal right of setoff. In addition, these exchange traded derivatives have daily settlement of margin.

The restricted cash which was held in connection with open derivative transactions with exchange brokers was \$249.6 million as of March 31, 2021.

#### *Derivatives designated as accounting hedges*

Where Global Atlantic has derivative instruments that are designated and qualify as accounting hedges, these derivative instruments receive hedge accounting.

Global Atlantic has designated an interest rate swap to hedge the interest rate risk associated with the 2029 Senior Notes in a fair value hedge. The 2029 Senior Notes are reported in debt in the consolidated statements of financial condition and are hedged through their maturity in October 2029. This hedge qualifies for the shortcut method of assessing hedge effectiveness. As of March 31, 2021, the carrying amount of the hedged 2029 Senior Notes was \$473.6 million, which reflects a fair value hedge adjustment of \$(26.4) million. A loss of \$26.4 million was recognized in interest expense in the consolidated statements of operations, due to changes in the fair value of the swap for the three months ended March 31, 2021, fully offsetting the fair value change in the hedged 2029 Senior Notes.

Global Atlantic has designated interest rate swaps to hedge the interest rate risk associated with its FHLB funding agreement liabilities in a fair value hedge. The FHLB funding agreement liabilities are reported in policy liabilities in the consolidated statement of financial condition and are hedged through their maturities that range from 2023 to 2025. This hedge qualifies for the shortcut method of assessing hedge effectiveness. As of March 31, 2021, the carrying amount of the hedged FHLB loan liabilities was \$1.1 billion, which reflects a fair value hedge adjustment of \$(5.3) million. A gain due to changes in the fair value of the swaps of \$5.3 million was recognized in policy benefits and claims in the consolidated statements of operations for the three months ended March 31, 2021, fully offsetting the fair value change in the hedged FHLB funding agreement liabilities.

In February and March 2021, Global Atlantic designated bond forwards to hedge the interest rate risk associated with the planned purchase of AFS debt securities in a cash flow hedge. Regression analysis is used to assess the effectiveness of this hedge. As of March 31, 2021, there was a cumulative loss of \$16.8 million on the bond forwards recorded in accumulated other comprehensive (loss) income. Amounts deferred in accumulated other comprehensive (loss) income are reclassified to net investment income following the qualifying purchases of AFS securities, as an adjustment to the yield earned over the life of the purchased securities, using the effective interest method. These arrangements are hedging purchases from January 2022 through January 2027 and are expected to affect earnings until 2051. There were no securities purchased for the three months ended March 31, 2021. Global Atlantic estimates that the amount of gains/losses in accumulated other comprehensive (loss) income to be reclassified into earnings in the next 12 months will not be material.

**Notes to Financial Statements (Continued)**

Global Atlantic designates foreign exchange forward purchase contracts ("FX forwards") on a rolling basis to hedge the foreign currency risk associated with foreign currency-denominated bonds in fair value hedges. These foreign currency-denominated bonds are accounted for as available-for-sale fixed-maturity securities. The changes in the fair value of the available-for-sale foreign currency-denominated bonds due to changes in the spot exchange rate on their book values are recorded in earnings, along with the entire change in the fair value of the FX forwards. These hedges qualify for the critical terms match method of assessing hedge effectiveness. The changes in the fair value of the FX forwards was \$2.8 million, which was recognized in net investment gains (losses) for the three months ended March 31, 2021, fully offsetting the fair value changes in the hedged available-for-sale bonds.

The fair value and notional value of the derivative assets and liabilities were as follows:

<b>As of March 31, 2021</b>	<b>Notional value</b>	<b>Derivative assets</b>	<b>Derivative liabilities</b>
<i>Asset Management</i>			
Foreign Exchange Contracts and Options	\$ 10,383,943	\$ 244,809	\$ 529,962
Other Derivatives	707,775	3,401	94,132
Total Asset Management		248,210	624,094
<i>Insurance</i>			
Equity market contracts	\$ 25,649,611	\$ 1,017,593	\$ 151,329
Interest rate contracts	8,336,485	87,669	215,959
Foreign currency contracts	402,233	6,801	2,753
Credit risk contracts	60,000	—	1,669
Impact of netting <sup>(1)</sup>		(168,931)	(168,919)
Fair value included within derivative assets and derivative liabilities		943,132	202,791
Embedded derivative – indexed universal life products		—	434,242
Embedded derivative – annuity products		—	984,910
Fair value included within policy liabilities		—	1,419,152
Embedded derivative – funds withheld at interest		55,883	(313,230)
Total Insurance		999,015	1,308,713
<b>Fair value included within total assets and liabilities</b>		<b>\$ 1,247,225</b>	<b>\$ 1,932,807</b>

(1) Represents netting of derivative exposures covered by qualifying master netting agreements.

<b>As of December 31, 2020</b>	<b>Notional value</b>	<b>Derivative assets</b>	<b>Derivative liabilities</b>
<i>Asset Management</i>			
Foreign Exchange Contracts and Options	\$ 9,837,178	\$ 250,398	\$ 551,728
Other Derivatives	802,988	7,839	126,950
Total Asset Management		258,237	678,678
<b>Fair value included within total assets and liabilities</b>		<b>\$ 258,237</b>	<b>\$ 678,678</b>

**Notes to Financial Statements (Continued)**

The amounts of derivative gains and losses recognized are reported in the consolidated statements of operations as follows:

<b>Derivative contracts not designated as hedges</b>	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
<i>Asset Management</i>		
Net Gains (Losses) from Investment Activities:		
Foreign Exchange Contracts and Options	\$ 9,549	\$ 414,290
Other Derivatives	(1,187)	585
Total included in Net Gains (Losses) from Investment Activities	<u>\$ 8,362</u>	<u>\$ 414,875</u>
<i>Insurance</i>		
Net investment gains (losses):		
Embedded derivatives	\$ 369,113	\$ —
Equity index options	104,021	—
Equity future contracts	(69,583)	—
Interest rate contracts	(266,731)	—
Credit risk contracts	(36)	—
Other	9,938	—
Total included in net investment gains (losses)	<u>\$ 146,722</u>	<u>\$ —</u>
<b>Derivative contracts designated as hedges</b>		
<b>Three Months Ended March 31,</b>		
	<b>2021</b>	<b>2020</b>
<i>Insurance</i>		
Revenues:		
Foreign currency forwards	\$ 1,810	\$ —
Total included in net investment gains (losses)	<u>\$ 1,810</u>	<u>\$ —</u>
Policy benefits and claims:		
Interest rate swap	\$ (8,403)	\$ —
Total included in policy benefits and claims	<u>\$ (8,403)</u>	<u>\$ —</u>
Interest expense:		
Interest rate swap	\$ (24,776)	\$ —
Total included in interest expense	<u>\$ (24,776)</u>	<u>\$ —</u>

The amount of Global Atlantic's net derivative assets and liabilities after consideration of collateral received or pledged were as follows:

<b>As of March 31, 2021</b>	<b>Gross amount recognized</b>	<b>Gross amounts offset in the statement of financial position<sup>(1)</sup></b>	<b>Net amounts presented in the statement of financial condition</b>	<b>Collateral (received) / pledged</b>	<b>Net amount after collateral</b>
Derivative assets (excluding embedded derivatives)	\$ 1,112,063	\$ (168,931)	\$ 943,132	\$ (804,042)	\$ 139,090
Derivative liabilities (excluding embedded derivatives)	\$ 371,710	\$ (168,919)	\$ 202,791	\$ —	\$ 202,791

(1) Represents netting of derivative exposures covered by qualifying master netting agreements.

**Notes to Financial Statements (Continued)**
**9. FAIR VALUE MEASUREMENTS**

The following tables summarize the valuation of assets and liabilities measured and reported at fair value by the fair value hierarchy. Investments classified as Equity Method - Other, for which the fair value option has not been elected, and Equity Method - Capital Allocation-Based Income have been excluded from the tables below.

**Assets, at fair value:**

	<b>March 31, 2021</b>			
	<b>Level I</b>	<b>Level II</b>	<b>Level III</b>	<b>Total</b>
<b>Asset Management</b>				
Private Equity	\$ 2,224,510	\$ 2,045,965	\$ 17,063,809	\$ 21,334,284
Credit	—	2,306,865	9,385,881	11,692,746
Investments of Consolidated CFEs	—	19,163,155	—	19,163,155
Real Assets	—	228,073	6,879,217	7,107,290
Equity Method - Other	534,811	40,612	1,041,780	1,617,203
Other Investments	440,791	117,993	2,473,365	3,032,149
Total Investments	3,200,112	23,902,663	36,844,052	63,946,827
Foreign Exchange Contracts and Options	—	244,809	—	244,809
Other Derivatives	—	—	3,401 <sup>(1)</sup>	3,401
Total Assets at Fair Value - Asset Management	<u>\$ 3,200,112</u>	<u>\$ 24,147,472</u>	<u>\$ 36,847,453</u>	<u>\$ 64,195,037</u>
<b>Insurance</b>				
AFS fixed maturity securities:				
U.S. government and agencies	\$ 1,251,930	\$ 75,761	\$ —	\$ 1,327,691
U.S. state, municipal and political subdivisions	—	4,588,645	—	4,588,645
Corporate	—	30,215,165	3,739,530	33,954,695
Structured securities	—	20,198,978	193,106	20,392,084
Total AFS fixed maturity securities	1,251,930	55,078,549	3,932,636	60,263,115
Trading fixed maturity securities:				
U.S. government and agencies	159,557	78,237	—	237,794
U.S. state, municipal and political subdivisions	—	694,926	—	694,926
Corporate	—	7,475,680	726,078	8,201,758
Structured securities	—	1,470,744	22,533	1,493,277
Total trading fixed maturity securities	159,557	9,719,587	748,611	10,627,755
Equity securities	45,592	—	69,985	115,577
Mortgage and other loan receivables <sup>(2)</sup>	—	—	1,183,074	1,183,074
Other investments <sup>(3)</sup>	—	—	444,882	444,882
Funds withheld receivable at interest	—	—	55,883	55,883
Reinsurance recoverable	—	—	1,317,962	1,317,962
Derivative assets:				
Equity market contracts	65,730	951,863	—	1,017,593
Interest rate contracts	14,772	72,897	—	87,669
Foreign currency contracts	—	6,801	—	6,801
Impact of netting <sup>(4)</sup>	(31,433)	(137,498)	—	(168,931)
Total derivative assets	49,069	894,063	—	943,132
Separate account assets	5,470,087	—	—	5,470,087
Total Assets at Fair Value - Insurance	<u>\$ 6,976,235</u>	<u>\$ 65,692,199</u>	<u>\$ 7,753,033</u>	<u>\$ 80,421,467</u>
<b>Total Assets at Fair Value</b>	<u><b>\$ 10,176,347</b></u>	<u><b>\$ 89,839,671</b></u>	<u><b>\$ 44,600,486</b></u>	<u><b>\$ 144,616,504</b></u>



**Notes to Financial Statements (Continued)**

	<b>December 31, 2020</b>			
	<b>Level I</b>	<b>Level II</b>	<b>Level III</b>	<b>Total</b>
<b>Asset Management</b>				
Private Equity	\$ 2,758,396	\$ 2,476,823	\$ 15,234,904	\$ 20,470,123
Credit	—	2,031,057	9,172,848	11,203,905
Investments of Consolidated CFEs	—	17,706,976	—	17,706,976
Real Assets	—	172,043	5,924,575	6,096,618
Equity Method - Other	485,988	7,254	1,014,378	1,507,620
Other Investments	434,481	88,760	2,341,981	2,865,222
Total Investments	3,678,865	22,482,913	33,688,686	59,850,464
Foreign Exchange Contracts and Options	—	250,398	—	250,398
Other Derivatives	442	729	6,668 <sup>(1)</sup>	7,839
Total Assets at Fair Value - Asset Management	<u>\$ 3,679,307</u>	<u>\$ 22,734,040</u>	<u>\$ 33,695,354</u>	<u>\$ 60,108,701</u>
<b>Total Assets at Fair Value</b>	<b><u>\$ 3,679,307</u></b>	<b><u>\$ 22,734,040</u></b>	<b><u>\$ 33,695,354</u></b>	<b><u>\$ 60,108,701</u></b>

- (1) Includes derivative assets that were valued using a third-party valuation firm. The approach used to estimate the fair value of these derivative assets was generally the discounted cash flow method, which includes consideration of the current portfolio, projected portfolio construction, projected portfolio realizations, portfolio volatility (based on the volatility, correlation, and size of each underlying asset class), and the discounting of future cash flows to the reporting date.
- (2) Includes related party balance of \$575.6 million in Level 3 for mortgage and other loan receivables.
- (3) Other investments excluded from the fair value hierarchy include certain real estate and private equity funds for which fair value is measured at net asset value per share as a practical expedient. As of March 31, 2021, the fair value of these investments was \$113.5 million.
- (4) Represents netting of derivative exposures covered by qualifying master netting agreements.

**Notes to Financial Statements (Continued)**
**Liabilities, at fair value:**

	<b>March 31, 2021</b>			
	<b>Level I</b>	<b>Level II</b>	<b>Level III</b>	<b>Total</b>
<i>Asset Management</i>				
Securities Sold Short	\$ 243,524	\$ —	\$ —	\$ 243,524
Foreign Exchange Contracts and Options	—	529,962	—	529,962
Unfunded Revolver Commitments	—	—	35,637 <sup>(1)</sup>	35,637
Other Derivatives	—	94,132	—	94,132
Debt Obligations of Consolidated CFEs	—	18,640,854	—	18,640,854
Total Liabilities at Fair Value - Asset Management	<u>\$ 243,524</u>	<u>\$ 19,264,948</u>	<u>\$ 35,637</u>	<u>\$ 19,544,109</u>
<i>Insurance</i>				
Policy liabilities	\$ —	\$ —	\$ 565,642	\$ 565,642
Closed block policy liabilities	—	—	1,366,879	1,366,879
Funds withheld payable at interest	—	—	(313,230)	(313,230)
Derivative instruments payable:				
Equity market contracts	17,100	134,229	—	151,329
Interest rate contracts	51,086	164,873	—	215,959
Foreign currency contracts	—	2,753	—	2,753
Credit contracts	—	1,669	—	1,669
Impact of netting <sup>(2)</sup>	(31,433)	(137,486)	—	(168,919)
Total derivative instruments payable	36,753	166,038	—	202,791
Embedded derivative – indexed universal life products	—	—	434,242	434,242
Embedded derivative – annuity products	—	—	984,910	984,910
Total Liabilities at Fair Value - Insurance	<u>\$ 36,753</u>	<u>\$ 166,038</u>	<u>\$ 3,038,443</u>	<u>\$ 3,241,234</u>
<b>Total Liabilities at Fair Value</b>	<u><b>\$ 280,277</b></u>	<u><b>\$ 19,430,986</b></u>	<u><b>\$ 3,074,080</b></u>	<u><b>\$ 22,785,343</b></u>
<b>December 31, 2020</b>				
	<b>Level I</b>	<b>Level II</b>	<b>Level III</b>	<b>Total</b>
<i>Asset Management</i>				
Securities Sold Short	\$ 281,826	\$ —	\$ —	\$ 281,826
Foreign Exchange Contracts and Options	—	551,728	—	551,728
Unfunded Revolver Commitments	—	—	46,340 <sup>(1)</sup>	46,340
Other Derivatives	76,930	50,020	—	126,950
Debt Obligations of Consolidated CFEs	—	17,372,740	—	17,372,740
Total Liabilities at Fair Value - Asset Management	<u>\$ 358,756</u>	<u>\$ 17,974,488</u>	<u>\$ 46,340</u>	<u>\$ 18,379,584</u>
<b>Total Liabilities at Fair Value</b>	<u><b>\$ 358,756</b></u>	<u><b>\$ 17,974,488</b></u>	<u><b>\$ 46,340</b></u>	<u><b>\$ 18,379,584</b></u>

(1) These unfunded revolver commitments are classified as Level III within the fair value hierarchy and valued using the same valuation methodologies as KKR's Level III credit investments.

(2) Represents netting of derivative exposures covered by qualifying master netting agreement.

**Notes to Financial Statements (Continued)**

The following tables summarize changes in assets and liabilities measured and reported at fair value for which Level III inputs have been used to determine fair value for the three months ended March 31, 2021 and 2020, respectively except for financial instruments held by Global Atlantic and acquired by KKR on the GA Acquisition Date which represents activity for the two months beginning February 1, 2021. The format of the tables has been modified to include the insurance assets and liabilities and, as such, the prior period presentation has been modified accordingly.

**Three Months Ended March 31, 2021**

	Balance, Beg. of Period	Transfers In / (Out) - Changes in Consolidation	Transfers In	Transfers Out	Net Purchases/Issuances/Sales/Settlements	Net Unrealized and Realized Gains (Losses)	Change in OCI	Balance, End of Period	Changes in Net Unrealized Gains (Losses) Included in Earnings related to Level III Assets and Liabilities still held as of the Reporting Date	Changes in Net Unrealized Gains (Losses) Included in OCI related to Level III Assets and Liabilities still held as of the Reporting Date
<b>Assets</b>										
<i>Asset Management</i>										
Private Equity	\$ 15,234,904	\$ —	\$ —	\$ —	\$ 130,309	\$ 1,698,596	\$ —	\$ 17,063,809	\$ 1,622,804	\$ —
Credit	9,172,848	(1,021)	86,135	—	92,140	33,640	2,139	9,385,881	61,774	2,139
Real Assets	5,924,575	—	—	—	696,345	258,297	—	6,879,217	231,898	—
Equity Method - Other	1,014,378	—	—	—	(153,840)	181,242	—	1,041,780	180,258	—
Other Investments	2,341,981	(2,879)	—	(105,644)	63,054	176,853	—	2,473,365	214,879	—
Other Derivatives	6,668	—	—	—	3,574	(6,841)	—	3,401	(6,841)	—
Total Assets - Asset Management	33,695,354	(3,900)	86,135	(105,644)	831,582	2,341,787	2,139	36,847,453	2,304,772	2,139
<i>Insurance</i>										
AFS fixed maturity securities:										
Corporate fixed maturity securities	3,519,368	—	—	—	244,578	—	(24,416)	3,739,530	—	(22,210)
Structured securities	197,983	—	—	—	(1,692)	—	(3,185)	193,106	—	474
Total AFS fixed maturity securities	3,717,351	—	—	—	242,886	—	(27,601)	3,932,636	—	(21,736)
Trading fixed maturity securities:										
Corporate fixed maturity securities	674,380	—	—	—	55,699	(4,001)	—	726,078	(3,600)	—
Structured securities	14,661	—	—	—	8,055	(183)	—	22,533	(222)	—
Total trading fixed maturity securities	689,041	—	—	—	63,754	(4,184)	—	748,611	(3,822)	—
Equity securities	66,660	—	—	—	—	3,325	—	69,985	3,325	—
Mortgage and other loan receivables	929,855	—	—	—	247,719	5,500	—	1,183,074	6,322	—
Other investments	443,824	—	—	—	—	1,058	—	444,882	6,092	—
Funds withheld receivable at interest	—	—	—	—	334	55,549	—	55,883	—	—
Reinsurance recoverable	—	—	—	—	—	1,317,962	—	1,317,962	—	—
Total Assets - Insurance	5,846,731	—	—	—	554,693	1,379,210	(27,601)	7,753,033	11,917	(21,736)
<b>Total</b>	<b>\$ 39,542,085</b>	<b>\$ (3,900)</b>	<b>\$ 86,135</b>	<b>\$ (105,644)</b>	<b>\$ 1,386,275</b>	<b>\$ 3,720,997</b>	<b>\$ (25,462)</b>	<b>\$ 44,600,486</b>	<b>\$ 2,316,689</b>	<b>\$ (19,597)</b>

Notes to Financial Statements (Continued)

Three Months Ended March 31, 2020

	Balance, Beg. of Period	Transfers In / (Out) - Changes in Consolidation	Transfers In	Transfers Out	Net Purchases/Issuances/Sales/Settlements	Net Unrealized and Realized Gains (Losses)	Change in OCI	Balance, End of Period	Changes in Net Unrealized Gains (Losses) Included in Earnings related to Level III Assets and Liabilities still held as of the Reporting Date	
<b>Assets</b>										
<i>Asset Management</i>										
Private Equity	\$ 9,871,682	\$ —	\$ —	\$ —	\$ —	\$ 114,099	\$ (636,333)	\$ —	\$ 9,349,448	\$ (636,333)
Credit	9,217,759	—	—	—	—	567,020	(757,783)	(22,031)	9,004,965	(750,837)
Real Assets	3,567,944	—	—	—	—	(42,301)	(797,652)	—	2,727,991	(844,905)
Equity Method - Other	1,656,045	—	—	—	—	2,098	(305,797)	—	1,352,346	(305,797)
Other Investments	2,154,755	—	—	—	—	60,442	(537,580)	—	1,677,617	(528,523)
Other Derivatives	21,806	—	—	—	—	(1,360)	23,922	—	44,368	24,438
<b>Total Assets - Asset Management</b>	<b>\$ 26,489,991</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 699,998</b>	<b>\$ (3,011,223)</b>	<b>\$ (22,031)</b>	<b>\$ 24,156,735</b>	<b>\$ (3,041,957)</b>

**Notes to Financial Statements (Continued)**

	Three Months Ended March 31, 2021					Three Months Ended March 31, 2020				
	Purchases	Issuances	Sales	Settlements	Net Purchases/Issuances/Sales/Settlements	Purchases	Sales	Settlements	Net Purchases/Issuances/Sales/Settlements	
<b>Assets</b>										
<i>Asset Management</i>										
Private Equity	\$ 221,344	\$ —	\$ (91,035)	\$ —	\$ 130,309	\$ 114,099	\$ —	\$ —	\$ —	\$ 114,099
Credit	1,120,791	—	(1,028,651)	—	92,140	1,227,138	(620,645)	(39,473)	—	567,020
Real Assets	924,320	—	(227,975)	—	696,345	168,640	(210,941)	—	—	(42,301)
Equity Method - Other	144	—	(153,984)	—	(153,840)	2,098	—	—	—	2,098
Other Investments	89,502	—	(26,448)	—	63,054	87,224	(26,782)	—	—	60,442
Other Derivatives	3,574	—	—	—	3,574	—	(1,360)	—	—	(1,360)
Total Assets - Asset Management	2,359,675	—	(1,528,093)	—	831,582	1,599,199	(859,728)	(39,473)	—	699,998
<i>Insurance</i>										
AFS fixed maturity securities:										
Corporate fixed maturity securities	\$ 287,638	—	\$ (3,299)	\$ (39,761)	244,578	—	—	—	—	—
Structured securities	10	—	—	(1,702)	(1,692)	—	—	—	—	—
Total AFS fixed maturity securities	287,648	—	(3,299)	(41,463)	242,886	—	—	—	—	—
Trading fixed maturity securities:										
Corporate fixed maturity securities	57,451	—	—	(1,752)	55,699	—	—	—	—	—
Structured securities	8,110	—	—	(55)	8,055	—	—	—	—	—
Total trading fixed maturity securities	65,561	—	—	(1,807)	63,754	—	—	—	—	—
Mortgage and other loan receivables	254,995	—	(5,076)	(2,200)	247,719	—	—	—	—	—
Funds withheld receivable at interest	—	334	—	—	334	—	—	—	—	—
Total Assets - Insurance	608,204	334	(8,375)	(45,470)	554,693	—	—	—	—	—
<b>Total</b>	<b>\$ 2,967,879</b>	<b>\$ 334</b>	<b>\$ (1,536,468)</b>	<b>\$ (45,470)</b>	<b>\$ 1,386,275</b>	<b>\$ 1,599,199</b>	<b>\$ (859,728)</b>	<b>\$ (39,473)</b>	<b>\$ —</b>	<b>\$ 699,998</b>

Notes to Financial Statements (Continued)

Three Months Ended March 31, 2021

	Balance, Beg. of Period	Transfers In / (Out) - Changes in Consolidation	Transfers In	Transfers Out	Net Purchases/Sales/Settlements/Issuances	Net Unrealized and Realized Gains (Losses)	Change in OCI	Balance, End of Period	Changes in Net Unrealized Gains (Losses) Included in Earnings related to Level III Assets and Liabilities still held as of the Reporting Date	
<b>Liabilities</b>										
<i>Asset Management</i>										
Unfunded Revolver Commitments	\$ 46,340	\$ —	\$ —	\$ —	\$ —	\$ 1,167	\$ (11,870)	\$ —	\$ 35,637	\$ (11,870)
Total Liabilities - Asset Management	46,340	—	—	—	—	1,167	(11,870)	—	35,637	(11,870)
<i>Insurance</i>										
Policy liabilities	\$ 637,800	\$ —	\$ —	\$ —	\$ —	\$ (72,158)	\$ —	\$ 565,642	\$ —	
Closed block policy liabilities	1,395,746	—	—	—	—	(25,982)	(2,885)	1,366,879	—	
Funds withheld payable at interest	59,230	—	—	—	—	(372,460)	—	(313,230)	—	
Embedded derivative – indexed universal life products	386,746	—	—	—	(931)	48,427	—	434,242	—	
Embedded derivative – annuity products	1,024,601	—	—	—	44,809	(84,500)	—	984,910	—	
Total Liabilities - Insurance	3,504,123	—	—	—	43,878	(506,673)	(2,885)	3,038,443	—	
<b>Total</b>	<b>\$ 3,550,463</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ —</b>	<b>\$ 45,045</b>	<b>\$ (518,543)</b>	<b>\$ (2,885)</b>	<b>\$ 3,074,080</b>	<b>\$ (11,870)</b>

Three Months Ended March 31, 2020

	Balance, Beg. of Period	Transfers In / (Out) - Changes in Consolidation	Transfers In	Transfers Out	Net Purchases/Sales/Settlements/Issuances	Net Unrealized and Realized Gains (Losses)	Change in OCI	Balance, End of Period	Changes in Net Unrealized Gains (Losses) Included in Earnings related to Level III Assets and Liabilities still held as of the Reporting Date	
<b>Liabilities</b>										
<i>Asset Management</i>										
Unfunded Revolver Commitments	\$ 75,842	\$ —	\$ —	\$ —	\$ —	\$ (2,464)	\$ (2,781)	\$ —	\$ 70,597	\$ (2,781)
Total Liabilities - Asset Management	\$ 75,842	\$ —	\$ —	\$ —	\$ —	\$ (2,464)	\$ (2,781)	\$ —	\$ 70,597	\$ (2,781)

**Notes to Financial Statements (Continued)**

	Three Months Ended March 31, 2021			Three Months Ended March 31, 2020		
	Issuances	Settlements	Net settlements/Issuances	Issuances	Settlements	Net settlements/Issuances
<b>Liabilities</b>						
<i>Asset Management</i>						
Unfunded Revolver Commitments	\$ 1,167	\$ —	\$ 1,167	\$ —	\$ (2,464)	\$ (2,464)
Total Liabilities - Asset Management	<u>1,167</u>	<u>—</u>	<u>1,167</u>	<u>—</u>	<u>(2,464)</u>	<u>(2,464)</u>
<i>Insurance</i>						
Embedded derivative – indexed universal life products	5,607	(6,538)	(931)	—	—	—
Embedded derivative – annuity products	44,809	—	44,809	—	—	—
Total Liabilities - Insurance	<u>50,416</u>	<u>(6,538)</u>	<u>43,878</u>	<u>—</u>	<u>—</u>	<u>—</u>
<b>Total</b>	<u>\$ 51,583</u>	<u>\$ (6,538)</u>	<u>\$ 45,045</u>	<u>\$ —</u>	<u>\$ (2,464)</u>	<u>\$ (2,464)</u>

**Notes to Financial Statements (Continued)**

Total realized and unrealized gains and losses recorded for Asset Management - Level III assets and liabilities are reported in Net Gains (Losses) from Investment Activities in the accompanying consolidated statements of operations while Insurance - Level III assets and liabilities are reported in Net Investment Gains and Policy Benefits and Claims in the accompanying consolidated statements of operations.

The following table presents additional information about valuation methodologies and significant unobservable inputs used for financial assets and liabilities that are measured and reported at fair value and categorized within Level III as of March 31, 2021. Because input information includes only those items for which information is reasonably available, balances shown below may not equal total amounts reported for such Level 3 assets and liabilities:

Level III Assets	Fair Value March 31, 2021	Valuation Methodologies	Unobservable Input(s) <sup>(1)</sup>	Weighted Average <sup>(2)</sup>	Range	Impact to Valuation from an Increase in Input <sup>(3)</sup>
<b>ASSET MANAGEMENT</b>						
<b>Private Equity</b>	<b>\$ 17,063,809</b>					
<i>Private Equity</i>	<b>\$ 14,016,147</b>	Inputs to market comparables, discounted cash flow and transaction price  Market comparables  Discounted cash flow	Illiquidity Discount	7.3%	5.0% - 15.0%	Decrease
			Weight Ascribed to Market Comparables	31.1%	0.0% - 50.0%	(4)
			Weight Ascribed to Discounted Cash Flow	68.0%	0.0% - 100.0%	(5)
			Weight Ascribed to Transaction Price	0.9%	0.0% - 75.0%	(6)
			Enterprise Value/LTM EBITDA Multiple	16.4x	8.8x - 29.3x	Increase
			Enterprise Value/Forward EBITDA Multiple	15.0x	8.3x - 20.1x	Increase
			Weighted Average Cost of Capital	9.2%	4.4% - 17.6%	Decrease
			Enterprise Value/LTM EBITDA Exit Multiple	13.0x	6.0x - 18.0x	Increase
<i>Growth Equity</i>	<b>\$ 3,047,662</b>		Inputs to market comparables, discounted cash flow and milestones  Scenario Weighting	Illiquidity Discount	12.5%	10.0% - 45.0%
		Weight Ascribed to Market Comparables		20.0%	0.0% - 100.0%	(4)
		Weight Ascribed to Discounted Cash Flow		0.2%	0.0% - 50.0%	(5)
		Weight Ascribed to Milestones		79.8%	0.0% - 100.0%	(6)
		Base		70.9%	50.0% - 80.0%	Increase
		Downside		9.6%	0.0% - 25.0%	Decrease
		Upside	19.5%	0.0% - 35.0%	Increase	
<b>Credit</b>	<b>\$ 9,385,881</b>	Yield Analysis	Yield	5.6%	4.3% - 18.1%	Decrease
			Net Leverage	5.2x	0.2x - 22.0x	Decrease
			EBITDA Multiple	10.8x	0.8x - 30.0x	Increase
<b>Real Assets</b>	<b>\$ 6,879,217</b>					
<i>Energy</i>	<b>\$ 2,293,765</b>	Inputs to market comparables and discounted cash flow  Market comparables  Discounted cash flow	Weight Ascribed to Market Comparables	46.6%	0.0% - 50.0%	(4)
			Weight Ascribed to Discounted Cash Flow	53.4%	50.0% - 100.0%	(5)
			Enterprise Value/LTM EBITDA Multiple	7.7x	7.4x - 7.8x	Increase
			Enterprise Value/Forward EBITDA Multiple	6.2x	6.0x - 9.0x	Increase
			Weighted Average Cost of Capital	11.4%	10.4% - 14.3%	Decrease
			Average Price Per BOE (8)	\$37.05	\$34.56 - \$39.43	Increase
<i>Infrastructure</i>	<b>\$ 1,305,548</b>	Inputs to market comparables, discounted cash flow and transaction price  Market comparables  Discounted cash flow	Illiquidity Discount	6.7%	5.0% - 10.0%	Decrease
			Weight Ascribed to Market Comparables	4.0%	0.0% - 25.0%	(4)
			Weight Ascribed to Discounted Cash Flow	20.0%	0.0% - 100.0%	(5)
			Weight Ascribed to Transaction Price	76.0%	0.0% - 100.0%	(6)
			Enterprise Value/Forward EBITDA Multiple	10.5x	10.5x - 10.5x	Increase
			Weighted Average Cost of Capital	7.7%	6.6% - 8.3%	Decrease
			Enterprise Value/LTM EBITDA Exit Multiple	10.0x	10.0x - 10.0x	Increase
<i>Real Estate</i>	<b>\$ 3,279,904</b>	Inputs to direct income capitalization and discounted cash flow  Direct income capitalization  Discounted cash flow	Weight Ascribed to Direct Income Capitalization	15.6%	0.0% - 100.0%	(7)
			Weight Ascribed to Discounted Cash Flow	70.4%	0.0% - 100.0%	(5)
			Weight Ascribed to Transaction Price	14.0%	0.0% - 100.0%	(6)
			Current Capitalization Rate	5.6%	3.8% - 7.9%	Decrease
			Unlevered Discount Rate	6.6%	5.2% - 18.0%	Decrease



Notes to Financial Statements (Continued)

Level III Assets	Fair Value March 31, 2021	Valuation Methodologies	Unobservable Input(s) <sup>(1)</sup>	Weighted Average <sup>(2)</sup>	Range	Impact to Valuation from an Increase in Input <sup>(3)</sup>
<b>Equity Method - Other</b>	\$ 1,041,780	Inputs to market comparables, discounted cash flow and transaction price	Illiquidity Discount	9.5%	5.0% - 15.0%	Decrease
			Weight Ascribed to Market Comparables	35.4%	0.0% - 60.0%	(4)
			Weight Ascribed to Discounted Cash Flow	29.2%	0.0% - 100.0%	(5)
			Weight Ascribed to Transaction Price	35.4%	0.0% - 100.0%	(6)
		Market comparables	Enterprise Value/LTM EBITDA Multiple	12.5x	7.4x - 23.7x	Increase
			Enterprise Value/Forward EBITDA Multiple	12.7x	6.0x - 21.0x	Increase
		Discounted cash flow	Weighted Average Cost of Capital	10.2%	6.2% - 18.1%	Decrease
			Enterprise Value/LTM EBITDA Exit Multiple	10.9x	6.0x - 15.0x	Increase
<b>Other Investments</b>	\$ 2,473,365 <sup>(9)</sup>	Inputs to market comparables, discounted cash flow and transaction price	Illiquidity Discount	10.2%	5.0% - 20.0%	Decrease
			Weight Ascribed to Market Comparables	29.7%	0.0% - 100.0%	(4)
			Weight Ascribed to Discounted Cash Flow	41.1%	0.0% - 100.0%	(5)
			Weight Ascribed to Transaction Price	29.2%	0.0% - 100.0%	(6)
		Market comparables	Enterprise Value/LTM EBITDA Multiple	12.4x	1.5x - 30.0x	Increase
			Enterprise Value/Forward EBITDA Multiple	12.5x	1.3x - 27.0x	Increase
		Discounted cash flow	Weighted Average Cost of Capital	13.6%	7.6% - 25.0%	Decrease
			Enterprise Value/LTM EBITDA Exit Multiple	9.2x	5.0x - 11.0x	Increase
<b>INSURANCE</b>						
<b>Corporate fixed maturity securities</b>	\$ 1,824,106	Discounted cash flow	Discount Spread	2.16%	0.04% - 4.97%	Decrease
<b>Structured securities</b>	\$ 175,626	Discounted cash flow	Discount Spread	2.63%	2.20% - 5.90%	Decrease
			Constant Prepayment Rate	7.43%	5.00% - 15.00%	Increase/Decrease
			Constant Default Rate	1.15%	1.00% - 2.50%	Decrease
			Loss Severity		100%	Decrease
<b>Equity securities</b>	\$ 48,072	Discounted cash flow	Yield		17.50%	Decrease
<b>Other investments</b>	\$ 423,279	Direct capitalization	Current Capitalization Rate	5.52%	5.27% - 5.77%	Increase
			Vacancy rate		5.00%	Decrease
<b>Funds withheld receivable at interest</b>	\$ 55,883	Discounted cash flow	Duration/Weighted Average Life	10.14 years	0.0 years - 22.3 years	Increase
			Contractholder Persistency	6.38%	3.70% - 16.50%	Increase
			Nonperformance Risk		0.40% - 1.14%	Decrease
<b>Reinsurance recoverable</b>	\$ 1,317,962	Present value of expenses paid from the open block plus the cost of capital held in support of the liabilities.	Expense assumption		The average expense assumption is between \$10.40 and \$78.00 per policy, increased by inflation.	Increase
			Unobservable inputs are a market participant's view of the expenses, a risk margin on the uncertainty of the level of expenses and a cost of capital on the capital held in support of the liabilities.	Expense risk margin		9.42%
		Discounted cash flow	Cost of capital		3.69% - 9.88%	Increase
			Mortality Rate		2.55%	Increase
			Surrender Rate		5.33%	Increase

(1) In determining certain of these inputs, management evaluates a variety of factors including economic conditions, industry and market developments, market valuations of comparable companies and company specific developments including exit strategies and realization opportunities. Management has determined that market participants would take these inputs into account when valuing the investments and debt obligations. LTM means last twelve months and EBITDA means earnings before interest, taxes, depreciation and amortization.

(2) Inputs were weighted based on the fair value of the investments included in the range.

**Notes to Financial Statements (Continued)**

- (3) Unless otherwise noted, this column represents the directional change in the fair value of the Level III investments that would result from an increase to the corresponding unobservable input. A decrease to the unobservable input would have the opposite effect. Significant increases and decreases in these inputs in isolation could result in significantly higher or lower fair value measurements.
- (4) The directional change from an increase in the weight ascribed to the market comparables approach would increase the fair value of the Level III investments if the market comparables approach results in a higher valuation than the discounted cash flow approach and transaction price. The opposite would be true if the market comparables approach results in a lower valuation than the discounted cash flow approach and transaction price.
- (5) The directional change from an increase in the weight ascribed to the discounted cash flow approach would increase the fair value of the Level III investments if the discounted cash flow approach results in a higher valuation than the market comparables approach, transaction price and direct income capitalization approach. The opposite would be true if the discounted cash flow approach results in a lower valuation than the market comparables approach, transaction price and direct income capitalization approach.
- (6) The directional change from an increase in the weight ascribed to the transaction price or milestones would increase the fair value of the Level III investments if the transaction price or milestones results in a higher valuation than the market comparables and discounted cash flow approach. The opposite would be true if the transaction price or milestones results in a lower valuation than the market comparables approach and discounted cash flow approach.
- (7) The directional change from an increase in the weight ascribed to the direct income capitalization approach would increase the fair value of the Level III investments if the direct income capitalization approach results in a higher valuation than the discounted cash flow approach. The opposite would be true if the direct income capitalization approach results in a lower valuation than the discounted cash flow approach.
- (8) The total energy fair value amount includes multiple investments (in multiple locations throughout North America) that are held in multiple investment funds and produce varying quantities of oil, condensate, natural gas liquids, and natural gas. Commodity price may be measured using a common volumetric equivalent where one barrel of oil equivalent ("BOE"), is determined using the ratio of six thousand cubic feet of natural gas to one barrel of oil, condensate or natural gas liquids. The price per BOE is provided to show the aggregate of all price inputs for the various investments over a common volumetric equivalent although the valuations for specific investments may use price inputs specific to the asset for purposes of our valuations. The discounted cash flows include forecasted production of liquids (oil, condensate, and natural gas liquids) and natural gas with a forecasted revenue ratio of approximately 84% liquids and 16% natural gas.
- (9) Consists primarily of investments in common stock, preferred stock, warrants and options of companies that are not private equity, real assets, credit, equity method - other or investments of consolidated CFEs.

**Notes to Financial Statements (Continued)**

Level III Liabilities	Fair Value March 31, 2021	Valuation Methodologies	Unobservable Input(s) <sup>(1)</sup>	Weighted Average <sup>(2)</sup>	Range	Impact Valuation from a Increase Input <sup>(3)</sup>
<b>ASSET MANAGEMENT</b>						
Unfunded Revolver Commitments	\$ 35,637	Yield Analysis	Yield	6.2%	4.6% - 7.9%	Decrease
<b>INSURANCE</b>						
Policy liabilities	\$ 565,642	Present value of best estimate liability cash flows. Unobservable inputs include a market participant view of the risk margin included in the discount rate which reflects the riskiness of the cash flows.  Policyholder behavior is also a significant unobservable input, including surrender and mortality.	Risk Margin Rate		0.40% - 1.34%	Decrease
			Surrender Rate		2.75% - 12.62%	Increase
			Mortality Rate		4.97% - 8.01%	Increase
Closed block policy liabilities	\$ 1,366,879	Present value of expenses paid from the open block plus the cost of capital held in support of the liabilities.  Nonperformance Risk Unobservable inputs are a market participant's view of the expenses, a risk margin on the uncertainty of the level of expenses and a cost of capital on the capital held in support of the liabilities.  Discounted cash flow	Expense assumption		The average expense assumption is between \$10.40 and \$78.00 per policy, increased by inflation.	Increase
			Expense Risk Margin		0.40% - 1.14% 9.42%	Decrease Decrease
			Cost of Capital		3.69% - 9.88%	Increase
			Mortality Rate		2.55%	Increase
			Surrender Rate		5.33%	Increase
Funds withheld payable at interest	\$ (313,230)	Discounted cash flow	Duration/Weighted Average Life	10.31 years	0.0 years - 19.4 years	Decrease
			Contractholder Persistency	6.38%	3.70% - 16.50%	Decrease
			Nonperformance Risk		0.40% - 1.14%	Decrease
Embedded derivative – indexed universal life products	\$ 434,242	Policy persistency is a significant unobservable input.  Future costs for options used to hedge the contract obligations	Lapse Rate		3.57%	Decrease
			Mortality Rate		0.68%	Decrease
			Option Budge Assumption		3.55%	Increase
			Nonperformance Risk		0.40% - 1.14%	Decrease
Embedded derivative – annuity products	\$ 984,910	Policyholder behavior is a significant unobservable input, including utilization and lapse.  Future costs for options used to hedge the contract obligations	Utilization:			
			Fixed-indexed annuity	3.92%		Decrease
			Variable annuity	4.05%	2.19% - 31.35%	Decrease
			Surrender Rate:			
			Fixed-indexed annuity	10.21%		Decrease
			Variable annuity		4.12% - 39.66%	Decrease
			Mortality Rate			
			Fixed-indexed annuity	1.82%		Decrease
			Variable annuity		1.27% - 7.51%	Decrease
			Option Budge Assumption:			
			Fixed-indexed annuity	1.74%		Increase
		Variable annuity	n/a		Increase	
		Nonperformance Risk		0.40% - 1.14%	Decrease	

**Notes to Financial Statements (Continued)**

- (1) In determining certain of these inputs, management evaluates a variety of factors including economic conditions, industry and market developments, market valuations of comparable companies and company specific developments including exit strategies and realization opportunities. Management has determined that market participants would take these inputs into account when valuing the investments and debt obligations. LTM means last twelve months and EBITDA means earnings before interest, taxes, depreciation and amortization.
- (2) Inputs were weighted based on the fair value of the investments included in the range.
- (3) Unless otherwise noted, this column represents the directional change in the fair value of the Level III investments that would result from an increase to the corresponding unobservable input. A decrease to the unobservable input would have the opposite effect. Significant increases and decreases in these inputs in isolation could result in significantly higher or lower fair value measurements.

In the table above, certain private equity investments may be valued at cost for a period of time after an acquisition as the best indicator of fair value. In addition, certain valuations of private equity investments may be entirely or partially derived by reference to observable valuation measures for a pending or consummated transaction.

The various unobservable inputs used to determine the Level III valuations may have similar or diverging impacts on valuation. Significant increases and decreases in these inputs in isolation and interrelationships between those inputs could result in significantly higher or lower fair value measurements as noted in the table above.

**Financial Instruments Not Carried At Fair Value**

Asset management financial instruments are primarily measured at fair value on a recurring basis, except as disclosed in Note 16 "Debt Obligations."

The following tables present carrying amounts and fair values of Global Atlantic's financial instruments which are not carried at fair value as of March 31, 2021.

As of March 31, 2021	Carrying Value	Fair Value Hierarchy			Fair Value
		Level 1	Level 2	Level 3	
<i>(\$ in thousands)</i>					
<b>Financial assets:</b>					
<i>Insurance</i>					
Mortgage and other loan receivables	\$ 15,625,153	\$ —	\$ —	\$ 15,838,840	\$ 15,838,840
Policy loans	831,459	—	—	822,864	822,864
FHLB common stock and other investments	137,544	—	—	137,544	137,544
Funds withheld receivables at interest	3,038,954	—	3,038,954	—	3,038,954
Cash and cash equivalents	5,467,012	5,467,012	—	—	5,467,012
Restricted cash and cash equivalents	399,922	399,922	—	—	399,922
<b>Total financial assets</b>	<b>\$ 25,500,044</b>	<b>\$ 5,866,934</b>	<b>\$ 3,038,954</b>	<b>\$ 16,799,248</b>	<b>\$ 25,705,136</b>
<b>Financial liabilities:</b>					
<i>Insurance</i>					
Policy liabilities	\$ 19,680,466	\$ —	\$ 18,017,494	\$ —	\$ 18,017,494
Supplementary contracts without life contingencies	28,810	—	—	28,997	28,997
Funding agreements	3,171,978	—	658,921	2,562,203	3,221,124
Funds withheld payables at interest	13,759,393	—	13,759,393	—	13,759,393
Debt obligations	1,400,338	—	—	1,431,518	1,431,518
Securities sold under agreements to repurchase	300,729	—	300,729	—	300,729
<b>Total financial liabilities</b>	<b>\$ 38,341,714</b>	<b>\$ —</b>	<b>\$ 32,736,537</b>	<b>\$ 4,022,718</b>	<b>\$ 36,759,255</b>

## Notes to Financial Statements (Continued)

**10. FAIR VALUE OPTION**

The following table summarizes the financial instruments for which the fair value option has been elected:

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
<b>Assets</b>		
<i>Asset Management</i>		
Credit	\$ 6,448,213	\$ 5,958,958
Investments of Consolidated CFEs	19,163,155	17,706,976
Real Assets	234,689	177,240
Equity Method - Other	1,617,203	1,507,620
Other Investments	58,132	201,563
Total Asset Management	\$ 27,521,392	\$ 25,552,357
<i>Insurance</i>		
Mortgage and other loan receivables	\$ 1,183,074	\$ —
Other investments	165,478	—
Reinsurance recoverable	1,317,962	—
Total Insurance	\$ 2,666,514	\$ —
<b>Total Assets</b>	<b>\$ 30,187,906</b>	<b>\$ 25,552,357</b>
<b>Liabilities</b>		
<i>Asset Management</i>		
Debt Obligations of Consolidated CFEs	\$ 18,640,854	\$ 17,372,740
Total Asset Management	<b>18,640,854</b>	<b>17,372,740</b>
<i>Insurance</i>		
Policy liabilities	\$ 1,932,521	\$ —
Total Insurance	\$ 1,932,521	\$ —
<b>Total Liabilities</b>	<b>\$ 20,573,375</b>	<b>\$ 17,372,740</b>

**Notes to Financial Statements (Continued)**

The following table presents the net realized and unrealized gains (losses) on financial instruments for which the fair value option was elected:

	Three Months Ended March 31, 2021			Three Months Ended March 31, 2020		
	Net Realized Gains (Losses)	Net Unrealized Gains (Losses)	Total	Net Realized Gains (Losses)	Net Unrealized Gains (Losses)	Total
<b>Assets</b>						
<i>Asset Management</i>						
Credit	(15,689)	(18,745)	(34,434)	(25,855)	(188,408)	(214,263)
Investments of Consolidated CFEs	(2,628)	128,143	125,515	(40,852)	(2,112,541)	(2,153,393)
Real Assets	47	727	774	—	(46,098)	(46,098)
Equity Method - Other	984	229,081	230,065	—	(412,218)	(412,218)
Other Investments	5,050	7,004	12,054	(5,934)	(6,117)	(12,051)
Total Asset Management	\$ (12,236)	\$ 346,210	\$ 333,974	\$ (72,641)	\$ (2,765,382)	\$ (2,838,023)
<i>Insurance</i>						
Mortgage and other loan receivables	—	7,561	7,561	—	—	—
Other investments	—	3,866	3,866	—	—	—
Total Insurance	\$ —	\$ 11,427	\$ 11,427	\$ —	\$ —	\$ —
<b>Total Assets</b>	<b>\$ (12,236)</b>	<b>\$ 357,637</b>	<b>\$ 345,401</b>	<b>\$ (72,641)</b>	<b>\$ (2,765,382)</b>	<b>\$ (2,838,023)</b>
<b>Liabilities</b>						
<i>Asset Management</i>						
Debt Obligations of Consolidated CFEs	(2,048)	(44,096)	(46,144)	—	1,904,492	1,904,492
Total Asset Management	\$ (2,048)	\$ (44,096)	\$ (46,144)	\$ —	\$ 1,904,492	\$ 1,904,492
<i>Insurance</i>						
Policy liabilities	—	(65,834)	(65,834)	—	—	—
Total Insurance	\$ —	\$ (65,834)	\$ (65,834)	\$ —	\$ —	\$ —
<b>Total Liabilities</b>	<b>\$ (2,048)</b>	<b>\$ (109,930)</b>	<b>\$ (111,978)</b>	<b>\$ —</b>	<b>\$ 1,904,492</b>	<b>\$ 1,904,492</b>

**11. INSURANCE INTANGIBLES, UNEARNED REVENUE RESERVES AND UNEARNED FRONT-END LOADS**

The following reflects the changes to the deferred policy acquisition costs ("DAC") asset:

	Three Months Ended March 31, 2021
<b>Balance, as of GA Acquisition Date</b>	\$ —
Deferrals	76,694
Amortized to expense during the period <sup>(1)</sup>	798
<b>Balance, as of end of period</b>	<b>\$ 77,492</b>

(1) These amounts are reported within amortization of policy acquisition costs in the consolidated statements of operations.

The following reflects the changes to the value of business acquired ("VOBA") asset:

	Three Months Ended March 31, 2021
<b>Balance, as of GA Acquisition Date</b>	\$ 1,024,520
Amortized to expense during the period <sup>(1)</sup>	(12,182)
<b>Balance, as of end of period</b>	<b>\$ 1,012,338</b>

(1) These amounts are reported within amortization of policy acquisition costs in the consolidated statements of operations.

**Notes to Financial Statements (Continued)**

The following reflects the changes to the negative VOBA liability:

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	
<b>Balance, as of Acquisition Date</b>	\$	1,273,414
Amortized to expense during the period <sup>(1)</sup>		(31,862)
<b>Balance, as of end of period</b>	<b>\$</b>	<b>1,241,552</b>

(1) These amounts are reported within amortization of policy acquisition costs in the consolidated statements of operations.

Estimated future amortization of VOBA and negative VOBA as of March 31, 2021 are as follows:

<b>Years</b>	<b>VOBA</b>	<b>Negative VOBA</b>	<b>Total, net</b>
Remainder of 2021	\$ 54,492	\$ (128,687)	\$ (74,195)
2022	68,344	(146,297)	(77,953)
2023	64,340	(127,255)	(62,915)
2024	60,291	(100,357)	(40,066)
2025	56,412	(80,907)	(24,495)
2026	52,674	(65,951)	(13,277)
2027 and thereafter	655,785	(592,098)	63,687
<b>Total</b>	<b>\$ 1,012,338</b>	<b>\$ (1,241,552)</b>	<b>\$ (229,214)</b>

The following reflects the changes to the unearned revenue reserve ("URR") and unearned front-end load ("UFEL):

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	
<b>Balance, as of GA Acquisition Date</b>	\$	—
Deferrals		9,575
Amortized to expense during the period <sup>(1)</sup>		(2,013)
<b>Balance, as of end of period</b>	<b>\$</b>	<b>7,562</b>

(1) These amounts are reported within policy fees in the consolidated statements of operations.

## 12. REINSURANCE

Global Atlantic maintains a number of reinsurance treaties with third parties whereby Global Atlantic assumes fixed annuity, variable annuity, payout annuity, universal life, variable universal life and term life insurance policies on a coinsurance, modified coinsurance and funds withheld basis. Global Atlantic also maintains other reinsurance treaties including the cession of certain fixed annuity, variable annuity, payout annuity, universal life policies, individual disability income policies and discontinued accident and health insurance.

The effects of all reinsurance agreements on the consolidated statement of financial condition were as follows:

	<b>March 31,</b>	
	<b>2021</b>	
<b>Policy liabilities:</b>		
Direct	\$	61,072,018
Assumed <sup>(1)</sup>		41,535,206
<b>Total policy liabilities</b>		<b>102,607,224</b>
Ceded <sup>(2)</sup>		(15,657,675)
<b>Net policy liabilities</b>	<b>\$</b>	<b>86,949,549</b>

**Notes to Financial Statements (Continued)**

- (1) Includes related party balance of \$7.6 billion as of March 31, 2021.  
(2) Reported within reinsurance recoverable within the consolidated statement of financial condition.

A key credit quality indicator is a counterparty's A.M. Best financial strength rating. A.M. Best ratings are an independent opinion of a reinsurer's ability to meet ongoing obligations to policyholders. Global Atlantic mitigates counterparty credit risk by requiring collateral and credit enhancements in various forms including engaging in funds withheld at interest and modified coinsurance transactions. The following shows the amortized cost basis of Global Atlantic's reinsurance recoverable and funds withheld receivable at interest by credit quality indicator and any associated credit enhancements Global Atlantic has obtained to mitigate counterparty credit risk:

A.M. Best Rating <sup>(1)</sup>	As of March 31, 2021		
	Reinsurance recoverable and funds withheld receivable at interest <sup>(2)</sup>	Credit enhancements <sup>(3)</sup>	Net reinsurance credit exposure
A++	\$ 9,690	\$ —	\$ 9,690
A+	2,056,048	—	2,056,048
A	2,848,967	—	2,848,967
A-	3,379,459	2,933,922	445,537
B++	35,321	—	35,321
B+	3,935	—	3,935
B	12,218	—	12,218
B-	2,665	—	2,665
Not rated <sup>(4)</sup>	10,438,235	10,512,242	—
<b>Total</b>	<b>\$ 18,786,538</b>	<b>\$ 13,446,164</b>	<b>\$ 5,414,381</b>

- (1) Ratings are periodically updated (at least annually) as A.M. Best issues new ratings.  
(2) At amortized cost, excluding any associated embedded derivative assets and liabilities  
(3) Includes funds withheld payable at interest and deferred intangible reinsurance assets and liabilities.  
(4) Includes \$10.4 billion associated with cessions to Ivy Re Limited, a Bermuda insurance company, and a subsidiary of Ivy Co-Invest Vehicle LLC, an unaffiliated co-investment vehicle that participates in qualifying reinsurance transactions sourced by Global Atlantic.

As of March 31, 2021, Global Atlantic had \$3.1 billion of funds withheld receivable at interest, with six counterparties related to modified coinsurance and funds withheld contracts. The assets supporting these receivables were held in trusts and not part of the respective counterparty's general accounts.

The effects of reinsurance on the consolidated statements of operations were as follows:

	Three Months Ended
	March 31,
	2021
<b>Premiums:</b>	
Direct	\$ 14,175
Assumed <sup>(1)</sup>	1,280,753
Ceded	(118,786)
<b>Net premiums</b>	<b>\$ 1,176,142</b>

- (1) Includes related party balances of \$2.7 million.



## Notes to Financial Statements (Continued)

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2021</b>	
<b>Policy fees:</b>		
Direct	\$	148,999
Assumed <sup>(1)</sup>		52,955
Ceded		(271)
<b>Net policy fees</b>	<b>\$</b>	<b>201,683</b>

(1) Includes related party balances of \$2.1 million.

	<b>Three Months Ended</b>	
	<b>March 31,</b>	
	<b>2021</b>	
<b>Policy benefits and claims:</b>		
Direct	\$	182,801
Assumed <sup>(1)</sup>		1,467,127
Ceded		(164,610)
<b>Net policy benefits and claims</b>	<b>\$</b>	<b>1,485,318</b>

(1) Includes related party balances of \$22.5 million.

Global Atlantic holds collateral for and provides collateral to our reinsurance clients. Global Atlantic held \$13.2 billion of collateral on behalf of our reinsurers as of March 31, 2021. As of March 31, 2021, reinsurers held collateral of \$1.2 billion on behalf of Global Atlantic. A significant portion of the collateral that Global Atlantic provides to its reinsurance clients is provided in the form of assets held in a trust for the benefit of the counterparty. As of March 31, 2021, these trusts were required to hold, and held in excess of, \$35.2 billion of assets to support reserves of \$38.3 billion. Of the cash held in trust, Global Atlantic classified \$51.9 million as restricted as of March 31, 2021.

**Notes to Financial Statements (Continued)**
**13. NET INCOME (LOSS) ATTRIBUTABLE TO KKR & CO. INC. PER SHARE OF COMMON STOCK**

For the three months ended March 31, 2021 and 2020, basic and diluted Net Income (Loss) attributable to KKR & Co. Inc. per share of common stock were calculated as follows:

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Net Income (Loss) Available to KKR &amp; Co. Inc. Common Stockholders - Basic</b>	<b>\$ 1,644,245</b>	<b>\$ (1,288,865)</b>
(+) Series C Mandatory Convertible Preferred Dividend (if dilutive)	17,250	—
<b>Net Income (Loss) Available to KKR &amp; Co. Inc. Common Stockholders - Diluted</b>	<b>\$ 1,661,495</b>	<b>\$ (1,288,865)</b>
<b>Basic Net Income (Loss) Per Share of Common Stock</b>		
Weighted Average Shares of Common Stock Outstanding - Basic	<u>576,727,967</u>	<u>559,149,821</u>
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc. Per Share of Common Stock - Basic</b>	<b>\$ 2.85</b>	<b>\$ (2.31)</b>
<b>Diluted Net Income (Loss) Per Share of Common Stock</b>		
Weighted Average Shares of Common Stock Outstanding - Basic	576,727,967	559,149,821
Incremental Common Shares:		
Assumed vesting of dilutive equity awards	17,337,924	—
Assumed conversion of Series C Mandatory Convertible Preferred Stock	26,822,600	—
Weighted Average Shares of Common Stock Outstanding - Diluted	<u>620,888,491</u>	<u>559,149,821</u>
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc. Per Share of Common Stock - Diluted</b>	<b>\$ 2.68</b>	<b>\$ (2.31)</b>

For the three months ended March 31, 2021, Weighted Average Shares of Common Stock Outstanding - Diluted includes the following:

(i) Unvested equity awards, including certain equity awards that have met their market-price vesting condition but have not satisfied their service-based condition, which have been granted under the Equity Incentive Plans. Vesting of these equity interests dilute equityholders of KKR Group Partnership, including KKR & Co. Inc. and KKR Holdings pro rata in accordance with their respective ownership interests in KKR Group Partnership.

(ii) For the three months ended March 31, 2021, the impact of Series C Mandatory Convertible Preferred Stock calculated under the if-converted method was dilutive, and as such (i) 26.8 million shares of common stock (assuming a conversion ratio based on the average volume weighted average price per share of common stock over the 20 consecutive trading day period beginning on, and including, the 21st scheduled trading day immediately prior to March 31, 2021) were included in the Weighted Average Shares of Common Stock Outstanding - Diluted and (ii) \$17.3 million of Series C Mandatory Convertible Preferred dividends were excluded from Net Income (Loss) Available to KKR & Co. Inc. Common Stockholders - Diluted.

**KKR Holdings**

For the three months ended March 31, 2021 and 2020, KKR Holdings units have been excluded from the calculation of Net Income (Loss) Attributable to KKR & Co. Inc. Per Share of Common Stock - Diluted since the exchange of these units would not dilute KKR & Co. Inc.'s respective ownership interests in KKR Group Partnership.

	<b>For the Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
Weighted Average KKR Holdings Units	<u>274,748,078</u>	<u>288,322,053</u>

**Market Condition Awards**

For the three months ended March 31, 2021 and 2020, 15.3 million and 5.0 million of unvested equity awards, respectively, that are subject to market-price and service vesting conditions were excluded from the calculation of Net Income (Loss) Attributable to KKR & Co. Inc. Per Share of Common Stock - Diluted since the market-price vesting condition was not satisfied. See Note 18 "Equity Based Compensation."

**14. OTHER ASSETS AND ACCRUED EXPENSES AND OTHER LIABILITIES**

Other Assets consist of the following:

	March 31, 2021	December 31, 2020
<i>Asset Management</i>		
Unsettled Investment Sales <sup>(1)</sup>	\$ 657,403	\$ 197,635
Receivables	27,450	75,697
Due from Broker <sup>(2)</sup>	193,037	644,028
Deferred Tax Assets, net (See Note 17)	83,170	83,822
Interest Receivable	171,729	145,532
Fixed Assets, net <sup>(3)</sup>	776,782	760,606
Foreign Exchange Contracts and Options <sup>(4)</sup>	244,809	250,398
Goodwill <sup>(5)</sup>	83,500	83,500
Derivative Assets	3,401	7,839
Prepaid Taxes	79,847	77,041
Prepaid Expenses	24,528	26,366
Operating Lease Right of Use Assets <sup>(6)</sup>	209,903	190,758
Deferred Financing Costs	22,396	22,810
Other	188,673	99,304
<b>Total Asset Management</b>	<b>\$ 2,766,628</b>	<b>\$ 2,665,336</b>
<i>Insurance</i>		
Unsettled Investment Sales <sup>(1)</sup>	\$ 1,138,560	\$ —
Deferred Tax Assets, net	1,052,393	—
Derivative Assets	943,132	—
Accrued Investment Income	769,685	—
Goodwill	450,813	—
Intangible Assets and Deferred Sales Inducements <sup>(7)</sup>	257,549	—
Operating Lease Right of Use Assets <sup>(6)</sup>	148,711	—
Other	119,630	—
Premiums and other account receivables	76,127	—
Current income tax recoverable	13,695	—
<b>Total Insurance</b>	<b>\$ 4,970,295</b>	<b>\$ —</b>
<b>Total Other Assets</b>	<b>\$ 7,736,923</b>	<b>\$ 2,665,336</b>

(1) Represents amounts due from third parties for investments sold for which cash settlement has not occurred.

(2) Represents amounts held at clearing brokers resulting from securities transactions.

(3) Net of accumulated depreciation and amortization of \$157.3 million and \$151.3 million as of March 31, 2021 and December 31, 2020, respectively. Depreciation and amortization expense of \$11.0 million, and \$4.8 million for the three months ended March 31, 2021 and 2020, respectively, are included in General, Administrative and Other in the accompanying consolidated statements of operations.

(4) Represents derivative financial instruments used to manage foreign exchange risk arising from certain foreign currency denominated investments. Such instruments are measured at fair value with changes in fair value recorded in Net Gains (Losses) from Investment Activities in the accompanying consolidated statements of operations. See Note 4 "Net Gains (Losses) from Investment Activities - Asset Management" for the net changes in fair value associated with these instruments.

(5) As of March 31, 2021, the carrying value of goodwill is recorded and assessed for impairment at the reporting unit.

(6) For Asset Management, non-cancelable operating leases consist of leases for office space in North America, Europe, Asia and Australia. KKR is the lessee under the terms of the operating leases. For the three months ended March 31, 2021 and 2020, the operating lease cost were \$11.5 million and \$12.8 million, respectively. For Insurance, non-cancelable operating leases consist of leases for office space and renewable energy forward power purchase agreements in the U.S. For the three months ended March 31, 2021 the operating lease costs were \$2.6 million. Insurance lease right-of-use assets are reported net of \$19 million in deferred rent and lease incentives.

(7) The definite life intangible assets are amortized by using the straight-line method over the useful life of the assets which is an average of 17 years. The indefinite life intangible assets are not subject to amortization. The amortization expense of definite life intangible assets was \$2.5 million for the three months ended March 31, 2021.

**Notes to Financial Statements (Continued)**

Accrued Expenses and Other Liabilities consist of the following:

	March 31, 2021	December 31, 2020
<i>Asset Management</i>		
Amounts Payable to Carry Pool <sup>(1)</sup>	\$ 2,815,328	\$ 1,916,669
Unsettled Investment Purchases <sup>(2)</sup>	1,916,314	850,714
Securities Sold Short <sup>(3)</sup>	243,524	281,826
Derivative Liabilities	94,132	126,950
Accrued Compensation and Benefits	269,014	150,883
Interest Payable	163,041	182,044
Foreign Exchange Contracts and Options <sup>(4)</sup>	529,962	551,728
Accounts Payable and Accrued Expenses	123,757	130,661
Taxes Payable	88,815	88,040
Uncertain Tax Positions	76,643	76,643
Unfunded Revolver Commitments	35,637	46,340
Operating Lease Liabilities <sup>(5)</sup>	210,470	191,564
Deferred Tax Liabilities, net (See Note 17)	652,439	199,425
Other Liabilities	74,001	464,326
<b>Total Asset Management</b>	<b>\$ 7,293,077</b>	<b>\$ 5,257,813</b>
<i>Insurance</i>		
Unsettled Investment Purchases <sup>(2)</sup>	\$ 2,036,472	\$ —
Collateral on derivative instruments	804,042	—
Accrued expenses	703,364	—
Securities sold under agreements to repurchase	300,729	—
Derivative Liabilities	202,791	—
Operating Lease Liabilities <sup>(5)</sup>	168,260	—
Accrued employee related expenses	167,331	—
Tax payable to former parent company	71,978	—
Interest Payable	27,890	—
Accounts and commissions payable	20,561	—
Other tax related liabilities	8,158	—
<b>Total Insurance</b>	<b>\$ 4,511,576</b>	<b>\$ —</b>
<b>Total Accrued Expenses and Other Liabilities</b>	<b>\$ 11,804,653</b>	<b>\$ 5,257,813</b>

- (1) Represents the amount of carried interest payable to current and former KKR employees with respect to KKR's investment funds and co-investment vehicles that provide for carried interest.
- (2) Represents amounts owed to third parties for investment purchases for which cash settlement has not occurred.
- (3) Represents the obligations of KKR to deliver a specified security at a future point in time. Such securities are measured at fair value with changes in fair value recorded in Net Gains (Losses) from Investment Activities in the accompanying consolidated statements of operations. See Note 4 "Net Gains (Losses) from Investment Activities - Asset Management" for the net changes in fair value associated with these instruments.
- (4) Represents derivative financial instruments used to manage foreign exchange risk arising from certain foreign currency denominated investments. Such instruments are measured at fair value with changes in fair value recorded in Net Gains (Losses) from Investment Activities in the accompanying consolidated statements of operations. See Note 4 "Net Gains (Losses) from Investment Activities- Asset Management" for the net changes in fair value associated with these instruments.
- (5) For Asset Management, operating leases have remaining lease terms that range from approximately one year to 14 years, some of which include options to extend the leases for up to three years. The weighted average remaining lease terms were 9.8 years and 4.61 years as of March 31, 2021 and 2020, respectively. The weighted average discount rates were 1.2% and 2.5% as of March 31, 2021 and 2020, respectively. For Insurance, operating leases have remaining lease terms that range from approximately one year to 13 years, some of which include options to extend the leases for up to ten years. The weighted average remaining lease terms was 9.9 years as of March 31, 2021. The weighted average discount rates was 3.3% as of March 31, 2021.

**15. VARIABLE INTEREST ENTITIES*****Consolidated VIEs***

KKR consolidates certain VIEs in which it is determined that KKR is the primary beneficiary as described in Note 2 "Summary of Significant Accounting Policies." The consolidated VIEs are predominately CFEs and certain investment funds sponsored by KKR.

The primary purpose of these VIEs is to provide strategy specific investment opportunities to earn investment gains, current income or both in exchange for management and performance based fees or carried interest. KKR's investment strategies differ for these VIEs; however, the fundamental risks have similar characteristics, including loss of invested capital and loss of management and performance based fees or carried interest. KKR does not provide performance guarantees and has no other financial obligation to provide funding to these consolidated VIEs, beyond amounts previously committed, if any.

Furthermore, KKR consolidates certain VIEs, which are created by Global Atlantic to hold investments, including railcar, aviation and other transportation equipment, renewable energy projects, fixed maturity securities, residential rental properties and student loans.

***Unconsolidated VIEs***

KKR holds variable interests in certain VIEs which are not consolidated as it has been determined that KKR is not the primary beneficiary. VIEs that are not consolidated predominantly include certain investment funds sponsored by KKR as well as certain investment partnerships where Global Atlantic retains an economic interest.

KKR's investment strategies differ by investment fund; however, the fundamental risks have similar characteristics, including loss of invested capital and loss of management and performance based fees or carried interest. KKR's maximum exposure to loss as a result of its investments in the unconsolidated investment funds is the carrying value of such investments, including KKR's capital interest and any unrealized carried interest. Accordingly, disaggregation of KKR's involvement by type of unconsolidated investment fund would not provide more useful information. For these unconsolidated investment funds in which KKR is the sponsor, KKR may have an obligation as general partner to provide commitments to such investment funds. As of March 31, 2021, KKR's commitments to these unconsolidated investment funds were \$3.4 billion. KKR has not provided any financial support other than its obligated amount as of March 31, 2021. Global Atlantic also has unfunded commitments of \$28.1 million in relation to other limited partnership interests as of March 31, 2021.

As of March 31, 2021 and December 31, 2020, the maximum exposure to loss, before allocations to the carry pool and noncontrolling interests, if any, for those VIEs in which KKR is determined not to be the primary beneficiary but in which it has a variable interest is as follows:

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
Investments - Asset Management	\$ 9,078,783	\$ 6,460,430
Due from (to) Affiliates, net	785,771	586,595
Maximum Exposure to Loss - Asset Management	<b>\$ 9,864,554</b>	<b>\$ 7,047,025</b>
Other Investment in Partnership - Insurance	\$ 349,404	\$ —
Investment in Renewable Partnerships - Insurance	83,814	—
Maximum Exposure to Loss- Insurance	<b>\$ 433,218</b>	<b>\$ —</b>
Total Maximum Exposure to Loss	<b>\$ 10,297,772</b>	<b>\$ 7,047,025</b>

**Notes to Financial Statements (Continued)**
**16. DEBT OBLIGATIONS**
**Asset Management Debt Obligations**

In Asset Management, KKR enters into credit agreements and issues debt for its general operating and investment purposes. KKR consolidates and reports debt obligations of KKR Financial Holdings LLC, a KKR subsidiary ("KFN"), which are non-recourse to KKR beyond the assets of KFN.

Certain of KKR's consolidated investment funds have entered into financing arrangements with financial institutions, generally to provide liquidity to such investment funds. These financing arrangements are generally not direct obligations of the general partners of KKR's investment funds (beyond KKR's capital interest) or its management companies. Such borrowings have varying maturities and bear interest at floating rates. Borrowings are generally secured by the investment purchased with the proceeds of the borrowing and/or the uncalled capital commitment of each respective fund. When an investment vehicle borrows, the proceeds are available only for use by that investment vehicle and are not available for the benefit of other investment vehicles or KKR. Collateral within each investment vehicle is also available only against borrowings by that investment vehicle and not against the borrowings of other investment vehicles or KKR.

In certain other cases, investments and other assets held directly by majority-owned consolidated investment vehicles have been funded with borrowings that are collateralized by the investments and assets they own. These borrowings are non-recourse to KKR beyond the investments or assets serving as collateral or the capital that KKR has committed to fund such investment vehicles. Such borrowings have varying maturities and generally bear interest at fixed rates.

In addition, consolidated CFEs issue debt securities to third-party investors which are collateralized by assets held by the CFE. Debt securities issued by CFEs are supported solely by the assets held at the CFEs and are not collateralized by assets of any other KKR entity. CFEs also may have warehouse facilities with banks to provide liquidity to the CFE. The CFE's debt obligations are non-recourse to KKR beyond the assets of the CFE.

KKR's Asset Management debt obligations consisted of the following:

	March 31, 2021			December 31, 2020		
	Financing Available	Borrowing Outstanding	Fair Value	Financing Available	Borrowing Outstanding	Fair Value
<b>Revolving Credit Facilities:</b>						
Corporate Credit Agreement	\$ 1,000,000	\$ —	\$ —	\$ 1,000,000	\$ —	\$ —
KCM Credit Agreement	715,017	—	—	705,014	—	—
KCM 364-Day Revolving Credit Agreement	750,000	—	—	750,000	—	—
<b>Notes Issued: <sup>(1)</sup></b>						
KKR ¥25 billion (or \$225.8 million) 0.509% Notes Due 2023 <sup>(4)</sup>	—	226,156	225,138	—	241,331	241,580
KKR ¥5 billion (or \$45.2 million) 0.764% Notes Due 2025 <sup>(4)</sup>	—	44,897	45,186	—	47,919	48,554
KKR €650 million (or \$762.3 million) 1.625% Notes Due 2029 <sup>(5)</sup>	—	755,127	820,053	—	790,157	870,647
KKR \$750 million 3.750% Notes Due 2029 <sup>(4)</sup>	—	742,666	829,643	—	742,196	874,658
KKR ¥10.3 billion (or \$93.0 million) 1.595% Notes Due 2038 <sup>(4)</sup>	—	92,373	95,087	—	98,640	104,004
KKR \$500 million 5.500% Notes Due 2043 <sup>(6)</sup> <sup>(4)</sup>	—	491,317	637,897	—	492,513	666,885
KKR \$1 billion 5.125% Notes Due 2044 <sup>(6)</sup> <sup>(4)</sup>	—	960,458	1,189,734	—	991,471	1,307,220
KKR \$500 million 3.625% Notes Due 2050 <sup>(4)</sup>	—	492,285	502,475	—	492,123	556,095
KKR \$750 million 3.500% Notes Due 2050 <sup>(4)</sup>	—	735,604	743,601	—	735,161	830,280
KKR \$500 million 4.625% Notes Due 2061 <sup>(5)</sup>	—	485,777	485,777	—	—	—
KFN \$500 million 5.500% Notes Due 2032 <sup>(2)</sup>	—	494,660	493,184	—	494,540	502,992
KFN \$120 million 5.200% Notes Due 2033 <sup>(2)</sup>	—	118,562	115,182	—	118,533	118,300
KFN \$70 million 5.400% Notes Due 2033 <sup>(2)</sup>	—	68,888	68,365	—	68,866	70,267
KFN Issued Junior Subordinated Notes <sup>(2)</sup> <sup>(3)</sup>	—	235,137	180,042	—	234,808	165,627
	2,465,017	5,943,907	6,431,364	2,455,014	5,548,258	6,357,109
<b>Other Debt Obligations</b>	5,853,069	28,725,523	28,746,523	5,621,883	27,875,338	27,889,438
	<b>\$ 8,318,086</b>	<b>\$ 34,669,430</b>	<b>\$ 35,177,887</b>	<b>\$ 8,076,897</b>	<b>\$ 33,423,596</b>	<b>\$ 34,246,547</b>



**Notes to Financial Statements (Continued)**

- (1) Borrowing outstanding includes: (i) unamortized note discount (net of premium), as applicable and (ii) unamortized debt issuance costs, as applicable. Financing costs related to the issuance of the notes have been deducted from the note liability and are being amortized over the life of the notes.
- (2) These debt obligations are classified as Level III within the fair value hierarchy and valued using the same valuation methodologies as KKR's Level III credit investments.
- (3) KKR consolidates KFN and reports KFN's outstanding \$258.5 million aggregate principal amount of junior subordinated notes. The weighted average interest rate is 2.7% and 2.7% and the weighted average years to maturity is 15.5 years and 15.8 years as of March 31, 2021 and December 31, 2020, respectively.
- (4) The notes are classified as Level II within the fair value hierarchy and fair value is determined by third party broker quotes.
- (5) The notes are classified as Level I within the fair value hierarchy and fair value is determined by quoted prices in active markets since the debt is publicly listed.
- (6) As of March 31, 2021, the 2043 Senior Notes and the 2044 Senior Notes reflect the elimination for the portion of these senior notes that are held by Global Atlantic.

***Asset Management Revolving Credit Facilities******KCM Short-Term Credit Agreement***

On April 9, 2021, KKR Capital Markets Holdings L.P. and certain other capital markets subsidiaries (the "KCM Borrowers") entered into a 364-day revolving credit agreement (the "KCM Short-Term Credit Agreement") with the same administrative agent, and one or more lenders party to the KCM Credit Agreement. The KCM Short-Term Credit Agreement replaces the prior 364-day revolving credit agreement, dated as of April 10, 2020, between the KCM Borrowers and the administrative agent, and one or more lenders party to the KCM Short-Term Agreement, which was terminated according to its terms on April 9, 2021. The KCM Short-Term Credit Agreement provides for revolving borrowings up to \$750 million, expires on April 8, 2022, and ranks pari passu with the KCM Credit Agreement.

If a borrowing is made under the KCM Short-Term Credit Agreement, the interest rate will vary depending on the type of drawdown requested. If the borrowing is a Eurocurrency loan, it will be based on a LIBOR rate plus an applicable margin initially ranging between 1.50% and 2.75%, depending on the duration of the loan. If the borrowing is an ABR loan, it will be based on the prime rate plus an applicable margin ranging between 0.50% and 1.75%, depending on the amount and nature of the loan. Borrowings under the KCM Short-Term Credit Agreement may only be used to facilitate the settlement of debt transactions syndicated by KKR's capital markets business. Obligations under the KCM Short-Term Credit Agreement are limited to the KCM Borrowers, which are solely entities involved in KKR's capital markets business, and liabilities under the KCM Short-Term Credit Agreement are non-recourse to other parts of KKR.

The KCM Short-Term Credit Agreement contains customary representations and warranties, events of default, and affirmative and negative covenants, including a financial covenant providing for a maximum debt to equity ratio for the KCM Borrowers. The KCM Borrowers' obligations under the KCM Short-Term Credit Agreement are secured by certain assets of the KCM Borrowers, including a pledge of equity interests of certain subsidiaries of the KCM Borrowers.

***Asset Management Notes Issuance and Redemptions******KKR Issued 4.625% Subordinated Notes Due 2061***

On March 31, 2021, KKR Group Finance Co. IX LLC, an indirect subsidiary of KKR & Co. Inc., issued \$500 million aggregate principal amount of its 4.625% Subordinated Notes due 2061 (the "KKR 2061 Subordinated Notes"). The KKR 2061 Subordinated Notes are guaranteed by KKR & Co. Inc. and KKR Group Partnership.

The KKR 2061 Subordinated Notes bear interest at a rate of 4.625% per annum and will mature on April 1, 2061, unless earlier redeemed. Interest on the KKR 2061 Subordinated Notes accrues from March 31, 2021 and is payable quarterly in arrears on January 1, April 1, July 1 and October 1 of each year, commencing on July 1, 2021 and ending on the applicable maturity date. The KKR 2061 Subordinated Notes are unsecured and subordinated obligations of the issuer. The KKR 2061 Subordinated Notes are fully and unconditionally guaranteed, jointly and severally, on a subordinated basis, by each of the guarantors. The guarantees are unsecured obligations of the guarantors.

The indenture includes covenants, including limitations on the issuer's and the guarantors' ability to, subject to exceptions, incur indebtedness secured by liens on voting stock or profit participating equity interests of their subsidiaries or merge, consolidate or sell, transfer or convey all or substantially all of their assets. The indenture also provides for events of default and further provides that the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding KKR



**Notes to Financial Statements (Continued)**

2061 Subordinated Notes may declare the KKR 2061 Subordinated Notes immediately due and payable upon the occurrence and during the continuance of any event of default after expiration of any applicable grace period. In the case of specified events of bankruptcy, insolvency, receivership or reorganization, the principal amount of the KKR 2061 Subordinated Notes and any accrued and unpaid interest on the KKR 2061 Subordinated Notes automatically become due and payable. On or after April 1, 2026, the issuer may redeem the KKR 2061 Subordinated Notes at its option, in whole or in part, at any time and from time to time, at a redemption price equal to 100% of the principal amount of the KKR 2061 Subordinated Notes to be redeemed, together with accrued and unpaid interest to, but excluding, the date of redemption, provided that if the KKR 2061 Subordinated Notes are not redeemed in whole, at least \$25 million aggregate principal amount of the KKR 2061 Subordinated Notes must remain outstanding after giving effect to such redemption. If a “tax redemption event” occurs, the KKR 2061 Subordinated Notes may be redeemed, in whole, but not in part, within 120 days of the occurrence of such tax redemption event at a redemption price equal to their principal amount plus accrued and unpaid interest to, but excluding, the date of redemption. In addition, the KKR 2061 Subordinated Notes may be redeemed, in whole, but not in part, at any time prior to April 1, 2026, within 90 days of the occurrence of a “rating agency event”, at a redemption price equal to 102% of their principal amount plus any accrued and unpaid interest to, but excluding, the date of redemption.

**Other Asset Management Debt Obligations**

As of March 31, 2021, other debt obligations consisted of the following:

	Financing Available	Borrowing Outstanding	Fair Value	Weighted Average Interest Rate	Weighted Average Remaining Maturity in Years
Financing Facilities of Consolidated Funds and Other	\$ 5,853,069	\$ 10,084,669	\$ 10,105,669	2.8%	3.5
Debt Obligations of Consolidated CLOs	—	18,640,854	18,640,854	(1)	10.5
	<b>\$ 5,853,069</b>	<b>\$ 28,725,523</b>	<b>\$ 28,746,523</b>		

- (1) The senior notes of the consolidated CLOs had a weighted average interest rate of 1.9%. The subordinated notes of the consolidated CLOs do not have contractual interest rates but instead receive a pro rata amount of the net distributions from the excess cash flows of the respective CLO vehicle. Accordingly, weighted average borrowing rates for the subordinated notes are based on cash distributions during the period, if any.

Debt obligations of consolidated CLOs are collateralized by assets held by each respective CLO vehicle and assets of one CLO vehicle may not be used to satisfy the liabilities of another. As of March 31, 2021, the fair value of the consolidated CLO assets was \$21.0 billion. This collateral consisted of Cash and Cash Equivalents Held at Consolidated Entities, Investments, and Other Assets.

**Insurance Debt Obligations**

Global Atlantic's debt obligations consisted of the following:

	March 31, 2021		
	Financing Available	Borrowing Outstanding	Fair Value <sup>(2)</sup>
<b>Revolving Credit Facilities:</b>			
Global Atlantic revolving credit facility, due May 2023	\$ 730,000	\$ 270,000	\$ 270,000
<b>Notes Issued and Others:</b>			
Global Atlantic senior notes, due April 2021		150,000	150,330
Global Atlantic term loan, due December 2023		225,000	225,000
Global Atlantic senior notes, due October 2029		500,000	526,650
Global Atlantic subordinated debentures, due October 2046		250,000	254,200
		1,395,000	\$ 1,426,180
Purchase Accounting Adjustments <sup>(1)</sup>		31,717	
Fair value loss (gain) of hedged senior notes due 2029, recognized in earnings		(26,379) 0	
		<b>\$ 1,400,338</b>	

- (1) The amortization of the purchase accounting adjustments was \$2.0 million for the quarter ended March 31, 2021.
- (2) These debt obligations are classified as Level III within the fair value hierarchy and valued using the same valuation methodologies as KKR's Level III credit investments.

**Notes to Financial Statements (Continued)***Global Atlantic Senior Notes due 2021*

In 2011, Forethought Financial Group, Inc. ("FFG") issued \$150 million aggregate principal amount of 8.625% senior notes due 2021 ("GA 2021 Senior Notes"). In December 2017, FFG and Forethought Services, LLC were merged with and into Global Atlantic (Fin) Company ("GA FinCo"), an indirect subsidiary of TGAFG. GA FinCo, as the surviving entity, is liable for the GA 2021 Senior Notes. Interest is paid semi-annually and the maturity date is April 15, 2021. GA FinCo may, at its option, redeem some or all of the GA 2021 Senior Notes at any time at a redemption price equal to 100% of the principal amount of the notes to be redeemed plus a "make-whole" premium and accrued and unpaid interest, if any, to the date of redemption.

If an event of default occurs, either the trustee or the holders of not less than 25% in aggregate principal amount of the GA 2021 Senior Notes then outstanding may declare the principal amount of all 2021 Senior Notes to be due and payable immediately.

On April 15, 2021, subsequent to the end of the quarter, the GA 2021 Senior Notes matured and were paid off. The pay-off of the maturing GA 2021 Senior Notes was facilitated by means of a \$150 million draw on the GA Credit Agreement (discussed and defined below.)

*Global Atlantic Term Loan*

On December 21, 2018, GA FinCo, as borrower, and Global Atlantic Financial Limited ("GAFL"), an indirect subsidiary of TGAFG, as guarantor, entered into a Term Loan Credit Agreement ("GA Term Loan") pursuant to which GA FinCo borrowed \$100 million.

On June 27, 2019, GA FinCo and GAFL entered into a joinder agreement to the GA Term Loan pursuant to which GA FinCo borrowed for general corporate purposes, and GAFL guaranteed, a \$125 million term loan on the same terms and with the same maturity as the existing \$100 million term loan.

On November 6, 2020, GA FinCo entered into an amendment of the GA Term Loan, whereby the definition of Change of Control was amended to permit the GA Acquisition, and the definition of the Maturity Date was amended to December 21, 2023.

All borrowings under the GA Term Loan must be repaid by December 21, 2023. Interest on the borrowing currently accrues at one month LIBOR plus a spread ranging from 1.250% to 1.875% based on GAFL's long-term issuer credit ratings. Interest payments on outstanding borrowings accruing interest based on LIBOR are due on the last day of the applicable interest period, which is currently monthly. The material events of default, representations and warranties and covenants under the GA Term Loan are the same as those under the GA Credit Agreement. If an event of default occurs, the lenders under the GA Term Loan will be entitled to take various actions, including the termination of their commitments and the acceleration of amounts due thereunder.

*Global Atlantic Credit Agreement*

GA FinCo is the borrower and GAFL is the guarantor under a revolving credit facility ("GA Credit Agreement"). On May 21, 2018, GAFL amended and restated the GA Credit Agreement to, among other things: (1) upsize the facility size from \$650 million to \$1 billion; (2) increase the aggregate letters of credit GAFL may issue from \$350 million to \$500 million; (3) extend the maturity of the GA Credit Agreement from December 2021 to May 2023; and (4) remove certain restrictive covenants.

Interest on any funded balances accrues at LIBOR plus a spread ranging from 1.125% to 2.00% based on GAFL's long-term issuer credit ratings. The borrower must pay a commitment fee on any unfunded committed balance under the GA Credit Agreement ranging from 0.15% to 0.35% based on the long-term issuer credit rating. The commitment fee on unfunded balances is paid quarterly in arrears. The GA Credit Agreement contains customary events of default, representations and warranties and covenants, including, among other things, covenants that GAFL's consolidated debt to total capitalization, as defined in the GA Credit Agreement, cannot be more than 35% and that GAFL's consolidated net worth determined in accordance with GAAP cannot be less than 70% of the value of GAFL's consolidated net worth as of March 31, 2018, plus 50% of net income since March 31, 2018.

On November 6, 2020, GA FinCo entered into an amendment of the GA Credit Agreement, whereby the definition of Change of Control was amended to permit the GA Acquisition. If an event of default occurs, the lenders under the GA Credit Agreement will be entitled to take various actions, including the termination of their commitments and the acceleration of amounts due thereunder.

**Notes to Financial Statements (Continued)**

As of March 31, 2021, there was \$270 million in revolving borrowings outstanding and no letters of credit outstanding under the GA Credit Agreement.

*Global Atlantic Senior Notes due 2029*

On October 7, 2019, GA FinCo issued \$500 million aggregate principal amount of 4.400% senior unsecured notes due 2029 ("GA 2029 Senior Notes"). The GA 2029 Senior Notes were issued pursuant to an Indenture, dated as of October 7, 2019, among GA FinCo, as issuer, GAFL, as guarantor, and U.S. Bank National Association, as trustee as supplemented by the First Supplemental Indenture, dated as of October 7, 2019, among GA FinCo, GAFL and the trustee. The GA 2029 Senior Notes are fully and unconditionally guaranteed on a senior unsecured basis by GAFL.

The GA 2029 Senior Notes bear interest at a rate of 4.400% per year. Interest on the GA 2029 Senior Notes is payable semi-annually in arrears on April 15 and October 15 of each year, beginning on April 15, 2020. The GA 2029 Senior Notes will mature on October 15, 2029.

The indenture includes covenants, including limitations on the issuer's and the guarantors' ability to, subject to exceptions, incur indebtedness secured by liens on voting stock or profit participating equity interests of their subsidiaries or merge, consolidate or sell, transfer or convey all or substantially all of their assets. The indenture also provides for events of default and further provides that the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding GA 2020 Senior Notes may declare the GA 2029 Senior Notes immediately due and payable upon the occurrence and during the continuance of any event of default after expiration of any applicable grace period. In the case of specified events of bankruptcy, insolvency, rehabilitation or reorganization, the principal amount of the GA 2029 Senior Notes and any accrued and unpaid interest on the GA 2029 Senior Notes automatically become due and payable. GA FinCo may, at its option, redeem some or all of the GA 2029 Senior Notes at any time: (i) prior to July 15, 2029 at a redemption price equal to 100% of the principal amount of the GA 2029 Senior Notes to be redeemed plus a "make-whole" premium and accrued and unpaid interest, if any, to the date of redemption; and (ii) on or after July 15, 2029 at a redemption price equal to 100% of the principal amount of the GA 2029 Senior Notes to be redeemed, plus accrued and unpaid interest to the date of redemption.

*Global Atlantic Subordinated Debentures*

On October 5, 2016, GA FinCo, as issuer, and GAFL, as guarantor, entered into an issuing and paying agency agreement pursuant to which GA FinCo issued \$250 million of the subordinated debentures unconditionally guaranteed on a subordinated basis by GAFL in a private placement ("GA 2046 Subordinated Debentures").

Interest on the GA 2046 Subordinated Debentures is payable semi-annually in arrears on April 1 and October 1 of each year and accrues at 9.5% per annum from and including October 5, 2016 to, but excluding, October 1, 2021. On October 1, 2021 and on each fifth anniversary of such date thereafter, each, a "reset date," the interest rate shall be recomputed based on the yield (rounded to two decimal places) reported as of two business days prior to the reset date for the most recently issued actively traded on the run U.S. Treasury securities having a maturity of five years from the reset date, plus 8.38% per annum.

GA FinCo has the right on one or more occasions to defer the payment of interest on the GA 2046 Subordinated Debentures for up to five consecutive years, each such period, an optional deferral period. During an optional deferral period, interest will continue to accrue at the interest rate on the subordinated debentures, compounded semi-annually as of each interest payment date.

If GA FinCo has exercised its right to defer interest payments on the GA Subordinated Debentures, GA FinCo and GAFL generally may not: (1) make payments on or redeem or purchase (a) GA FinCo or GAFL common stock or (b) with respect to GA FinCo, any indebtedness ranking on parity with or junior to the GA Subordinated Debentures, and with respect to GAFL, any indebtedness ranking on parity with or junior to the guarantee; or (2) make any guarantee payments with respect to any guarantee by GA FinCo or by GAFL of any securities or any of their respective subsidiaries if such guarantee ranks equally with or junior to the debentures.

The indenture includes covenants, including limitations on the issuer's and the guarantors' ability to, subject to exceptions, consolidate or merge into any person or convey, transfer or lease its properties and assets. In the case of specified events of bankruptcy, insolvency, receivership or reorganization, the principal amount of the GA Subordinated Debentures automatically becomes due and payable. GA FinCo may elect to redeem the GA Subordinated Debentures either: (1) in whole or in part on any interest payment date on or after October 1, 2021, at a redemption price equal to the principal amount plus accrued and unpaid interest; or (2) in whole, but not in part, at any time prior to October 1, 2021, within 90 days after the occurrence of a "tax event" or a "rating agency event" (as defined in the issuing and paying agency agreement), at a redemption price equal to the principal amount plus any accrued and unpaid interest to, but excluding, the redemption date.

**Debt Covenants**

Borrowings of KKR (including by Global Atlantic) contain various debt covenants. These covenants do not, in management's opinion, materially restrict KKR's operating business or investment strategies as of March 31, 2021. KKR (including Global Atlantic) was in compliance with such debt covenants in all material respects as of March 31, 2021.

**17. INCOME TAXES**

KKR & Co. Inc. is a domestic corporation for U.S. federal income tax purposes and is subject to U.S. federal, state and local income taxes at the entity level on its share of taxable income. In addition, KKR Group Partnership and certain of its subsidiaries operate as partnerships for U.S. federal tax purposes but as taxable entities for certain state, local or non-U.S. tax purposes. Moreover, certain corporate subsidiaries of KKR, including certain Global Atlantic subsidiaries, are domestic corporations for U.S. federal income tax purposes and are subject to U.S. federal, state, and local income taxes. Income taxes reported in these consolidated financial statements include the taxes described in this paragraph.

The effective tax rates were 10.1% and 7.9% for the three months ended March 31, 2021 and 2020, respectively. The effective tax rate differs from the statutory rate primarily because a substantial portion of the reported net income (loss) before taxes is not attributable to KKR but rather is attributable to noncontrolling interests held in KKR's consolidated entities by KKR's principals or by third parties.

Future realization of deferred tax assets is dependent on KKR generating sufficient taxable income before the tax benefits are expected to expire. KKR considers projections of taxable income in evaluating its ability to utilize those deferred tax assets. In projecting its taxable income, KKR begins with historical results and incorporates assumptions concerning the amount and timing of future pretax operating income. Those assumptions require significant judgment and are consistent with the plans and estimates that KKR uses to manage its business. As of March 31, 2021, \$23.1 million of deferred tax assets are not considered to be more likely than not to be realized prior to the expiration of the related loss carryforwards. For that portion of the total deferred tax asset, a valuation allowance has been recorded.

During the three months ended March 31, 2021, there were no material changes to KKR's uncertain tax positions and KKR believes there will be no significant increase or decrease to the uncertain tax positions within 12 months of the reporting date.

**18. EQUITY BASED COMPENSATION***Equity Based Compensation - Asset Management*

The following table summarizes the expense associated with equity-based compensation for the three months ended March 31, 2021 and 2020, respectively.

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
KKR Equity Incentive Plan Awards <sup>(1)</sup>	\$ 64,527	\$ 51,003
KKR Holdings Awards	16,367	20,576
<b>Total</b>	<b>\$ 80,894</b>	<b>\$ 71,579</b>

(1) Includes \$0.2 million of equity based compensation related to our insurance business for the three months ended March 31, 2021.

**KKR Equity Incentive Plan Awards**

Under KKR's Equity Incentive Plans, KKR is permitted to grant equity awards representing ownership interests in KKR & Co. Inc. common stock. On March 29, 2019, the 2019 Equity Incentive Plan became effective. Following the effectiveness of the 2019 Equity Incentive Plan, KKR no longer makes further grants under the 2010 Equity Incentive Plan, and the 2019 Equity Incentive Plan became KKR's only plan for providing new equity-based awards by KKR & Co. Inc. Outstanding awards under the 2010 Equity Incentive Plan will remain outstanding, unchanged and subject to the terms of the 2010 Equity Incentive Plan and their respective equity award agreements, until the vesting, expiration or lapse of such awards in accordance with their terms. The total number of equity awards representing shares of common stock that may be issued under the 2019 Equity Incentive Plan is equivalent to 15% of the aggregate number of the shares of common stock and KKR Group Partnership Units (excluding KKR Group Partnership Units held by KKR & Co. Inc. or its wholly-owned subsidiaries), subject to annual adjustment. Equity awards granted pursuant to the Equity Plans generally consist of (i) restricted stock units ("RSUs") that convert to shares of common stock of KKR & Co. Inc. (or cash equivalent) upon vesting and (ii) restricted holdings units ("RHUs") that are exchangeable into shares of common stock of KKR & Co. Inc. upon vesting and certain other conditions. Vested awards under the Equity Incentive Plans dilute KKR & Co. Inc. common stockholders and KKR Holdings pro rata in accordance with their respective percentage interests in KKR Group Partnership.

*Service-Vesting Awards*

Under the Equity Incentive Plans, KKR grants equity awards that are subject to service-based vesting, typically over a three to five-year period from the date of grant (referred to hereafter as "Service-Vesting Awards"). In certain cases, these Service-Vesting Awards may have a percentage of the award that vests immediately upon grant. Additionally, some but not all Service-Vesting Awards are subject to transfer restrictions and/or minimum retained ownership requirements. The transfer restriction period, if applicable, lasts for (i) one year with respect to one-half of the interests vesting on any vesting date and (ii) two years with respect to the other one-half of the interests vesting on such vesting date. While providing services to KKR, some but not all of these awards are also subject to minimum retained ownership rules requiring the award recipient to continuously hold shares of common stock equivalents equal to at least 15% of their cumulatively vested awards that have or had the minimum retained ownership requirement. Holders of the Service-Vesting Awards do not participate in dividends until such awards have met their vesting requirements.

Expense associated with the vesting of these Service-Vesting Awards is based on the closing price of KKR & Co. Inc. common stock on the date of grant, discounted for the lack of participation rights in the expected dividends on unvested equity awards. Expense is recognized on a straight line basis over the life of the award and assumes a forfeiture rate of up to 7% annually based upon expected turnover by class of recipient.

**Notes to Financial Statements (Continued)**

As of March 31, 2021, there was approximately \$441.7 million of total estimated unrecognized expense related to unvested Service-Vesting Awards. That cost is expected to be recognized as follows:

<b>Year</b>	<b>Unrecognized Expense (in millions)</b>
Remainder of 2021	\$ 104.4
2022	113.6
2023	87.4
2024	66.0
2025	56.8
2026	13.5
<b>Total</b>	<b>\$ 441.7</b>

A summary of the status of unvested Service-Vesting Awards granted under the Equity Incentive Plans from January 1, 2021 through March 31, 2021 is presented below:

	<b>Shares</b>	<b>Weighted Average Grant Date Fair Value</b>
Balance, January 1, 2021	23,866,696	\$ 28.28
Granted	362,813	38.09
Vested	(1,205,812)	37.77
Forfeitures	(166,054)	26.34
Balance, March 31, 2021	<b>22,857,643</b>	<b>\$ 27.95</b>

The weighted average remaining vesting period over which unvested Service-Vesting Awards are expected to vest is 1.7 years.

A summary of the remaining vesting tranches of awards granted under the Equity Incentive Plans is presented below:

<b>Vesting Date</b>	<b>Shares</b>
April 1, 2021	4,564,493
October 1, 2021	3,023,567
April 1, 2022	3,793,421
October 1, 2022	1,667,548
April 1, 2023	3,058,791
October 1, 2023	410,293
April 1, 2024	2,428,868
October 1, 2024	199,809
April 1, 2025	1,839,434
October 1, 2025	158,430
April 1, 2026	1,712,989
	<b>22,857,643</b>

**Market Condition Awards**

Under KKR's Equity Incentive Plans, KKR also grants equity awards that are subject to a market price-based vesting condition (referred to hereafter as "Market Condition Awards").

**Notes to Financial Statements (Continued)**

During the fourth quarter of 2020 and the first quarter of 2021, KKR granted 16.9 million and 2.2 million of Market Condition Awards, respectively, subject to both stock price target requirements and service requirements. The number of Market Condition awards that will vest will depend upon the market price of KKR common stock reaching and maintaining a 20 day average closing price based on the vesting schedules provided below on or prior to May 1, 2026, subject to the employee's continued service to May 1, 2026, subject to exceptions. For any price targets not achieved, that portion of the unvested awards will be automatically canceled and forfeited. These awards are subject to additional transfer restrictions and minimum retained ownership requirements after vesting. Each recipient received awards with market price-based vesting conditions based on either Type 1 or Type 2, not both.

Vesting Condition Type 1				Vesting Condition Type 2			
Stock Price		Vesting %		Stock Price		Vesting %	
\$	45.00	25.0	%	\$	45.00	16.7	%
\$	50.00	50.0	%	\$	50.00	33.4	%
\$	55.00	75.0	%	\$	55.00	50.1	%
\$	60.00	100.0	%	\$	60.00	66.8	%
				\$	65.00	83.5	%
				\$	70.00	100.0	%

Due to the existence of the service requirement, the vesting period for these Market Condition Awards is explicit, and as such, compensation expense will be recognized on a straight-line basis over the period from the date of grant through May 1, 2026 and assumes a forfeiture rate of up to 4% annually based upon expected turnover. The fair value of the awards granted in the fourth quarter of 2020 was \$22.56 and \$19.87 per share for vesting condition Type 1 and vesting condition Type 2, respectively, based on a Monte-Carlo simulation valuation model. The fair value of the awards granted in the first quarter of 2021 was \$34.10 per share for vesting condition Type 2, based on a Monte-Carlo simulation valuation model. In addition, the grant date fair value assumes that holders of the Market Condition Awards will not participate in dividends or distributions until such awards have met all of their vesting requirements.

Below is a summary of the significant assumptions used to estimate the grant date fair value of these Market Condition Awards:

Grant Date	Fourth Quarter 2020	First Quarter 2021
Closing KKR share price as of valuation date	\$37.93	\$47.09
Risk Free Rate	0.41 %	0.60 %
Volatility	28.00 %	28.00 %
Dividend Yield	1.53 %	1.23 %
Expected Cost of Equity	10.76 %	10.28 %

As of March 31, 2021, there was approximately \$337.0 million of total estimated unrecognized expense related to these unvested Market Condition awards. That cost is expected to be recognized as follows:

Year	Unrecognized Expense (in millions)
Remainder of 2021	\$ 42.5
2022	60.1
2023	64.6
2024	69.6
2025	74.4
2026	25.8
<b>Total</b>	<b>\$ 337.0</b>

**Notes to Financial Statements (Continued)**

A summary of the status of unvested Market Condition awards granted under the Equity Incentive Plans from January 1, 2021 through March 31, 2021 is presented below:

	Shares	Weighted Average Grant Date Fair Value
Balance, January 1, 2021	16,875,000	\$ 21.07
Granted	2,200,000	34.10
Vested	—	—
Forfeitures	—	—
Balance, March 31, 2021	<u>19,075,000</u>	<u>\$ 22.57</u>

As of March 31, 2021, 3.8 million of these Market Condition awards met their market-price based vesting condition.

**KKR Holdings Awards**

KKR Holdings units are exchangeable for KKR Group Partnership Units and allow for their exchange into common stock of KKR & Co. Inc. on a one-for-one basis. As of March 31, 2021 and 2020, KKR Holdings owned approximately 32.1% or 273,367,712 units and 34.1% or 286,477,271 units, respectively, of outstanding KKR Group Partnership Units. Awards for KKR Holdings units that have been granted are generally subject to service-based vesting, typically over a three to five-year period from the date of grant. They are also generally subject to transfer restrictions which last for (i) one year with respect to one-half of the interests vesting on any vesting date and (ii) two years with respect to the other one-half of the interests vesting on such vesting date. While providing services to KKR, the recipients are also subject to minimum retained ownership rules requiring them to continuously hold 25% of their vested interests. Holders of KKR Holdings units are not entitled to participate in distributions made on KKR Group Partnership Units underlying their KKR Holdings units until such units are vested. As of March 31, 2021, all of the KKR Holdings units (except for less than 1.2% of the outstanding KKR Holdings units) have been granted, and certain Holdings units remain subject to vesting.

The fair value of awards granted out of KKR Holdings is generally based on the closing price of KKR & Co. Inc. common stock on the date of grant discounted for the lack of participation rights in the expected distributions on unvested units. KKR determined this to be the best evidence of fair value as KKR & Co. Inc. common stock is traded in an active market and has an observable market price. Additionally, a KKR Holdings unit is an instrument with terms and conditions similar to those of KKR & Co. Inc. common stock. Specifically, units in KKR Holdings and shares of KKR & Co. Inc. represent ownership interests in KKR Group Partnership Units and, subject to any vesting, minimum retained ownership requirements and transfer restrictions, each KKR Holdings unit is exchangeable into a KKR Group Partnership Unit and then into a share of KKR & Co. Inc. common stock on a one-for-one basis.

In February 2016, approximately 28.9 million KKR Holdings units were granted that were originally subject to market condition and service-based vesting that were subsequently modified in November 2016 to eliminate the market condition vesting and instead require only service-based vesting in equal annual installments over a five-year period. At the date of modification, total future compensation expense amounted to \$320.9 million, net of estimated forfeitures, to be recognized over the remaining vesting period of the modified awards.

The awards described above were granted from outstanding but previously unallocated units of KKR Holdings, and consequently these grants did not increase the number of KKR Holdings units outstanding or outstanding KKR & Co. Inc. common stock on a fully-diluted basis. If and when vested, these awards will not dilute KKR's respective ownership interests in KKR Group Partnership.

KKR Holdings awards give rise to equity-based compensation in the consolidated statements of operations based on the grant-date fair value of the award discounted for the lack of participation rights in the expected distributions on unvested units. This discount is consistent with that noted above for shares issued under the Equity Incentive Plans. Expense is recognized on a straight line basis over the life of the award and assumes a forfeiture rate of up to 7% annually based on expected turnover by class of recipient.



**Notes to Financial Statements (Continued)**

As of March 31, 2021, there was approximately \$54.5 million of estimated unrecognized expense related to unvested KKR Holdings awards. That cost is expected to be recognized as follows:

<b>Year</b>	<b>Unrecognized Expense (in millions)</b>
Remainder of 2021	\$ 28.7
2022	25.8
<b>Total</b>	<b>\$ 54.5</b>

A summary of the status of unvested awards granted under the KKR Holdings Plan from January 1, 2021 through March 31, 2021 is presented below:

	<b>Units</b>	<b>Weighted Average Grant Date Fair Value</b>
Balance, January 1, 2021	10,240,000	\$ 14.33
Granted	—	—
Vested	—	—
Forfeitures	—	—
Balance, March 31, 2021	<b>10,240,000</b>	<b>\$ 14.33</b>

The weighted average remaining vesting period over which unvested awards are expected to vest is 0.8 years.

A summary of the remaining vesting tranches of awards granted under the KKR Holdings Plan is presented below:

<b>Vesting Date</b>	<b>Units</b>
May 1, 2021	2,905,000
October 1, 2021	3,425,000
October 1, 2022	3,910,000
	<b>10,240,000</b>

**Equity Based Compensation - Insurance**

The following table summarizes the expense associated with Global Atlantic equity-based compensation for the three months ended March 31, 2021.

	<b>Three Months Ended March 31, 2021</b>
Global Atlantic Book Value and Other Awards	\$ 7,201
KKR Equity Incentive Plan Awards	210
<b>Total</b>	<b>\$ 7,411</b>

No equity-based compensation costs were capitalized during the three months ended March 31, 2021.

On February 1, 2021, in connection with the GA Acquisition, employees of Global Atlantic were awarded a one-time grant of RSUs under the 2019 Equity Incentive Plan. These awards (i) are subject to service-based vesting conditions and (ii) expense associated with the vesting of these awards is based on the closing price of KKR & Co. Inc. common stock on the date of grant, consistent with other awards granted under the 2019 Equity Incentive Plan as described above.

**Notes to Financial Statements (Continued)**
**Liability Classified Awards - Book-value awards**

The following table presents Global Atlantic's unrecognized compensation expense and the expected weighted average period over which these expenses will be recognized as of March 31, 2021:

	March 31, 2021	
	Expense	Weighted average period (years)
GA Book Value Awards	\$ 91,105	2.85
<b>Unrecognized compensation expense, as of end of period</b>	<b>\$ 91,105</b>	

On February 1, 2021, Global Atlantic adopted the Global Atlantic Financial Company Book Value Award Plan ("GA Plan") to enhance the ability of Global Atlantic to attract, motivate and retain its employees and to promote the success of the Global Atlantic business.

The GA Plan authorizes the grant of cash-settled awards ("book value awards") representing the right to receive one or more payments upon vesting equal to the product of an initial dollar value set by the award multiplied by a pre-determined formula as of each applicable vesting date. The predetermined formula is equal to the quotient determined by dividing the book value of one share of TGAFG on the applicable vesting date by the book value of a share on the original grant date, subject to adjustments. Book value awards generally vest in three equal, annual installments, subject to continued employment.

On February 1, 2021, under the terms of the GA Merger Agreement and in accordance with applicable plan documentation, former Global Atlantic restricted share awards that were unvested immediately prior to the closing of the GA Acquisition converted into the right to receive a number of book value awards under the GA Plan having the same value and the same vesting schedule as the former Global Atlantic restricted share awards immediately prior to the closing of the GA Acquisition.

An aggregate of 3,020,017 unvested former Global Atlantic restricted share awards having a fair value of \$29.47 per share were converted to book value awards at an aggregate grant-date value of \$89 million. On February 28, 2021, book value awards having an aggregate value of approximately \$28 million vested as set forth in the former Global Atlantic grant agreements and resulted in a cash payment of \$17 million to participants, net of applicable tax withholding.

Also in connection with the GA Acquisition, on February 1, 2021, Global Atlantic employees were issued a one-time grant of book value awards having an aggregate initial value of \$23 million. These one-time book value awards vest over five (5) years, with the first 25% vesting on April 1, 2023 and the remainder vesting 25% annually on April 1 each subsequent year until fully vested, subject to continued employment. Global Atlantic is recording compensation expense over the vesting schedule of the awards, net of an estimated forfeiture rate of 4%.

On March 1, 2021, pursuant to the GA Plan, book value awards having an aggregate initial value of approximately \$32 million were granted. Such book value awards generally vest annually over three years in equal increments, subject to continued employment. Global Atlantic is recording compensation expense over the vesting schedule of the awards, net of an estimated forfeiture rate of 4%.

Global Atlantic began recognizing long-term incentive expense for the book value awards described above at the grant dates, based on their initial value. The table below presents the activity related to book value awards for the three months ended March 31, 2021:

	Book value awards (\$ in thousands)
Outstanding amount as of beginning of period	\$ —
Pre-acquisition awards converted to book-value awards on February 1, 2021	89,000
Granted	53,969
Forfeited	(957)
Vested and issued	(30,280)
<b>Outstanding amount as of end of period</b>	<b>\$ 111,732</b>

**19. RELATED PARTY TRANSACTIONS****Due from Affiliates consists of:**

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
Amounts due from portfolio companies	\$ 165,636	\$ 164,113
Amounts due from unconsolidated investment funds	893,403	707,758
Amounts due from related entities	2,392	1,123
<b>Due from Affiliates</b>	<b>\$ 1,061,431</b>	<b>\$ 872,994</b>

**Due to Affiliates consists of:**

	<b>March 31, 2021</b>	<b>December 31, 2020</b>
Amounts due to KKR Holdings - tax receivable agreement	\$ 214,879	\$ 204,014
Amounts due to unconsolidated investment funds	107,632	121,163
<b>Due to Affiliates</b>	<b>\$ 322,511</b>	<b>\$ 325,177</b>

## 20. SEGMENT REPORTING

KKR operates through two reportable segments which are presented below and reflect how its chief operating decision-makers allocate resources and assess performance:

- **Asset Management** - the asset management business offers a broad range of investment management services to investment funds, vehicles and accounts (including Global Atlantic) and provides capital markets services to portfolio companies and third parties. This reportable segment also reflects how its business lines operate collaboratively with predominantly a single expense pool.
- **Insurance** - the insurance business is operated by Global Atlantic, which is a leading U.S. annuity and life insurance company that provides a broad suite of protection, legacy and savings products and reinsurance solutions to clients across individual and institutional markets. Global Atlantic primarily generates income by earning a spread between its investment income and the cost of policyholder benefits.

KKR's segment profitability measure used to make operating decisions and assess performance across KKR's reportable segments is presented prior to giving effect to the allocation of income (loss) among KKR & Co. Inc., KKR Holdings L.P. and holders of other exchangeable securities, and the consolidation of the investment funds, vehicles and accounts that KKR advises, manages or sponsors (including CFEs). KKR's segment profitability measure excludes: (i) equity-based compensation charges, (ii) amortization of acquired intangibles, (iii) strategic transaction-related charges and (iv) non-recurring items, if any. Strategic transaction-related items arise from corporate actions and consist primarily of (i) impairments, (ii) non-monetary gains or losses on divestitures, (iii) transaction costs from strategic acquisitions, and (iv) depreciation on real estate that KKR owns and occupies. Segment operating earnings for the Asset Management and Insurance segments is further defined as follows:

- **Asset Management Segment Operating Earnings** is the profitability measure used to make operating decisions and to assess the performance of the Asset Management segment and is comprised of: (i) Fee Related Earnings, (ii) Realized Performance Income, (iii) Realized Performance Income Compensation, (iv) Realized Investment Income (Loss), and (v) Realized Investment Income Compensation. Asset Management Segment Operating Earnings excludes (i) unrealized carried interest, (ii) net unrealized gains (losses) on investments, and (iii) related unrealized performance income compensation expense. Management fees earned by KKR as the adviser, manager, or sponsor for its investment funds, vehicles and accounts, including management fees paid to KKR by Global Atlantic's insurance companies and management fees paid to Global Atlantic by reinsurance investment vehicles, are included in Asset Management Segment Operating Earnings.
- **Insurance Segment Operating Earnings** is the profitability measure used to make operating decisions and to assess the performance of the Insurance segment and is comprised of: (i) Net Investment Income, (ii) Net Cost of Insurance, (iii) General, Administrative, and Other Expenses, (iv) Income Taxes, and (v) Net income Attributable to Noncontrolling Interests. The non-operating adjustments made to derive Insurance Segment Operating Earnings eliminate the impact of: (i) realized (gains) losses related to asset/liability matching investments strategies, (ii) unrealized investment (gains) losses, (iii) changes in the fair value of derivatives, embedded derivatives, and fair value liabilities for fixed-indexed annuities, indexed universal life contracts and variable annuities, and (iv) the associated income tax effects of all exclusions from Insurance Segment Operating Earnings except for equity-based compensation expense. Insurance Segment Operating Earnings includes (i) realized gains and losses not related to asset/liability matching investments strategies and (ii) the investment management fee expenses that are earned by KKR as the investment adviser of Global Atlantic's insurance companies.

### ***Modification of Segment Information***

In connection with the acquisition of Global Atlantic on February 1, 2021, KKR reevaluated the manner in which it makes operational and resource deployment decisions and assesses the overall performance of KKR's business. Effective with the three months ended March 31, 2021, the items detailed below have changed with respect to the preparation of the reports used by KKR's chief operating decision makers. As a result, KKR has modified the presentation of its segment financial information effective as of and for the three months ended March 31, 2021 with retrospective application to all prior periods presented.

**Notes to Financial Statements (Continued)**

The most significant changes between KKR's current segment presentation and its previous segment presentation reported prior to the three months ended March 31, 2021, are as follows:

- Two Reportable Segments - KKR operates through two reportable segment due to the acquisition of Global Atlantic, which represents a separate reportable segment. The Asset Management segment represents KKR's business separate from its insurance operations and what previously was identified as one operating and reportable segment. The Asset Management segment continues to reflect how the chief operating decision makers allocate resources and assess performance in the asset management business, which includes operating collaboratively across asset management business lines, with predominantly a single expense pool.
- Segment Operating Earnings - Segment Operating Earnings is the performance measure for KKR's segment profitability and is used by management in making operational and resource deployment decisions. Previously, due to the conclusion that KKR operated under one reportable segment, no measure of segment profit or loss was disclosed.

In connection with these modifications, segment information as of and for the three months ended March 31, 2021 has been presented in this Quarterly Report on Form 10-Q to conform to KKR's current segment presentation for comparability purposes. Consequently, this information will be different from the historical segment financial results previously reported by KKR in its reports filed with the SEC.

**Segment Presentation**

The following tables set forth information regarding KKR's segment results:

	Three Months Ended	
	March 31, 2021	March 31, 2020
Management Fees <sup>(1)</sup>	\$ 439,740	\$ 336,074
Transaction and Monitoring Fees, Net	135,677	79,428
Fee Related Performance Revenues	10,296	9,156
Fee Related Compensation	(131,785)	(83,345)
Other Operating Expenses	(90,161)	(83,531)
Fee Related Earnings	363,767	257,782
Realized Performance Income	171,309	363,132
Realized Performance Income Compensation	(109,986)	(225,278)
Realized Investment Income	461,273	145,164
Realized Investment Income Compensation	(69,191)	(17,604)
<b>Asset Management Segment Operating Earnings</b>	<b>817,172</b>	<b>523,196</b>
Net Investment Income <sup>(1)</sup>	445,898	—
Net Cost of Insurance	(250,219)	—
General, Administrative and Other	(75,489)	—
Pre-tax Insurance Operating Earnings	120,190	—
Income Taxes	(16,626)	—
Net Income Attributable to Noncontrolling Interest	(40,299)	—
<b>Insurance Segment Operating Earnings</b>	<b>63,265</b>	<b>—</b>
<b>Total Segment Operating Earnings</b>	<b>\$ 880,437</b>	<b>\$ 523,196</b>

Includes intersegment management fees of \$22.9 million for the three months ended March 31, 2021.

	As of	
	March 31, 2021	March 31, 2020
<b>Segment Assets:</b>		
Asset Management	\$ 28,247,535	\$ 19,721,302
Insurance	131,350,085	—
<b>Total Segment Assets</b>	<b>\$ 159,597,620</b>	<b>\$ 19,721,302</b>

	Three Months Ended	
	March 31, 2021	March 31, 2020
<b>Non-cash expenses excluded from Segment Operating Earnings</b>		
Equity Based Compensation		
Asset Management	\$ 64,317	\$ 51,003
Insurance	7,411	—
<b>Total Non-cash expenses</b>	<b>\$ 71,728</b>	<b>\$ 51,003</b>

**Reconciliations of Total Segment Amounts**

The following tables reconcile the Segment Revenues, Segment Operating Earnings, and Segment Assets to their equivalent GAAP measure:

	Three Months Ended	
	March 31, 2021	March 31, 2020
<b>Total GAAP Revenues</b>	<b>\$ 4,563,006</b>	<b>\$ (1,001,505)</b>
Impact of Consolidation and Other	123,448	95,029
<i>Asset Management Adjustments:</i>		
Capital Allocation-Based Income (GAAP)	(2,684,647)	1,382,077
Realized Carried Interest	165,142	361,331
Realized Investment Income	461,273	145,164
Capstone Fees	(20,080)	(20,918)
Expense Reimbursements	(27,729)	(28,224)
<i>Insurance Adjustments:</i>		
Premiums	(1,176,142)	—
Policy Fees	(201,683)	—
Other Income	(18,144)	—
Investment Gains and Losses	259,168	—
Derivative Gains and Losses	220,581	—
<b>Total Segment Revenues <sup>(1)</sup></b>	<b>\$ 1,664,193</b>	<b>\$ 932,954</b>

(1) Total Segment Revenues is comprised of (i) Management Fees, (ii) Transaction and Monitoring Fees, Net, (iii) Fee Related Performance Revenues, (iv) Realized Performance Income, (v) Realized Investment Income, and (vi) Net Investment Income.

	Three Months Ended	
	March 31, 2021	March 31, 2020
<b>Income (Loss) Before Tax (GAAP)</b>	<b>\$ 4,354,106</b>	<b>\$ (4,588,632)</b>
Impact of Consolidation and Other	(1,375,375)	2,034,098
Interest Expense	57,545	47,434
Equity-based compensation - KKR Holdings	16,434	20,696
<i>Asset Management Adjustments:</i>		
Unrealized Carried Interest	(2,109,018)	1,659,940
Net Unrealized Gains (Losses)	(1,316,644)	1,974,531
Unrealized Performance Income Compensation	896,907	(675,874)
Strategic Corporate Transaction-Related Charges	4,875	—
Equity-based compensation	49,761	49,334
Equity-based compensation - Performance based	14,556	1,669
<i>Insurance Adjustments:</i>		
Net (Gains) Losses from Investments and Derivatives	289,235	—
Strategic Corporate Transaction-Related Charges	4,819	—
Equity-based and Other Compensation	7,411	—
Amortization of Acquired Intangibles	2,451	—
Income Taxes	(16,626)	—
<b>Total Segment Operating Earnings</b>	<b>\$ 880,437</b>	<b>\$ 523,196</b>

## Notes to Financial Statements (Continued)

	As of	
	March 31, 2021	March 31, 2020
<b>Total GAAP Assets</b>	<b>\$ 216,445,114</b>	<b>\$ 55,601,0</b>
Impact of Consolidation and Other	(53,636,814)	(34,876,5
Carry Pool Reclassifications	(2,815,328)	(773,1
Other Reclassifications	(395,352)	(229,5
<b>Total Segment Assets</b>	<b>\$ 159,597,620</b>	<b>\$ 19,721,5</b>



## 21. EQUITY

### Stockholders' Equity

#### *Common Stock*

The common stock of KKR & Co. Inc. is entitled to vote as provided by its certificate of incorporation, Delaware General Corporation Law and the rules of the NYSE. Subject to preferences that apply to shares of Series A Preferred Stock, Series B Preferred Stock, Series C Mandatory Convertible Preferred Stock and any other shares of preferred stock outstanding at the time on which dividends are payable, the holders of common stock are entitled to receive dividends out of funds legally available if the board of directors, in its discretion, determines to declare dividends and then only at the times and in the amounts that the board of directors may determine. The common stock is not entitled to preemptive rights and is not subject to conversion, redemption or sinking fund provisions.

#### *Series I and Series II Preferred Stock*

Except for any distribution required by Delaware law to be made upon a dissolution event, the holders of Series I preferred stock and Series II preferred stock do not have any economic rights to receive dividends. Series I preferred stock is entitled to vote on various matters that may be submitted to vote of the stockholders and the other matters as set forth in the certificate of incorporation. For matters on which common stock is entitled to vote, so long as the ratio at which KKR Group Partnership Units are exchangeable for shares of common stock remains on a one-for-one basis, Series II preferred stock will vote together with common stock as a single class and on an equivalent basis, except Series II preferred stock will vote separately as a class on any amendment to the certificate of incorporation that changes certain terms, rights or preferences of Series II preferred stock. Upon a dissolution event, each holder of Series I preferred stock will be entitled to a payment equal to \$0.01 per share of Series I preferred stock and each holder of Series II preferred stock will be entitled to a payment equal to \$0.00000001 per share of Series II Preferred Stock.

#### *Series A and Series B Preferred Stock*

The board of directors is authorized, subject to limitations prescribed by Delaware law, to issue preferred stock in one or more series, to establish from time to time the number of shares to be included in each series, and to fix the designation, powers (including voting powers), preferences and rights of the shares of each series and any of its qualifications, limitations or restrictions, in each case without further vote or action by the stockholders (except as may be required by the terms of any preferred stock then outstanding).

KKR & Co. Inc. has outstanding 13,800,000 shares of Series A Preferred Stock and 6,200,000 shares of Series B Preferred Stock. Series A Preferred Stock and Series B Preferred Stock trade on the NYSE under the symbols "KKR PR A" and "KKR PR B," respectively, and were originally issued on March 17, 2016 and June 20, 2016, respectively. The terms of the preferred stock are set forth in our certificate of incorporation.

If declared, dividends on the Series A Preferred Stock and Series B Preferred Stock are payable quarterly on March 15, June 15, September 15 and December 15 of each year, at a rate per annum equal to 6.75%, in the case of Series A Preferred Stock, and 6.50%, in the case of Series B Preferred Stock. Dividends on the Series A Preferred Stock and Series B Preferred Stock are discretionary and non-cumulative. Holders of the Series A Preferred Stock and Series B Preferred Stock will only receive dividends on such shares when, as and if declared by the board of directors. KKR has no obligation to declare or pay any dividends for any dividend period, whether or not dividends on any series of preferred stock are declared or paid for any other dividend period.

Unless dividends have been declared and paid (or declared and set apart for payment) on Series A Preferred Stock and Series B Preferred Stock for a quarterly distribution period, KKR & Co. Inc. may not declare or pay dividends on, or repurchase, any of its shares that are junior to Series A Preferred Stock and Series B Preferred Stock, including common stock, during such dividend period. A dividend period begins on a dividend payment date and extends to, but excludes, the next dividend payment date.

If KKR & Co. Inc. dissolves, then the holders of the Series A Preferred Stock and Series B Preferred Stock are entitled to receive payment of a \$25.00 liquidation preference per share, plus declared and unpaid dividends, if any, to the extent that KKR has sufficient gross income (excluding any gross income attributable to the sale or exchange of capital assets) such that holders of such preferred stock have capital account balances equal to such liquidation preference, plus declared and unpaid dividends, if any.

**Notes to Financial Statements (Continued)**

The Series A Preferred Stock and Series B Preferred Stock do not have a maturity date. However, Series A Preferred Stock may be redeemed at KKR & Co. Inc.'s option, in whole or in part, at any time on or after June 15, 2021, at a price of \$25.00 per share, plus declared and unpaid dividends, if any. Series B Preferred Stock may be redeemed at KKR & Co. Inc.'s option, in whole or in part, at any time on or after September 15, 2021, at a price of \$25.00 per share, plus declared and unpaid dividends, if any. Holders of Series A Preferred Stock and Series B Preferred Stock have no right to require the redemption of such stock.

If a certain change of control event with a ratings downgrade occurs prior to June 15, 2021, in the case of Series A Preferred Stock, and September 15, 2021, in the case of Series B Preferred Stock, then Series A Preferred Stock or Series B Preferred Stock, as applicable, may be redeemed at KKR & Co. Inc.'s option, in whole but not in part, upon at least 30 days' notice, within 60 days of the occurrence of such change of control event, at a price of \$25.25 per share, plus declared and unpaid dividends, if any. If such a change of control event occurs (whether before, on or after June 15, 2021, in the case of the Series A Preferred Stock, or September 15, 2021, in the case of the Series B Preferred Stock) and we do not give such notice, the dividend rate per annum on the applicable series of preferred stock will increase by 5.00%, beginning on the 31st day following such change of control event.

Series A Preferred Stock and Series B Preferred Stock are not convertible into common stock of KKR & Co. Inc. and have no voting rights, except that holders of Series A Preferred Stock and Series B Preferred Stock have certain voting rights in limited circumstances relating to the election of directors following the failure to declare and pay dividends, certain amendments to the terms of the preferred stock, and the creation of preferred stock that are senior to the Series A Preferred Stock and Series B Preferred Stock.

In connection with the issuance of the Series A Preferred Stock and Series B Preferred Stock, KKR Group Partnership issued for the benefit of KKR & Co. Inc. corresponding series of preferred units with economic terms that mirror those of the Series A Preferred Stock and Series B Preferred Stock, as applicable.

*Series C Mandatory Convertible Preferred Stock*

On August 14, 2020, KKR & Co. Inc. issued 23,000,000 shares, or \$1.15 billion aggregate liquidation preference, of its 6.00% Series C Mandatory Convertible Preferred Stock (the "Series C Mandatory Convertible Preferred Stock").

Unless converted or redeemed earlier in accordance with the terms of the Series C Mandatory Convertible Preferred Stock, each share of Series C Mandatory Convertible Preferred Stock will automatically convert on the mandatory conversion date, which is expected to be September 15, 2023, into between 1.1662 shares and 1.4285 shares of common stock, in each case, subject to customary anti-dilution adjustments described in the certificate of designations related to the Series C Mandatory Convertible Preferred Stock. The number of shares of common stock issuable upon conversion will be determined based on the average volume weighted average price per share of common stock over the 20 consecutive trading day period beginning on, and including, the 21st scheduled trading day immediately prior to September 15, 2023.

Dividends on the Series C Mandatory Convertible Preferred Stock will be payable on a cumulative basis when, as and if declared by our board of directors, or an authorized committee thereof, at an annual rate of 6.00% on the liquidation preference of \$50.00 per share of Series C Mandatory Convertible Preferred Stock, and may be paid in cash or, subject to certain limitations, in shares of common stock or, subject to certain limitations, any combination of cash and shares of common stock. If declared, dividends on the Series C Mandatory Convertible Preferred Stock will be payable quarterly on March 15, June 15, September 15 and December 15 of each year to, and including, September 15, 2023, commencing on December 15, 2020.

Upon KKR & Co. Inc.'s voluntary or involuntary liquidation, winding-up or dissolution, each holder of the Series C Mandatory Convertible Preferred Stock would be entitled to receive a liquidation preference in the amount of \$50.00 per share of Series C Mandatory Convertible Preferred Stock, plus an amount equal to accumulated and unpaid dividends on such shares, whether or not declared, to, but excluding, the date fixed for liquidation, winding-up or dissolution, to be paid out of KKR & Co. Inc.'s assets legally available for distribution to its stockholders after satisfaction of debt and other liabilities owed to KKR & Co. Inc.'s creditors and holders of shares of its stock ranking senior to the Series C Mandatory Convertible Preferred Stock and before any payment or distribution is made to holders of any stock ranking junior to the Series C Mandatory Convertible Preferred Stock, including, without limitation, common stock.

In connection with the issuance of the Series C Mandatory Convertible Preferred Stock, the limited partnership agreement of KKR Group Partnership was amended to provide for preferred units with economic terms designed to mirror those of the Series C Mandatory Convertible Preferred Stock.

**Share Repurchase Program**

Under KKR's repurchase program, shares of common stock of KKR & Co. Inc. may be repurchased from time to time in open market transactions, in privately negotiated transactions or otherwise. The timing, manner, price and amount of any repurchases will be determined by KKR in its discretion and will depend on a variety of factors, including legal requirements, price and economic and market conditions. In addition to the repurchases of common stock, the repurchase program will be used for the retirement (by cash settlement or the payment of tax withholding amounts upon net settlement) of equity awards granted pursuant to our Equity Incentive Plans representing the right to receive common stock. KKR expects that the program, which has no expiration date, will be in effect until the maximum approved dollar amount has been used. The program does not require KKR to repurchase or retire any specific number of shares of common stock or equity awards, respectively, and the program may be suspended, extended, modified or discontinued at any time. As of April 30, 2021, the remaining amount available under the repurchase program was \$280 million.

The following table presents KKR & Co. Inc. common stock that has been repurchased or equity awards retired under the repurchase program:

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
Shares of common stock repurchased	1,501,558	10,209,673
Equity awards for common stock retired	1,325,853	—

**Noncontrolling Interests**

Noncontrolling interests represent (i) noncontrolling interests in consolidated entities and (ii) noncontrolling interests held by KKR Holdings.

**Noncontrolling Interests in Consolidated Entities and Other**

Noncontrolling interests in consolidated entities represent the non-redeemable ownership interests in KKR that are held primarily by:

- (i) third party fund investors in KKR's consolidated funds and certain other entities;
- (ii) third parties entitled to up to 1% of the carried interest received by certain general partners of KKR's funds that have made investments on or prior to December 31, 2015;
- (iii) certain former principals and their designees representing a portion of the carried interest received by the general partners of KKR's private equity funds that was allocated to them with respect to private equity investments made during such former principals' tenure with KKR prior to October 1, 2009;
- (iv) certain current and former principals representing all of the capital invested by or on behalf of the general partners of KKR's private equity funds prior to October 1, 2009 and any returns thereon;
- (v) third parties in KKR's Capital Markets business line;
- (vi) holders of other exchangeable securities, which consist of vested restricted holdings units granted under the 2019 Equity Plan that are exchangeable into shares of common stock of KKR & Co. Inc.; and
- (vii) third parties in KKR's insurance business including GA Rollover Investors, GA Co-Investors and third party investors in Global Atlantic's consolidated renewable energy entities.

**Noncontrolling Interests held by KKR Holdings**

Noncontrolling interests held by KKR Holdings consist of economic interests held by principals indirectly in KKR Group Partnership Units. Such principals receive financial benefits from KKR's business in the form of distributions received from KKR Holdings and through their direct and indirect participation in the value of KKR Group Partnership Units held by KKR Holdings. These financial benefits are not paid by KKR & Co. Inc. and are borne by KKR Holdings.

**Notes to Financial Statements (Continued)**

The following tables present the calculation of total noncontrolling interests:

	<b>Three Months Ended March 31, 2021</b>		
	<b>Noncontrolling Interests in Consolidated Entities and Other</b>	<b>Noncontrolling Interests Held by KKR Holdings</b>	<b>Total Noncontrolling Interests</b>
<b>Balance at the beginning of the period</b>	\$ 20,570,716	\$ 6,512,382	\$ 27,083,098
Net income (loss) attributable to noncontrolling interests <sup>(1)</sup>	1,241,877	1,003,654	2,245,531
Other comprehensive income (loss), net of tax <sup>(2)</sup>	(581,154)	(298,234)	(879,388)
Exchange of KKR Holdings Units to Common Stock <sup>(3)</sup>	—	(56,903)	(56,903)
Equity-based and other non-cash compensation	19,882	16,434	36,316
Capital contributions	4,009,967	25	4,009,992
Capital distributions	(987,066)	(40,768)	(1,027,834)
Impact of Acquisition <sup>(4)</sup>	190,405	—	190,405
Changes in consolidation	(66,488)	—	(66,488)
<b>Balance at the end of the period</b>	<b>\$ 24,398,139</b>	<b>\$ 7,136,590</b>	<b>\$ 31,534,729</b>

	<b>Three Months Ended March 31, 2020</b>		
	<b>Noncontrolling Interests in Consolidated Entities</b>	<b>Noncontrolling Interests Held by KKR Holdings</b>	<b>Total Noncontrolling Interests</b>
<b>Balance at the beginning of the period</b>	\$ 13,966,250	\$ 5,728,634	\$ 19,694,884
Net income (loss) attributable to noncontrolling interests <sup>(1)</sup>	(2,095,235)	(852,194)	(2,947,429)
Other comprehensive income (loss), net of tax <sup>(2)</sup>	(6,602)	(7,512)	(14,114)
Exchange of KKR Holdings Units to Common Stock <sup>(3)</sup>	—	(71,894)	(71,894)
Equity-based and other non-cash compensation	—	20,696	20,696
Capital contributions	1,120,943	23	1,120,966
Capital distributions	(484,609)	(40,047)	(524,656)
Transfer of interests under common control <sup>(5)</sup>	(21,830)	7,445	(14,385)
<b>Balance at the end of the period</b>	<b>\$ 12,478,917</b>	<b>\$ 4,785,151</b>	<b>\$ 17,264,068</b>

(1) Refer to the table below for calculation of net income (loss) attributable to noncontrolling interests held by KKR Holdings.

(2) With respect to noncontrolling interests held by KKR Holdings, calculated on a pro rata basis based on the weighted average KKR Group Partnership Units held by KKR Holdings during the reporting period.

(3) Calculated based on the proportion of KKR Holdings units exchanged for KKR & Co. Inc. common stock. The exchange agreement with KKR Holdings provides for the exchange of KKR Group Partnership Units held by KKR Holdings for KKR & Co. Inc. common stock.

(4) Represents other noncontrolling interests at the GA Acquisition Date. See Note 3.

(5) KKR acquired KKR Capstone on January 1, 2020. KKR Capstone was consolidated prior to January 1, 2020 and consequently, this transaction was accounted for as an equity transaction. This transaction resulted in an increase to KKR Group Partnership's equity. Accordingly, both KKR's equity and noncontrolling interests held by KKR Holdings increased for their proportionate share of the KKR Capstone equity based on their ownership in KKR Group Partnership on January 1, 2020.

Net income (loss) attributable to each of KKR & Co. Inc. common stockholders, KKR Holdings and holders of other exchangeable securities, with the exception of certain tax assets and liabilities that are directly allocable to KKR & Co. Inc., is attributed based on the percentage of the weighted average KKR Group Partnership Units directly or indirectly held by them. However, primarily because of the (i) contribution of certain expenses borne entirely by KKR Holdings and holders of other exchangeable securities, (ii) the periodic exchange of KKR Holdings units and other exchangeable securities for KKR & Co. Inc. common stock pursuant to the exchange agreement and (iii) the contribution of certain expenses borne entirely by KKR associated with the Equity Incentive Plans, equity allocations shown in the consolidated statement of changes in equity differ from their respective pro rata ownership interests in KKR's net assets.

**Notes to Financial Statements (Continued)**

The following table presents net income (loss) attributable to noncontrolling interests held by KKR Holdings:

	<b>Three Months Ended March 31,</b>	
	<b>2021</b>	<b>2020</b>
<b>Net income (loss)</b>	\$ 3,915,367	\$ (4,227,953)
(-) Net income (loss) attributable to Redeemable Noncontrolling Interests	—	—
(-) Net income (loss) attributable to Noncontrolling Interests in consolidated entities and other	1,241,877	(2,095,235)
(-) Series A and B Preferred Stock Dividends	8,341	8,341
(-) Series C Mandatory Convertible Preferred Stock Dividends	17,250	—
(+) Income tax expense (benefit) attributable to KKR & Co. Inc.	462,930	(363,836)
<b>Net income (loss) attributable to KKR &amp; Co. Inc. Common Stockholders and KKR Holdings</b>	<b>\$ 3,110,829</b>	<b>\$ (2,504,895)</b>
<b>Net income (loss) attributable to Noncontrolling Interests held by KKR Holdings</b>	<b>\$ 1,003,654</b>	<b>\$ (852,194)</b>

**22. REDEEMABLE NONCONTROLLING INTERESTS**

Global Atlantic has redeemable non-controlling interests related to these renewable energy entities of approximately \$92 million as of March 31, 2021 as determined by the HLBV method. The estimated redemption value of redeemable non-controlling interests is calculated as the discounted cash flows subsequent to the expected flip date of the respective renewable energy entity. The flip date represents the date at which the allocation of income and cash flows among the investors in the entity is adjusted, pursuant to the redeemable non-controlling interest investors having achieved an agreed-upon return. The flip date of renewable energy partnerships determines when the redeemable non-controlling interests are eligible to be redeemed. Eligible redemption dates range from 2022 to 2027. For the redeemable non-controlling interests outstanding as of March 31, 2021, the estimated redemption value that would be due at the respective redemption dates is \$7 million.

**23. COMMITMENTS AND CONTINGENCIES*****Funding Commitments and Others***

As of March 31, 2021, KKR had unfunded commitments consisting of \$6,446.8 million to its investment funds. In addition to the uncalled commitments to KKR's investment funds, KKR has entered into contractual commitments with respect to (i) the purchase of investments and other assets in its Principal Activities business line and (ii) underwriting transactions, debt financing, and syndications in KKR's Capital Markets business line. As of March 31, 2021, these commitments amounted to \$310.3 million and \$965.2 million, respectively.

Whether these amounts are actually funded, in whole or in part, depends on the contractual terms of such commitments, including the satisfaction or waiver of any conditions to closing or funding. KKR's capital markets business has arrangements with third parties, which reduce its risk when underwriting certain debt transactions, and thus our unfunded commitments as of March 31, 2021 have been reduced to reflect the amount to be funded by such third parties. In the case of purchases of investments or assets in KKR's Principal Activities business line, the amount to be funded includes amounts that are intended to be syndicated to third parties, and the actual amounts to be funded may be less than shown.

Global Atlantic has commitments to purchase or fund investments of \$884 million as of March 31, 2021. These commitments include those related to commercial mortgage loans, other lending facilities and other investments. For those commitments that represent a contractual obligation to extend credit, Global Atlantic has recorded a liability of \$15 million for current expected credit losses as of March 31, 2021.

In addition, Global Atlantic has entered into certain forward flow agreements to purchase loans. Global Atlantic's obligations under these agreements are subject to change, curtailment, and cancellation based on various provisions including repricing mechanics, due diligence reviews, and performance or pool quality, among other factors.

***Non-cancelable Operating Leases***

KKR's non-cancelable operating leases consist of leases of office space around the world. There are no material rent holidays, contingent rent, rent concessions or leasehold improvement incentives associated with any of these property leases. In addition to base rentals, certain lease agreements are subject to escalation provisions and rent expense is recognized on a straight-line basis over the term of the lease agreement.

Global Atlantic also enters into land leases for its consolidated solar subsidiaries.

***Contingent Repayment Guarantees***

The partnership documents governing KKR's carry-paying investment funds and vehicles generally include a "clawback" provision that, if triggered, may give rise to a contingent obligation requiring the general partner to return amounts to the fund for distribution to the fund investors at the end of the life of the fund. Under a clawback obligation, upon the liquidation of a fund, the general partner is required to return, typically on an after-tax basis, previously distributed carry to the extent that, due to the diminished performance of later investments, the aggregate amount of carry distributions received by the general partner during the term of the fund exceed the amount to which the general partner was ultimately entitled, including the effects of any performance thresholds.

As of March 31, 2021, approximately \$76.0 million of carried interest was subject to this clawback obligation, assuming that all applicable carry-paying funds and their alternative investment vehicles were liquidated at their March 31, 2021 fair values. Although KKR would be required to remit the entire amount to fund investors that are entitled to receive the clawback payment, KKR would be entitled to seek reimbursement of approximately \$31.0 million of that amount from KKR Associates Holdings L.P., which is not a KKR subsidiary. As of March 31, 2021, KKR Associates Holdings L.P. had access to cash reserves sufficient to reimburse the full \$31.0 million that would be due to KKR. If the investments in all carrying-paying funds were to be liquidated at zero value the clawback obligation would have been approximately \$2.3 billion, and KKR would be entitled to seek reimbursement of approximately \$0.9 billion of that amount from KKR Associates Holdings L.P.

Carried interest is recognized in the consolidated statements of operations based on the contractual conditions set forth in the agreements governing the fund as if the fund were terminated and liquidated at the reporting date and the fund's investments were realized at the then estimated fair values. Amounts earned pursuant to carried interest are earned by the general partner of those funds to the extent that cumulative investment returns are positive and where applicable, preferred return thresholds have been met. If these investment amounts earned decrease or turn negative in subsequent periods, recognized carried interest will be reversed and to the extent that the aggregate amount of carry distributions received by the general partner during the term of the fund exceed the amount to which the general partner was ultimately entitled, a clawback obligation would be recorded. For funds that are consolidated, this clawback obligation, if any, is reflected as an increase in noncontrolling interests in the consolidated statements of financial condition. For funds that are not consolidated, this clawback obligation, if any, is reflected as a reduction of KKR's investment balance as this is where carried interest is initially recorded.

***Indemnifications and Other Guarantees***

KKR may incur contingent liabilities for claims that may be made against it in the future. KKR enters into contracts that contain a variety of representations, warranties and covenants, including indemnifications. For example, KKR (including KFN) and certain of KKR's investment funds have provided and provide certain indemnities relating to environmental and other matters and have provided and provide non-recourse carve-out guarantees for fraud, willful misconduct and other customary wrongful acts, each in connection with the financing of KKR's corporate real estate and certain real estate investments and for certain investment vehicles that KKR manages. KKR's maximum exposure under these arrangements is currently unknown and KKR's liabilities for these matters would require a claim to be made against KKR in the future.

KKR provides credit support to certain of its subsidiaries' obligations in connection with a limited number of investment vehicles that KKR manages. For example, KKR has guaranteed the obligations of a general partner to post collateral on behalf of its investment vehicle in connection with such vehicle's derivative transactions. KKR also (i) provides credit support regarding repayment and funding obligations to third-party lenders to certain of its employees, excluding its executive officers, in connection with their personal investments in KKR investment funds and in an investment vehicle that includes third party investors and invests in KKR funds and alongside KKR funds and (ii) provides credit support to a hedge fund partnership. KKR is not a guarantor for any borrowings, credit facilities or debt securities of its Indian debt financing company.

KKR may also become liable for certain fees payable to sellers of businesses or assets if a transaction does not close, subject to certain conditions, if any, specified in the acquisition agreements for such businesses or assets.

Additionally, KKR has agreed to be liable for certain investment losses and/or for providing liquidity in the events specified in the governing documents of other investment vehicles.

The Global Atlantic business was formerly owned by The Goldman Sachs Group, Inc. (together with its subsidiaries, "Goldman Sachs"). In connection with the separation of Global Atlantic from Goldman Sachs in 2013, Global Atlantic entered into a tax benefit payment agreement with Goldman Sachs. Under the tax benefit payment agreement, GA FinCo is obligated to make annual payments out of available cash, guaranteed by two other Global Atlantic subsidiaries, GAFG and GAFLL, to Goldman Sachs over an approximately 25-year period totaling \$214 million. As of March 31, 2021, the present value of the remaining amount to be paid is \$72 million. Although these payments are subordinated and deferrable, deferral of these payments would result in restrictions on distributions by GA FinCo, GAFG and GAFLL.

In lieu of funding certain investments in loan facilities to third party borrowers in cash, Global Atlantic has arranged for third-party banks to issue letters of credit on behalf of the borrowers in the amount of \$20 million, as of March 31, 2021, with expiration dates between September 2021 to October 2022. Global Atlantic has available lines of credit that would allow for additional letters of credit to be issued on behalf of the borrowers, up to \$270 million, as of March 31, 2021. For accounting purposes, these letters of credit are considered guarantees of certain obligations of the borrowers. If a letter of credit were drawn, Global Atlantic would be obligated to repay the issuing third-party bank, and Global Atlantic would recognize a loan receivable from the borrowers on the consolidated statements of financial condition. Global Atlantic monitors the likelihood of these letters of credit being drawn, and any related contingent obligation. As of March 31, 2021, the expected credit loss on the contingent liability associated with these letters of credit was not material.

### ***Litigation***

From time to time, KKR (including Global Atlantic) is involved in various legal proceedings, lawsuits, arbitration and claims incidental to the conduct of KKR's businesses. KKR's asset management and insurance businesses are also subject to extensive regulation, which may result in regulatory proceedings against them.

In December 2017, KKR & Co. L.P. (which is now KKR & Co. Inc.) and its Co-Chief Executive Officers were named as defendants in a lawsuit filed in Kentucky state court alleging, among other things, the violation of fiduciary and other duties in connection with certain separately managed accounts that Prisma Capital Partners LP, a former subsidiary of KKR, manages for the Kentucky Retirement Systems. Also named as defendants in the lawsuit are certain current and former trustees and officers of the Kentucky Retirement Systems, Prisma Capital Partners LP, and various other service providers to the Kentucky Retirement Systems and their related persons. KKR and other defendants' motions to dismiss were denied by the trial court in November 2018, but in April 2019 the Kentucky Court of Appeals vacated the trial court's opinion and order denying the motions to dismiss the case for lack of standing. The decision of the Court of Appeals was appealed by plaintiffs to the Supreme Court of Kentucky. On July 9, 2020, the Supreme Court of Kentucky reversed the trial court's order and remanded the case to the trial court with direction to dismiss the complaint for lack of constitutional standing. On July 20, 2020, the Office of the Attorney General, on behalf of the Commonwealth of Kentucky, filed a motion to intervene as a plaintiff in the lawsuit and on July 21, 2020 filed a new lawsuit in the same Kentucky trial court making essentially the same allegations against the defendants, including KKR & Co. Inc. and Messrs. Kravis and Roberts. On July 29, 2020, certain private plaintiffs in the original lawsuit filed a motion to further amend their original complaint and to add new plaintiffs. On July 30, 2020, KKR and other defendants filed objections to the Attorney General's motion to intervene. On December 28, 2020, the trial court dismissed the complaint filed by the original plaintiffs and denied their motion to amend their original complaint and add new plaintiffs, but granted the Office of the Attorney General's motion to intervene. Some of the attorneys for the private plaintiffs in the original lawsuit have filed a new lawsuit, and a motion to intervene in the original lawsuit, on behalf of a new set of plaintiffs, who claim to be "Tier 3" members of Kentucky Retirement Systems, alleging substantially the same allegations as in the original lawsuit. In addition, the Kentucky Retirement Systems has commissioned an investigation into certain matters alleged in the Attorney General's complaint. The trial court has ordered that this investigation be completed by May 17, 2021, and the Attorney General may amend its complaint after reviewing the investigation's report within ten days of the Attorney General's receipt of it.

KKR (including Global Atlantic) currently is and expects to continue to become, from time to time, subject to examinations, inquiries and investigations by various U.S. and non-U.S. governmental and regulatory agencies, including but not limited to the SEC, Department of Justice, U.S. state attorney generals, Financial Industry Regulatory Authority ("FINRA"), the U.K. Financial Conduct Authority, Central Bank of Ireland, Monetary Authority of Singapore, U.S. state insurance regulatory authorities, and the Bermuda Monetary Authority. Such examinations, inquiries and investigations may result in the commencement of civil, criminal or administrative proceedings or fines against KKR or its personnel.



**Notes to Financial Statements (Continued)**

Moreover, in the ordinary course of business, KKR (including Global Atlantic) is and can be both the defendant and the plaintiff in numerous lawsuits with respect to acquisitions, bankruptcy, insolvency and other events. Such lawsuits may involve claims that adversely affect the value of certain investments owned by KKR's funds and Global Atlantic's insurance companies.

KKR establishes an accrued liability for legal proceedings only when those matters present loss contingencies that are both probable and reasonably estimable. In such cases, there may be an exposure to loss in excess of any amounts accrued. No loss contingency is recorded for matters where such losses are either not probable or reasonably estimable (or both) at the time of determination. Such matters may be subject to many uncertainties, including among others: (i) the proceedings may be in early stages; (ii) damages sought may be unspecified, unsupported, unexplained or uncertain; (iii) discovery may not have been started or is incomplete; (iv) there may be uncertainty as to the outcome of pending appeals or motions; (v) there may be significant factual issues to be resolved or (vi) there may be novel legal issues or unsettled legal theories to be presented or a large number of parties. Consequently, management is unable to estimate a range of potential loss, if any, related to these matters. In addition, loss contingencies may be, in part or in whole, subject to insurance or other payments such as contributions and/or indemnity, which may reduce any ultimate loss. KKR has included in its financial statements the reserve for regulatory, litigation and related matters that Global Atlantic includes in its financial statements, including with respect to matters arising from the conversion of life insurance policies from systems previously managed by Athene Holdings Limited to the platform of one of Global Atlantic's third party service providers, Alliance-One, a subsidiary of DXC Technology Company.

It is not possible to predict the ultimate outcome of all pending legal proceedings, and some of the matters discussed above seek or may seek potentially large and/or indeterminate amounts. Based on information known by management, management has not concluded that the final resolutions of the matters above will have a material effect upon the financial statements. However, given the potentially large and/or indeterminate amounts sought or may be sought in certain of these matters and the inherent unpredictability of investigations and litigations, it is possible that an adverse outcome in certain matters could, from time to time, have a material effect on KKR's financial results in any particular period.

***Other Financing arrangements***

Global Atlantic has financing arrangements with unaffiliated third parties to support the reserves of its affiliated captive reinsurers. Total fees expensed associated with these credit facilities were \$4 million for the three months ended March 31, 2021, and are included in insurance expenses in the consolidated statements of operations. As of March 31, 2021, the total capacity of the financing arrangements with third parties was \$1.9 billion.

Other than the matters disclosed above, there were no outstanding or unpaid balances from the financing arrangements with unaffiliated third parties as of March 31, 2021.



**24. SUBSEQUENT EVENTS*****Common Stock Dividend***

A dividend of \$0.145 per share of common stock of KKR & Co. Inc. was announced on May 4, 2021, and will be paid on June 1, 2021 to common stockholders of record as of the close of business on May 17, 2021. KKR Holdings will receive its pro rata share of the distribution from KKR Group Partnership.

***Preferred Stock Dividends***

A dividend of \$0.421875 per share of Series A Preferred Stock has been declared as announced on May 4, 2021 and set aside for payment on June 15, 2021 to holders of record of Series A Preferred Stock as of the close of business on June 1, 2021.

A dividend of \$0.406250 per share of Series B Preferred Stock has been declared as announced on May 4, 2021 and set aside for payment on June 15, 2021 to holders of record of Series B Preferred Stock as of the close of business on June 1, 2021.

A dividend of \$0.75 per share of Series C Mandatory Convertible Preferred Stock has been declared as announced on May 4, 2021 and set aside for payment on June 15, 2021 to holders of record of Series C Mandatory Convertible Preferred Stock as of the close of business on June 1, 2021.

***Preferred Stock Redemption***

On May 4, 2021, KKR provided notice to holders of its outstanding Series A Preferred Stock that it has elected to redeem in full such series of preferred stock on June 15, 2021 at a redemption price per share equal to the \$25.00 liquidation preference plus declared and unpaid dividends, if any.

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

*The following discussion and analysis should be read in conjunction with the unaudited condensed consolidated financial statements of KKR & Co. Inc., together with its consolidated subsidiaries, and the related notes included elsewhere in this report and our Annual Report on Form 10-K for the fiscal year ended December 31, 2020, filed with the SEC on February 19, 2021 (our "Annual Report"), including the audited consolidated financial statements and the related notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" contained therein. In addition, this discussion and analysis contains forward-looking statements and involves numerous risks and uncertainties, including those described under "Cautionary Note Regarding Forward-looking Statements" and "Business Environment" in this report and our Annual Report and "Risk Factors" in our Annual Report, and our other filings with the SEC. Actual results may differ materially from those contained in any forward-looking statements.*

*The unaudited condensed consolidated financial statements and the related notes included elsewhere in this report are hereafter referred to as the "financial statements." Additionally, the condensed consolidated statements of financial condition are referred to herein as the "consolidated statements of financial condition"; the condensed consolidated statements of operations are referred to herein as the "consolidated statements of operations"; the condensed consolidated statements of comprehensive income (loss) are referred to herein as the "consolidated statements of comprehensive income (loss)"; the condensed consolidated statements of changes in equity are referred to herein as the "consolidated statements of changes in equity"; and the condensed consolidated statements of cash flows are referred to herein as the "consolidated statements of cash flows."*

*References herein to "KKR," "we," "us" and "our" refer to KKR & Co. Inc. and its subsidiaries, including The Global Atlantic Financial Group LLC ("TGAFG" and, together with its subsidiaries, "Global Atlantic"), unless the context requires otherwise.*

### Overview

We are a leading global investment firm that offers alternative asset management and capital markets and insurance solutions. We aim to generate attractive investment returns by following a patient and disciplined investment approach, employing world-class people, and supporting growth in our portfolio companies and communities. We sponsor investment funds that invest in private equity, credit and real assets and have strategic partners that manage hedge funds. Our insurance subsidiaries offer retirement, life and reinsurance products under the management of Global Atlantic.

Our asset management business offers a broad range of investment management services to our fund investors and provides capital markets services to our firm, our funds, our portfolio companies and third parties. Throughout our history, we have consistently been a leader in the private equity industry, having completed more than 375 private equity investments in portfolio companies with a total transaction value in excess of \$650 billion as of March 31, 2021. We have grown our firm by expanding our geographical presence and building businesses in areas such as leveraged credit, alternative credit, capital markets, infrastructure, energy, real estate, growth equity, core and impact investments. Our balance sheet has provided a significant source of capital in the growth and expansion of our business, and has allowed us to further align our interests with those of our fund investors. Building on these efforts and leveraging our industry expertise and intellectual capital have allowed us to capitalize on a broader range of the opportunities we source. Additionally, we have increased our focus on meeting the needs of our existing fund investors and in developing relationships with new investors in our funds.

We seek to work proactively and collaboratively as one firm across business lines, departments, and geographies, as appropriate, to achieve what we believe are the best results for our funds and other clients and the firm. Through our offices around the world, we have a pre-eminent global integrated platform for sourcing transactions, raising capital and carrying out capital markets activities. Our growth has been driven by value that we have created through our operationally focused investment approach, the expansion of our existing businesses, our entry into new lines of business, innovation in the products that we offer investors in our funds, an increased focus on providing tailored solutions to our clients and the integration of capital markets distribution activities.

As an asset management firm, we earn management, monitoring, transaction and incentive fees and carried interest for providing investment management, monitoring and other services to our funds, vehicles, CLOs, managed accounts and portfolio companies, and we generate transaction-specific income from capital markets transactions. We earn additional investment income by investing our own capital alongside that of our fund investors, from other assets on our balance sheet and from the carried interest we receive from our funds and other investment vehicles. A carried interest entitles the sponsor of a

fund to a specified percentage of investment gains that are generated on third-party capital that is invested. Beginning in the first quarter of 2021, we also earn our share of income generated by Global Atlantic.

Our investment teams have deep industry knowledge and are supported by a substantial and diversified capital base; an integrated global investment platform; the expertise of operating professionals, senior advisors and other advisors; and a worldwide network of business relationships that provide a significant source of investment opportunities, specialized knowledge during due diligence and substantial resources for creating and realizing value for stakeholders. These teams invest capital, a substantial portion of which is of a long duration. As of March 31, 2021, 87% of our capital is not subject to redemption for at least 8 years from inception and 42% of our capital is from strategic investor partnerships and investment funds and vehicles that have an indefinite term and for which there is no immediate requirement to return invested capital to investors upon realization of investments. This capital provides us with significant flexibility to increase the value of the investments and select exit opportunities. We believe that these aspects of our business will help us continue to expand and grow our business and deliver strong investment performance in a variety of economic and financial conditions.

Our insurance business is operated by Global Atlantic, in which we acquired a majority controlling interest on February 1, 2021. In connection with the acquisition, KKR also became the investment manager for Global Atlantic's insurance companies. Global Atlantic is a leading U.S. annuity and life insurance company that provides a broad suite of protection, legacy and savings products and reinsurance solutions to clients across individual and institutional markets. Global Atlantic primarily offers individuals fixed-rate annuities, fixed-indexed annuities and targeted life products through a network of banks, broker dealers and independent marketing organizations. Global Atlantic provides its institutional clients customized reinsurance solutions, including block, flow and pension risk transfer reinsurance, as well as funding agreements. Global Atlantic primarily generates income by earning a spread between its investment income and the cost of policyholder benefits. As of March 31, 2021, Global Atlantic served over two million policyholders. As a result of this acquisition, Global Atlantic's assets and operations have been consolidated with our operating results from and after February 1, 2021. Comparability of KKR's results for periods prior and subsequent to the Global Atlantic acquisition may accordingly be limited.

## **Our Business**

In connection with the acquisition of Global Atlantic on February 1, 2021, we organized our business into two segments: Asset Management and Insurance. The Asset Management segment reflects KKR's historical operations, and the Insurance segment represents Global Atlantic's operations. We operate our asset management business in four business lines: (1) Private Markets, (2) Public Markets, (3) Capital Markets and (4) Principal Activities. Our insurance business is operated by Global Atlantic. Information about our asset management business lines below should be read together with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements in our Annual Report on Form 10-K for the fiscal year ended December 31, 2020. KKR became the investment adviser for Global Atlantic's insurance companies on February 1, 2021.

### ***Asset Management - Private Markets***

Through our Private Markets business line, we manage and sponsor a group of private equity funds that invest capital for long-term appreciation, either through controlling ownership of a company or strategic minority positions. In addition to our traditional private equity funds, we sponsor investment funds that invest in growth equity (including impact) and core investments. We also manage and sponsor investment funds that invest capital in real assets, such as real estate, infrastructure and energy. Our Private Markets business line includes separately managed accounts that invest in multiple strategies, which include our credit strategies as well as our private equity and real assets strategies. These funds and accounts are managed by Kohlberg Kravis Roberts & Co. L.P., an SEC-registered investment adviser. As of March 31, 2021, our Private Markets business line had \$177.7 billion of AUM, consisting of \$111.0 billion in private equity (including growth equity, impact and core investments), \$49.7 billion in real assets (including real estate, infrastructure and energy) and \$17.0 billion in other related strategies.

The table below presents information as of March 31, 2021, relating to our investment vehicles in our Private Markets business line for which we have the ability to earn carried interest. This data does not reflect additional capital raised, acquisitions or disposals of investments, changes in investment values, or distributions occurring after March 31, 2021.

	Investment Period <sup>(1)</sup>		Amount (\$ in millions)								
	Start Date	End Date	Commitment <sup>(2)</sup>	Uncalled Commitments	Percentage Committed by General Partner	Invested	Realized	Remaining Cost <sup>(3)</sup>	Remaining Fair Value	Gross Accrued Carried Interest	
<b>Private Equity and Growth Equity Funds</b>											
Americas Fund XII	1/2017	1/2023	\$ 13,500.0	\$ 5,574.7	5.8%	\$ 8,354.5	\$ 951.0	\$ 8,193.6	\$ 18,878.4	\$ 1,818.1	
North America Fund XI	9/2012	1/2017	8,718.4	429.8	2.9%	9,733.0	12,932.9	4,499.7	9,557.8	946.6	
2006 Fund <sup>(4)</sup>	9/2006	9/2012	17,642.2	247.4	2.1%	17,309.3	32,646.5	2,440.0	4,900.4	502.8	
Millennium Fund <sup>(4)</sup>	12/2002	12/2008	6,000.0	—	2.5%	6,000.0	14,123.1	—	6.1	1.3	
European Fund V	3/2019	7/2025	6,429.0	3,824.1	1.8%	2,604.9	111.0	2,604.9	3,200.3	83.4	
European Fund IV	12/2014	3/2019	3,517.2	67.5	5.7%	3,578.1	3,092.2	2,349.3	4,080.9	310.1	
European Fund III <sup>(4)</sup>	3/2008	3/2014	5,514.7	154.9	5.2%	5,359.8	10,602.2	254.4	235.4	(13.5)	
European Fund II <sup>(4)</sup>	11/2005	10/2008	5,750.8	—	2.1%	5,750.8	8,507.4	—	34.3	(0.2)	
Asian Fund IV	7/2020	7/2026	14,734.7	14,734.7	6.8%	—	—	—	—	—	
Asian Fund III	4/2017	7/2020	9,000.0	3,021.2	5.6%	6,338.2	1,261.1	5,941.6	10,178.7	778.1	
Asian Fund II	4/2013	4/2017	5,825.0	3.1	1.3%	6,839.3	5,189.9	3,733.5	5,547.3	362.3	
Asian Fund <sup>(4)</sup>	7/2007	4/2013	3,983.3	—	2.5%	3,974.3	8,723.3	17.1	28.7	4.2	
China Growth Fund <sup>(4)</sup>	11/2010	11/2016	1,010.0	—	1.0%	1,010.0	903.9	389.3	403.1	0.9	
Next Generation Technology Growth Fund II	12/2019	12/2025	2,088.3	1,205.8	7.2%	944.7	62.2	920.6	1,357.3	74.0	
Next Generation Technology Growth Fund	3/2016	12/2019	658.9	3.5	22.5%	663.3	401.8	494.0	1,651.2	130.2	
Health Care Strategic Growth Fund	12/2016	12/2021	1,331.0	713.7	11.3%	747.4	196.0	643.8	1,137.5	73.0	
Global Impact Fund	2/2019	2/2025	1,242.2	715.3	8.1%	552.1	25.3	533.0	759.3	35.9	
<b>Private Equity and Growth Equity Funds</b>			<b>106,945.7</b>	<b>30,695.7</b>		<b>79,759.7</b>	<b>99,729.8</b>	<b>33,014.8</b>	<b>61,956.7</b>	<b>5,107.2</b>	
Co-Investment Vehicles and Other	Various	Various	13,977.7	6,027.6	Various	8,158.5	5,861.1	5,417.1	8,361.6	1,203.3	
Core Investment Vehicles	Various	Various	10,807.0	3,118.6	32.7%	7,688.4	—	7,688.4	11,531.4	99.9	
<b>Total Private Equity, Growth Equity and Core Funds</b>			<b>131,730.4</b>	<b>39,841.9</b>		<b>95,606.6</b>	<b>105,590.9</b>	<b>46,120.3</b>	<b>81,849.7</b>	<b>6,410.4</b>	
<b>Real Assets</b>											
Energy Income and Growth Fund II	6/2018	8/2021	994.2	566.2	20.1%	488.9	60.9	429.5	522.4	4.9	
Energy Income and Growth Fund	9/2013	6/2018	1,974.2	—	12.9%	1,967.9	838.0	1,236.2	1,020.4	—	
Natural Resources Fund <sup>(4)</sup>	Various	Various	887.4	—	Various	887.4	123.2	193.9	73.1	—	
Global Energy Opportunities	Various	Various	914.1	63.4	Various	518.4	146.4	343.8	217.1	—	
Global Infrastructure Investors III	6/2018	6/2024	7,199.1	4,012.5	3.8%	3,421.5	234.9	3,359.8	3,512.7	—	
Global Infrastructure Investors II	10/2014	6/2018	3,040.8	121.8	4.1%	3,158.9	2,843.4	1,992.3	3,028.1	108.1	
Global Infrastructure Investors	9/2011	10/2014	1,040.2	25.1	4.8%	1,046.8	2,191.5	26.8	36.5	3.2	
Asia Pacific Infrastructure Investors	1/2020	1/2026	3,791.6	2,976.8	6.6%	814.8	—	814.8	939.9	16.1	
Real Estate Partners Americas III	12/2020	1/2025	2,529.1	2,529.1	11.8%	—	—	—	—	—	
Real Estate Partners Americas II	5/2017	12/2020	1,921.2	404.2	7.8%	1,753.1	568.3	1,469.6	1,726.2	59.9	
Real Estate Partners Americas	5/2013	5/2017	1,229.1	146.0	16.3%	1,013.0	1,365.7	187.2	82.7	(1.0)	
Real Estate Partners Europe	9/2015	12/2019	714.5	178.3	9.1%	612.0	359.0	398.0	501.5	19.2	
Asia Real Estate Partners	6/2019	6/2023	1,682.4	1,458.3	14.9%	224.1	—	224.1	246.8	—	
Real Estate Credit Opportunity Partners II	4/2019	6/2022	950.0	564.3	5.3%	385.7	18.5	385.7	396.6	—	
Real Estate Credit Opportunity Partners	2/2017	4/2019	1,130.0	122.2	4.4%	1,007.8	254.9	1,007.8	941.7	—	
Property Partners Americas	12/2019	(5)	2,012.5	1,074.7	24.8%	937.8	17.4	937.8	998.5	2.9	
Co-Investment Vehicles and Other	Various	Various	7,399.7	3,507.7	Various	3,953.7	1,013.4	3,892.4	4,134.2	7.2	
<b>Total Real Assets</b>			<b>39,410.1</b>	<b>17,750.6</b>		<b>22,191.8</b>	<b>10,035.5</b>	<b>16,899.7</b>	<b>18,378.4</b>	<b>220.5</b>	
<b>Other</b>											
Unallocated Commitments <sup>(6)</sup>			753.8	753.8	Various	—	—	—	—	—	
<b>Private Markets Total</b>			<b>\$ 171,894.3</b>	<b>\$ 58,346.3</b>		<b>\$ 117,798.4</b>	<b>\$ 115,626.4</b>	<b>\$ 63,020.0</b>	<b>\$ 100,228.1</b>	<b>\$ 6,630.9</b>	

- (1) The start date represents the date on which the general partner of the applicable fund commenced investment of the fund's capital or the date of the first closing. The end date represents the earlier of (i) the date on which the general partner of the applicable fund was or will be required by the fund's governing agreement to cease making investments on behalf of the fund, unless extended by a vote of the fund investors, and (ii) the date on which the last investment was made.
- (2) The commitment represents the aggregate capital commitments to the fund, including capital commitments by third-party fund investors and the general partner. Foreign currency commitments have been converted into U.S. dollars based on (i) the foreign exchange rate at the date of purchase for each investment and (ii) the exchange rate that prevailed on March 31, 2021, in the case of uncalled commitments.
- (3) The remaining cost represents the initial investment of the general partner and limited partners, reduced for returns of capital, with the limited partners' investment further reduced for any realized gains from which the general partner did not receive a carried interest.
- (4) The "Invested" and "Realized" columns do not include the amounts of any realized investments that restored the unused capital commitments of the fund investors, if any.
- (5) Open ended fund.
- (6) "Unallocated Commitments" represent unallocated commitments from our strategic investor partnerships.

The table below presents information as of March 31, 2021, relating to the historical performance of certain of our Private Markets investment vehicles since inception, which we believe illustrates the benefits of our investment approach. This data does not reflect additional capital raised since March 31, 2021, or acquisitions or disposals of investments, changes in investment values or distributions occurring after that date. However, the information presented below is not intended to be representative of any past or future performance for any particular period other than the period presented below. Past performance is no guarantee of future results.

Private Markets Investment Funds	Amount		Fair Value of Investments		Total Value	Gross IRR <sup>(5)</sup>	Net IRR <sup>(5)</sup>	Gross Multiple of Invested Capital <sup>(5)</sup>
	Commitment	Invested	Realized <sup>(4)</sup>	Unrealized				
(\$ in millions)								
<i>Legacy Funds <sup>(1)</sup></i>								
1976 Fund	\$ 31.4	\$ 31.4	\$ 537.2	\$ —	\$ 537.2	39.5 %	35.5 %	17.1
1980 Fund	356.8	356.8	1,827.8	—	1,827.8	29.0 %	25.8 %	5.1
1982 Fund	327.6	327.6	1,290.7	—	1,290.7	48.1 %	39.2 %	3.9
1984 Fund	1,000.0	1,000.0	5,963.5	—	5,963.5	34.5 %	28.9 %	6.0
1986 Fund	671.8	671.8	9,080.7	—	9,080.7	34.4 %	28.9 %	13.5
1987 Fund	6,129.6	6,129.6	14,949.2	—	14,949.2	12.1 %	8.9 %	2.4
1993 Fund	1,945.7	1,945.7	4,143.3	—	4,143.3	23.6 %	16.8 %	2.1
1996 Fund	6,011.6	6,011.6	12,476.9	—	12,476.9	18.0 %	13.3 %	2.1
Subtotal - Legacy Funds	16,474.5	16,474.5	50,269.3	—	50,269.3	26.1 %	19.9 %	3.1
<i>Included Funds</i>								
European Fund (1999) <sup>(2)</sup>	3,085.4	3,085.4	8,757.7	—	8,757.7	26.9 %	20.2 %	2.8
Millennium Fund (2002)	6,000.0	6,000.0	14,123.1	6.1	14,129.2	22.0 %	16.1 %	2.4
European Fund II (2005) <sup>(2)</sup>	5,750.8	5,750.8	8,507.4	34.3	8,541.7	6.1 %	4.5 %	1.5
2006 Fund (2006)	17,642.2	17,309.3	32,646.5	4,900.4	37,546.9	12.0 %	9.4 %	2.2
Asian Fund (2007)	3,983.3	3,974.3	8,723.3	28.7	8,752.0	18.9 %	13.7 %	2.2
European Fund III (2008) <sup>(2)</sup>	5,514.7	5,359.8	10,602.2	235.4	10,837.6	16.6 %	11.5 %	2.0
E2 Investors (Annex Fund) (2009) <sup>(2)</sup>	195.8	195.8	199.6	—	199.6	0.6 %	0.5 %	1.0
China Growth Fund (2010)	1,010.0	1,010.0	903.9	403.1	1,307.0	6.6 %	2.3 %	1.3
Natural Resources Fund (2010)	887.4	887.4	123.2	73.1	196.3	(25.3)%	(27.1)%	0.2
Global Infrastructure Investors (2011) <sup>(2)</sup>	1,040.2	1,046.8	2,191.5	36.5	2,228.0	17.6 %	15.6 %	2.1
North America Fund XI (2012)	8,718.4	9,733.0	12,932.9	9,557.8	22,490.7	23.6 %	18.9 %	2.3
Asian Fund II (2013)	5,825.0	6,839.3	5,189.9	5,547.3	10,737.2	13.8 %	10.1 %	1.6
Real Estate Partners Americas (2013)	1,229.1	1,013.0	1,365.7	82.7	1,448.4	16.4 %	11.6 %	1.4
Energy Income and Growth Fund (2013)	1,974.2	1,967.9	838.0	1,020.4	1,858.4	(1.6)%	(4.0)%	0.9
Global Infrastructure Investors II (2014) <sup>(2)</sup>	3,040.8	3,158.9	2,843.4	3,028.1	5,871.5	21.5 %	18.7 %	1.9
European Fund IV (2015) <sup>(2)</sup>	3,517.2	3,578.1	3,092.2	4,080.9	7,173.1	26.5 %	20.9 %	2.0
Real Estate Partners Europe (2015) <sup>(2)</sup>	714.5	612.0	359.0	501.5	860.5	15.3 %	10.8 %	1.4
Next Generation Technology Growth Fund (2016)	658.9	663.3	401.8	1,651.2	2,053.0	48.0 %	41.2 %	3.1
Health Care Strategic Growth Fund (2016)	1,331.0	747.4	196.0	1,137.5	1,333.5	54.7 %	35.0 %	1.8
Americas Fund XII (2017)	13,500.0	8,354.5	951.0	18,878.4	19,829.4	49.4 %	40.2 %	2.4
Real Estate Credit Opportunity Partners (2017)	1,130.0	1,007.8	254.9	941.7	1,196.6	6.9 %	5.7 %	1.2
Core Investment Vehicles (2017)	10,807.0	7,688.4	—	11,531.4	11,531.4	22.5 %	21.1 %	1.5
Asian Fund III (2017)	9,000.0	6,338.2	1,261.1	10,178.7	11,439.8	43.6 %	33.5 %	1.8
Real Estate Partners Americas II (2017)	1,921.2	1,753.1	568.3	1,726.2	2,294.5	22.7 %	17.6 %	1.3
Global Infrastructure Investors III (2018) <sup>(2)</sup>	7,199.1	3,421.5	234.9	3,512.7	3,747.6	7.3 %	3.4 %	1.1
Global Impact Fund (2019)	1,242.2	552.1	25.3	759.3	784.6	69.0 %	45.0 %	1.4
European Fund V (2019) <sup>(2)(3)</sup>	6,429.0	2,604.9	111.0	3,200.3	3,311.3	—	—	—
Energy Income and Growth Fund II (2019) <sup>(3)</sup>	994.2	488.9	60.9	522.4	583.3	—	—	—
Next Generation Technology Growth Fund II (2019) <sup>(3)</sup>	2,088.3	944.7	62.2	1,357.3	1,419.5	—	—	—
Asia Pacific Infrastructure Investors (2019) <sup>(3)</sup>	3,791.6	814.8	—	939.9	939.9	—	—	—
Real Estate Credit Opportunity Partners II (2019) <sup>(3)</sup>	950.0	385.7	18.5	396.6	415.1	—	—	—
Asian Fund IV (2020) <sup>(3)</sup>	14,734.7	—	—	—	—	—	—	—
Asia Real Estate Partners (2020) <sup>(3)</sup>	1,682.4	224.1	—	246.8	246.8	—	—	—
Real Estate Partners Americas III (2021) <sup>(3)</sup>	2,529.1	—	—	—	—	—	—	—
Subtotal - Included Funds	150,117.7	107,511.2	117,545.4	86,516.7	204,062.1	16.7 %	12.8 %	1.9
<b>All Funds</b>	<b>\$ 166,592.2</b>	<b>\$ 123,985.7</b>	<b>\$ 167,814.7</b>	<b>\$ 86,516.7</b>	<b>\$ 254,331.4</b>	<b>25.6 %</b>	<b>18.8 %</b>	<b>2.1</b>

- (1) These funds were not contributed to KKR as part of the acquisition of the assets and liabilities of KKR & Co. (Guernsey) L.P. (formerly known as KKR Private Equity Investors, L.P.) on October 1, 2009 (the "KPE Transaction").
- (2) The following table presents information regarding investment funds with euro-denominated commitments. Such amounts have been converted into U.S. dollars based on (i) the foreign exchange rate at the date of purchase for each investment and (ii) the exchange rate prevailing on March 31, 2021, in the case of unfunded commitments.

Private Markets Investment Funds	Commitment (€ in millions)
European Fund	€ 196.5
European Fund II	€ 2,597.5
European Fund III	€ 2,882.8
E2 Investors (Annex Fund)	€ 55.5
Global Infrastructure Investors	€ 30.0
Global Infrastructure Investors II	€ 243.8
European Fund IV	€ 1,626.1
Real Estate Partners Europe	€ 276.6
Global Infrastructure Investors III	€ 987.0
European Fund V	€ 2,144.2

- (3) The gross IRR, net IRR and gross multiple of invested capital are calculated for our investment funds that made their first investment at least 24 months prior to March 31, 2021. None of the European Fund V, Energy Income and Growth Fund II, Next Generation Technology Growth Fund II, Asia Pacific Infrastructure Investors, Real Estate Credit Opportunities Partners II, Asian Fund IV, Asia Real Estate Partners, Real Estate Partners Americas III, or Property Partners Americas, has invested for at least 24 months as of March 31, 2021. We therefore have not calculated gross IRRs, net IRRs and gross multiples of invested capital with respect to those funds.
- (4) An investment is considered realized when it has been disposed of or has otherwise generated disposition proceeds or current income that has been distributed by the relevant fund. In periods prior to the three months ended September 30, 2015, realized proceeds excluded current income such as dividends and interest.
- (5) IRRs measure the aggregate annual compounded returns generated by a fund's investments over a holding period. Net IRRs are calculated after giving effect to the allocation of realized and unrealized carried interest and the payment of any applicable management fees and organizational expenses. Gross IRRs are calculated before giving effect to the allocation of realized and unrealized carried interest and the payment of any applicable management fees and organizational expenses.

The gross multiples of invested capital measure the aggregate value generated by a fund's investments in absolute terms. Each multiple of invested capital is calculated by adding together the total realized and unrealized values of a fund's investments and dividing by the total amount of capital invested by the fund. Such amounts do not give effect to the allocation of realized and unrealized carried interest or the payment of any applicable management fees or organizational expenses.

KKR's Private Markets funds may utilize third-party financing facilities to provide liquidity to such funds. The above net and gross IRRs are calculated from the time capital contributions are due from fund investors to the time fund investors receive a related distribution from the fund, and the use of such financing facilities generally decreases the amount of time that would otherwise be used to calculate IRRs, which tends to increase IRRs when fair value grows over time and decrease IRRs when fair value decreases over time. KKR's Private Markets funds also generally provide in certain circumstances, which vary depending on the relevant fund documents, for a portion of capital returned to investors to be restored to unused commitments as recycled capital. For KKR's Private Markets funds that have a preferred return, we take into account recycled capital in the calculation of IRRs and multiples of invested capital because the calculation of the preferred return includes the effect of recycled capital. For KKR's Private Markets funds that do not have a preferred return, we do not take recycled capital into account in the calculation of IRRs and multiples of invested capital. The inclusion of recycled capital generally causes invested and realized amounts to be higher and IRRs and multiples of invested capital to be lower than had recycled capital not been included. The inclusion of recycled capital would reduce the composite net IRR of all Included Funds by 0.1% and the composite net IRR of all Legacy Funds by 0.5% and would reduce the composite multiple of invested capital of Included Funds by less than 0.1 and the composite multiple of invested capital of Legacy Funds by 0.4.

### ***Asset Management - Public Markets***

Through our Public Markets business line, we operate our credit and hedge funds platforms on a combined basis. Our credit business invests capital in (i) leveraged credit strategies, including leveraged loans, high-yield bonds, opportunistic credit and revolving credit strategies, and (ii) alternative credit strategies, including special situations or dislocation strategies and private credit strategies such as direct lending and private opportunistic credit (including mezzanine and asset-based finance) investment strategies. The funds, CLOs, separately managed accounts, investment companies registered under the Investment Company Act of 1940 (the "Investment Company Act") and alternative investment funds ("AIFs") in our leveraged credit and alternative credit strategies are managed by KKR Credit Advisors (US) LLC, which is an SEC-registered investment adviser, KKR Credit Advisors (Ireland) Unlimited Company, which is regulated by the Central Bank of Ireland ("CBI"), and KKR Credit Advisors (Singapore) Pte. Ltd., which is regulated by the Monetary Authority of Singapore and also registered with the SEC. Our business development company ("BDC") platform consists of BDCs advised by FS/KKR Advisor, LLC ("FS/KKR Advisor"), which is an investment adviser jointly owned by KKR and Franklin Square Holdings, L.P. ("FS Investments"). Our Public Markets business line also includes our hedge funds platform, which consists of strategic partnerships with third-party

hedge fund managers in which KKR owns a minority stake (which we refer to as "hedge fund partnerships"). Our hedge fund partnerships offer a variety of investment strategies, including equity hedge funds, hedge fund-of-funds and credit hedge funds.

As of March 31, 2021, our Public Markets business line had \$189.7 billion of AUM, comprised of \$98.2 billion of assets managed in our leveraged credit strategies (which include \$6.8 billion of assets managed in our opportunistic credit strategy and \$2.0 billion of assets managed in our revolving credit strategy), \$7.6 billion of assets managed in our special situations or dislocation strategies, \$57.9 billion of assets managed in our private credit strategies, \$24.8 billion of assets managed through our hedge fund platform, and \$1.2 billion of assets managed in other strategies. Our private credit strategies include \$17.4 billion of assets managed in our direct lending strategy, \$7.3 billion of assets managed in our private opportunistic credit strategy and \$33.3 billion of assets managed in other private credit strategies. Our BDC platform has approximately \$15.3 billion in combined assets under management, which are reflected in the AUM of our leveraged credit strategies and alternative credit strategies above. We report all of the assets under management of the BDCs in our BDC platform. We report only a pro rata portion of the AUM in our strategic partnership with third-party hedge fund managers based on KKR's percentage ownership in them.

## Credit

### Performance

We generally review our performance in our credit business by investment strategy.

Our leveraged credit strategies principally invest through separately managed accounts, BDCs, CLOs and investment funds. In certain cases, these strategies have meaningful track records and may be compared to widely-known indices. The following table presents information regarding larger leveraged credit strategies managed by KKR from inception to March 31, 2021. The information presented below is not intended to be representative of any past or future performance for any particular period other than the period presented below. Past performance is no guarantee of any future result.

*Leveraged Credit Strategies: Inception-to-Date Annualized Gross Performance vs. Benchmark by Strategy*

Leveraged Credit Strategy	Inception Date	Gross Returns	Net Returns	Benchmark <sup>(1)</sup>	Benchmark Gross Returns
Bank Loans Plus High Yield	Jul 2008	7.49 %	6.88 %	65% S&P/LSTA Loan Index, 35% BoAML HY Master II Index <sup>(2)</sup>	5.98 %
Opportunistic Credit <sup>(3)</sup>	May 2008	11.61 %	9.80 %	50% S&P/LSTA Loan Index, 50% BoAML HY Master II Index <sup>(3)</sup>	6.27 %
Bank Loans	Apr 2011	5.30 %	4.72 %	S&P/LSTA Loan Index <sup>(4)</sup>	4.25 %
High-Yield	Apr 2011	7.06 %	6.48 %	BoAML HY Master II Index <sup>(5)</sup>	6.31 %
Bank Loans Conservative	Apr 2011	4.51 %	3.93 %	S&P/LSTA BB-B Loan Index <sup>(6)</sup>	4.24 %
European Leveraged Loans <sup>(7)</sup>	Sep 2009	4.73 %	4.21 %	CS Inst West European Leveraged Loan Index <sup>(8)</sup>	3.64 %
High-Yield Conservative	Apr 2011	6.33 %	5.76 %	BoAML HY BB-B Constrained <sup>(9)</sup>	6.27 %
European Credit Opportunities <sup>(7)</sup>	Sept 2007	5.79 %	4.85 %	S&P European Leveraged Loans (All Loans) <sup>(10)</sup>	4.17 %
Revolving Credit <sup>(11)</sup>	May 2015	N/A	N/A	N/A	N/A

- The benchmarks referred to herein include the S&P/LSTA Leveraged Loan Index (the "S&P/LSTA Loan Index"), S&P/LSTA U.S. B/BB Ratings Loan Index (the "S&P/LSTA BB-B Loan Index"), the Bank of America Merrill Lynch High Yield Master II Index (the "BoAML HY Master II Index"), the BofA Merrill Lynch BB-B US High Yield Index (the "BoAML HY BB-B Constrained"), the Credit Suisse Institutional Western European Leveraged Loan Index (the "CS Inst West European Leveraged Loan Index"), and S&P European Leveraged Loans (All Loans). The S&P/LSTA Loan Index is a daily tradable index for the U.S. loan market that seeks to mirror the market-weighted performance of the largest institutional loans that meet certain criteria. The S&P/LSTA BB-B Loan Index is comprised of loans in the S&P/LSTA Loan Index, whose rating is BB+, BB, BB-, B+, B or B-. The BoAML HY Master II Index is an index for high-yield corporate bonds. It is designed to measure the broad high-yield market, including lower-rated securities. The BoAML HY BB-B Constrained is a subset of the BoAML HY Master II Index including all securities rated BB1 through B3, inclusive. The CS Inst West European Leveraged Loan Index contains only institutional loan facilities priced above 90, excluding TL and TLa facilities and loans rated CC, C or are in default. The S&P European Leveraged Loan Index reflects the market-weighted performance of institutional leveraged loan portfolios investing in European credits. While the returns of our leveraged credit strategies reflect the reinvestment of income and dividends, none of the indices presented in the chart above reflect such reinvestment, which has the effect of increasing the reported relative performance of these strategies as compared to the indices. Furthermore, these indices are not subject to management fees, incentive allocations, or expenses.
- Performance is based on a blended composite of Bank Loans Plus High Yield strategy accounts. The benchmark used for purposes of comparison for the Bank Loans Plus High Yield strategy is based on 65% S&P/LSTA Loan Index and 35% BoAML HY Master II Index.
- The Opportunistic Credit strategy invests in high-yield securities and corporate loans with no preset allocation. The benchmark used for purposes of comparison for the Opportunistic Credit strategy presented herein is based on 50% S&P/LSTA Loan Index and 50% BoAML HY Master II Index. Funds within this strategy may utilize third-party financing facilities to enhance investment returns. In cases where financing facilities are used, the amounts

drawn on the facility are deducted from the assets of the fund in the calculation of net asset value, which tends to increase returns when net asset value grows over time and decrease returns when net asset value decreases over time.

- (4) Performance is based on a composite of portfolios that primarily invest in leveraged loans. The benchmark used for purposes of comparison for the Bank Loans strategy is based on the S&P/LSTA Loan Index.
- (5) Performance is based on a composite of portfolios that primarily invest in high-yield securities. The benchmark used for purposes of comparison for the High Yield strategy is based on the BoAML HY Master II Index.
- (6) Performance is based on a composite of portfolios that primarily invest in leveraged loans rated B-/Baa3 or higher. The benchmark used for purposes of comparison for the Bank Loans Conservative strategy is based on the S&P/LSTA BB-B Loan Index.
- (7) The returns presented are calculated based on local currency.
- (8) Performance is based on a composite of portfolios that primarily invest in higher quality leveraged loans. The benchmark used for purposes of comparison for the European Leveraged Loans strategy is based on the CS Inst West European Leveraged Loan Index.
- (9) Performance is based on a composite of portfolios that primarily invest in high-yield securities rated B or higher. The benchmark used for purposes of comparison for the High-Yield Conservative strategy is based on the BoAML HY BB-B Constrained Index.
- (10) Performance is based on a composite of portfolios that primarily invest in European institutional leveraged loans. The benchmark used for purposes of comparison for the European Credit Opportunities strategy is based on the S&P European Leveraged Loans (All Loans) Index.
- (11) This strategy has not called any capital as of March 31, 2021. As a result, the gross and net return performance measures are not meaningful and are not included above.

Our alternative credit strategies primarily invest in more illiquid instruments through private investment funds, BDCs and separately managed accounts. The following table presents information regarding our Public Markets alternative credit commingled funds where investors are subject to capital commitments from inception to March 31, 2021. Some of these funds have been investing for less than 24 months, and thus their performance is less meaningful and not included below. In addition, the information presented below is not intended to be representative of any past or future performance for any particular period other than the period presented below. Past performance is no guarantee of any future result.

*Alternative Credit Strategies: Fund Performance*

Public Markets Investment Funds	Inception Date	Amount		Fair Value of Investments			Total Value	Gross IRR <sup>(2)</sup>	Net IRR <sup>(2)</sup>	Multiple of Invested Capital <sup>(3)</sup>	Gross Accrued Carried Interest
		Commitment	Invested <sup>(1)</sup>	Realized <sup>(1)</sup>	Unrealized						
(\$ in Millions)											
Dislocation Opportunities Fund	May 2020	\$ 2,831.0	\$ 1,017.4	\$ 40.9	\$ 1,192.1	\$ 1,233.0	N/A	N/A	N/A	\$ 25.5	
Special Situations Fund II	Dec 2014	3,524.7	3,225.2	1,135.4	2,574.9	3,710.3	5.0 %	3.0 %	1.2	—	
Special Situations Fund	Dec 2012	2,274.3	2,273.2	1,552.4	595.3	2,147.7	(1.4)%	(3.4)%	0.9	—	
Mezzanine Partners	Mar 2010	1,022.8	989.6	1,093.7	224.9	1,318.6	9.8 %	6.6 %	1.3	(20.0)	
Private Credit Opportunities Partners II	Dec 2015	2,245.1	1,442.1	320.6	1,367.2	1,687.8	6.7 %	5.1 %	1.2	—	
Lending Partners III	Apr 2017	1,497.8	990.7	213.2	1,054.4	1,267.6	18.1 %	15.0 %	1.3	21.4	
Lending Partners II	Jun 2014	1,335.9	1,179.1	1,100.7	207.6	1,308.3	4.1 %	2.8 %	1.1	—	
Lending Partners	Dec 2011	460.2	407.2	450.7	13.9	464.6	4.0 %	2.3 %	1.1	—	
Lending Partners Europe II	Jun 2019	836.6	317.6	19.8	349.6	369.4	N/A	N/A	N/A	1.3	
Lending Partners Europe	Mar 2015	847.6	635.3	261.1	359.6	620.7	(1.1)%	(3.8)%	1.0	—	
Other Alternative Credit Vehicles	Various	11,149.1	6,024.6	3,841.8	4,098.0	7,939.8	N/A	N/A	N/A	121.5	
Unallocated Commitments <sup>(4)</sup>	Various	124.3	—	—	—	—	N/A	N/A	N/A	—	
<b>All Funds</b>		<b>\$ 28,149.4</b>	<b>\$ 18,502.0</b>	<b>\$ 10,030.3</b>	<b>\$ 12,037.5</b>	<b>\$ 22,067.8</b>				<b>\$ 149.7</b>	

- (1) Recycled capital is excluded from the amounts invested and realized.
- (2) These credit funds utilize third-party financing facilities to provide liquidity to such funds, and in such event, IRRs are calculated from the time capital contributions are due from fund investors to the time fund investors receive a related distribution from the fund. The use of such financing facilities generally decreases the amount of invested capital that would otherwise be used to calculate IRRs, which tends to increase IRRs when fair value grows over time and decrease IRRs when fair value decreases over time. IRRs measure the aggregate annual compounded returns generated by a fund's investments over a holding period and are calculated taking into account recycled capital. Net IRRs presented are calculated after giving effect to the allocation of realized and unrealized carried interest and the payment of any applicable management fees. Gross IRRs are calculated before giving effect to the allocation of carried interest and the payment of any applicable management fees.
- (3) The multiples of invested capital measure the aggregate value generated by a fund's investments in absolute terms. Each multiple of invested capital is calculated by adding together the total realized and unrealized values of a fund's investments and dividing by the total amount of capital invested by the investors. The use of financing facilities generally decreases the amount of invested capital that would otherwise be used to calculate multiples of invested capital, which tends to increase multiples when fair value grows over time and decrease multiples when fair value decreases over time. Such amounts do



not give effect to the allocation of any realized and unrealized returns on a fund's investments to the fund's general partner pursuant to a carried interest or the payment of any applicable management fees and are calculated without taking into account recycled capital.

- (4) "Unallocated Commitments" represent unallocated commitments from our strategic investor partnerships.

### Public Markets AUM and Vehicle Structures

The table below presents information as of March 31, 2021, based on the investment funds, vehicles or accounts offered by our Public Markets business line. Our funds, vehicles and accounts have been sorted based upon their primary investment strategies. However, the AUM and FPAUM presented for each line in the table includes certain investments from non-primary investment strategies, which are permitted by their investment mandates, for purposes of presenting the fees and other terms for such funds, vehicles and accounts.

(\$ in millions)	AUM	FPAUM	Typical Management Fee Rate	Incentive Fee / Carried Interest	Preferred Return	Duration of Capital
<b>Leveraged Credit:</b>						
Leveraged Credit SMAs/Funds	\$ 77,433	\$ 75,614	0.15% - 1.10%	Various <sup>(1)</sup>	Various <sup>(1)</sup>	Subject to redemptions
CLOs	19,101	19,102	0.40% - 0.50%	Various <sup>(1)</sup>	Various <sup>(1)</sup>	10-14 Years <sup>(2)</sup>
Total Leveraged Credit	96,534	94,716				
<b>Alternative Credit: <sup>(3)</sup></b>						
Special Situations	7,803	4,254	0.50% - 1.75% <sup>(4)</sup>	10.00 - 20.00%	7.00 - 12.00%	7-15 Years <sup>(2)</sup>
Private Credit	45,222	40,274	0.30% - 1.50%	10.00 - 20.00%	5.00 - 8.00%	8-15 Years <sup>(2)</sup>
Total Alternative Credit	53,025	44,528				
Hedge Funds <sup>(5)</sup>	24,822	24,822	0.50% - 2.00%	Various <sup>(1)</sup>	Various <sup>(1)</sup>	Subject to redemptions
BDCs <sup>(6)</sup>	15,341	15,341	0.60%	8.00%	7.00%	Indefinite
<b>Total</b>	<b>\$ 189,722</b>	<b>\$ 179,407</b>				

- (1) Certain funds and CLOs are subject to a performance fee in which the manager or general partner of the funds share up to 20% of the net profits earned by investors in excess of performance hurdles (generally tied to a benchmark or index) and subject to a provision requiring the funds and vehicles to regain prior losses before any performance fee is earned.
- (2) Duration of capital is measured from inception. Inception dates for CLOs were between 2013 and 2021 and for separately managed accounts and funds investing in alternative credit strategies from 2009 through 2021.
- (3) Our alternative credit funds generally have investment periods of three to five years and our newer alternative credit funds generally earn fees on invested capital during the investment period.
- (4) Lower fees on uninvested capital in certain vehicles.
- (5) Hedge Funds represent KKR's pro rata portion of AUM and FPAUM of our hedge fund partnerships.
- (6) Consists of our BDC platform advised by FS/KKR Advisor. We report all of the AUM of the BDCs in our AUM and FPAUM.

### Asset Management - Capital Markets

Our Capital Markets business line is comprised of our global capital markets business, which is integrated with KKR's asset management business lines, and serves our firm, our funds, our portfolio companies and third-party clients by developing and implementing both traditional and non-traditional capital solutions for investments or companies seeking financing. These services include arranging debt and equity financing, placing and underwriting securities offerings, and providing other types of capital markets services that may result in the firm receiving fees, including underwriting, placement, transaction and syndication fees, commissions, underwriting discounts, interest payments and other compensation, which may be payable in cash or securities, in respect of the activities described above.

Our capital markets business underwrites credit facilities and arranges loan syndications and participations. When we are sole arrangers of a credit facility, we may advance amounts to the borrower on behalf of other lenders, subject to repayment. When we underwrite an offering of securities on a firm commitment basis, we commit to buy and sell an issue of securities and generate revenue by purchasing the securities at a discount or for a fee. When we act in an agency capacity or best efforts basis,

we generate revenue for arranging financing or placing securities with capital markets investors. We may also provide issuers with capital markets advice on security selection, access to markets, marketing considerations, securities pricing, and other aspects of capital markets transactions in exchange for a fee. Our capital markets business also provides syndication services in respect of co-investments in transactions participated in by KKR funds or third-party clients, which may entitle the firm to receive syndication fees, management fees and/or a carried interest.

The capital markets business has a global footprint, with local presence and licenses to carry out certain broker-dealer activities in various countries in North America, Europe, Asia-Pacific and the Middle East. Our flagship capital markets subsidiary is KKR Capital Markets LLC, an SEC-registered broker-dealer and a member of the Financial Industry Regulatory Authority ("FINRA").

**Asset Management - Principal Activities**

Through our Principal Activities business line, we manage the firm's own assets on our balance sheet and deploy capital to support and grow our asset management business lines. Typically, the funds in our Private Markets and Public Markets business lines contractually require us, as general partner of the funds, to make sizable capital commitments from time to time. We believe making general partner commitments assists us in raising new funds from limited partners by demonstrating our conviction in a given fund's strategy. We also use our balance sheet to bridge investment activity during fundraising by seeding investments for new funds and also to acquire investments in order to help establish a track record for fundraising in new strategies. We also use our own capital to bridge capital selectively for our funds' investments or finance strategic acquisitions and partnerships, although the financial results of an acquired business or hedge fund partnership may be reported in our other business lines.

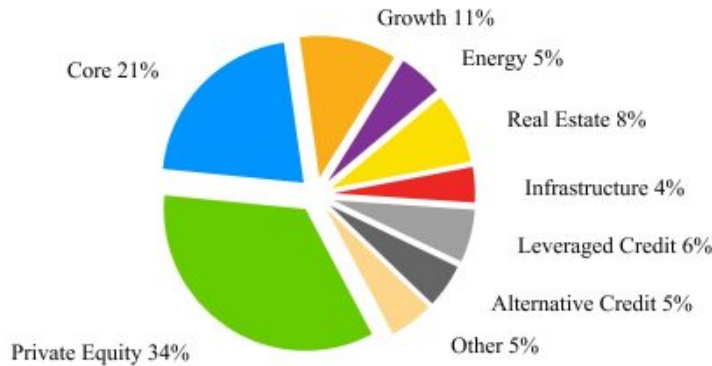
Our Principal Activities business line also provides the required capital to fund the various commitments of our Capital Markets business line when underwriting or syndicating securities, or when providing term loan commitments for transactions involving our portfolio companies and for third parties. Our Principal Activities business line also holds assets that are utilized to satisfy regulatory requirements for our Capital Markets business line and risk retention requirements for our CLOs.

We also make opportunistic investments through our Principal Activities business line, which include co-investments alongside our Private Markets and Public Markets funds as well as Principal Activities investments that do not involve our Private Markets or Public Markets funds.

We endeavor to use our balance sheet strategically and opportunistically to generate an attractive risk-adjusted return on equity in a manner that is consistent with our fiduciary duties, in compliance with applicable laws, and consistent with our one-firm approach.

The chart below presents the holdings of our Principal Activities business line by asset class as of March 31, 2021:

**Holdings by Asset Class <sup>(1)</sup>**



(1) General partner commitments in our funds are included in the various asset classes shown above. Assets and revenues of other asset managers with which KKR has formed strategic partnerships where KKR does not hold more than 50% ownership interest are not included in our Principal Activities business line but are reported in the financial results of our other business lines. Private Equity includes KKR private equity funds, co-investments alongside such KKR-sponsored private equity funds, certain core equity investments, and other opportunistic investments. Equity investments in other asset classes, such as real estate, special situations and energy appear in these other asset classes. Other Credit consists of certain leveraged credit and specialty finance strategies.

## Insurance - Global Atlantic

Our insurance business is operated by Global Atlantic, which we acquired on February 1, 2021. KKR owns all of the voting interests in Global Atlantic and a 61.1% economic interest in Global Atlantic as of the closing of the acquisition, which economic interest is subject to change based on post-closing purchase price adjustments. The balance of Global Atlantic is owned by third-party investors and Global Atlantic employees. Following the Global Atlantic acquisition, Global Atlantic continues to operate as a separate business with its existing brands and management team. Beginning with the first quarter of 2021, we present Global Atlantic's financial results as a separate reportable segment.

Global Atlantic is a leading U.S. annuity and life insurance company that provides a broad suite of protection, legacy and savings products and reinsurance solutions to clients across individual and institutional markets. Global Atlantic has made the strategic decision to focus on target markets that it believes supports issuing products that have attractive risk and return characteristics. These markets allow Global Atlantic to leverage its strength in distribution and to deploy capital opportunistically across market conditions.

Global Atlantic primarily offers individuals fixed-rate annuities, fixed-indexed annuities, and targeted life products through a network of banks, broker-dealers, and insurance agencies. Global Atlantic provides its institutional clients customized reinsurance solutions, including block, flow and pension risk transfer, as well as funding agreements. Global Atlantic primarily generates income by earning a spread between its investment income and the cost of policyholder benefits. As of March 31, 2021, Global Atlantic served over two million policyholders.

## Business Environment

### *Economic and Market Conditions*

**Impact of COVID-19.** The outbreak of COVID-19 continues to impact the United States and other countries throughout the world. For a description of the impact that COVID-19 had and may in the future have on our business, see "Risk Factors—Risks Related to Our Business—COVID-19 continues to impact the United States and other countries throughout the world, and it has caused and may further cause disruptions to our business and adversely affect our financial results" and "Risk Factors—Risks Related to the Assets We Manage—Our investments are impacted by various economic conditions and events outside of our control that are difficult to quantify or predict, which may have a significant impact on the valuation of our investments and, therefore, on the investment income we realize and our results of operations and financial condition" in our Annual Report.

**Economic Conditions.** As a global investment firm, we are affected by financial and economic conditions globally. Global and regional economic conditions, including those caused by the COVID-19 pandemic, have substantial impact on our financial condition and results of operations, impacting the values of the investments we make, our ability to exit these investments profitably, our ability to raise capital from investors, and our ability to make new investments. Financial and economic conditions in the United States, European Union, Japan, China, and other major economies are significant contributors to the global economy.

During the period ended March 31, 2021, the United States continued to show signs of economic improvement, primarily driven by fiscal and monetary support and its vaccine rollout program. In the United States, real GDP is estimated to have expanded by 5.4% at a seasonally adjusted annualized rate in the quarter ended March 31, 2021, compared to an expansion of 4.3% at a seasonally adjusted annualized rate in the quarter ended December 31, 2021; the U.S. unemployment rate was 6.0% as of March 31, 2021, down from 6.7% as of December 31, 2020; the U.S. core consumer price index was 1.6% on a year-over-year basis as of March 31, 2021, flat from 1.6% on a year-over-year basis as of December 31, 2020; and the effective federal funds rate set by the U.S. Federal Reserve was 0.1% as of March 31, 2021, flat from 0.1% as of December 31, 2020.

During the period ended March 31, 2021, the Euro Area continued to face economic challenges. In the Euro Area, real GDP is estimated to have contracted by 0.8% on a seasonally adjusted quarter-over-quarter basis in the quarter ended March 31, 2021 compared to a contraction of 0.7% on a seasonally adjusted quarter-over-quarter basis in the quarter ended December 31, 2020; the Euro Area unemployment is estimated to have been 8.3% as of March 31, 2021, slightly up from 8.2% as of December 31, 2020; Euro Area core inflation was 0.9% on a year-over-year basis as of March 31, 2021, up from 0.2% on a year-over-year basis as of December 31, 2020; and the short-term benchmark interest rate set by the European Central Bank was 0.0% as of March 31, 2021, unchanged from December 31, 2020.

During the period ended March 31, 2021, in Asia, Japan's economy continued to suffer economic contraction. In Japan, real GDP growth for the quarter ended March 31, 2021 is estimated to be -4.20% on a seasonally adjusted quarter-over-quarter

basis, down from 11.7% as of December 31, 2020 on a seasonally adjusted quarter-over-quarter basis. Inflation in Japan rose to 0.3% as of March 31, 2021, up from -0.4% as of December 31, 2020. In Japan, the short-term benchmark interest rate set by the Bank of Japan was -0.1% as of March 31, 2021, unchanged from December 31, 2020. In China, signs of growth continued to emerge but at a slower pace than in the second half of 2020. Reported real GDP in China grew by 0.6% on a seasonally adjusted quarter-over-quarter basis in the quarter ended March 31, 2021, compared to 3.2% reported for the quarter ended December 31, 2020. Reported inflation in China was 0.3% as of March 31, 2021, down from 0.4% as of December 31, 2020.

These and other key issues could have repercussions across regional and global financial markets, which could adversely affect the valuations of our investments. Other key issues include (i) political uncertainty caused by, among other things, economic nationalist sentiments, tensions surrounding socioeconomic inequality issues, and the at-times partisan nature of U.S. government administration, which has potentially global ramifications with regards to policy, (ii) geopolitical uncertainty such as U.S.-China relations, (iii) regulatory changes regarding, for example, taxation, international trade, cross-border investments, immigration, and stimulus programs/rising levels of debt, (iv) volatility or downturn in stock and credit markets, (v) any unexpected shift in central banks' monetary policies, (vi) technological advancements and innovations that may disrupt marketplaces and businesses, and (vii) further developments regarding COVID-19, including the spread of variants that may hinder the success of the vaccines and the ability to vaccinate sufficient segments of the global population. For a further discussion of how market conditions may affect our businesses, see "Risk Factors—Risks Related to Our Business—Difficult market and economic conditions can adversely affect our business in many ways, including by reducing the value or performance of the investments that we manage or by reducing the ability of our funds to raise or deploy capital, each of which could negatively impact our net income and cash flow and adversely affect our financial condition," in our Annual Report.

**Equity and Credit Markets.** Global equity and credit markets have a substantial effect on our financial condition and results of operations. In general, a climate of reasonable interest rates and high levels of liquidity in the debt and equity capital markets provide a positive environment for us to generate attractive investment returns, which also impacts our ability to generate incentive fees and carried interest. Periods of volatility and dislocation in the capital markets, such as the present, raise substantial risks, but also can present us with opportunities to invest at reduced valuations that position us for future growth and investment returns. Low interest rates related to monetary stimulus and economic stagnation may negatively impact expected returns on all types of investments. Higher interest rates in conjunction with slower growth or weaker currencies in some emerging market economies have caused, and may further cause, the default risk of these countries to increase, and this could impact the operations or value of our investments that operate in these regions. Areas that have ongoing central bank quantitative easing campaigns and comparatively low interest rates relative to the United States could potentially experience further currency volatility and weakness relative to the U.S. dollar.

With respect to our insurance business, fluctuations in market interest rates can expose Global Atlantic to the risk of reduced income in respect of its investment portfolio, increases in the cost of acquiring or maintaining its insurance liabilities, increases in the cost of hedging, or other fluctuations in Global Atlantic's financial, capital and operating profile which materially and adversely affect the business. Higher interest rates, periods of changes in rates and lower rates each may result in differing impacts on Global Atlantic's business. See "Risk Factors—Risks Related to Global Atlantic—Interest rate fluctuations and sustained periods of low or high interest rates could adversely affect Global Atlantic's business, financial condition, liquidity, results of operations, cash flows and prospects.

In our asset management business, many of our investments are in equities, so a change in global equity prices or in market volatility directly impacts the value of our investments and our profitability as well as our ability to realize investment gains and the receptiveness of fund investors to our investment products. For the quarter ended March 31, 2021, global equity markets were positive, with the S&P 500 up 6.2% and the MSCI World Index up 5.0% on a total return basis including dividends. Equity market volatility as evidenced by the Chicago Board Options Exchange Market Volatility Index (VIX), a measure of volatility, ended at 19.4 as of March 31, 2021, decreasing from 22.8 as of December 31, 2020. For a discussion of our valuation methods, see "Risk Factors—Risks Related to the Assets We Manage—Our investments are impacted by various economic conditions and events outside of our control that are difficult to quantify or predict, which may have a significant impact on the valuation of our investments and, therefore, on the investment income we realize and our results of operations and financial condition" in our Annual Report and see also "—Critical Accounting Policies—Fair Value Measurements—Level III Valuation Methodologies" in our Annual Report. In our insurance business, a change in equity prices also impacts Global Atlantic's equity-sensitive annuity and life insurance products, including with respect to hedging costs related to and fee-income earned on those products.

Many of our investments, particularly in asset management, are in non-investment grade credit instruments, and, particularly in insurance, in investment grade credit instruments. Our funds, our portfolio companies and Global Atlantic also rely on credit financing and the ability to refinance existing debt. Consequently, any decrease in the value of credit instruments that we have invested in or any increase in the cost of credit financing reduces our returns and decreases our net income.

Due in part to holdings of credit instruments such as CLOs on our balance sheet, the performance of the credit markets has had an amplified impact on our financial results, as we directly bear the full extent of losses from credit instruments on our balance sheet. Credit markets can also impact valuations because a discounted cash flow analysis is generally used as one of the methodologies to ascertain the fair value of our investments that do not have readily observable market prices. In addition, with respect to our credit instruments, tightening credit spreads are generally expected to lead to an increase, and widening credit spreads are generally expected to lead to a decrease, in the value of these credit investments, if not offset by hedging or other factors. In addition, the significant widening of credit spreads is also typically expected to negatively impact equity markets, which in turn would negatively impact our portfolio and us as noted above. Conversely, widening credit spreads may have a positive impact on our insurance business, as the margin Global Atlantic is able to earn between crediting rates offered on its insurance products and the investment income it earns from its credit investments should increase, and tightening credit spreads may negatively impact the pricing and therefore competitiveness of Global Atlantic's products, adversely impacting sales and growth, or may negatively impact the margins that Global Atlantic earns on sales and transactions.

During the quarter ended March 31, 2021, U.S. investment grade corporate bond spreads (BofA Merrill Lynch US Corporate Index) contracted by 6 basis points and U.S. high-yield corporate bond spreads (BofAML HY Master II Index) contracted by 50 basis points. The non-investment grade credit indices were up during the quarter ended March 31, 2021, with the S&P/LSTA Leveraged Loan Index up 1.8% and the BAML US High Yield Index up 0.9%. During the quarter ended March 31, 2021, 10-year government bond yields rose 83 basis points in the United States, rose 65 basis points in the United Kingdom, rose 28 basis points in Germany, rose 5 basis points in China, and rose 7 basis point in Japan. For a further discussion of how market conditions may affect our businesses, see "Risk Factors—Risks Related to Our Business—Difficult market and economic conditions can adversely affect our business in many ways, including by reducing the value or performance of the investments that we manage or by reducing the ability of our funds to raise or deploy capital, each of which could negatively impact our net income and cash flow and adversely affect our financial condition" in our Annual Report and "Risk Factors—Risks Related to the Assets We Manage—Our investments are impacted by various economic conditions and events outside of our control that are difficult to quantify or predict, which may have a significant impact on the valuation of our investments and, therefore, on the investment income we realize and our results of operations and financial condition" in our Annual Report.

For further discussion of the impact of global credit markets on our financial condition and results of operations, see "Risk Factors—Risks Related to the Assets We Manage—Changes in the debt financing markets may negatively impact the ability of our investment funds, their portfolio companies and strategies pursued with our balance sheet assets to obtain attractive financing for their investments or to refinance existing debt and may increase the cost of such financing or refinancing if it is obtained, which could lead to lower-yielding investments and potentially decrease our net income," "Risk Factors—Risks Related to the Assets We Manage—Our investments are impacted by various economic conditions and events outside of our control that are difficult to quantify or predict, which may have a significant impact on the valuation of our investments and, therefore, on the investment income we realize and our results of operations and financial condition" and "Risk Factors—Risks Related to the Assets We Manage—Our funds and our firm through our balance sheet may make a limited number of investments, or investments that are concentrated in certain issuers, geographic regions or asset types, which could negatively affect our performance or the performance of our funds to the extent those concentrated assets perform poorly" and "Risk Factors—Risks Related to Global Atlantic—Interest rate fluctuations and sustained periods of low or high interest rates could adversely affect Global Atlantic's business, financial condition, liquidity, results of operations, cash flows and prospects" in our Annual Report. For a further discussion of our valuation methods, see "—Critical Accounting Policies—Fair Value Measurements—Level III Valuation Methodologies" in our Annual Report.

**Foreign Exchange Rates.** Foreign exchange rates have a substantial impact on the valuations of our investments that are denominated in currencies other than the U.S. dollar. Currency volatility can also affect our businesses and investments that deal in cross-border trade. The appreciation or depreciation of the U.S. dollar is expected to contribute to a decrease or increase, respectively, in the U.S. dollar value of our non-U.S. investments to the extent unhedged. In addition, an appreciating U.S. dollar would be expected to make the exports of U.S. based companies less competitive, which may lead to a decline in their export revenues, if any, while a depreciating U.S. dollar would be expected to have the opposite effect. Moreover, when selecting investments for our investment funds that are denominated in U.S. dollars, an appreciating U.S. dollar may create opportunities to invest at more attractive U.S. dollar prices in certain countries outside of the United States, while a depreciating U.S. dollar would be expected to have the opposite effect. For our investments denominated in currencies other than the U.S. dollar, the depreciation in such currencies will generally contribute to the decrease in the valuation of such investments, to the extent unhedged, and adversely affect the U.S. dollar equivalent revenues of portfolio companies with substantial revenues denominated in such currencies, while the appreciation in such currencies would be expected to have the opposite effect. For the quarter ended March 31, 2021, the euro fell 4.0%, the British pound rose 0.8%, the Japanese yen fell 6.7%, and the Chinese renminbi fell 0.4%, respectively, relative to the U.S. dollar. For additional information regarding our foreign exchange rate risk, see "Quantitative and Qualitative Disclosure About Market Risk—Exchange Rate Risk" in our Annual Report.

**Commodity Markets.** Our Private Markets portfolio contains energy real asset investments, and certain of our other Private Markets and Public Markets strategies and products, including private equity, direct lending, special situations and CLOs, also have meaningful investments in the energy sector. The value of these investments is heavily influenced by the price of natural gas and oil. During the quarter ended March 31, 2021, the 3-year forward price of WTI crude oil increased approximately 9%, and the 3-year forward price of natural gas increased approximately 4%. The 3-year forward price of WTI crude oil increased from approximately \$46 per barrel to \$50 per barrel, and the 3-year forward price of natural gas increased from approximately \$2.47 per mcf to \$2.56 per mcf as of December 31, 2020 and March 31, 2021, respectively. When commodity prices decline or if a decline is not offset by other factors, we would expect the value of our energy real asset investments to be adversely impacted, to the extent unhedged. In addition, because we hold certain energy real asset investments on our balance sheet, price movements can have an amplified impact on our financial results, to the extent unhedged, as we would directly bear the full extent of such gains or losses. For additional information regarding our energy real assets, see "—Critical Accounting Policies—Fair Value Measurements—Level III Valuation Methodologies—Real Asset Investments" and see also "Risk Factors—Risks Related to the Assets We Manage—Our funds and our firm through our balance sheet may make a limited number of investments, or investments that are concentrated in certain issuers, geographic regions or asset types, which could negatively affect our performance or the performance of our funds to the extent those concentrated assets perform poorly" in our Annual Report.

Following the significant volatility experienced in 2020, oil prices continued to recover during the first quarter alongside improving global demand. We expect downward price movements to have a negative impact on the fair value of our energy portfolio, all other things being equal, given those commodity prices are an input in our valuation models. However, due to near-term commodity derivative transactions, we expect long-term oil and natural gas prices to be a more significant driver of the valuation of our energy investments in asset management than spot prices. As of March 31, 2021, energy investments in oil and gas assets make up approximately 1% of our assets under management, 1% of our total GAAP assets and 1% of our total segment assets.

#### *Business Conditions*

Our operating revenues consist of fees, performance income and investment income.

Our ability to grow our revenues depends in part on our ability to attract new capital and investors, our successful deployment of capital including from our balance sheet and our ability to realize investments at a profit.

**Our ability to attract new capital and investors.** Our ability to attract new capital and investors in our funds is driven, in part, by the extent to which they continue to see the alternative asset management industry generally, and our investment products specifically, as attractive means for capital appreciation or income. In addition, our ability to attract new capital and investors in our insurance business is driven, in part, by the extent to which they continue to see the life and annuity insurance industry generally, and in certain cases our re-insurance vehicles, as attractive means for capital appreciation or income. Since 2010, we have expanded into strategies such as real assets, credit, core, impact and, through hedge fund partnerships, hedge funds, and most recently, insurance. In several of our asset management strategies, our first time funds have begun raising successor funds, and we expect the cost of raising such successor funds to be lower. We have also reached out to new fund investors, including retail and high net worth investors. However, fundraising continues to be competitive. While our Asian Fund IV, Americas Fund XII, European Fund V, Real Estate Partners Americas II, Global Infrastructure Investors III and Next Generation Technology Growth Fund II exceeded the size of their respective predecessor funds, there is no assurance that fundraises for our other flagship investment funds or vehicles or for our newer strategies and their successor funds will experience similar success. If we are unable to successfully raise comparably sized or larger funds, our AUM, FPAUM, and associated fees attributable to new capital raised in future periods may be lower than in prior years. See "Risk Factors—Risks Related to Our Business—Our inability to raise additional or successor funds (or raise successor funds of a comparable size as our predecessor funds) could have a material adverse impact on our business" in our Annual Report.

**Our ability to successfully deploy capital.** Our ability to maintain and grow our revenue base is dependent upon our ability to successfully deploy the capital available to us as well as our participation in capital markets transactions. Greater competition, high valuations, increased overall cost of credit and other general market conditions may impact our ability to identify and execute attractive investments. Additionally, because we seek to make investments that have an ability to achieve our targeted returns while taking on a reasonable level of risk, we may experience periods of reduced investment activity. We have a long-term investment horizon and the capital deployed in any one quarter may vary significantly from the capital deployed in any other quarter or the quarterly average of capital deployed in any given year. Reduced levels of transaction activity also tends to result in reduced potential future investment gains, lower transaction fees and lower fees for our capital markets business line, which may earn fees in the syndication of equity or debt. In our insurance business, we deploy capital by

investing in assets that are anticipated to generate net investment income in excess of the net cost of insurance. If we are unable to originate or source attractive investments, the success and growth in revenues of our insurance business will be adversely impacted. See “Risk Factors—Risks Related to the Assets We Manage—Changes in the debt financing markets may negatively impact the ability of our investment funds, their portfolio companies and strategies pursued with our balance sheet assets to obtain attractive financing for their investments or to refinance existing debt and may increase the cost of such financing or refinancing if it is obtained, which could lead to lower-yielding investments and potentially decrease our net income” in our Annual Report.

***Our ability to realize investments.*** Challenging market and economic conditions may adversely affect our ability to exit and realize value from our investments and result in lower-than-expected returns. Although the equity markets are not the only means by which we exit investments from our funds, the strength and liquidity of the U.S. and relevant global equity markets generally, and the initial public offering market specifically, affect the valuation of, and our ability to successfully exit, our equity positions in the portfolio companies of our funds in a timely manner. We may also realize investments through strategic sales. When financing is not available or becomes too costly, it may be more difficult to find a buyer that can successfully raise sufficient capital to purchase our investments. In our insurance business, we depend on the ability of our investments to generate their anticipated returns, through the payment of interest and dividends and interest as well as return of principal, in the amounts and at the times that we expect them to be made in order to manage our obligations to make payments to our policyholders. If policyholder behavior differs from our expectations, we may be forced to sell our investments earlier than we anticipated and during market conditions where we may realized losses on the investment. In addition, material delays in payments or impairments to our anticipated investment returns could have material adverse affects to our results of operations. For additional information about how business environment and market conditions affect Global Atlantic, see “—Global Atlantic’s Investment Portfolio.”

### **Basis of Accounting**

We consolidate the financial results of KKR Group Partnership and its consolidated entities, which include the accounts of our investment advisers, broker-dealers, Global Atlantic’s insurance companies, the general partners of certain unconsolidated investment funds, general partners of consolidated investment funds and their respective consolidated investment funds and certain other entities including certain CLOs and CMBS. We refer to CLOs and CMBS as collateralized financing entities (“CFEs”).

When an entity is consolidated, we reflect the accounts of the consolidated entity, including its assets, liabilities, revenues, expenses, investment income, cash flows and other amounts, on a gross basis. While the consolidation of a consolidated fund or entity does not have an effect on the amounts of Net Income Attributable to KKR or KKR’s stockholders’ capital that KKR reports, the consolidation does significantly impact the financial statement presentation under GAAP. This is due to the fact that the accounts of the consolidated entities are reflected on a gross basis while the allocable share of those amounts that are attributable to third parties are reflected as single line items. The single line items in which the accounts attributable to third parties are recorded are presented as noncontrolling interests on the consolidated statements of financial condition and net income (loss) attributable to noncontrolling interests on the consolidated statements of operations.

The presentations in the financial statements reflect the significant industry diversification of KKR by its acquisition of Global Atlantic. Global Atlantic operates an insurance business, and KKR operates an asset management business, each of which possess distinct characteristics. As a result, KKR developed a two-tiered approach for the financial statements presentations in this Management’s Discussion and Analysis. KKR believes that these separate presentations provide a more informative view of the consolidated financial position and results of operations than traditional aggregated presentations. KKR believes that reporting Global Atlantic’s insurance operations separately is appropriate given, among other factors, the relative significance of Global Atlantic’s policy liabilities, which are not obligations of KKR (other than the insurance companies that issued them). If a traditional aggregated presentation were to be used, KKR would expect to eliminate or combine several identical or similar captions, which would condense the presentations but would reduce transparency. KKR also believes that using a traditional aggregated presentation would result in no new line items compared to the two-tier presentation included in the financial statements in this report. We acquired Global Atlantic on February 1, 2021; accordingly, the results of Global Atlantic’s insurance operations included in our condensed consolidated results of operations are from February 1, 2021 (the closing date of the acquisition) through March 31, 2021.

All the intercompany transactions have been eliminated.

For a further discussion of our consolidation policies, see Note 2 “Summary of Significant Accounting Policies” to our financial statements included elsewhere in this report. The summary of the significant accounting policies has been organized



considering the two-tiered approach described above and includes a section for common accounting policies and an accounting policy section for each of the two tiers when a policy is specific to one of the tiers.

### **Key Financial Measures Under GAAP - Asset Management**

The following discussion of key financial measures under GAAP is based on KKR's asset management business as of March 31, 2021.

#### ***Revenues***

##### *Fees and Other*

Fees and other consist primarily of (i) management and incentive fees from providing investment management services to unconsolidated funds, CLOs, other vehicles, and separately managed accounts; (ii) transaction fees earned in connection with successful investment transactions and from capital markets activities; (iii) monitoring fees from providing services to portfolio companies; (iv) expense reimbursements from certain investment funds and portfolio companies; (v) revenue earned by oil and gas entities that are consolidated; and (vi) consulting fees. These fees are based on the contractual terms of the governing agreements and are recognized when earned, which coincides with the period during which the related services are performed and in the case of transaction fees, upon closing of the transaction. Monitoring fees may provide for a termination payment following an initial public offering or change of control. These termination payments are recognized in the period when the related transaction closes.

##### *Capital Allocation-Based Income (Loss)*

Capital allocation-based income (loss) is earned from those arrangements whereby KKR serves as general partner and includes income or loss from KKR's capital interest as well as "carried interest" which entitles KKR to a disproportionate allocation of investment income or loss from an investment fund's limited partners.

For a further discussion of our revenue policies, see Note 2 "Summary of Significant Accounting Policies" to our financial statements included elsewhere in this report.

#### ***Expenses***

##### *Compensation and Benefits*

Compensation and Benefits expense includes (i) base cash compensation consisting of salaries and wages, (ii) benefits, (iii) carry pool allocations, (iv) equity-based compensation, and (v) discretionary cash bonuses.

To supplement base cash compensation, benefits, carry pool allocations, and equity-based compensation, we typically pay discretionary cash bonuses, which are included in Compensation and Benefits expense in the consolidated statements of operations, based principally on the level of (i) management fees and other fee revenues (including incentive fees), (ii) realized carried interest and (iii) realized investment income earned during the year. The amounts paid as discretionary cash bonuses, if any, are at our sole discretion and vary by individual to individual and from period to period, including having no cash bonus. We accrue discretionary cash bonuses when payment becomes probable and reasonably estimable which is generally in the period when we make the decision to pay discretionary cash bonuses and is based upon a number of factors, including the recognition of fee revenues, realized carried interest, realized investment income and other factors determined during the year.

Beginning in 2021, we expect to pay our employees by assigning a percentage range to each component of distributable revenues. Based on the current components and blend of our distributable revenues on an annual basis, we expect to use approximately 20-25% of fee revenues, 60-70% of realized carried interest and 10-20% of realized investment income and hedge fund partnership incentive fees to pay our asset management employees. Because these ranges are applied to applicable distributable revenue components independently, and on an annual basis, the amount paid as a percentage of total distributable revenues will vary and will, for example, likely be higher in a period with relatively higher realized carried interest and lower in a period with relatively lower realized carried interest. We decide whether to pay a discretionary cash bonus and determines the percentage of applicable revenue components to pay compensation only upon the occurrence of the realization event. There is no contractual or other binding obligation that requires us to pay a discretionary cash bonus to the asset management employees, except in limited circumstances.

Assuming that we had accrued compensation of (i) 65% of the unrealized carried interest earned by the funds that allocate 40% and 43% to the carry pool and (ii) 15% of the unrealized gains in our Principal Activities business line (in each case at the mid-point of the ranges above), KKR & Co. Inc. Stockholders' Equity – Series I and II Preferred, Common Stock as of March 31, 2021 would have been reduced by approximately \$1.99 per share, compared to our reported \$22.62 per share on such date, and our book value as of March 31, 2021 would have been reduced by approximately \$2.12 per adjusted share, compared to our reported book value of \$ 25.84 per adjusted share on such date.

#### *Carry Pool Allocation*

With respect to our funds that provide for carried interest, we allocate a portion of the realized and unrealized carried interest that we earn to a carry pool established at KKR Associates Holdings L.P., which is not a KKR subsidiary, from which our asset management employees and certain other carry pool participants are eligible to receive a carried interest allocation. The allocation is determined based upon a fixed arrangement between KKR Associates Holdings L.P. and us, and we do not exercise discretion on whether to make an allocation to the carry pool upon a realization event. These amounts are accounted for as compensatory profit sharing arrangements in Accrued Expenses and Other Liabilities within the accompanying consolidated statements of financial condition in conjunction with the related carried interest income and are recorded as compensation expense. Upon a reversal of carried interest income, the related carry pool allocation, if any, is also reversed. Accordingly, such compensation expense is subject to both positive and negative adjustments.

In February 2021, with the approval of a majority of our independent directors, KKR amended the percentage of carried interest that is allocable to the carry pool to 65% for (i) current investment funds for which no or de minimis amounts of carried interest was accrued as of December 31, 2020 and (ii) all future funds. For all other funds, the percentage of carried interest remains 40% or 43%, as applicable. The percentage of carried interest allocable to the carry pool may be increased above 65% only with the approval of a majority of our independent directors. To account for the difference in the carry pool allocation percentages, we expect to use a portion of realized carried interest from the older funds equal to the difference between 65% and 40% or 43%, as applicable, to supplement the carry pool and to pay amounts as discretionary cash bonus compensation as described above to our asset management employees. The amounts paid as discretionary cash bonuses, if any, are at our discretion and vary from individual to individual and from period to period, including having no cash bonus at all for certain employees. See "—Critical Accounting Policies - Asset Management—Recognition of Carried Interest in the Statement of Operations" and "—Key Financial Measures Under GAAP - Asset Management—Expenses—Compensation and Benefits."

#### *Equity-based Compensation*

In addition to the cash-based compensation and carry pool allocations as described above, employees receive equity awards under the Equity Incentive Plans, most of which are subject to service-based vesting typically over a three to five-year period from the date of grant, and some of which are subject to the achievement of market-based conditions. Certain of these awards are subject to post-vesting transfer restrictions and minimum retained ownership requirements.

#### *General, Administrative and Other*

General, administrative and other expense consists primarily of professional fees paid to legal advisors, accountants, advisors and consultants, insurance costs, travel and related expenses, communications and information services, depreciation and amortization charges, expenses incurred by oil and gas entities, CLOs and investment funds that are consolidated, costs incurred in connection with pursuing potential investments that do not result in completed transactions ("broken-deal expenses"), expense reimbursements, placement fees and other general operating expenses. A portion of these general administrative and other expenses, in particular broken-deal expenses, are borne by fund investors.

#### ***Investment Income (Loss)***

##### *Net Gains (Losses) from Investment Activities*

Net gains (losses) from investment activities consist of realized and unrealized gains and losses arising from our investment activities as well as income earned from certain equity method investments. Fluctuations in net gains (losses) from investment activities between reporting periods is driven primarily by changes in the fair value of our investment portfolio as well as the realization of investments. The fair value of, as well as the ability to recognize gains from, our investments is significantly impacted by the global financial markets, which, in turn, affects the net gains (losses) from investment activities recognized in any given period. Upon the disposition of an investment, previously recognized unrealized gains and losses are reversed and an offsetting realized gain or loss is recognized in the current period. Since our investments are carried at fair value, fluctuations between periods could be significant due to changes to the inputs to our valuation process over time. For a further discussion of

our fair value measurements and fair value of investments, see "—Critical Accounting Policies - Combined—Fair Value Measurements."

#### *Dividend Income*

Dividend income consists primarily of distributions that we and our consolidated investment funds receive from portfolio companies in which we and our consolidated investment funds invest. Dividend income is recognized primarily in connection with (i) dispositions of operations by portfolio companies, (ii) distributions of cash generated from operations from portfolio investments, and (iii) other significant refinancings undertaken by portfolio investments.

#### *Interest Income*

Interest income consists primarily of interest that is received on our credit instruments in which we and our consolidated investment funds, CLOs and other entities invest as well as interest on our cash and other investments.

#### *Interest Expense*

Interest expense is incurred from debt issued by KKR, including debt issued by KFN, credit facilities entered into by KKR, debt securities issued by consolidated CFEs, and financing arrangements at our consolidated investment funds entered into primarily with the objective of managing cash flow. KFN's debt obligations are non-recourse to KKR beyond the assets of KFN. Debt securities issued by consolidated CFEs are supported solely by the investments held at the CFE and are not collateralized by assets of any other KKR entity. Our obligations under financing arrangements at our consolidated funds are generally limited to our pro rata equity interest in such funds. However, in some circumstances, we may provide limited guarantees of the obligations of our general partners in an amount equal to its pro rata equity interest in such funds. Our management companies bear no obligations with respect to financing arrangements at our consolidated funds. We also may provide other kinds of guarantees. See "—Liquidity."

### **Key Financial Measures Under GAAP - Insurance**

The following discussion of key financial measures under GAAP is based on KKR's insurance business as conducted by Global Atlantic as of March 31, 2021.

#### *Revenues*

##### *Premiums*

Premiums primarily relate to payout policies with life contingencies and whole life and term life insurance policies, recognized when due from the policyholders.

##### *Policy fees*

Policy fees include charges assessed against policyholder account balances for mortality, administration, separate account, benefit rider and surrender fees.

##### *Net investment income*

Net investment income reflects the income earned on our investments, net of any associated investment expenses (including management fees charged by the asset management segment) and net investment income credited to funds withheld at interest. Net investment income includes, amongst other things (i) interest earned on our fixed income available-for-sale and fixed-income trading investments, (ii) interest income and other related fees from our mortgage and other loan receivables, (iii) interest on funds withheld at interest receivables, (iv) proportional share of income from equity-method investments and (v) income from physical assets, such as renewable energy plants, railcars, and airplanes (net of depreciation and operating expenses).

##### *Net investment gains*

Net investment gains primarily consists of (i) realized gains and losses from the disposal of investments, (ii) unrealized gains and losses from investments held for trading, or with fair value remeasurements recognized in earnings as a result of the election of a fair-value option, (iii) unrealized gains and losses on funds withheld at interest, (iv) unrealized gains and losses

from derivatives not designated in an hedging relationship and (v) allowances for loan losses, and other impairments of investments.

*Other income*

Other income is primarily comprised of administration, management fees and distribution fees.

**Expenses**

*Policy benefits and claims*

Policy benefits and claims represent the current period expense associated with providing insurance benefits to policyholders, including claims and benefits paid, interest credited to policyholders, changes in policyholder liability reserves (including fair value reserves) amortization of cost of reinsurance liabilities, and amortization of deferred sales inducements.

*Amortization of policy acquisition costs*

Amortization of policy acquisition costs primarily consist on amortization of value of business acquired and deferred policy acquisition costs.

*Insurance expense*

Insurance expenses are primarily comprised of commissions expense, premium taxes, and captive financing charges.

*Interest expense*

Interest expense is incurred from insurance segment debt issued, including related interest rate swaps, credit facilities and other financing agreements.

*General, administrative and other*

General and administrative expenses are primarily comprised of employee compensation and benefit expenses, third-party administrator ("TPA") policy servicing fees, administrative and professional services, and other operating expenses.

**Other Key Financial Measures Under GAAP**

***Income Taxes***

KKR & Co. Inc. is a domestic corporation for U.S. federal income tax purposes and is subject to U.S. federal, state and local income taxes at the entity level on its share of taxable income. In addition, KKR Group Partnership and certain of its subsidiaries operate as partnerships for U.S. federal tax purposes but as taxable entities for certain state, local or non-U.S. tax purposes. Moreover, certain corporate subsidiaries of KKR, including certain Global Atlantic subsidiaries, are domestic corporations for U.S. federal income tax purposes and are subject to U.S. federal, state, and local income taxes.

Tax laws are complex and subject to different interpretations by the taxpayer and respective governmental taxing authorities. Significant judgment is required in determining tax expense and in evaluating tax positions including evaluating uncertainties. We review our tax positions quarterly and adjust our tax balances as new information becomes available.

For a further discussion of our income tax policies, see Note 2 "Summary of Significant Accounting Policies" and Note 17 "Income Taxes" to our financial statements included elsewhere in this report.

***Net Income (Loss) Attributable to Noncontrolling Interests***

Net income (loss) attributable to noncontrolling interests primarily represents the ownership interests that certain third parties hold in entities that are consolidated in the financial statements as well as the ownership interests in KKR Group Partnership that are held by KKR Holdings. The allocable share of income and expense attributable to these interests is accounted for as net income (loss) attributable to noncontrolling interests. Given the consolidation of certain of our investment funds and the significant ownership interests in KKR Group Partnership held by KKR Holdings, we expect a portion of net income (loss) will continue to be attributed to noncontrolling interests in our business.

For a further discussion of our noncontrolling interests policies, see Note 21 "Equity" to the financial statements included elsewhere in this report.

### **Key Non-GAAP Performance Measures and Other Operating Measures**

The key non-GAAP and other operating and performance measures that follow are used by management in making operational and resource deployment decisions as well as assessing the performance of KKR's businesses. They include certain financial measures that are calculated and presented using methodologies other than in accordance with GAAP. These non-GAAP measures as described below are presented prior to giving effect to the allocation of income (loss) between KKR & Co. Inc. and KKR Holdings L.P. and as such represent the entire KKR business in total. In addition, these non-GAAP measures are presented without giving effect to the consolidation of the investment funds and collateralized financing entities ("CFEs") that KKR manages.

We believe that providing these non-GAAP measures on a supplemental basis to our GAAP results is helpful to stockholders in assessing the overall performance of KKR's business. These non-GAAP measures should not be considered as a substitute for financial measures calculated in accordance with GAAP. Reconciliations of these non-GAAP measures to the most directly comparable financial measures calculated and presented in accordance with GAAP, where applicable. Reconciliations of these non-GAAP measures to the most directly comparable financial measures calculated and presented in accordance with GAAP, where applicable, are included under "—Reconciliations to GAAP Measures."

#### *After-tax Distributable Earnings*

After-tax distributable earnings is a non-GAAP performance measure of KKR's earnings, which is derived from KKR's reported segment results. After-tax distributable earnings is used to assess the performance of KKR's business operations and measures the earnings potentially available for distribution to its equity holders or reinvestment into its business. After-tax distributable earnings is equal to Distributable Operating Earnings less Interest Expense, Series A and B Preferred Stock dividends, Net Income Attributable to Noncontrolling Interests and Income Taxes Paid. Series C Mandatory Convertible Preferred Stock dividends have been excluded from After-tax Distributable Earnings, because the definition of Adjusted Shares used to calculate After-tax Distributable Earnings per Adjusted Share assumes that all shares of Series C Mandatory Convertible Preferred Stock have been converted to shares of common stock. Income Taxes Paid represents the implied amount of income taxes that would be paid assuming that all pre-tax distributable earnings were allocated to KKR & Co. Inc. and taxed at the same effective rate, which assumes that all units in KKR Holdings L.P. and other exchangeable securities were exchanged for common stock of KKR & Co. Inc. Income Taxes Paid includes amounts paid pursuant to the tax receivable agreement and the benefit of tax deductions arising from equity-based compensation, which reduces income taxes paid or payable during the period. Equity based compensation expense is excluded from After-tax Distributable Earnings, because (i) KKR believes that the cost of equity awards granted to employees does not contribute to the earnings potentially available for distributions to its equity holders or reinvestment into its business and (ii) excluding this expense makes KKR's reporting metric more comparable to the corresponding metric presented by other publicly traded companies in KKR's industry, which KKR believes enhances an investor's ability to compare KKR's performance to these other companies. If tax deductions from equity-based compensation were to be excluded from Income Taxes Paid, KKR's After-tax Distributable Earnings would be lower and KKR's effective tax rate would appear to be higher, even though a lower amount of income taxes would have actually been paid or payable during the period. KKR separately discloses the amount of tax deduction from equity-based compensation for the period reported and the effect of its inclusion in After-tax Distributable Earnings for the period. KKR makes these adjustments when calculating After-tax Distributable Earnings in order to more accurately reflect the net realized earnings that are expected to be or become available for distribution to KKR's equity holders or reinvestment into KKR's business. However, After-tax Distributable Earnings does not represent and is not used to calculate actual dividends under KKR's dividend policy, which is a fixed amount per period, and After-tax Distributable Earnings should not be viewed as a measure of KKR's liquidity.

#### *Book Value*

Book value is a non-GAAP performance measure of the net assets of KKR and is used by management primarily in assessing the unrealized value of KKR's net assets presented on a basis that (i) deconsolidates KKR's investment funds and CFEs that KKR manages and (ii) includes Global Atlantic's book value representing KKR's ownership of the net assets of Global Atlantic. We believe this measure is useful to stockholders as it provides additional insight into the net assets of KKR excluding those net assets that are allocated to noncontrolling interest holders and to the holders of the Series A and B Preferred Stock. KKR's book value includes the net impact of KKR's tax assets and liabilities as prepared under GAAP. Series C Mandatory Convertible Preferred Stock has been included in book value, because the definition of adjusted shares used to calculate book value per adjusted share assumes that all shares of Series C Mandatory Convertible Preferred Stock have been

converted to shares of common stock. To calculate Global Atlantic's book value and to make it more comparable with the corresponding metric presented by other publicly traded companies in Global Atlantic's industry, Global Atlantic's book value excludes (i) accumulated other comprehensive income and (ii) accumulated change in fair value of reinsurance balances and related assets, net of deferred acquisition costs and income tax.

#### *Distributable Operating Earnings*

Distributable operating earnings is a non-GAAP performance measure that KKR believes is useful to stockholders as it provides a supplemental measure of our operating performance without taking into account items that KKR does not believe arise from or relate directly to KKR's operations. Distributable Operating Earnings is presented prior to giving effect to the allocation of income (loss) among KKR & Co. Inc., KKR Holdings L.P. and holders of other exchangeable securities, and the consolidation of the investment funds, vehicles and accounts that KKR advises, manages or sponsors (including collateralized financing entities). Distributable Operating Earnings excludes: (i) equity-based compensation charges, (ii) amortization of acquired intangibles, (iii) strategic corporate transaction-related charges and (iv) non-recurring items, if any. Strategic corporate transaction-related items arise from corporate actions and consist primarily of (i) impairments, (ii) non-monetary gains or losses on divestitures, (iii) transaction costs from strategic acquisitions, and (iv) depreciation on real estate that KKR owns and occupies. Distributable Operating Earnings represents operating earnings of KKR's Asset Management and Insurance segments, which are comprised of the following:

- Asset Management Segment Operating Earnings is the segment profitability measure used to make operating decisions and to assess the performance of the Asset Management segment and is comprised of: (i) Fee Related Earnings, (ii) Realized Performance Income, (iii) Realized Performance Income Compensation, (iv) Realized Investment Income, and (v) Realized Investment Income Compensation. Asset Management Segment Operating Earnings excludes (i) unrealized carried interest, (ii) net unrealized gains (losses) on investments, and (iii) related unrealized performance income compensation. Management fees earned by KKR as the adviser, manager or sponsor for its investment funds, vehicles and accounts, including management fees paid to KKR by Global Atlantic's insurance companies and management fees paid to Global Atlantic by reinsurance investment vehicles, are included in Asset Management Segment Operating Earnings.
- Insurance Segment Operating Earnings is the segment profitability measure used to make operating decisions and to assess the performance of the Insurance segment and is comprised of: (i) Net Investment Income, (ii) Net Cost of Insurance, (iii) General, Administrative, and Other Expenses, (iv) Income Taxes, and (v) Net Income Attributable to Noncontrolling Interests. The non-operating adjustments made to derive Insurance Segment Operating Earnings eliminate the impact of: (i) realized (gains) losses related to asset/liability matching investments strategies, (ii) unrealized investment (gains) losses, (iii) changes in the fair value of derivatives, embedded derivatives, and fair value liabilities for fixed-indexed annuities, indexed universal life contracts and variable annuities, and (iv) the associated income tax effects of all exclusions from Insurance Segment Operating Earnings except for equity-based compensation expense. Insurance Segment Operating Earnings includes (i) realized gains and losses not related to asset/liability matching investments strategies and (ii) the investment management fee expenses that are earned by KKR as the investment adviser of Global Atlantic's insurance companies.

#### *Fee Related Earnings ("FRE")*

Fee related earnings is a performance measure used to assess the Asset Management segment's generation of profits from revenues that are measured and received on a recurring basis and are not dependent on future realization events. KKR believes this measure is useful to stockholders as it provides additional insight into the profitability of KKR's fee generating asset management and capital markets businesses and other recurring revenue streams. FRE equals (i) Management Fees, (ii) Transaction and Monitoring Fees, Net and (iii) Fee Related Performance Revenues, less (x) Fee Related Compensation, and (y) Other Operating Expenses.

- Fee Related Performance Revenues refers to the realized portion of Incentive Fees from certain AUM that has an indefinite term and for which there is no immediate requirement to return invested capital to investors upon the realization of investments. Fee-related performance revenues consists of performance fees (i) to be received from our investment funds, vehicles and accounts on a recurring basis, and (ii) that are not dependent on a realization event involving investments held by the investment fund, vehicle or account.
- Fee Related Compensation refers to the compensation expense, excluding equity-based compensation, paid from (i) Management Fees, (ii) Transaction and Monitoring Fees, Net, and (iii) Fee Related Performance Revenues.

- Other Operating Expenses represents the sum of (i) occupancy and related charges and (ii) other operating expenses.

#### *Total Asset Management Segment Revenues*

Total asset management segment revenues is a performance measure that represents the realized revenues of the Asset Management segment (which excludes unrealized carried interest and unrealized net gains (losses) on investments) and is the sum of (i) Management Fees, (ii) Transaction and Monitoring Fees, Net, (iii) Fee Related Performance Revenues, (iv) Realized Performance Income, and (v) Realized Investment Income. KKR believes that this performance measure is useful to stockholders as it provides additional insight into the realized revenues generated by KKR's asset management segment.

#### *Adjusted Shares*

Adjusted shares represents shares of common stock of KKR & Co. Inc. outstanding under GAAP adjusted to include shares issuable upon exchange of all units of KKR Holdings L.P. and other exchangeable securities and the number of shares of common stock assumed to be issuable upon conversion of the Series C Mandatory Convertible Preferred Stock. Weighted average adjusted shares is used in the calculation of After-tax Distributable Earnings per Adjusted Share, and Adjusted Shares is used in the calculation of Book Value per Adjusted Share.

#### *Assets Under Management ("AUM")*

Assets under management represent the assets managed, advised or sponsored by KKR from which KKR is entitled to receive management fees or performance income (currently or upon a future event), general partner capital, and assets managed, advised or sponsored by our strategic BDC partnership and the hedge fund and other managers in which KKR holds an ownership interest. We believe this measure is useful to stockholders as it provides additional insight into the capital raising activities of KKR and its hedge fund and other managers and the overall activity in their investment funds and other managed or sponsored capital. KKR calculates the amount of AUM as of any date as the sum of: (i) the fair value of the investments of KKR's investment funds and Global Atlantic's insurance companies; (ii) uncalled capital commitments from these funds, including uncalled capital commitments from which KKR is currently not earning management fees or performance income; (iii) the fair value of investments in KKR's co-investment vehicles; (iv) the par value of outstanding CLOs; (v) KKR's pro rata portion of the AUM of hedge fund and other managers in which KKR holds an ownership interest; (vi) all AUM of KKR's strategic BDC partnership; and (vii) the fair value of other assets managed or sponsored by KKR. The pro rata portion of the AUM of hedge fund and other managers is calculated based on KKR's percentage ownership interest in such entities multiplied by such entity's respective AUM. KKR's definition of AUM (i) is not based on any definition of AUM that may be set forth in the governing documents of the investment funds, vehicles, accounts or other entities whose capital is included in this definition, (ii) includes assets for which KKR does not act as an investment adviser, and (iii) is not calculated pursuant to any regulatory definitions.

#### *Capital Invested*

Capital invested is the aggregate amount of capital invested by (i) KKR's investment funds and Global Atlantic's insurance companies, (ii) KKR's Principal Activities business line as a co-investment, if any, alongside KKR's investment funds, and (iii) KKR's Principal Activities business line in connection with a syndication transaction conducted by KKR's Capital Markets business line, if any. Capital invested is used as a measure of investment activity at KKR during a given period. We believe this measure is useful to stockholders as it provides a measure of capital deployment across KKR's business lines. Capital invested includes investments made using investment financing arrangements like credit facilities, as applicable. Capital invested excludes (i) investments in certain leveraged credit strategies, (ii) capital invested by KKR's Principal Activities business line that is not a co-investment alongside KKR's investment funds, and (iii) capital invested by KKR's Principal Activities business line that is not invested in connection with a syndication transaction by KKR's Capital Markets business line. Capital syndicated by KKR's Capital Markets business line to third parties other than KKR's investment funds or Principal Activities business line is not included in capital invested.

#### *Fee Paying AUM ("FPAUM")*

Fee paying AUM represents only the AUM from which KKR is entitled to receive management fees. We believe this measure is useful to stockholders as it provides additional insight into the capital base upon which KKR earns management fees. FPAUM is the sum of all of the individual fee bases that are used to calculate KKR's and its hedge fund and BDC partnership management fees and differs from AUM in the following respects: (i) assets and commitments from which KKR is not entitled to receive a management fee are excluded (e.g., assets and commitments with respect to which it is entitled to receive only performance income or is otherwise not currently entitled to receive a management fee) and (ii) certain assets,

primarily in its private equity funds, are reflected based on capital commitments and invested capital as opposed to fair value because fees are not impacted by changes in the fair value of underlying investments.

*Uncalled Commitments*

Uncalled commitments is the aggregate amount of unfunded capital commitments that KKR's investment funds and carry-paying co-investment vehicles have received from partners to contribute capital to fund future investments. We believe this measure is useful to stockholders as it provides additional insight into the amount of capital that is available to KKR's investment funds and carry paying co-investment vehicles to make future investments. Uncalled commitments are not reduced for investments completed using fund-level investment financing arrangements or investments we have committed to make but remain unfunded at the reporting date.



### Consolidated Results of Operations (GAAP Basis) (Unaudited)

The following is a discussion of our consolidated results of operations for the three months ended March 31, 2021 and 2020. You should read this discussion in conjunction with the financial statements and related notes included elsewhere in this report. For a more detailed discussion of the factors that affected our segment results in these periods, see "—Analysis of Segment Operating Results." See "—Business Environment" for more details on the potential adverse effects of COVID-19 on our business, financial performance, operating results and valuations.

The presentation of our consolidated results of operations that follows reflects the significant industry diversification of KKR by its acquisition of Global Atlantic. Global Atlantic operates an insurance business, and KKR operates an asset management business, each of which possess distinct characteristics. As a result, KKR developed a two-tiered presentation approach, where Global Atlantic's insurance operations are presented separately from KKR's asset management business. Additionally, the results of Global Atlantic's insurance operations included in our consolidated results of operations are from February 1, 2021 (closing date of the acquisition) through March 31, 2021.

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Revenues</b>			
<i>Asset Management</i>			
Fees and Other	\$ 493,311	\$ 380,572	\$ 112,739
Capital Allocation-Based Income (Loss)	2,684,647	(1,382,077)	4,066,724
	<u>3,177,958</u>	<u>(1,001,505)</u>	<u>4,179,463</u>
<i>Insurance</i>			
Premiums	1,176,142	—	1,176,142
Policy Fees	201,683	—	201,683
Net Investment Income	444,781	—	444,781
Net Investment (Losses) Gains	(455,702)	—	(455,702)
Other Income	18,144	—	18,144
	<u>1,385,048</u>	<u>—</u>	<u>1,385,048</u>
<b>Total Revenues</b>	<b>4,563,006</b>	<b>(1,001,505)</b>	<b>5,564,511</b>
<b>Expenses</b>			
<i>Asset Management</i>			
Compensation and Benefits	1,306,797	(262,137)	1,568,934
Occupancy and Related Charges	15,200	16,322	(1,122)
General, Administrative and Other	166,997	149,123	17,874
	<u>1,488,994</u>	<u>(96,692)</u>	<u>1,585,686</u>
<i>Insurance</i>			
Policy Benefits and Claims	1,485,318	—	1,485,318
Amortization of Policy Acquisition Costs	(20,478)	—	(20,478)
Interest Expense	10,672	—	10,672
Insurance Expenses	52,084	—	52,084
General, Administrative and Other	79,955	—	79,955
	<u>1,607,551</u>	<u>—</u>	<u>1,607,551</u>
<b>Total Expenses</b>	<b>3,096,545</b>	<b>(96,692)</b>	<b>3,193,237</b>
<b>Investment Income (Loss) - Asset Management</b>			
Net Gains (Losses) from Investment Activities	2,696,200	(3,944,504)	6,640,704
Dividend Income	75,746	168,699	(92,953)
Interest Income	367,455	353,455	14,000

Interest Expense	(251,756)	(261,469)	9,713
<b>Total Investment Income (Loss)</b>	<b>2,887,645</b>	<b>(3,683,819)</b>	<b>6,571,464</b>
<b>Income (Loss) Before Taxes</b>	<b>4,354,106</b>	<b>(4,588,632)</b>	<b>8,942,738</b>
<b>Income Tax Expense (Benefit)</b>	<b>438,739</b>	<b>(360,679)</b>	<b>799,418</b>
<b>Net Income (Loss)</b>	<b>3,915,367</b>	<b>(4,227,953)</b>	<b>8,143,320</b>
Net Income (Loss) Attributable to Redeemable Noncontrolling Interests	—	—	—
Net Income (Loss) Attributable to Noncontrolling Interests	2,245,531	(2,947,429)	5,192,960
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc.</b>	<b>1,669,836</b>	<b>(1,280,524)</b>	<b>2,950,360</b>
Series A Preferred Stock Dividends	5,822	5,822	—
Series B Preferred Stock Dividends	2,519	2,519	—
Series C Mandatory Convertible Preferred Stock Dividends	17,250	—	17,250
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc. Common Stockholders</b>	<b>\$ 1,644,245</b>	<b>\$ (1,288,865)</b>	<b>\$ 2,933,110</b>

## Unaudited Consolidated Results of Operations (GAAP Basis) - Asset Management

### Revenues

For the three months ended March 31, 2021 and 2020, revenues consisted of the following:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
Management Fees	\$ 276,181	\$ 222,689	\$ 53,492
Fee Credits	(35,398)	(35,387)	(11)
Transaction Fees	165,893	98,996	66,897
Monitoring Fees	35,388	31,149	4,239
Incentive Fees	3,438	668	2,770
Expense Reimbursements	27,729	28,224	(495)
Oil and Gas Revenue	—	13,315	(13,315)
Consulting Fees	20,080	20,918	(838)
<b>Total Fees and Other</b>	<b>493,311</b>	<b>380,572</b>	<b>112,739</b>
Carried Interest	2,140,426	(1,210,925)	3,351,351
General Partner Capital Interest	544,221	(171,152)	715,373
<b>Total Capital Allocation-Based Income (Loss)</b>	<b>2,684,647</b>	<b>(1,382,077)</b>	<b>4,066,724</b>
<b>Total Revenues - Asset Management</b>	<b>\$ 3,177,958</b>	<b>\$ (1,001,505)</b>	<b>\$ 4,179,463</b>

### Fees and Other

Total Fees and Other for the three months ended March 31, 2021 increased compared to the three months ended March 31, 2020 primarily as a result of the increase in transaction fees and management fees.

For a more detailed discussion of the factors that affected our transaction fees during the period, see "—Analysis of Asset Management Segment Operating Earnings."

The increase in management fees was primarily due to management fees earned from Asian Fund IV, which entered its investment period after the first quarter of 2020, and Asia Pacific Infrastructure Investors due to additional capital raised for these funds. These increases were partially offset by a decrease in management fees earned from Asian Fund III as it entered its post investment period in the third quarter of 2020.

Fee credits owed to consolidated investment funds are eliminated upon consolidation under GAAP. Transaction fees earned from KKR portfolio companies are not eliminated upon consolidation because those fees are earned from companies which are not consolidated. Furthermore, transaction fees earned in our Capital Markets business line are not shared with fund investors. Accordingly, certain transaction fees are reflected in revenues without a corresponding fee credit.

### Capital Allocation-Based Income (Loss)

Capital Allocation-Based Income (Loss) for the three months ended March 31, 2021 was positive primarily due to the net appreciation of the underlying investments at our carry earning investment funds most notably Americas Fund XII, North America Fund XI and 2006 Fund. Capital Allocation-Based Income (Loss) for the three months ended March 31, 2020 was negative due to the net depreciation of the underlying investments at our carry earning investment funds most notably 2006 Fund, North America Fund XI and Asia Fund II primarily due to the market dislocation from COVID-19.

KKR generally calculates the carried interest that would be due to KKR for each investment fund, pursuant to the fund agreements, as if the fair value of the underlying investments were realized as of such date, irrespective of whether such amounts have been realized. As the fair value of underlying investments varies between reporting periods, it is necessary to

make adjustments to amounts recorded as carried interest to reflect either (a) positive performance resulting in an increase in the carried interest allocated to the general partner or (b) negative performance that would cause the amount due to KKR to be less than the amount previously recognized, resulting in a negative adjustment to carried interest allocated to the general partner. In each case, it is necessary to calculate the carried interest on cumulative results compared to the carried interest recorded to date and to make the required positive or negative adjustments. Additionally, unrealized carried interest and general partner capital interest reverse upon a realization, and unrealized carried interest and general partner capital interest can be negative if the amount of realized carried interest exceeds total unrealized carried interest generated in the period.

#### *Investment Income (Loss) - Asset Management*

#### *Net Gains (Losses) from Investment Activities*

The following is a summary of net gains (losses) from investment activities:

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
	(\$ in thousands)	
Private Equity	\$ 1,550,665	\$ (1,282,404)
Credit	29,407	(946,304)
Investments of Consolidated CFEs	125,515	(2,153,393)
Real Assets	274,147	(797,652)
Equity Method - Other	401,701	(440,618)
Other Investments	206,181	(679,172)
Debt Obligations and Other	(1,397)	1,903,986
Other Net Gains (Losses) from Investment Activities	109,981	451,053
<b>Net Gains (Losses) from Investment Activities</b>	<b>\$ 2,696,200</b>	<b>\$ (3,944,504)</b>

#### *Net Gains (Losses) from Investment Activities for the three months ended March 31, 2021*

The net gains from investment activities for the three months ended March 31, 2021 were comprised of net realized gains of \$584.4 million and net unrealized gains of \$2,111.8 million.

Investment gains and losses relating to our general partner capital interest in our unconsolidated funds are not reflected in our discussion and analysis of Net Gains (Losses) from Investment Activities. Our economics associated with these gains and losses are reflected in Capital Allocation-Based Income (Loss) as described above. For a discussion and analysis of the primary investment gains or losses relating to individual investments in our unconsolidated funds, see "—Analysis of Asset Management Segment Operating Results."

#### *Realized Gains and Losses from Investment Activities*

For the three months ended March 31, 2021, net realized gains related primarily to the (i) sale of our investment in FanDuel Inc. (technology sector), (ii) partial sale of our investment in BridgeBio Pharma, Inc. (NASDAQ: BBIO), and (iii) sale of our investment in American Equity Investment Life Holding Company (NYSE: AEL). Partially offsetting these realized gains were realized losses primarily relating to certain investments held in our consolidated special situations funds.

#### *Unrealized Gains and Losses from Investment Activities*

For the three months ended March 31, 2021, net unrealized gains were driven primarily by (i) mark-to-market gains from private equity, growth equity and core investments held by KKR and certain consolidated funds, the most significant of which were OutSystems Holdings S.A (technology sector), PetVet Care Centers, LLC (healthcare sector), and USI, Inc. (financial services sector) and (ii) mark-to-market gains for certain investments held in our consolidated energy funds, special situations funds and CLOs. These unrealized gains were partially offset by (i) mark-to-market losses from our investment in BridgeBio Pharma, Inc. and (ii) the reversal of previously recognized unrealized gains relating to the realization activity described above.

For a discussion of other factors that affected KKR's realized investment income, see "—Analysis of Asset Management Segment Operating Results."

*Net Gains (Losses) from Investment Activities for the three months ended March 31, 2020*

The net losses from investment activities for the three months ended March 31, 2020 were comprised of net realized gains of \$63.4 million and net unrealized losses of \$(4,007.9) million.

*Realized Gains and Losses from Investment Activities*

For the three months ended March 31, 2020, net realized gains related primarily to realized gains on (i) the sale of real estate investments held through certain consolidated entities and (ii) the settlement of foreign currency derivatives in our consolidated credit funds, partially offset by realized losses primarily on (i) realization on assets held through our consolidated credit funds and (ii) realization of certain investments held through consolidated CLOs.

*Unrealized Gains and Losses from Investment Activities*

For the three months ended March 31, 2020, net unrealized losses were driven primarily by (i) mark-to-market losses in our private equity investments held by KKR and certain consolidated entities, the most significant of which was Fiserv, Inc. (NASDAQ: FISV) and (ii) mark-to-market losses in our credit investments held through certain consolidated entities. Partially offsetting the unrealized losses above were unrealized gains relating to (i) mark-to-market gains in portfolio companies in our healthcare strategies, the most significant of which was Blue Sprig Pediatrics Inc. (health care sector), (ii) mark-to-market gains in a portfolio company in our core investment strategy, Exact Group B.V. (technology sector), and (iii) mark-to-market gains on some real estate investments held through certain consolidated entities.

For a discussion of other factors that affected KKR's realized investment income, see "—Analysis of Asset Management Segment Operating Results."

*Dividend Income*

During the three months ended March 31, 2021, the most significant dividends received included \$26.6 million from our consolidated real estate funds and a dividend of \$17.7 million from our investment in US Foods Holding Corp. (NYSE: USFD) held by a consolidated fund. During the three months ended March 31, 2020, the most significant dividends received included \$80.9 million from our consolidated real estate funds and \$62.5 million from our investment in Fiserv, Inc.

Significant dividends from portfolio companies and consolidated funds are generally not recurring quarterly dividends, and while they may occur in the future, their size and frequency are variable. For a discussion of other factors that affected KKR's dividend income, see "—Analysis of Asset Management Segment Operating Results."

*Interest Income*

The increase in interest income during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 was primarily due to (i) interest income earned on investments held in our Dislocation Opportunities Fund that is consolidated and closed subsequent to March 31, 2020 and (ii) an increase in interest income from certain of our consolidated direct lending funds, primarily related to an increase in the amount of capital deployed. Partially offsetting these increases was a lower level of interest income earned from loans held by KKR Real Estate Finance Trust Inc. ("KREF"), a NYSE-listed real estate investment trust (NYSE: KREF), due to an overall decrease in interest rates compared to three months ended March 31, 2020. For a discussion of other factors that affected KKR's interest income, see "—Analysis of Asset Management Segment Operating Results."

*Interest Expense*

The decrease in interest expense during the three months ended March 31, 2021 compared to the three months ended March 31, 2020 was primarily due to a lower level of interest expense on debt obligations of KREF as a result of a decrease in interest rates subsequent to March 31, 2020. The decrease was partially offset by the impact of multiple issuances of our senior notes subsequent to March 31, 2020. For a discussion of other factors that affected KKR's interest expense, see "—Analysis of Non-GAAP Performance Measures."

*Expenses - Asset Management*

*Compensation and Benefits Expenses*

The increase in compensation and benefits expenses during the three months ended March 31, 2021 compared to the prior period was primarily due to (i) accrued carried interest compensation in the current period as compared to the reversal of previously recognized accrued carried interest compensation in the prior period resulting from a depreciation in the value of our investment portfolio in the prior period and (ii) a higher level of discretionary compensation and benefits resulting from a higher level of revenues.

*General, Administrative and Other*

The increase in general, administrative and other expenses during the three months ended March 31, 2021 compared to the prior period was primarily due to (i) issuance expenses at consolidated CLOs, which closed in the current period and (ii) a higher level of broken-deal expenses. The level of broken-deal expenses can vary significantly period to period based upon a number of factors, the most significant of which are the number of potential investments being pursued for our investment funds, the size and complexity of investments being pursued and the number of investment funds currently in their investment period.

**Consolidated Results of Operations (GAAP Basis) - Insurance (Unaudited)**

As discussed above, our Insurance segment consists solely of the operations of Global Atlantic, which was acquired on February 1, 2021. Accordingly, prior periods have been excluded for Insurance segment results. The results of Global Atlantic's insurance operations included in our condensed consolidated results of operations are from February 1, 2021 (closing date of the acquisition) through March 31, 2021.

**Revenues**

For the three months ended March 31, 2021, revenues consisted of the following:

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	
	<b>(\$ in thousands)</b>	
Premiums	\$	1,176,142
Policy Fees		201,683
Net Investment Income		444,781
Net Investment (Losses) Gains		(455,702)
Other Income		18,144
<b>Total Insurance Revenues</b>	<b>\$</b>	<b>1,385,048</b>

*Premiums*

Premiums were primarily driven by initial premiums related to new reinsurance transactions with life contingencies assumed during the three months ending March 31, 2021, which were offset by a comparable increase in policy reserves reported within policy benefits and claims (as discussed below).

*Policy fees*

Policy fees were primarily driven by cost of insurance, administrative, and rider fees in the individual market channel.

*Net investment (losses) gains*

Net investment income was primarily driven by insurance segment investments and the effective book yield (as determined, in part, by the allocated fair value of the investment portfolio as determined as of February 1, 2021, the closing date of the Global Atlantic acquisition). Average insurance segment investments were primarily driven by inflows of assets from the individual markets and institutional channels. The impact of higher asset balances were offset by lower income primarily due to the negative impact of higher than usual average cash and cash equivalent balances as a result of new reinsurance transactions closing during the two month period ending March 31, 2021 pending reinvestment.

*Net investment losses*

The components of net investment losses were as follows:

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	
	<b>(\$ in thousands)</b>	
Embedded derivatives on funds withheld at interest	\$	369,113
Equity index options		104,021
Other		9,938
Foreign currency forwards		1,810
Interest rate contracts		(266,731)
Equity future contracts		(69,583)
Credit risk contracts		(36)
<b>Net gains on derivative instruments</b>		<b>148,532</b>
Net other investment losses		(604,234)
<b>Net investment losses</b>	<b>\$</b>	<b>(455,702)</b>

*Net gains on derivative instruments*

The increase in the fair value of embedded derivatives on funds withheld at interest were primarily driven by the decrease in fair value of the underlying investments in the funds withheld portfolio.

The increase in the fair value of equity index options were primarily driven by the performance of the indexes upon which call options are based. Global Atlantic purchases equity index options to hedge the market risk of embedded derivatives in indexed universal life and fixed-indexed annuity products (the change for which is accounted for in policy benefits and claims.) The majority of Global Atlantic's equity index call options are based on the S&P 500 index, which increased during the three months ended March 31, 2021.

The decrease in the fair value of interest rate and equity future contracts were driven primarily by the performance of equity and interest markets. Global Atlantic purchases equity futures primarily to hedge the market risk in our variable annuity products which are accounted for in policy benefits and claims. The majority Global Atlantic's equity futures are based on the S&P 500 Index, which increased during the three months ended March 31, 2021, resulting in a loss on equity futures contracts. Market interest rates increased during the three months ended March 31, 2021, resulting in a loss on interest rate contracts.

*Net other investment losses*

Net other investment losses were primarily due to (i) net unrealized losses on trading fixed maturity securities underlying a portion of the funds withheld payable at interest portfolio due to an increase in market interest rates, (ii) the recognition of an initial credit loan loss allowance as a result of the adoption of the current expected credit loss accounting standard concurrent with the acquisition of Global Atlantic, and (iii) realized losses from the sale of securities during the two month period ended March 31, 2021. Offsetting these losses were realized gains on embedded derivatives associated with the funds withheld receivable at interest portfolio.

*Other income*

Other income is mainly driven by administration, management fees and distribution fees, modestly increasing during the three months ended March 31, 2021 due in part to higher administration fees earned from an increase in the volume of reinsured assets assumed in the institutional channel.

**Expenses**

*Policy benefits and claims*

Policy benefits and claims was primarily driven by (i) initial reserves related to new reinsurance transactions, (ii) an increase in the value of embedded derivatives in our indexed universal life and fixed indexed annuity products, as a result of higher equity market returns (as discussed above under "–Net investment losses–Gains on derivatives," Global Atlantic purchases equity index options in order to hedge this risk, the fair value changes of which are accounted for in gains on derivative instruments, and generally offsetting the change in embedded derivative fair value reported in policy benefits and claims,) and (iii) an increase in individual retirement channel sales. Offsetting these increases was a decrease in variable annuity reserves primarily due to higher equity market returns and higher market interest rates.

*Amortization of policy acquisition costs*

Amortization of policy acquisition costs was primarily driven by the amortization of insurance intangibles recognized as part of purchase accounting of the Global Atlantic acquisition. Amortization is negative (that is, a reduction to expense) as a result of the net negative value-of-business-acquired insurance intangible recognized as part of the aforementioned purchase accounting.

*Interest expense*

Interest expense for the two month period ended March 31, 2021 was lower primarily due to the amortization of the fair value adjustment to debt recognized as part of the purchase accounting for the Global Atlantic acquisition.

*Insurance expenses*

Insurance expense was primarily driven by (i) commission expense related to sales, and (ii) reinsurance ceding expense allowances paid for policy administration services.



*General, administrative and other*

General, administrative and other expenses were driven primarily by (i) employee compensation and benefits related expenses, (ii) third-party administrator ("TPA") policy servicing fees, and (iii) technology hardware and software related charges.

**Other Unaudited Consolidated Results of Operations (GAAP Basis)**

*Income Tax Expense (Benefit)*

For the three months ended March 31, 2021, income tax expense was \$438.7 million compared to an income tax benefit of \$360.7 million in the prior period. Our effective tax rate under GAAP for the three months ended March 31, 2021 was 10.1%. For a discussion of factors that impacted KKR's tax provision, see Note 17 "Income Taxes" to the financial statements included elsewhere in this report.

*Net Income (Loss) Attributable to Noncontrolling Interests*

Net Income (Loss) attributable to noncontrolling interests for the three months ended March 31, 2021 relates primarily to net income (loss) attributable to (i) interests of KKR Holdings and other exchangeable securities representing ownership interests in KKR Group Partnership, (ii) third-party limited partner interests in consolidated investment funds and (iii) interests that GA Co-Investors and GA Rollover Investors hold in Global Atlantic. Net income (loss) attributable to noncontrolling interests for the three months ended March 31, 2021 increased compared to the prior period primarily due to mark-to-market net gains from investment activities during the three months ended March 31, 2021, as described above, as compared to overall losses in the prior period.

*Net Income (Loss) Attributable to KKR & Co. Inc.*

Net income (loss) attributable to KKR & Co. Inc. for the three months ended March 31, 2021 increased compared to the prior period due primarily to (i) net gains from investment activities and (ii) capital allocation-based income during the three months ended March 31, 2021. These increases were partially offset by accrued carried interest compensation and income tax expense as described above.

**Condensed Consolidated Statements of Financial Condition (GAAP Basis) (Unaudited)**

The following table provides the Unaudited Condensed Consolidated Statements of Financial Condition on a GAAP basis as of March 31, 2021 and December 31, 2020.

(Amounts in thousands, except per share amounts)

	As of March 31, 2021	As of December 31, 2020
<b>Assets</b>		
<i>Asset Management</i>		
Cash and Cash Equivalents	\$ 5,031,724	\$ 6,507,874
Investments	76,156,229	69,274,715
Other Assets	3,907,076	4,023,913
	<b>85,095,029</b>	<b>79,806,502</b>
<i>Insurance</i>		
Cash and Cash Equivalents	5,467,012	—
Investments	98,271,046	—
Other Assets	27,612,027	—
	<b>131,350,085</b>	<b>—</b>
<b>Total Assets</b>	<b>\$ 216,445,114</b>	<b>\$ 79,806,502</b>
<b>Liabilities and Equity</b>		
<i>Asset Management</i>		
Debt Obligations	\$ 34,669,430	\$ 33,423,596
Other Liabilities	7,615,588	5,582,990
	<b>42,285,018</b>	<b>39,006,586</b>
<i>Insurance</i>		
Debt Obligations	1,400,338	—
Other Liabilities	126,457,128	—
	<b>127,857,466</b>	<b>—</b>
<b>Total Liabilities</b>	<b>\$ 170,142,484</b>	<b>\$ 39,006,586</b>
<b>Redeemable Noncontrolling Interests</b>	<b>91,845</b>	<b>—</b>
<b>Stockholders' Equity</b>		
KKR & Co. Inc. Stockholders' Equity - Series A and B Preferred Stock	482,554	482,554
KKR & Co. Inc. Stockholders' Equity - Series C Mandatory Convertible Preferred Stock	1,115,792	1,115,792
KKR & Co. Inc. Stockholders' Equity - Series I and II Preferred Stock, Common Stock	13,077,710	12,118,472
Noncontrolling Interests	31,534,729	27,083,098
<b>Total Equity</b>	<b>46,210,785</b>	<b>40,799,916</b>
<b>Total Liabilities and Equity</b>	<b>\$ 216,445,114</b>	<b>\$ 79,806,502</b>
<b>KKR &amp; Co. Inc. Stockholders' Equity - Common Stock Per Outstanding Share of Common Stock</b>	<b>\$ 22.62</b>	<b>\$ 21.15</b>

KKR & Co. Inc. Stockholders' Equity - Common Stock per Outstanding Share of Common Stock was \$22.62 as of March 31, 2021, up from \$21.15 as of December 31, 2020. The increase was primarily due to the net income attributable to KKR & Co. Inc. common stockholders during the first three months of 2021, partially offset by (i) unrealized losses on available-sale-securities from Global Atlantic that are recorded in other comprehensive income and (ii) dividends to common stockholders.

## **Consolidated Statements of Cash Flows (GAAP Basis)**

The accompanying consolidated statements of cash flows include the cash flows of our consolidated entities which include certain consolidated investment funds, CLOs and certain variable interest entities formed by Global Atlantic notwithstanding the fact that we may hold only a minority economic interest in those investment funds and CFEs.

The assets of our consolidated investment funds and CFEs, on a gross basis, can be substantially larger than the assets of our business and, accordingly, could have a substantial effect on the cash flows reflected in our consolidated statements of cash flows. The primary cash flow activities of our consolidated funds and CFEs involve: (i) capital contributions from fund investors; (ii) using the capital of fund investors to make investments; (iii) financing certain investments with indebtedness; (iv) generating cash flows through the realization of investments; and (v) distributing cash flows from the realization of investments to fund investors. Because our consolidated funds are treated as investment companies for accounting purposes, certain of these cash flow amounts are included in our cash flows from operations.

### *Net Cash Provided (Used) by Operating Activities*

Our net cash provided (used) by operating activities was \$(0.1) billion and \$(1.4) billion during the three months ended March 31, 2021 and 2020, respectively. These amounts primarily included: (i) investments purchased (asset management), net of proceeds from investments of \$(1.3) billion and \$(1.3) billion during the three months ended March 31, 2021 and 2020, respectively, (ii) net realized gains (losses) on asset management investments of \$584.4 million and \$63.4 million during the three months ended March 31, 2021 and 2020, respectively, (iii) change in unrealized gains (losses) on investments of \$2.1 billion and \$(4.0) billion during the three months ended March 31, 2021 and 2020, respectively, (iv) capital allocation-based income (loss) of \$2.7 billion and \$(1.4) billion during the three months ended March 31, 2021 and 2020, respectively and (v) net realized gains (losses) on insurance operations of \$(441.6) million during the three months ended March 31, 2021. Investment funds are, for GAAP purposes, investment companies and reflect their investments and other financial instruments at fair value.

### *Net Cash Provided (Used) by Investing Activities*

Our net cash provided (used) by investing activities was \$(376.0) million and \$(45.4) million during the three months ended March 31, 2021 and 2020, respectively. Our investing activities included: (i) investments purchased (insurance), net of proceeds from investments of \$(44.5) million during the three months ended March 31, 2021, (ii) acquisitions, net of cash acquired of \$(415.6) million during the three months ended March 31, 2021, (iii) the purchase of fixed assets of \$(27.7) million and \$(41.4) million during the three months ended March 31, 2021 and 2020, respectively and (iv) development of oil and natural gas properties of \$(4.1) million for the three months ended March 31, 2020.

### *Net Cash Provided (Used) by Financing Activities*

Our net cash provided (used) by financing activities was \$4.5 billion and \$1.5 billion during the three months ended March 31, 2021 and 2020, respectively. Our financing activities primarily included: (i) contributions by, net of distributions to, our noncontrolling interests of \$2.1 billion and \$0.6 billion during the three months ended March 31, 2021 and 2020, respectively, (ii) proceeds received net of repayment of debt obligations of \$1.6 billion and \$1.2 billion during the three months ended March 31, 2021 and 2020, respectively, (iii) additions to, net of withdrawals from contractholder deposit funds of \$958.3 million during the three months ended March 31, 2021, (iv) common stock dividends of \$(77.8) million and \$(69.7) million during the three months ended March 31, 2021 and 2020, respectively; (v) net delivery of common stock of \$(55.9) million during the three months ended March 31, 2021; (vi) repurchases of common stock of \$(71.4) million and \$(246.2) million during the three months ended March 31, 2021 and 2020, respectively; (vii) Series A and B Preferred Stock dividends of \$(8.3) million during each of the three months ended March 31, 2021 and 2020; (viii) Series C Mandatory Convertible Preferred Stock dividends of \$(17.3) million during the three months ended March 31, 2021 and (ix) private placement share issuance of \$38.5 million during the three months ended March 31, 2021.

## Analysis of Segment Operating Results

The following is a discussion of the results of our business on a Segment basis for the three months ended March 31, 2021 and 2020. You should read this discussion in conjunction with the information included under "—Key Non-GAAP Performance Measures and Other Operating Measures" and the financial statements and related notes included elsewhere in this report. See "—Business Environment" for more details on the potential adverse effects of COVID-19 on our business, financial performance, operating results and valuations.

In connection with our acquisition of Global Atlantic on February 1, 2021, management reevaluated the manner in which we manage and assess the performance of our business and allocate resources. As a result, beginning with the three months ended March 31, 2021, we have introduced a new Insurance segment and report segment results for two operating and reportable segments: Asset Management and Insurance. See Note 20 "Segment Reporting" to our financial statements included elsewhere in this report.

## Analysis of Asset Management Segment Operating Results

The following tables set forth information regarding KKR's Asset Management segment operating results and certain key operating metrics as of and for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
Management Fees	\$ 439,740	\$ 336,074	\$ 103,666
Transaction and Monitoring Fees, Net	135,677	79,428	56,249
Fee Related Performance Revenues	10,296	9,156	1,140
Fee Related Compensation	(131,785)	(83,345)	(48,440)
Other Operating Expenses	(90,161)	(83,531)	(6,630)
Fee Related Earnings	363,767	257,782	105,985
Realized Performance Income	171,309	363,132	(191,823)
Realized Performance Income Compensation	(109,986)	(225,278)	115,292
Realized Investment Income	461,273	145,164	316,109
Realized Investment Income Compensation	(69,191)	(17,604)	(51,587)
<b>Asset Management Segment Operating Earnings</b>	<b>\$ 817,172</b>	<b>\$ 523,196</b>	<b>\$ 293,976</b>

## Management Fees

The following table presents management fees by business line for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Management Fees</b>			
Private Markets	\$ 286,967	\$ 221,075	\$ 65,892
Public Markets	152,773	114,999	37,774
<b>Total Management Fees</b>	<b>\$ 439,740</b>	<b>\$ 336,074</b>	<b>\$ 103,666</b>

The increase in Private Markets management fees was primarily due to management fees earned from Asian Fund IV, which entered its investment period after the first quarter of 2020, and Asia Pacific Infrastructure Investors and Asia Real Estate Partners due to additional capital raised. These increases were partially offset by a decrease in management fees earned from Asian Fund III as it entered its post-investment period in the third quarter of 2020 and now earn fees based on capital invested rather than capital committed and at a lower fee rate.

The increase in Public Markets management fees was primarily attributable to (i) management fees earned from the Insurance Segment during the period February 1, 2021 through March 31, 2021, (ii) the issuance of new CLOs subsequent to March 31, 2020 and (iii) greater overall FPAUM at our direct lending and dislocation opportunities strategies.

### **Transaction and Monitoring Fees, Net**

The following table presents transaction and monitoring fees, net by business line for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Transaction and Monitoring Fees, Net</b>			
Private Markets	\$ 22,462	\$ 18,016	\$ 4,446
Public Markets	1,030	1,229	(199)
Capital Markets	112,185	60,183	52,002
<b>Total Transaction and Monitoring Fees, Net</b>	<b>\$ 135,677</b>	<b>\$ 79,428</b>	<b>\$ 56,249</b>

Our Capital Markets business line only earns transaction fees that are not shared with fund investors. The increase in transaction fees was primarily due to an increase in the number and average size of capital markets transactions for the three months ended March 31, 2021, compared to the three months ended March 31, 2020. Overall, we completed 57 capital markets transactions for the three months ended March 31, 2021, of which 11 represented equity offerings and 46 represented debt offerings, as compared to 43 transactions for the three months ended March 31, 2020, of which 3 represented equity offerings and 40 represented debt offerings. We earned fees in connection with underwriting, syndication and other capital markets services. While each of the capital markets transactions that we undertake in this business line is separately negotiated, our fee rates are generally higher with respect to underwriting or syndicating equity offerings than with respect to debt offerings, and the amount of fees that we earn for similar transactions generally correlates with overall transaction sizes.

Our capital markets fees are generated in connection with our Private Markets and Public Markets business lines as well as from third-party companies. For the three months ended March 31, 2021, approximately 26% of our transaction fees in our Capital Markets business line were earned from unaffiliated third parties as compared to approximately 49% for the three months ended March 31, 2020. Our transaction fees are comprised of fees earned from North America, Europe, and the Asia-Pacific region. For the three months ended March 31, 2021, approximately 32% of our transaction fees were generated outside of North America as compared to approximately 29% for the three months ended March 31, 2020. Our Capital Markets business line is dependent on the overall capital markets environment, which is influenced by equity prices, credit spreads, and volatility. Our Capital Markets business line does not generate monitoring fees.

Our Private Markets and Public Markets business lines earn transaction and monitoring fees from portfolio companies, and under the terms of the management agreements with certain of our investment funds, we are required to share all or a portion of such with such fund's investors.

The increase in Private Markets transaction and monitoring fees, net was primarily attributable to an increase in net transaction fees. During the three months ended March 31, 2021, there were 19 transaction fee-generating investments that paid an average fee of \$2.0 million compared to 11 transaction fee-generating investments that paid an average fee of \$1.5 million during the three months ended March 31, 2020. For the three months ended March 31, 2021, approximately 41% of these transaction fees were paid by companies in North America, 36% were paid from companies in the Asia-Pacific region, and 23% of these transaction fees were paid from companies in Europe. Transaction fees vary by investment based upon a number of factors, the most significant of which are transaction size, the particular agreements as to the amount of the fees, the complexity of the transaction, and KKR's role in the transaction. Additionally, transaction fees are generally not earned with respect to energy and real estate investments.

Public Markets transaction and monitoring fees, net remained relatively flat for the three months ended March 31, 2021 compared to the three months ended March 31, 2020.

### *Fee Related Performance Revenues*

The following table presents fee related performance revenues by business line for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Fee Related Performance Revenues</b>			
Private Markets	\$ 1,552	\$ 1,137	\$ 415
Public Markets	8,744	8,019	725
<b>Total Fee Related Performance Revenues</b>	<b>\$ 10,296</b>	<b>\$ 9,156</b>	<b>\$ 1,140</b>

Fee related performance revenues earned in our Private Markets and Public Markets business lines represent realized incentive fees which are measured and received on a recurring basis. These incentive fees are primarily earned from our BDCs and our investment in KREF. The increase was primarily due to a higher level of investment income at these incentive fee earning investment vehicles during the three months ended March 31, 2021 as compared to the prior period.

### *Fee Related Compensation*

The increase in fee related compensation for the three months ended March 31, 2021 compared to the prior period is primarily due to a higher level of compensation recorded in connection with the higher level of revenues included within fee related earnings.

### *Other Operating Expenses*

The increase in other operating expenses for the three months ended March 31, 2021 compared to the prior period is primarily due to a higher level of professional fees and other administrative costs in connection with the overall growth of the firm. These increases were partially offset by a decrease in travel related expenses as a result of the COVID-19 pandemic.

### *Fee Related Earnings*

The increase in fee related earnings for the three months ended March 31, 2021 compared to the prior period is primarily due to a higher level of management fees and transaction fees, partially offset by a higher level of fee related compensation, as described above.

### *Realized Performance Income*

The following table presents realized performance income by business line for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Realized Performance Income</b>			
Private Markets	\$ 166,418	\$ 325,691	\$ (159,273)
Public Markets	4,891	37,441	(32,550)
<b>Total Realized Performance Income</b>	<b>\$ 171,309</b>	<b>\$ 363,132</b>	<b>\$ (191,823)</b>

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Private Markets</b>			
Core Investment Vehicles	\$ 80,937	\$ 57,484	\$ 23,453
North America Fund XI	44,881	122,395	(77,514)
2006 Fund	19,960	53,693	(33,733)
Co-Investment Vehicles and Other	15,533	—	15,533
Real Estate Partners Europe	3,478	—	3,478
European Fund III	353	—	353
Asian Fund III	—	46,347	(46,347)
Asian Fund II	—	20,485	(20,485)
Global Infrastructure Investors II	—	20,310	(20,310)
Real Estate Partners Americas	—	4,977	(4,977)
<b>Total Realized Carried Interest <sup>(1)</sup></b>	<b>165,142</b>	<b>325,691</b>	<b>(160,549)</b>
Incentive Fees	1,276	—	1,276
<b>Total Realized Performance Income</b>	<b>\$ 166,418</b>	<b>\$ 325,691</b>	<b>\$ (159,273)</b>

(1) The above table excludes any funds for which there was no realized carried interest during both of the periods presented.

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Public Markets</b>			
Mezzanine Partners	\$ —	\$ 9,900	\$ (9,900)
Other Alternative Credit Vehicles	—	25,740	(25,740)
<b>Total Realized Carried Interest <sup>(1)</sup></b>	<b>—</b>	<b>35,640</b>	<b>(35,640)</b>
Incentive Fees	4,891	1,801	3,090
<b>Total Realized Performance Income</b>	<b>\$ 4,891</b>	<b>\$ 37,441</b>	<b>\$ (32,550)</b>

(1) The above table excludes any funds for which there was no realized carried interest during both of the periods presented.

Realized performance income includes (i) realized carried interest from our carry earning funds and (ii) incentive fees not included in Fee Related Performance Revenues.

Realized carried interest in our Private Markets business line for the three months ended March 31, 2021 consisted primarily of (i) realized performance income from our core investment vehicles, (ii) dividends received from our investment in Internet Brands, Inc. (technology sector) and (iii) realized gains from the partial sale of our investments in BridgeBio Pharma, Inc. and Academy Sports & Outdoors Inc. (NASDAQ: ASO).

Realized carried interest in our Private Markets business line for the three months ended March 31, 2020 consisted primarily of realized gains from the final strategic sales of Privilege Underwriters, Inc. (financial services sector) and KCF Technologies Ltd. (industrial sector), realized performance income from our core investment vehicles, and dividends received from our investment in Fiserv, Inc.

During the three months ended March 31, 2021, there was no realized carried interest earned in our Public Markets business line. Realized carried interest was recognized at certain of our alternative credit strategy funds during the three months ended March 31, 2020.

**Realized Performance Income Compensation**

The decrease in realized performance income compensation for the three months ended March 31, 2021 compared to the prior period is primarily due to a lower level of compensation recorded in connection with the lower level of realized performance income.

**Realized Investment Income**

The following table presents realized investment income in our Principal Activities business line for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
<b>Realized Investment Income</b>			
Net Realized Gains (Losses)	\$ 373,120	\$ 6,670	\$ 366,450
Interest Income and Dividends	88,153	138,494	(50,341)
<b>Total Realized Investment Income</b>	<b>\$ 461,273</b>	<b>\$ 145,164</b>	<b>\$ 316,109</b>

The increase in realized investment income is due to a higher level of net realized gains, partially offset by a decrease in interest income and dividends. The amount of realized investment income depends on the transaction activity of our funds and balance sheet, which can vary from period to period.

For the three months ended March 31, 2021, net realized gains were comprised of realized gains primarily from the partial sales of our Private Markets investments in FanDuel and BridgeBio Pharma Inc. Partially offsetting these realized gains were realized losses, the most significant of which was a realized loss on the sale of an investment in our special situations funds.

For the three months ended March 31, 2020, net realized gains were comprised of realized gains primarily from the sale of our Private Markets investments including the final sales of KCF Technologies, Inc. and Privilege Underwriters, Inc. Partially offsetting these realized gains were realized losses, the most significant of which was a realized loss on the sale of our investment in General Healthcare Group (healthcare sector).

For the three months ended March 31, 2021, interest income and dividends were comprised primarily of (i) \$44.5 million of dividend income primarily from our Private Markets investments in Internet Brands, Inc. and US Foods Holding Corp. as well as distributions received from our real estate investments including our investment in KREF and (ii) \$43.7 million of interest income primarily from our Public Markets investments in CLOs.

For the three months ended March 31, 2020, interest income and dividends were comprised primarily of (i) \$62.5 million of dividend income from our investment in Fiserv, Inc. and \$38.9 million of dividend income from distributions received primarily through our real estate investments including our investment in KREF and (ii) \$37.1 million of interest income which consists primarily of interest that is received from our Public Markets investments including CLOs and other credit investments and to a lesser extent our cash balances and investments held at our India debt finance company. See "—Analysis of Non-GAAP Performance Measures—Non-GAAP Balance Sheet Measures."

We expect realized performance income and realized investment income to be greater than \$700 million in the second quarter of 2021 relating to realized carried interest and realized investment income from completed, or signed and expected to be completed sales, partial sales or secondary sales subsequent to March 31, 2021 with respect to certain private equity portfolio companies and other investments. Some of these transactions are not complete, and are subject to the satisfaction of closing conditions, including but not limited to regulatory approvals; there can be no assurance if or when any of these transactions will be completed.

Following the acquisition of KKR Capstone on January 1, 2020, after-tax distributable earnings includes the net income (loss) from KKR Capstone within realized investment income (loss). This treatment is consistent with periods prior to the acquisition of KKR Capstone, when KKR excluded KKR Capstone from KKR's non-GAAP financial measures even though KKR Capstone was consolidated KKR's financial statements prepared in accordance with GAAP. For the quarter ended March 31, 2021, total fees attributable to KKR Capstone were \$20.1 million and total expenses attributable to KKR Capstone were



\$18.9 million. For KKR Capstone-related adjustments in reconciling Asset Management segment revenues to GAAP revenues see "—Analysis of Non-GAAP Performance Measures—Reconciliations to GAAP Measures".

### **Realized Investment Income Compensation**

The increase in realized investment income compensation for the three months ended March 31, 2021 compared to the prior period is primarily due to a higher level of compensation recorded in connection with the higher level of realized investment income.

### **Other Operating and Performance Measures**

The following table presents certain key operating and performance metrics as of March 31, 2021 and December 31, 2020:

	As of		
	March 31, 2021	December 31, 2020	Change
(\$ in thousands)			
<b>Assets Under Management</b>	\$ 367,453,400	\$ 251,679,200	\$ 115,774,200
<b>Fee Paying Assets Under Management</b>	\$ 288,440,500	\$ 186,217,000	\$ 102,223,500
<b>Uncalled Commitments</b>	\$ 68,988,300	\$ 66,960,000	\$ 2,028,300

The following table presents one of our key performance metrics for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
(\$ in thousands)			
<b>Capital Invested</b>	\$ 6,891,600	\$ 5,076,100	\$ 1,815,500

### **Assets Under Management**

#### *Private Markets*

The following table reflects the changes in our Private Markets AUM from December 31, 2020 to March 31, 2021:

	(\$ in thousands)
December 31, 2020	\$ 148,689,300
New Capital Raised	7,090,400
Impact of Global Atlantic	12,012,400
Distributions and Other	(2,344,500)
Change in Value	12,283,500
March 31, 2021	<u>\$ 177,731,100</u>

AUM for the Private Markets business line was \$177.7 billion at March 31, 2021, an increase of \$29.0 billion, compared to \$148.7 billion at December 31, 2020.

The increase was primarily attributable to (i) assets we now manage under our investment management agreements with Global Atlantic's insurance companies, (ii) capital raised from our first special purpose acquisition company (SPAC), KKR Acquisition Holdings I, which had an initial public offering, (iii) new capital raised in our Health Care Strategic Growth Fund II, Diversified Core Infrastructure Investors, Real Estate Partners Americas III, and Asian Fund IV, and (iv) an increase in value of our Private Markets portfolio. These increases were partially offset by distributions to fund investors, primarily as a result of realizations, most notably in Americas Fund XII, Asian Fund II, North America Fund XI and 2006 Fund.

The increase in the value of our Private Markets portfolio was driven primarily by net gains of \$5.9 billion in Americas Fund XII, \$1.3 billion in Asian Fund III, \$0.9 billion in North America Fund XI, \$0.7 billion in our core investment strategy, and \$0.6 billion in Next Generation Technology Growth Fund.

For the three months ended March 31, 2021, the value of our private equity investment portfolio increased 19%. This was comprised of a 21% increase in value of our privately held investments and a 10% increase in share prices of various publicly held or publicly indexed investments. See "—Business Environment" for more details on the potential adverse effects of COVID-19 on our business, financial performance, operating results and valuations.

The most significant increase in value of our privately held investments related to AppLovin Corporation (technology sector), OneStream Software, LLC (technology sector), and OutSystems Holdings S.A. These increases in value were partially offset by decreases in value relating primarily to Colonial Enterprises, Inc. (infrastructure), Goodpack Limited (packaging sector), and Channel Control Merchants (retail sector). The increased valuations of individual companies in our privately held investments, in the aggregate, generally related to (i) individual company performance and (ii) an increase in the value of market comparables and (iii) transactional activity in the quarter related to new rounds of funding. The decreased valuations of individual companies in our privately held investments, in the aggregate, generally related to (i) an unfavorable business outlook and (ii) a decrease in the value of market comparables, both influenced from the impact of COVID-19 on the economic outlook and overall market environment.

The most significant increases in share prices of various publicly held or publicly indexed investments were increases in Max Healthcare Institute Limited (NSE: MAXHEALTH), Fiserv, Inc. and Academy Sports & Outdoor Inc. These increases were partially offset by decreases in share prices of various publicly held investments, the most significant of which were decreases in BridgeBio Pharma, Inc. and Laureate Education, Inc. (NASDAQ: LAUR).

For the three months ended March 31, 2020, the value of our private equity investment portfolio decreased 12%. This was comprised of an 8% decrease in value of our privately held investments and a 24% decrease in share prices of various publicly held or publicly indexed investments. Additionally, our infrastructure investment portfolio, which is comprised predominately of privately held investments, increased 6%.

The most significant decreases in value of our privately held investments related to Magneti Marelli S.p.A. (industrial sector), Envision Healthcare Corporation (healthcare sector) and Travelopia (services sector). These decreases in value on our privately held investments were partially offset by increases in value relating primarily to Deutsche Glasfaser (telecom sector), AppLovin Corporation and AlphaTheta Corporation (technology sector). The decreased valuations of individual companies in our privately held investments, in the aggregate, generally related to (i) an unfavorable business outlook and (ii) a decrease in the value of market comparables, both influenced from the impact of COVID-19 on the economic outlook and overall market environment. The increased valuations of individual companies in our privately held investments, in the aggregate, generally related to individual company performance, and with respect to Deutsche Glasfaser and AlphaTheta Corporation, increases in valuation reflecting agreements to exit these investments.

The most significant decreases in share prices of various publicly held or publicly indexed investments were decreases in Fiserv, Inc., Ingersoll Rand Inc. (NYSE: IR), and Laureate Education, Inc.

Certain investments included in our AUM are denominated in currencies other than the U.S. dollar. Those investments expose our AUM to the risk that the value of the investments will be affected by changes in exchange rates between the currency in which the investments are denominated and the currency in which the investments are made. We generally seek to reduce these risks by employing hedging transactions in connection with certain investments, including using foreign currency options and foreign exchange forward contracts to reduce exposure to changes in exchange rates when a meaningful amount of capital has been invested in currencies other than the currencies in which the investments are denominated. We do not, however, hedge our currency exposure in all currencies or for all investments. See "Quantitative and Qualitative Disclosures about Market Risk—Exchange Rate Risk" and "Risk Factors—Risks Related to the Assets We Manage—We make investments in companies that are based outside of the United States, which may expose us to additional risks not typically associated with investing in companies that are based in the United States" in our Annual Report.

*Public Markets*

The following table reflects the changes in our Public Markets AUM from December 31, 2020 to March 31, 2021:

	(\$ in thousands)
December 31, 2020	\$ 102,989,900
New Capital Raised	7,474,200
Impact of Global Atlantic	85,490,800
Distributions and Other	(2,601,000)
Redemptions	(3,728,700)
Change in Value	97,100
March 31, 2021	<u>\$ 189,722,300</u>

AUM in our Public Markets business line totaled \$189.7 billion at March 31, 2021, an increase of \$86.7 billion compared to \$103.0 billion at December 31, 2020.

The increase was primarily attributable to (i) assets we now manage under our investment management agreements with Global Atlantic's insurance companies and (ii) new capital raised across multiple strategies, most notably \$1.6 billion in CLOs, and \$1.0 billion in our hedge fund partnerships. Partially offsetting these increases were redemptions, primarily in our hedge fund partnerships and certain leveraged credit strategies and distributions to our fund investors. See "—Business Environment" for more details on the potential adverse effects of COVID-19 on our business, financial performance, operating results and valuations.

***Fee Paying Assets Under Management****Private Markets*

The following table reflects the changes in our Private Markets FPAUM from December 31, 2020 to March 31, 2021:

	(\$ in thousands)
December 31, 2020	\$ 94,195,900
New Capital Raised	4,293,400
Impact of Global Atlantic	12,012,400
Distributions and Other	(1,121,100)
Change in Value	(347,500)
March 31, 2021	<u>\$ 109,033,100</u>

FPAUM in our Private Markets business line was \$109.0 billion at March 31, 2021, an increase of \$14.8 billion, compared to \$94.2 billion at December 31, 2020.

The increase was primarily attributable to (i) assets we now manage under our investment management agreements with Global Atlantic and (ii) new capital raised of \$1.0 billion in Real Estate Partners Americas III, \$0.9 billion in Asian Fund IV, and \$0.3 billion in Diversified Core Infrastructure Investors. These increases were partially offset by distributions to our fund investors from realizations in our real assets funds, 2006 Fund, and Asian Fund II.

Uncalled capital commitments from Private Markets investment funds from which KKR is currently not earning management fees amounted to approximately \$13.5 billion at March 31, 2021, which includes capital commitments reserved for follow-on investments for funds that have completed their investment periods. This capital will generally begin to earn management fees upon deployment of the capital or upon the commencement of the fund's investment period. The average annual management fee rate associated with this capital is approximately 1.2%. We will not begin earning fees on this capital until it is deployed or the related investment period commences, neither of which is guaranteed to occur. If and when such management fees are earned, which will occur over an extended period of time, a portion of existing FPAUM may cease paying fees or pay lower fees, thus offsetting a portion of any new management fees earned.

### Public Markets

The following table reflects the changes in our Public Markets FPAUM from December 31, 2020 to March 31, 2021:

	(\$ in thousands)	
December 31, 2020	\$	92,021,100
New Capital Raised		7,649,200
Impact of Global Atlantic		85,490,800
Distributions and Other		(3,071,700)
Redemptions		(2,131,300)
Change in Value		(550,700)
March 31, 2021	\$	<u>179,407,400</u>

FPAUM in our Public Markets business line was \$179.4 billion at March 31, 2021, an increase of \$87.4 billion, compared to \$92.0 billion at December 31, 2020.

The increase was primarily attributable to (i) assets we now manage under our investment management agreements with Global Atlantic's insurance companies and (ii) new capital raised across multiple strategies, most notably \$1.6 billion in CLOs, and \$1.0 billion in both our hedge fund partnerships and alternative credit strategies. Partially offsetting these increases were distributions to fund investors and redemptions primarily in our hedge fund partnerships and certain leveraged credit strategies. See "—Business Environment" for more details on the potential adverse effects of COVID-19 on our business, financial performance, operating results and valuations.

Uncalled capital commitments from Public Markets investment funds from which KKR is currently not earning management fees amounted to approximately \$6.8 billion at March 31, 2021. This capital will generally begin to earn management fees upon deployment of the capital or upon the commencement of the fund's investment period. The average annual management fee rate associated with this capital is approximately 0.8%. We will not begin earning fees on this capital until it is deployed or the related investment period commences, neither of which is guaranteed to occur. If and when such management fees are earned, which will occur over an extended period of time, a portion of existing FPAUM may cease paying fees or pay lower fees, thus offsetting a portion of any new management fees earned.

### Uncalled Commitments

#### Private Markets

As of March 31, 2021, our Private Markets business line had \$58.9 billion of remaining uncalled capital commitments that could be called for investments in new transactions as compared to \$56.6 billion as of December 31, 2020. The increase was primarily attributable to new capital raised, which was partially offset by capital called from fund investors to make investments during the period.

#### Public Markets

As of March 31, 2021, our Public Markets business line had \$10.1 billion of remaining uncalled capital commitments that could be called for investments in new transactions, as compared to \$10.3 billion as of December 31, 2020. The decrease was primarily attributable to capital called from fund investors to make investments during the period, which was partially offset by new capital raised in various alternative credit strategies.

### Capital Invested

#### Private Markets Capital Invested

For the three months ended March 31, 2021, Private Markets had \$4.0 billion of capital invested as compared to \$1.4 billion for the three months ended March 31, 2020. The increase was driven primarily by a \$1.5 billion increase in capital invested in our real assets strategies and a \$1.1 billion increase in capital invested in our private equity strategies (including core, growth equity, and impact investments). Generally, the portfolio companies acquired through our private equity funds have higher transaction values and result in higher capital invested relative to transactions in our real assets funds. The number of large private equity investments made in any quarter is volatile and consequently, a significant amount of capital invested in one quarter or a few quarters may not be indicative of a similar level of capital deployment in future quarters. During the three

months ended March 31, 2021, 72% of capital deployed in private equity, which includes core, growth equity, and impact investments, was in transactions in North America and 28% was in the Asia-Pacific region.

#### *Public Markets Capital Invested*

For the three months ended March 31, 2021, Public Markets had \$2.9 billion of capital invested as compared to \$3.6 billion for the three months ended March 31, 2020. The decrease was primarily due to a lower level of capital deployed in our direct lending strategies, partially offset by a higher level of capital deployed in our dislocation opportunities strategies. During the three months ended March 31, 2021, 86% of capital deployed was in transactions in North America and 14% of capital deployed was in Europe.

#### **Analysis of Insurance Segment Operating Results**

The following tables set forth information regarding KKR's insurance segment operating results and certain key operating metrics as of and for the three months ended March 31, 2021:

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	
<i>(\$ in thousands)</i>		
Net Investment Income	\$	445,898
Net Cost of Insurance		(250,219)
General, Administrative and Other		(75,489)
Pre-tax Insurance Operating Earnings		120,190
Income Taxes		(16,626)
Net Income Attributable to Noncontrolling Interest		(40,299)
<b>Insurance Segment Operating Earnings</b>	<b>\$</b>	<b>63,265</b>

#### ***Insurance segment operating earnings***

Insurance segment operating earnings is driven by net investment income, general and administrative expenses, taxes and adjusted net cost of insurance.

Certain fees paid to Global Atlantic by reinsurance investment vehicles are reported in the Asset Management segment.

#### ***Net investment income***

Net investment income was primarily driven by insurance segment investments and the effective book yield (as determined, in part, by the allocated fair value of the investment portfolio as of the closing date of the GA Acquisition). Average insurance segment investments are driven by inflows of assets from the individual markets and institutional channels. The impact of higher asset balances was impacted by lower income primarily due (i) to the negative impact of higher than usual average cash and cash equivalent balances as a result of new reinsurance transactions closing during the three month period ending March 31, 2021 pending reinvestment, and (ii) net investment expenses.

#### ***Net cost of insurance***

Net cost of insurance was driven primarily by stable liability performance across in-force and new business offset by favorable adjustments to reserves and policy acquisition costs resulting from higher reserves and insurance intangibles established as part of the purchase accounting for the Global Atlantic acquisition.

#### ***General, administrative and other expenses***

General and administrative expenses are driven by (i) employee compensation and benefits related expenses, (ii) policy servicing fees, and (iii) technology-related charges.

**Income taxes**

Insurance segment income tax expense reflects the annual estimated effective tax rate for the insurance segment on an operating basis.

**Net Income attributable to non-controlling interests**

Income attributable to non-controlling interests represent the portion of the insurance segment adjusted operating earnings held by rollover and co-investors in Global Atlantic.

**Analysis of Non-GAAP Performance Measures**

The following is a discussion of our Non-GAAP performance measures for the three months ended March 31, 2021 and 2020:

	Three Months Ended		
	March 31, 2021	March 31, 2020	Change
	(\$ in thousands)		
Asset Management Segment Operating Earnings	\$ 817,172	\$ 523,196	\$ 293,976
Insurance Segment Operating Earnings	63,265	—	63,265
<b>Distributable Operating Earnings</b>	<b>880,437</b>	<b>523,196</b>	<b>357,241</b>
Interest Expense	(57,545)	(47,434)	(10,111)
Preferred Dividends	(8,341)	(8,341)	—
Net Income Attributable to Noncontrolling Interests	(3,192)	(1,089)	(2,103)
Income Taxes Paid	(151,120)	(60,035)	(91,085)
<b>After-tax Distributable Earnings</b>	<b>\$ 660,239</b>	<b>\$ 406,297</b>	<b>\$ 253,942</b>

**Distributable Operating Earnings**

The increase in distributable operating earnings for the three months ended March 31, 2021 compared to the prior period is primarily due to a higher level of Asset Management segment operating earnings and the addition of our Insurance segment operating earnings, in connection with the Global Atlantic acquisition. For a discussion of the Asset Management and Insurance segment operating earnings, see "—Analysis of Asset Management Segment Operating Results and Analysis of Insurance Segment Operating Results."

**Interest Expense**

For the three months ended March 31, 2021 and 2020, interest expense relates primarily to the senior notes outstanding for KKR and KFN.

The increase in interest expense for the three months ended March 31, 2021 compared to the prior period is due primarily to new senior note issuances including: (i) \$250 million aggregate principal amount of \$3.750% Senior Notes due 2029 and (ii) \$750 million aggregate principal amount of 3.500% Senior Notes due 2050 subsequent to March 31, 2020.

**Income Taxes Paid**

The increase in income taxes paid for the three months ended March 31, 2021 compared to the prior period was primarily due to a higher level of total distributable operating earnings.

**After-tax Distributable Earnings**

The increase in after-tax distributable earnings for the three months ended March 31, 2021 compared to the prior period was due primarily to a higher level of distributable operating earnings, partially offset by an increase in income taxes paid and interest expense.

The amount of the tax benefit from equity-based compensation included in income taxes paid for three months ended March 31, 2021 and 2020 was \$43.0 million and \$11.9 million, respectively, and its inclusion in After-tax Distributable Earnings had the effect of increasing this measure by 7% and 3%, respectively.

### Book Value

The following tables present information of our calculation of book value as of March 31, 2021 and December 31, 2020:

	As of	
	March 31, 2021	December 31, 2020
	(\$ in thousands)	
(+) Cash and Short-term Investments	\$ 3,580,861	\$ 5,961,083
(+) Investments	16,362,795	14,991,914
(+) Net Unrealized Carried Interest <sup>(1)</sup>	3,837,926	2,625,935
(+) Other Assets <sup>(2)</sup>	4,465,953	4,198,641
(+) Global Atlantic Book Value	2,923,655	—
(-) Debt Obligations - KKR (excluding KFN and Global Atlantic)	5,128,472	4,688,460
(-) Debt Obligations - KFN	948,517	948,517
(-) Tax Liabilities, Net	942,108	485,966
(-) Other Liabilities	894,221	857,764
(-) Noncontrolling Interests	31,086	29,510
(-) Series A & B Preferred Stock	500,000	500,000
<b>Book Value</b>	<b>\$ 22,726,786</b>	<b>\$ 20,267,356</b>
<b>Book Value Per Adjusted Share</b>	<b>\$ 25.84</b>	<b>\$ 23.09</b>
<b>Adjusted Shares</b>	<b>879,681,840</b>	<b>877,613,164</b>

(1) The following table provides net unrealized carried interest by business line:

	As of	
	March 31, 2021	December 31, 2020
	(\$ in thousands)	
Private Markets Business Line	\$ 3,750,800	\$ 2,560,101
Public Markets Business Line	87,126	65,834
<b>Total</b>	<b>\$ 3,837,926</b>	<b>\$ 2,625,935</b>

(2) Other Assets include KKR's ownership interest in FS/KKR Advisor and minority ownership interests in hedge fund partnerships.

Book value per adjusted share increased 12% from December 31, 2020. The increase was primarily attributable to (i) the net appreciation in the value of our investment portfolio, including investments held by KKR as well as investments held through investment funds, including KKR's private equity, real assets and alternative credit funds, where KKR is entitled to earn carried interest and (ii) after-tax distributable earnings during the period. Partially offsetting this increase is the payment of dividends and the repurchases of our common stock during the period.

With respect to book value relating to the asset management business, for the three months ended March 31, 2021, the value of the Asset Management segment balance sheet portfolio increased 12% and KKR's overall private equity portfolio increased 19%. The increases in KKR's Asset Management segment balance sheet portfolio and net unrealized carried interest was primarily due to mark-to-market net gains in its investments. For a further discussion, see "—Unaudited Consolidated Results of Operations (GAAP Basis) - Asset Management—Unrealized Gains and Losses from Investment Activities." For a discussion of the changes in KKR's private equity portfolio, see "—Analysis of Asset Management Segment Operating Results—Assets Under Management." For a discussion of factors that impacted KKR's after-tax distributable earnings, see "—Analysis of Non-GAAP Performance Measures— After-tax Distributable Earnings" and for more details on factors that impact our business, financial performance, operating results and valuations, see "—Business Environment."

The following table presents the holdings of our investments in Asset Management by asset class as of March 31, 2021 on a segment basis. To the extent investments are realized at values below their cost in future periods, after-tax distributable earnings would be adversely affected by the amount of such loss, if any, during the period in which the realization event occurs. For example, we have recognized certain net unrealized losses in our credit investment portfolio held at our India debt finance company, of which we own 50.3% of its equity. As of March 31, 2021, KKR's 50.3% interest in our India debt finance company had a cost basis of approximately \$168 million, comprised of invested capital of \$100 million plus reinvested earnings. If the value of our investment is ultimately realized at the current carrying value of \$65 million, future realized investment losses of approximately \$103 million would be recognized on a segment basis based on valuations as of March 31, 2021, which would reduce after-tax distributable earnings in future periods.

Investments <sup>(1)</sup>	As of March 31, 2021		
	(\$ in thousands)		
	Cost	Fair Value	Fair Value as a Percentage of Total Investments
Private Equity	\$ 2,822,232	\$ 5,536,501	33.8 %
Core	1,986,358	3,514,699	21.5 %
Growth	459,422	1,787,788	10.9 %
<b>Private Equity, Core &amp; Growth Total</b>	<b>5,268,012</b>	<b>10,838,988</b>	<b>66.2 %</b>
Energy	767,084	751,299	4.6 %
Real Estate	1,262,708	1,390,387	8.5 %
Infrastructure	594,218	691,625	4.2 %
<b>Real Assets Total</b>	<b>2,624,010</b>	<b>2,833,311</b>	<b>17.3 %</b>
Leveraged Credit	1,004,264	972,600	5.9 %
Alternative Credit	855,548	825,265	5.0 %
<b>Credit Total</b>	<b>1,859,812</b>	<b>1,797,865</b>	<b>11.0 %</b>
Other	1,058,154	892,631	5.5 %
<b>Total Investments</b>	<b>\$ 10,809,988</b>	<b>\$ 16,362,795</b>	<b>100.0 %</b>

Significant Investments: <sup>(2)</sup>	March 31, 2021		
	(\$ in thousands)		
	Cost	Fair Value	Fair Value as a Percentage of Total Investments
Fiserv, Inc. (NASDAQ: FISV)	\$ 614,098	\$ 1,400,334	8.6 %
USI, Inc.	531,425	987,753	6.0 %
BridgeBio Pharma, Inc. (NASDAQ: BBIO)	63,821	759,640	4.6 %
PetVet Care Centers, LLC	243,188	632,289	3.9 %
Heartland Dental, LLC	320,626	577,126	3.5 %
<b>Total Significant Investments</b>	<b>1,773,158</b>	<b>4,357,142</b>	<b>26.6 %</b>
Other Investments	9,036,830	12,005,653	73.4 %
<b>Total Investments</b>	<b>\$ 10,809,988</b>	<b>\$ 16,362,795</b>	<b>100.0 %</b>

(1) Investments is a term used solely for purposes of financial presentation of a portion of KKR's balance sheet and includes majority ownership of subsidiaries that operate KKR's businesses, including the general partner interests of KKR's investment funds and Global Atlantic's insurance companies.

(2) Significant Investments include the top five investments based on their fair values as of March 31, 2021. Significant Investments exclude (i) investments expected to be syndicated, (ii) investments expected to be transferred in connection with a new fundraising, and (iii) investments in funds and other entities that are owned by one or more third parties and established for the purpose of making investments. Accordingly, this list of Significant Investments should not be relied upon as a substitute for information about the asset class exposure of KKR's balance sheet. For information about the asset class exposure of KKR's balance sheet see "—Our Business—Principal Activities" for the "Holdings by Asset Class" pie chart. The fair value figures include the co-investment and the limited partner and/or general partner interests held by KKR in the underlying investment, if applicable.



With respect to KKR's book value relating to its insurance business, KKR includes Global Atlantic's book value, which consists of KKR's pro rata equity interest in Global Atlantic on a GAAP basis, excluding (i) accumulated other comprehensive income and (ii) accumulated change in fair value of reinsurance embedded derivative balances and related assets, net of deferred acquisition costs and income tax. KKR believes this presentation of Global Atlantic's book value is comparable with the corresponding metric presented by other publicly traded companies in Global Atlantic's industry. As of March 31, 2021, Global Atlantic Book Value was \$2.9 billion. For more information about the composition and credit quality of Global Atlantic's investments on a consolidated basis, please see "--Global Atlantic's Investment Portfolio" below.

#### *Global Atlantic's Investment Portfolio*

As of March 31, 2021, 98% and 87% of Global Atlantic's available-for-sale ("AFS") fixed maturity securities were considered investment grade under ratings from the Securities Valuation Office of the National Association of Insurance Commissioners ("NAIC") and nationally recognized statistical rating organizations ("NRSROs"), respectively. Securities where a rating by an NRSRO was not available are considered investment grade if they have an NAIC designation of "1" or "2". The three largest asset categories in Global Atlantic's AFS fixed-maturity security portfolio as of March 31, 2021 were Corporate, RMBS and U.S. state, municipal and political subdivisions securities, comprising 35%, 9% and 5% of Global Atlantic's investment portfolio, respectively. Within these categories, 98%, 97% and 100% of Global Atlantic's Corporate, RMBS and U.S. state, municipal and political subdivisions securities, respectively, were investment grade according to NAIC ratings and 98%, 39% and 100% of its Corporate, RMBS and U.S. state, municipal and political subdivisions securities, respectively, were investment grade according to NRSRO ratings as of March 31, 2021. NRSRO and NAIC ratings have different methodologies. Global Atlantic believes the NAIC ratings methodology, which considers the likelihood of recovery of amortized cost as opposed to the recovery of all contractual payments including the principal at par, as the more appropriate way to view the ratings quality of its AFS fixed maturity portfolio since a large portion of its holdings were purchased at a significant discount to par value. The portion of Global Atlantic's AFS fixed maturity portfolio consisting of floating rate assets was 35% as of March 31, 2021.

Within the funds withheld receivable at interest portfolio 95% of the fixed maturity securities were investment grade by NAIC designation as of March 31, 2021.

Trading fixed maturity securities back funds withheld payable at interest where the investment performance is ceded to reinsurers under the terms of the respective reinsurance agreements.

#### *Credit quality of AFS fixed maturity securities*

The Securities Valuation Office of the NAIC evaluates the AFS fixed maturity security investments of insurers for regulatory reporting and capital assessment purposes and assigns securities to one of six credit quality categories called "NAIC designations." Using an internally developed rating is permitted by the NAIC if no rating is available. These designations are generally similar to the credit quality designations of NRSROs for marketable fixed maturity securities, except for certain structured securities as described below. NAIC designations of "1," highest quality, and "2," high quality, include fixed maturity securities generally considered investment grade by NRSROs. NAIC designations "3" through "6" include fixed maturity securities generally considered below investment grade by NRSROs.

An NRSRO rating was assigned based on the following criteria: (i) the equivalent S&P rating where the security is rated by one NRSRO; (ii) the equivalent S&P rating of the lowest NRSRO when the security is rated by two NRSROs; and (i) the equivalent S&P rating of the second lowest NRSRO if the security is rated by three or more NRSROs. If the lowest two NRSROs' ratings are equal, then such rating will be the assigned rating. NRSROs' ratings available for the periods presented were S&P, Fitch, Moody's, DBRS, Inc. and Kroll Bond Rating Agency, Inc. If no rating is available from a rating agency, then an internally developed rating is used.

The portion of the AFS fixed maturity securities portfolio that was considered below investment grade by NAIC designation was 2% as of March 31, 2021. Pursuant to Global Atlantic's investment guidelines, it actively monitors the percentage of its portfolio that is held in investments rated NAIC 3 or lower and must obtain an additional approval from Global Atlantic's management investment committee before making a significant investment in an asset rated NAIC 3 or lower.

As of March 31, 2021, non-rated AFS fixed-maturity securities included \$173 million of private placement securities for which Global Atlantic has not sought individual ratings from the NRSROs.

*Corporate fixed maturity securities*

Global Atlantic maintains a diversified portfolio of corporate fixed maturity securities across industries and issuers. As of March 31, 2021, 56% of the AFS fixed maturity securities portfolio was invested in corporate fixed maturity securities.

As of March 31, 2021, 98% of the total fair value of corporate fixed maturity securities is rated NAIC investment grade, and 98% is rated NRSROs investment grade.

*Residential mortgage-backed securities*

As of March 31, 2021, 14% of the AFS fixed maturity securities portfolio was invested in RMBS. RMBS are securities constructed from pools of residential mortgages and backed by payments from those pools. Excluding limitations on access to lending and other extraordinary economic conditions, we would expect prepayments of principal on the underlying loans to accelerate with decreases in market interest rates and diminish with increases in market interest rates.

The NAIC designations for RMBS, including prime, sub-prime, alt-A, and adjustable rate mortgages with variable payment options ("Option ARM"), are based upon a comparison of the bond's amortized cost to the NAIC's loss expectation for each security. Accordingly, an investment in the same security at a lower cost may result in a higher quality NAIC designation in recognition of the lower likelihood the investment would result in a realized loss. Prime residential mortgage lending includes loans to the most creditworthy borrowers with high quality credit profiles. Alt-A is a classification of mortgage loans where the risk profile of the borrower is between prime and sub-prime. Sub-prime mortgage lending is the origination of residential mortgage loans to borrowers with weak credit profiles.

As of March 31, 2021, 94% of RMBS securities that are below investment grade as rated by the NRSRO, carry an NAIC 1 designation. As of March 31, 2021, Alt-A, Option ARM, Re-Performing and Sub-prime represent 40%, 26%, 12% and 11% of the total RMBS portfolio (\$8.5 billion), respectively.

*Unrealized gains and losses for AFS fixed maturity securities*

Global Atlantic's investments in AFS fixed maturity securities are reported at fair value with changes in fair value recorded in other comprehensive income as unrealized gains or losses, net of taxes and offsets. Certain AFS fixed maturity securities have experienced changes in fair value that Global Atlantic considers to be temporary in nature. Unrealized gains and losses can be created by changes in interest rates or by changes in credit spreads.

As of March 31, 2021, Global Atlantic had gross unrealized losses on below investment grade AFS fixed maturity securities of \$33 million based on NRSRO rating and \$12 million based on NAIC ratings.

*Mortgage and other loan receivables - Credit quality indicators*

Mortgage and other loan receivables consist of commercial and residential mortgage loans, and other loan receivables. As of March 31, 2021, 17% of Global Atlantic's total investments consisted of mortgage and other loan receivables. Global Atlantic invests in U.S. mortgage loans, comprised of first lien and mezzanine real estate loans, residential mortgage loans, consumer loans, and other loan receivables.

Global Atlantic's commercial mortgage loans may also be rated based on NAIC designations, with designations "CM1" and "CM2" considered to be investment grade. As of March 31, 2021, 91% of the commercial mortgage loan portfolio was rated investment grade based on NAIC designation. 100% of the commercial mortgage loan portfolio is in current status.

As of March 31, 2021, 92% of the residential mortgage loan portfolio is in current status, and approximately \$241.3 million is over 90 days past due (representing 5% of the total residential mortgage portfolio).

The loan-to-value ratio is expressed as a percentage of the current amount of the loan relative to the value of the underlying collateral. Approximately 89% of the commercial mortgage loans has a loan-to-value ratio of 70% or less, and approximately 0.5% has loan-to-value ratio over 90%.

Changing economic conditions affect Global Atlantic's valuation of commercial mortgage loans. Changing vacancies and rents are incorporated into the discounted cash flow analysis that Global Atlantic performs for monitored loans and may contribute to the establishment of (or increase or decrease in) a commercial mortgage loan valuation allowance for losses. In addition, Global Atlantic continuously monitors its commercial mortgage loan portfolio to identify risk. Areas of emphasis are properties that have exposure to specific geographic events, or have deteriorating credit.

The weighted average loan-to-value ratio for residential mortgage loans was 73% as of March 31, 2021.

Global Atlantic's residential mortgage loan portfolio is comprised mainly of re-performing loans that were purchased at a discount after they were modified and returned to performing status, as well as prime jumbo loans and mortgage loans backed by single family rental properties. Global Atlantic has also extended financing to counterparties in the form of repurchase agreements secured by mortgage loans, including performing and non-performing mortgage loans.

#### **Reconciliations to GAAP Measures**

The following tables reconcile the most directly comparable financial measures calculated and presented in accordance with GAAP to KKR's non-GAAP financial measures for the three months ended March 31, 2021 and 2020:

#### *Revenues*

	<b>Three Months Ended</b>	
	<b>March 31, 2021</b>	<b>March 31, 2020</b>
	(\$ in thousands)	
<b>Total GAAP Revenues</b>	<b>\$ 4,563,006</b>	<b>\$ (1,001,505)</b>
Insurance GAAP Revenues	(1,385,048)	—
Impact of Consolidation and Other	123,448	95,029
Capital Allocation-Based Income (GAAP)	(2,684,647)	1,382,077
Realized Carried Interest	165,142	361,331
Realized Investment Income	461,273	145,164
Insurance Segment Management Fees	22,930	—
Capstone Fees	(20,080)	(20,918)
Expense Reimbursements	(27,729)	(28,224)
<b>Total Asset Management Segment Revenues</b>	<b>\$ 1,218,295</b>	<b>\$ 932,954</b>

*Net Income (Loss) Attributable to KKR & Co. Inc. Common Stockholders*

	Three Months Ended	
	March 31, 2021	March 31, 2020
	(\$ in thousands)	
<b>Net Income (Loss) Attributable to KKR &amp; Co. Inc. Common Stockholders (GAAP)</b>	<b>\$ 1,644,245</b>	<b>\$ (1,288,865)</b>
Preferred Stock Dividends	25,591	8,341
Net Income (Loss) Attributable to Noncontrolling Interests	2,245,531	(2,947,429)
Income Tax Expense (Benefit)	438,739	(360,679)
<b>Income (Loss) Before Tax (GAAP)</b>	<b>\$ 4,354,106</b>	<b>\$ (4,588,632)</b>
Impact of Consolidation and Other	(1,378,567)	2,033,009
Equity-based Compensation - KKR Holdings	16,434	20,696
Preferred Stock Dividends	(8,341)	(8,341)
Income Taxes Paid	(151,120)	(60,035)
<i>Asset Management Adjustments:</i>		
Unrealized Carried Interest	(2,109,018)	1,659,940
Net Unrealized Gains (Losses)	(1,316,644)	1,974,531
Unrealized Performance Income Compensation	896,907	(675,874)
Strategic Corporate Transaction-Related Charges	4,875	—
Equity-based Compensation	49,761	49,334
Equity-based Compensation - Performance based	14,556	1,669
<i>Insurance Adjustments:</i>		
Net Gains (Losses) from Investments and Derivatives	289,235	—
Strategic Corporate Transaction-Related Charges	4,819	—
Equity-based and Other Compensation	7,411	—
Amortization of Acquired Intangibles	2,451	—
Income Taxes	(16,626)	—
<b>After-tax Distributable Earnings</b>	<b>\$ 660,239</b>	<b>\$ 406,297</b>
Interest Expense	57,545	47,434
Preferred Stock Dividends	8,341	8,341
Net Income Attributable to Noncontrolling Interests	3,192	1,089
Income Taxes Paid	151,120	60,035
<b>Distributable Operating Earnings</b>	<b>\$ 880,437</b>	<b>\$ 523,196</b>
Insurance Segment Operating Earnings	(63,265)	—
Realized Performance Income	(171,309)	(363,132)
Realized Performance Income Compensation	109,986	225,278
Realized Investment Income	(461,273)	(145,164)
Realized Investment Income Compensation	69,191	17,604
<b>Fee Related Earnings</b>	<b>\$ 363,767</b>	<b>\$ 257,782</b>
Insurance Segment Operating Earnings	63,265	—
Realized Performance Income	171,309	363,132
Realized Performance Income Compensation	(109,986)	(225,278)
Realized Investment Income	461,273	145,164
Realized Investment Income Compensation	(69,191)	(17,604)
Depreciation and Amortization	6,164	4,804
<b>Adjusted EBITDA</b>	<b>\$ 886,601</b>	<b>\$ 528,000</b>

*KKR & Co. Inc. Stockholders' Equity - Common Stock*

	As of	
	March 31, 2021	December 31, 2020
(\$ in thousands)		
<b>KKR &amp; Co. Inc. Stockholders' Equity - Series I and II Preferred Stock, Common Stock</b>	<b>\$ 13,077,710</b>	<b>\$ 12,118,472</b>
Series C Mandatory Convertible Preferred Stock	1,115,792	1,115,792
Impact of Consolidation and Other	419,546	520,710
KKR Holdings and Other Exchangeable Securities	7,209,833	6,512,382
Accumulated Other Comprehensive Income (AOCI) and Other (Insurance)	903,905	—
<b>Book Value</b>	<b>\$ 22,726,786</b>	<b>\$ 20,267,356</b>

The following table provides reconciliations of KKR's GAAP Shares of Common Stock Outstanding to Adjusted Shares:

	As of	
	March 31, 2021	December 31, 2020
<b>GAAP Shares of Common Stock Outstanding</b>	<b>578,269,039</b>	<b>572,893,738</b>
Adjustments:		
KKR Holdings Units	273,367,712	275,626,493
Other Exchangeable Securities <sup>(1)</sup>	1,222,489	—
Common Stock - Series C Mandatory Convertible Preferred Stock <sup>(2)</sup>	26,822,600	29,092,933
<b>Adjusted Shares <sup>(3)</sup></b>	<b>879,681,840</b>	<b>877,613,164</b>
<b>Unvested Shares of Common Stock and Other Exchangeable Securities <sup>(4)</sup></b>	<b>26,687,308</b>	<b>23,892,201</b>

(1) Consists of vested restricted holdings units granted under our 2019 Equity Incentive Plan, which are exchangeable for shares of KKR & Co. Inc. common stock.

(2) Assumes that all shares of Series C Mandatory Convertible Preferred Stock have been converted to shares of KKR & Co. Inc. common stock on March 31, 2021 and December 31, 2020.

(3) Amounts exclude unvested equity awards granted under our Equity Incentive Plans.

(4) Represents equity awards granted under our Equity Incentive Plans. The issuance of common stock of KKR & Co. Inc. pursuant to equity awards under our Equity Incentive Plans dilutes KKR common stockholders and KKR Holdings pro rata in accordance with their respective ownership interests in the KKR business. Excludes market condition awards that did not meet their market-price based vesting conditions as of March 31, 2021 and December 31, 2020.

### Liquidity

We manage our liquidity and capital requirements by (i) focusing on our cash flows before the consolidation of our funds and CFEs and the effect of changes in short term assets and liabilities, which we anticipate will be settled for cash within one year, and (ii) maintaining access to sufficient liquidity through various sources. The overall liquidity framework and cash management approach of our insurance business are also based on building an investment portfolio that is cash flow matched, providing cash inflows from insurance assets that meet our insurance companies' expected cash outflows to pay their liabilities. Our primary cash flow activities typically involve: (i) generating cash flow from operations; (ii) generating income from investment activities, by investing in investments that generate yield (namely interest and dividends), as well as through the sale of investments and other assets; (iii) funding capital commitments that we have made to, and advancing capital to, our funds and CLOs; (iv) developing and funding new investment strategies, investment products, and other growth initiatives, including acquisitions of other investments, assets, and businesses; (v) underwriting and funding commitments in our capital markets business; (vi) distributing cash flow to our stockholders and holders of our Series A Preferred Stock, Series B Preferred Stock and Series C Mandatory Convertible Preferred Stock; and (vii) paying borrowings, interest payments, and repayments under credit agreements, our senior and subordinated notes, and other borrowing arrangements. See "—Liquidity—Liquidity Needs—Dividends."

See "—Business Environment" for more details on factors that impact our business, financial performance, operating results and valuations.

### ***Sources of Liquidity***

Our primary sources of liquidity consist of amounts received from: (i) our operating activities, including the fees earned from our funds, portfolio companies, and capital markets transactions; (ii) realizations on carried interest from our investment funds; (iii) interest and dividends from investments that generate yield, including our investments in CLOs; (iv) in our insurance business, cash inflows in respect of new premiums, policyholder deposits, reinsurance transactions and funding agreements, including through memberships in Federal Home Loan Banks; (v) realizations on and sales of investments and other assets, including the transfers of investments for fund formations; and (vi) borrowings, including advances under our revolving credit facilities, debt offerings, committed repurchase agreements, uncommitted financing, and other borrowing arrangements. In addition, we may generate cash proceeds from sales of our equity securities.

Many of our investment funds provide carried interest. With respect to our private equity funds, carried interest is distributed to the general partner of a private equity fund with a clawback provision only after all of the following are met: (i) a realization event has occurred (e.g., sale of a portfolio company, dividend, etc.); (ii) the vehicle has achieved positive overall investment returns since its inception, in excess of performance hurdles where applicable, and is accruing carried interest; and (iii) with respect to investments with a fair value below cost, cost has been returned to fund investors in an amount sufficient to reduce remaining cost to the investments' fair value. As of March 31, 2021, certain of our funds had met the first and second criteria, as described above, but did not meet the third criteria. In these cases, carried interest accrues on the consolidated statement of operations, but will not be distributed in cash to us as the general partner of an investment fund upon a realization event. For a fund that has a fair value above cost, overall, and is otherwise accruing carried interest, but has one or more investments where fair value is below cost, the shortfall between cost and fair value for such investments is referred to as a "netting hole." When netting holes are present, realized gains on individual investments that would otherwise allow the general partner to receive carried interest distributions are instead used to return invested capital to our funds' limited partners in an amount equal to the netting hole. Once netting holes have been filled with either (a) return of capital equal to the netting hole for those investments where fair value is below cost or (b) increases in the fair value of those investments where fair value is below cost, then realized carried interest will be distributed to the general partner upon a realization event. A fund that is in a position to pay cash carry refers to a fund for which carried interest is expected to be paid to the general partner upon the next material realization event, which includes funds with no netting holes as well as funds with a netting hole that is sufficiently small in size such that the next material realization event would be expected to result in the payment of carried interest. Strategic investor partnerships with fund investors may require netting across the various funds in which they invest, which may reduce the carried interest we otherwise would have earned if such fund investors were to have invested in our funds without the existence of the strategic investor partnership. See "Risk Factors—Risks Related to Our Business—Strategic investor partnerships have longer investment periods and invest in multiple strategies, which may increase the possibility of a 'netting hole,' which will result in less carried interest for us, as well as clawback liabilities" in our Annual Report.

As of March 31, 2021, netting holes in excess of \$50 million existed at three of our private equity funds, which were Americas Fund XII of \$234 million, Asian Fund II of \$131 million and China Growth Fund of \$51 million. In accordance with the criteria set forth above, other funds currently have and may in the future develop netting holes, and netting holes for those and other funds may otherwise increase or decrease in the future.

We have access to funding under various credit facilities, other borrowing arrangements and other sources of liquidity that we have entered into with major financial institutions or which we receive from the capital markets.

For a discussion of our debt obligations, including our debt securities, revolving credit agreements and loans, see Note 10 "Debt Obligations" in our Annual Report and Note 16 "Debt Obligations" to the financial statements included elsewhere in this report.

### ***Liquidity Needs***

We expect that our primary liquidity needs will consist of cash required to:

- continue to support and grow our business lines, including funding our capital commitments made to existing and future funds, pay the costs related to fundraising and launching of new strategies, and otherwise supporting investment vehicles which we sponsor;
- seed or warehouse investments for the benefit of new strategies or funds, including CLOs, pending the contribution of committed capital by the investors in such funds, and advancing capital to our funds for operational or other needs;

- pay interest expense;
- service debt obligations, including the payment of obligations upon maturity or redemption, as well as any contingent liabilities that may give rise to future cash payments, including funding requirements to levered investment vehicles;
- fund cash operating expenses and contingencies, including litigation matters;
- pay corporate income taxes and other taxes;
- pay policyholders and amounts in our insurance business related to investment, reinvestment, reinsurance or funding agreement activity;
- pay amounts that may become due under our tax receivable agreement with KKR Holdings;
- pay cash dividends in accordance with our dividend policy for our common stock or the terms of our preferred stock;
- underwrite commitments, advance loan proceeds and fund syndication commitments within our capital markets business, and fund any net capital or regulatory requirements of our capital markets companies;
- post or return collateral in respect of derivative contracts;
- support and acquire other assets for our Principal Activities business line, including other businesses, investments and assets, some of which may be required to satisfy risk retention requirements for CLOs (to the extent it continues to apply); and
- repurchase KKR's common stock or retire equity awards pursuant to the share repurchase program or other securities issued by KKR.

For a discussion of KKR's share repurchase program, see "Part II. Item 2. Unregistered Sales of Equity Securities and Use of Proceeds — Share Repurchases in the First Quarter of 2021."

On February 1, 2021 we funded the \$4.7 billion required to acquire Global Atlantic with \$2.9 billion of cash from our own balance sheet, with the balance provided by rollover and co-investors. The purchase price is subject to certain post-closing adjustments, which we expect will require us to pay an incremental amount less than the \$150 million maximum as provided under the merger agreement for the Global Atlantic acquisition.

### Capital Commitments

The agreements governing our active investment funds generally require the general partners of the funds to make minimum capital commitments to such funds, which generally range from 2% to 8% of a fund's total capital commitments at final closing, but may be greater for certain funds (i) where we are pursuing newer strategies, (ii) where third party investor demand is limited, and (iii) where a larger commitment is consistent with the asset allocation strategy for our Principal Activities business line.

The following table presents our uncalled commitments to our active investment funds and other vehicles as of March 31, 2021:

	<b>Uncalled Commitments</b>
	<b>(\$ in thousands)</b>
<b>Private Markets</b>	
Asian Fund IV	\$ 1,118,500
Core Investment Vehicles	919,400
Americas Fund XII	325,700
Real Estate Partners Americas III	300,000
Property Partners Americas	261,000
Asian Fund III	216,300
Asia Real Estate Partners	215,400
Real Estate Partners Europe II	200,000
Asia Pacific Infrastructure Investors	193,900
Global Infrastructure Investors III	185,300
Next Generation Technology Growth II	115,500
Energy Income and Growth Fund II	113,900
European Fund V	96,400
Health Care Strategic Growth Fund	80,700
Global Impact Fund	57,600
Real Estate Partners Americas II	39,100
Real Estate Credit Opportunity Partners II	29,700
Other Private Markets Vehicles	1,121,400
<b>Total Private Markets Commitments</b>	<b>5,589,800</b>
<b>Public Markets</b>	
Dislocation Opportunities Fund	260,000
Lending Partners Europe II	33,700
Special Situations Fund II	26,800
Private Credit Opportunities Partners II	16,900
Lending Partners Europe	11,300
Lending Partners III	8,800
Other Public Markets Vehicles	499,500
<b>Total Public Markets Commitments</b>	<b>857,000</b>
<b>Total Uncalled Commitments</b>	<b>\$ 6,446,800</b>

### Other Commitments

In addition to the uncalled commitments to our investment funds as shown above, KKR has entered into contractual commitments with respect to (i) the purchase of investments and other assets primarily in our Principal Activities business line and (ii) underwriting transactions, debt financing, and syndications in our capital markets business line. As of March 31, 2021, these commitments amounted to \$310.3 million and \$965.2 million, respectively.

Whether these amounts are actually funded, in whole or in part, depends on the contractual terms of such commitments, including the satisfaction or waiver of any conditions to closing or funding. Our capital markets business has arrangements with third parties, which reduce our risk when underwriting certain debt transactions, and thus our unfunded commitments as of



March 31, 2021 have been reduced to reflect the amount to be funded by such third parties. In the case of purchases of investments or assets in our Principal Activities business line, the amount to be funded includes amounts that are intended to be syndicated to third parties, and the actual amounts to be funded may be less than shown.

On January 14, 2020, KKR committed to invest up to an additional \$150 million in our India debt finance company to support its alternative credit business in India. As of March 31, 2021, none of the \$150 million commitment has been invested.

#### *Tax Receivable Agreement*

We may be required to acquire KKR Group Partnership Units from time to time pursuant to our exchange agreement with KKR Holdings, which may result in an increase in our tax basis of the assets of KKR Group Partnership at the time of an exchange of KKR Group Partnership Units. We have entered into a tax receivable agreement with KKR Holdings, which requires us to pay to KKR Holdings, or to current and former limited partners who have exchanged KKR Holdings units for KKR's common stock as transferees of KKR Group Partnership Units, 85% of the amount of cash savings, if any, in U.S. federal, state and local income tax that we realize as a result of the increase in tax basis described above, as well as 85% of the amount of any such savings we realize as a result of increases in tax basis that arise due to future payments under the agreement. As of March 31, 2021, an undiscounted payable of \$214.9 million has been recorded in due to affiliates in the financial statements representing management's best estimate of the amounts currently expected to be owed under the tax receivable agreement. As of March 31, 2021, approximately \$50.2 million of cumulative cash payments have been made under the tax receivable agreement.

#### *Dividends*

A dividend of \$0.145 per share of our common stock has been declared for the quarter ended March 31, 2021, which will be paid on June 1, 2021 to holders of record of our common stock as of the close of business on May 17, 2021.

A dividend of \$0.421875 per share of Series A Preferred Stock has been declared and set aside for payment on June 15, 2021 to holders of record of Series A Preferred Stock as of the close of business on June 1, 2021. A dividend of \$0.406250 per share of Series B Preferred Stock has been declared and set aside for payment on June 15, 2021 to holders of record of Series B Preferred Stock as of the close of business on June 1, 2021. A dividend of \$0.75 per share of Series C Mandatory Convertible Preferred Stock has been declared and set aside for payment on June 15, 2021 to holders of record of Series C Mandatory Convertible Preferred Stock as of the close of business on June 1, 2021.

When KKR & Co. Inc. receives distributions from KKR Group Partnership, other equityholders in KKR Group Partnership including KKR Holdings receive their pro rata share of such distributions from KKR Group Partnership.

The declaration and payment of dividends to our common stockholders will be at the sole discretion of our board of directors, and our dividend policy may be changed at any time. Our current dividend policy is to pay dividends to holders of our common stock in an annual aggregate amount of \$0.58 per share (or a quarterly dividend of \$0.145 per share) beginning with the dividend announced with respect to the results for the first quarter of 2021. The declaration of dividends is subject to the discretion of our board of directors based on a number of factors, including KKR's future financial performance and other considerations that the board deems relevant, and compliance with the terms of KKR & Co. Inc.'s certificate of incorporation and applicable law. For U.S. federal income tax purposes, any dividends we pay (including dividends on our preferred stock) generally will be treated as qualified dividend income for U.S. individual stockholders to the extent paid out of our current or accumulated earnings and profits, as determined for U.S. federal income tax purposes. There can be no assurance that future dividends will be made as intended or at all or that any particular dividend policy for our common stock will be maintained. Furthermore, the declaration and payment of distributions by KKR Group Partnership and our other subsidiaries may also be subject to legal, contractual and regulatory restrictions, including restrictions contained in our debt agreements and the terms of the preferred units of KKR Group Partnership.

#### **Preferred Stock**

For a discussion of KKR's equity, including our preferred stock, see Financial Statements and Supplementary Data—Note 21 "Equity" to the financial statements included elsewhere in this report.

### Other Liquidity Needs

From time to time, we fund various underwriting, syndication and fronting commitments in our capital markets business in connection with the arranging or underwriting of loans, securities or other financial instruments, for which we may draw all or substantially all of our availability for borrowings under the KCM Short-Term Credit Agreement, KCM Credit Agreement and Global Atlantic Revolving Credit Facility. We generally expect these borrowings to be repaid promptly as these commitments are syndicated to third parties or otherwise fulfilled or terminated, although we may in some instances elect to retain a portion of the commitments for our own investment.

### Contractual Obligations, Commitments and Contingencies

In the ordinary course of business, we (including Global Atlantic) and our consolidated funds and CFEs enter into contractual arrangements that may require future cash payments. The following table sets forth information relating to anticipated future cash payments as of March 31, 2021 excluding consolidated funds and CFEs with a reconciliation of such amounts to the anticipated future cash payments of KKR (including Global Atlantic) and our consolidated funds and CFEs.

Types of Contractual Obligations	Payments due by Period				
	<1 Year	1-3 Years	3-5 Years	>5 Years	Total
	(\$ in millions)				
<b>Asset Management</b>					
Uncalled commitments to investment funds <sup>(1)</sup>	\$ 6,446.8	\$ —	\$ —	\$ —	\$ 6,446.8
Debt payment obligations <sup>(2)</sup>	—	225.8	45.2	5,770.8	6,041.8
Interest obligations on debt payment obligations <sup>(3)</sup>	222.9	467.6	465.9	3,805.0	4,961.4
Underwriting commitments <sup>(4)</sup>	782.1	—	—	—	782.1
Lending commitments <sup>(5)</sup>	183.1	—	—	—	183.1
Purchase commitments <sup>(6)</sup>	160.3	—	—	—	160.3
Lease obligations	24.2	56.9	35.3	107.8	224.3
<b>Insurance <sup>(7)</sup></b>					
Policy liabilities <sup>(8)</sup>	9,263.6	20,962.2	18,758.7	78,673.8	127,658.3
Debt payment obligations <sup>(9)</sup>	150.0	495.0	—	750.0	1,395.0
Interest obligations on debt payment obligations <sup>(10)</sup>	65.6	103.2	90.5	576.3	835.6
Purchase and lease commitments <sup>(11)</sup>	11.8	22.6	23.2	196.7	254.3
Total Contractual Obligations of KKR	\$ 17,310.4	\$ 22,333.3	\$ 19,418.7	\$ 89,880.5	\$ 148,943.0
(+) Uncalled commitments of consolidated funds <sup>(12)</sup>	11,711.7	—	—	—	11,711.7
(+) Debt payment obligations of consolidated funds, CFEs and Other <sup>(13)</sup>	3,313.6	3,454.4	131.2	21,342.6	28,241.8
(+) Corporate real estate borrowings <sup>(14)</sup>	490.0	—	—	—	490.0
(+) Interest obligations of consolidated funds, CFEs and Other <sup>(15)</sup>	647.6	966.6	894.5	2,043.6	4,552.3
(+) Purchase commitments of consolidated funds <sup>(16)</sup>	454.2	—	—	—	454.2
<b>Total Consolidated Contractual Obligations</b>	<b>\$ 33,927.5</b>	<b>\$ 26,754.3</b>	<b>\$ 20,444.4</b>	<b>\$ 113,266.7</b>	<b>\$ 194,393.0</b>

- (1) These uncalled commitments represent amounts committed by us to fund a portion of the purchase price paid for each investment made by our investment funds which are actively investing. Because capital contributions are due on demand, the above commitments have been presented as falling due within one year. However, given the size of such commitments and the pace at which our investment funds make investments, we expect that the capital commitments presented above will be called over a period of several years. See "—Revolving Credit Agreements, Senior Notes, KFN Debt Obligation, KFN Securities and Real Estate Financing—Liquidity Needs."
- (2) Amounts include senior notes and subordinated notes issued by KKR and its subsidiaries. KFN's debt obligations are non-recourse to KKR beyond the assets of KFN.
- (3) These interest obligations on debt represent estimated interest to be paid over the term of the related debt obligation, which has been calculated assuming the debt outstanding at March 31, 2021 is not repaid until its maturity. Future interest rates are assumed to be those in effect as of March 31, 2021, including both variable and fixed rates, as applicable, provided for by the relevant debt agreements. The amounts presented above include accrued interest on outstanding indebtedness.
- (4) Represents various commitments in our capital markets business in connection with the underwriting of loans, securities and other financial instruments. These commitments are shown net of amounts syndicated.

- (5) Represents obligations in our capital markets business to lend under various revolving credit facilities.
- (6) Represents commitments of KKR and KFN to fund the purchase of various investments.
- (7) Global Atlantic has other obligations related to collateral payable held for derivative instruments (\$804 million) and outstanding commitments to make investments in commercial mortgage loans, other lending facilities and other investments (\$884 million) which have not been included in the above table as the exact timing of these payments cannot be estimated. Global Atlantic's debt obligations are non-recourse to KKR beyond the assets of Global Atlantic.
- (8) Policy liabilities for insurance obligations consist of amounts required to meet future obligations for future policy benefits and policy account balances. Amounts presented in the table represent estimated cash payments under such contracts, including significant assumptions related to the receipt of future premiums, mortality, lapse, renewal, withdrawal, and annuitization comparable with actual experience. These assumptions also include market growth and policy crediting consistent with assumptions used in amortizing DAC. All estimated cash payments are not discounted to present value. Accordingly, the total of cash flows presented for all years of \$127.7 billion significantly exceeds total policy liabilities of \$102.6 billion recorded on the statements of financial condition as of March 31, 2021. Estimated cash payments are also presented gross of reinsurance. Due to the significance of the assumptions used, the amounts presented could differ materially from actual results.
- (9) The payments due by period for debt obligations reflects the contractual maturities of principal.
- (10) Reflects estimated future interest payments. Future interest on variable rate debt (which includes borrowing under our revolving credit facility, the term loan and the subordinated debentures) was computed using prevailing rates as of March 31, 2021 and, as such, does not consider the impact of future rate movements. Future interest on fixed rate debt was computed using the stated rate on the obligations.
- (11) Reflects operational servicing agreements with third-party administrators for policy administration.
- (12) Represents uncalled commitments of our consolidated funds excluding KKR's portion of uncalled commitments as the general partner of the respective funds. Because capital contributions are due on demand, the above commitments have been presented as falling due within one year. However, given the size of such commitments and the pace at which our investment funds make investments, we expect that the capital commitments presented above will be called over a period of several years. See "—Revolving Credit Agreements, Senior Notes, KFN Debt Obligation, KFN Securities and Real Estate Financing—Liquidity Needs."
- (13) Amounts include (i) financing arrangements entered into by our consolidated funds with the objective of providing liquidity to the funds of \$7.9 billion, (ii) debt securities issued by our consolidated CLOs of \$18.7 billion and (iii) borrowings collateralized by fund investments, fund co-investments and other assets held by levered investment vehicles of \$1.6 billion. Debt securities issued by consolidated CLO entities are supported solely by the investments held at the CLO vehicles and are not collateralized by assets of any other KKR entity. Borrowings by levered investment vehicles are supported solely by the investments held at the investment vehicles and are not collateralized by assets of any other KKR entity. Obligations under financing arrangements entered into by our consolidated funds are generally limited to our pro rata equity interest in such funds. Our management companies bear no obligations to repay any financing arrangements at our consolidated funds.
- (14) Represents a debt obligation in connection with the ownership of KKR office space.
- (15) The interest obligations on debt of our CFEs and other borrowings represent estimated interest to be paid over the term of the related debt obligation, which has been calculated assuming the debt outstanding at March 31, 2021 is not repaid until its maturity. Future interest rates are assumed to be those in effect as of March 31, 2021, including both variable and fixed rates, as applicable, provided for by the relevant debt agreements. The amounts presented above include accrued interest on outstanding indebtedness.
- (16) Represents commitments of consolidated funds to fund the purchase of various investments.

The commitment table above excludes KKR's commitment to invest up to an additional \$150 million in our India finance company to support its alternative credit business in India. Additionally, the commitment table above excludes contractual amounts owed under the tax receivable agreement because the ultimate amount and timing of the amounts due are not presently known. See "—Liquidity Needs—Tax Receivable Agreement" in this report and "Risk Factors—We will be required to pay our principals for most of the benefits relating to our use of tax attributes we receive from prior and future exchanges of our common stock for KKR Group Partnership Units and related transactions, and the timing and value of these tax attributes differ from those of our restricted stock units" in our Annual Report.

We may incur contingent liabilities for claims that may be made against us in the future. We enter into contracts that contain a variety of representations, warranties and covenants, including indemnifications. For example, certain of our investment funds and KKR have provided certain indemnities relating to environmental and other matters and have provided nonrecourse carve-out guarantees for fraud, willful misconduct and other customary wrongful acts, each in connection with the financing of certain real estate investments that we have made, including KKR's corporate real estate, and certain investment vehicles we manage or sponsor. KKR has also (i) provided credit support regarding repayment and funding obligations to third-party lenders to certain of its employees, excluding its executive officers, in connection with their personal investments in KKR investment funds and a levered investment vehicle and (ii) provided credit support to one of our hedge fund partnerships. We have also indemnified employees and non-employees against potential liabilities, in connection with their service as described under "Certain Relationships and Related Transactions, and Director Independence—Indemnification of Directors, Officers and Others" in our Annual Report. In addition, we have also provided credit support to certain of our subsidiaries' obligations in connection with certain investment vehicles or partnerships that we manage. For example, KKR has guaranteed the obligations of a general partner to post collateral on behalf of its investment vehicle in connection with such vehicle's derivative transactions. In addition, we have also agreed to be liable for certain investment losses (up to a maximum of approximately \$116 million) and/or for providing liquidity in the events specified in the governing documents of certain investment vehicles. Our maximum exposure under these arrangements is currently unknown as our liabilities for these matters would require a claim to be made against us in the future.

The partnership documents governing our carry-paying funds generally include a "clawback" provision that, if triggered, may give rise to a contingent obligation requiring the general partner to return amounts to the fund for distribution to the fund investors at the end of the life of the fund. See Note 23 "Commitments and Contingencies—Contingent Repayment Guarantees" to our financial statements included elsewhere in this report for further information on KKR's potential clawback obligations.

### ***Off Balance Sheet Arrangements***

Other than contractual commitments and other legal contingencies incurred in the normal course of our business, we do not have any off-balance sheet financings or liabilities.

### **Critical Accounting Policies**

The preparation of our financial statements in accordance with GAAP requires our management to make estimates and judgments that affect the reported amounts of assets and liabilities, disclosure of contingent assets and liabilities, and reported amounts of fees, expenses and investment income. Our management bases these estimates and judgments on available information, historical experience and other assumptions that we believe are reasonable under the circumstances. However, these estimates, judgments and assumptions are often subjective and may be impacted negatively based on changing circumstances or changes in our analyses. If actual amounts are ultimately different from those estimated, judged or assumed, revisions are included in the financial statements in the period in which the actual amounts become known. We believe our critical accounting policies could potentially produce materially different results if we were to change underlying estimates, judgments or assumptions.

The following discusses certain aspects of our critical accounting policies. For a full discussion of these and all critical accounting policies, see Note 2 "Summary of Significant Accounting Policies" to the financial statements included elsewhere in this report.

### **Critical Accounting Policies - Asset Management**

#### ***Recognition of Investment Income***

Investment income consists primarily of the net impact of: (i) realized and unrealized gains and losses on investments; (ii) dividends; (iii) interest income; (iv) interest expense and (v) foreign exchange gains and losses relating to mark-to-market activity on foreign exchange forward contracts, foreign currency options, foreign denominated debt and debt securities issued by consolidated CFEs.

Certain of our investment funds are consolidated. When a fund is consolidated, the portion of our funds' investment income that is allocable to our carried interests and capital investments is not shown in the consolidated statements of operations. For funds that are consolidated, all investment income (loss), including the portion of a funds' investment income (loss) that is allocable to KKR's carried interest, is included in investment income (loss) on the consolidated statements of operations. The carried interest that KKR retains in net income (loss) attributable to KKR & Co. Inc. is reflected as an adjustment to net income (loss) attributable to noncontrolling interests. However, because certain of our funds remain consolidated and because we hold a minority economic interest in these funds' investments, our share of the investment income is less than the total amount of investment income presented in the consolidated statements of operations for these consolidated funds.

#### ***Recognition of Carried Interest in the Statement of Operations***

Carried interest entitles the general partner of a fund to a greater allocable share of the fund's earnings from investments relative to the capital contributed by the general partner and correspondingly reduces noncontrolling interests' attributable share of those earnings. Carried interest is earned by the general partner of those funds to the extent that cumulative investment returns are positive and where applicable, preferred return thresholds have been met. If these investment returns decrease or turn negative in subsequent periods, recognized carried interest will be reversed and reflected as losses in the statement of operations. For funds that are not consolidated, amounts earned pursuant to carried interest are included in capital allocation-based income (loss) in the consolidated statements of operations. Amounts earned pursuant to carried interest at consolidated funds are eliminated upon consolidation of the fund and are included as investment income (loss) in net gains (losses) from investment activities along with all of the other investment gains and losses at the consolidated fund.

Carried interest is recognized in the statement of operations based on the contractual conditions set forth in the agreements governing the fund as if the fund were terminated and liquidated at the reporting date and the fund's investments were realized at the then estimated fair values. Due to the extended durations of our private equity funds, we believe that this approach results

in income recognition that best reflects our periodic performance in the management of those funds. Amounts earned pursuant to carried interest are earned by the general partner of those funds to the extent that cumulative investment returns are positive and where applicable, preferred return thresholds have been met. If these investment amounts earned decrease or turn negative in subsequent periods, recognized carried interest will be reversed and to the extent that the aggregate amount of carry distributions received by the general partner during the term of the fund exceed the amount to which the general partner was ultimately entitled, a clawback obligation would be recorded. For funds that are not consolidated, this clawback obligation, if any, is reflected as a reduction of our investment balance as this is where carried interest is initially recorded. For funds that are consolidated, this clawback obligation, if any, is reflected as an increase in noncontrolling interests in the consolidated statements of financial condition.

Prior to 2012, most of our historical private equity funds that provide for carried interest do not have a preferred return. For these funds, the management company is required to refund up to 20% of any management fees earned from its limited partners in the event that the fund recognizes carried interest. At such time as the fund recognizes carried interest in an amount sufficient to cover 20% of the management fees earned or a portion thereof, a liability due to the fund's limited partners is recorded and revenue is reduced for the amount of the carried interest recognized, not to exceed 20% of the management fees earned. The refunds to the limited partners are paid, and liabilities relieved, at such time that the underlying investment is sold and the associated carried interest is realized. In the event that a fund's carried interest is not sufficient to cover all or a portion of the amount that represents 20% of the earned management fees, such management fees would be retained and not returned to the funds' limited partners.

Most of our investment funds that provide for carried interest and were launched after 2012, however, have a preferred return. In this case, the management company does not refund the management fees earned from the limited partners of the fund as described above. Instead, the management fee is effectively returned to the limited partners through a reduction of the realized gain on which carried interest is calculated. To calculate the carried interest, KKR calculates whether a preferred return has been achieved based on an amount that includes all of the management fees paid by the limited partners as well as the other capital contributions and expenses paid by them to date. To the extent the fund has exceeded the preferred return at the time of a realization event, and subject to any other conditions for the payment of carried interest like netting holes, carried interest is distributed to the general partner. Until the preferred return is achieved, no carried interest is recorded. Thereafter, the general partner is entitled to a catch up allocation such that the general partner's carried interest is paid in respect of all of the fund's net gains, including the net gains used to pay the preferred return, until the general partner has received the full percentage amount of carried interest that the general partner is entitled to under the terms of the fund. In general, investment funds that entitle the management company to receive an incentive fee have a preferred return and are calculated on a similar basis that takes into account management fees paid.

## **Critical Accounting Policies - Insurance**

### ***Policy liabilities***

Policy liabilities, or collectively, "reserves," are the portion of past premiums or assessments received that are set aside to meet future policy and contract obligations as they become due. Interest accrues on the reserves and on future premiums, which may also be available to pay for future obligations. Global Atlantic establishes reserves to pay future policy benefits, claims, and certain expenses for its life policies and annuity contracts.

Global Atlantic's reserves are estimated based on models that include many actuarial assumptions and projections. These assumptions and projections, which are inherently uncertain, involve significant judgment, including assumptions as to the levels and/or timing of premiums, benefits, claims, expenses, interest credits, investment results (including equity market returns), mortality, longevity, and persistency.

The assumptions on which reserves are based are intended to represent an estimation of experience for the period that policy benefits are payable. Global Atlantic reviews the adequacy of its reserves and the assumptions underlying those reserves at least annually. Global Atlantic cannot, however, determine with precision the amount or the timing of actual benefit payments. If actual experience is better than or equal to the assumptions, then reserves would be adequate to provide for future benefits and expenses. If experience is worse than the assumptions, additional reserves may be required to meet future policy and contract obligations. This would result in a charge to our net income during the period in which excess benefits are paid or an increase in reserves occurs.

For a majority of Global Atlantic's in-force policies, including its universal life policies and most annuity contracts, the base policy reserve is equal to the account value. For these products, the account value represents its obligation to repay to the policyholder the amounts held on deposit. However, there are several significant blocks of business where policy reserves, in

addition to the account value, are explicitly calculated, including variable annuities, fixed-indexed annuities, universal life products with secondary guarantees, indexed universal life and preneed policies.

*Guaranteed minimum death benefits ("GMDB")*

Some of Global Atlantic's variable annuity and fixed-indexed annuity contracts contain a GMDB feature that provides a guarantee that the benefit received at death will be no less than a prescribed minimum amount, even if the account balance is reduced to zero. This amount is based on either the net deposits paid into the contract, the net deposits accumulated at a specified rate, the highest historical account value on a contract anniversary, or sometimes a combination of these values. If the GMDB is higher than the current account value at the time of death, Global Atlantic incurs a cost equal to the difference.

*Guaranteed minimum withdrawal benefits ("GMWB")*

Global Atlantic issues fixed-indexed annuity and variable annuity contracts with a guaranteed minimum withdrawal feature. GMWB are an optional benefit where the contract owner is entitled to withdraw a maximum amount of their benefit base each year.

Once exercised, living benefit features provide annuity policyholders with a minimum guaranteed stream of income for life. A policyholder's annual income benefit is generally based on an annual withdrawal percentage multiplied by the benefit base. The benefit base is defined in the policy and is generally the initial premium, reduced by any partial withdrawals and increased by a defined percentage, formula or index credits. Any living benefit payments are first deducted from the account value. Global Atlantic is responsible for paying any excess guaranteed living benefits still owed after the account value has reached zero.

The ultimate cost of these benefits will depend on the level of market returns and the level of contractual guarantees, as well as policyholder behavior, including surrenders, withdrawals, and benefit utilization. For fixed-indexed annuity products, costs also include certain non-guaranteed terms that impact the ultimate cost, such as caps on crediting rates that Global Atlantic can, in its discretion, reset annually.

*GMDB and GMWB sensitivities*

As of March 31, 2021, the GMDB and GMWB liability balance totaled \$946 million. As of March 31, 2021, the liability balances for GMDB were \$22 million for fixed-indexed annuities and \$23 million for variable annuities. As of March 31, 2021, the liability balances for GMWB were \$901 million for fixed-indexed annuities. The increase (decrease) to the GMDB and GMWB liability balance as a result of hypothetical changes in projected assessments, equity market prices, and annual equity growth is summarized in the table below. This sensitivity considers the direct effect of such changes only and not changes in any other assumptions used in or items considered in the measurement of such balances.

	<b>March 31, 2021</b>	
<i>(\$ in thousands)</i>		
Balance	\$	946,407
<b>Hypothetical change:</b>		
+10% future assessments(1)		(10,670)
-10% future assessments(1)		11,195
+10% equity market prices		(7,679)
-10% equity market prices		8,813
1% lower annual equity growth		1,936

*Note: Hypothetical changes to the liability balance do not reflect the impact of related hedges.*

*(1) The assessments used to accrue liabilities are generally based on investment yields, realized gains and losses, rider charges, surrender charges, and asset-based fees, such as mortality and expense fees.*

### ***Embedded derivatives***

Global Atlantic's fixed-indexed annuity, variable annuity and indexed universal life products contain equity-indexed features, which are considered embedded derivatives and are required to be measured at fair value.

The embedded derivative is calculated as the present value of future projected benefits in excess of the projected guaranteed benefits, using an option budget as the indexed account value growth rate. In addition, the fair value of the embedded derivative is reduced to reflect the risk of non-performance on Global Atlantic's obligations (i.e., own credit risk).

Changes in interest rates, future index credits, Global Atlantic's own credit risk, projected withdrawal and surrender activity, and mortality on fixed-indexed annuity and indexed universal life contracts can have a significant impact on the value of the embedded derivative.

#### *Valuation of embedded derivatives – Fixed-indexed annuities*

Fixed-indexed annuity contracts allow the policyholder to elect a fixed interest rate of return or a market indexed strategy where interest credited is based on the performance of an index, such as the S&P 500 Index, or other indexes. The market indexed strategy is an embedded derivative, similar to a call option. The fair value of the embedded derivative is computed as the present value of benefits attributable to the excess of the projected policy contract values over the projected minimum guaranteed contract values. The projections of policy contract values are based on assumptions for future policy growth, which include assumptions for expected index credits, future equity option costs, volatility, interest rates, and policyholder behavior. The projections of minimum guaranteed contract values include the same assumptions for policyholder behavior as are used to project policy contract values. The embedded derivative cash flows are discounted using a risk-free interest rate increased by a non-performance risk spread tied to Global Atlantic's own credit rating.

#### *Valuation of embedded derivatives – Indexed universal life*

Indexed universal life products allow a policyholder's account value to grow based on the performance of certain equity indexes, which result in an embedded derivative similar to a call option. The embedded derivative related to the index is bifurcated from the host contract and measured at fair value. The valuation of the embedded derivative is the present value of future projected benefits in excess of the projected guaranteed benefits, using the option budget as the indexed account value growth rate and the guaranteed interest rate as the guaranteed account value growth rate. Present values are based on discount rate curves determined at the valuation date/issue date as well as assumed lapse and mortality rates. The discount rate equals the forecast treasury rate plus a non-performance risk spread tied to Global Atlantic's own credit rating. Changes in discount rates and other assumptions such as spreads and/or option budgets can have a substantial impact on the embedded derivative.

#### *Valuation of embedded derivatives – Variable annuities*

Variable annuity contracts offered and assumed by Global Atlantic provide the contractholder with GMDB and/or GMWB. The liabilities for these benefits are included in policy liabilities in the consolidated statement of financial condition. The change in the liabilities for these benefits is included in policy benefits and claims in the consolidated statements of operation.

Global Atlantic has issued variable annuity contracts with GMDB features. Global Atlantic elected the fair value option to measure the liability for certain of these variable annuity contracts, valued at \$566 million as March 31, 2021. Fair value is calculated as the present value of the estimated death benefits less the present value of the GMDB fees, using 1,000 risk neutral scenarios. Global Atlantic discounts the cash flows using U.S. Treasury rates plus an adjustment for its own company credit risk.

Global Atlantic also issues variable annuity contracts with a GMWB. The GMWB feature represents an embedded derivative. The embedded derivative is required to be bifurcated and measured at fair value. This liability is calculated as the present value of the excess GMWB claims less the present value of GMWB fees, using 1,000 risk neutral scenarios. Global Atlantic discounts the cash flows using U.S. Treasury rates plus an adjustment for its own company credit risk.

As of March 31, 2021, the embedded derivative liability balance totaled \$896.6 million for fixed-indexed annuities, \$434.2 million for indexed universal life and \$88.3 million for variable annuities. As of March 31, 2021, variable annuities accounted for using the fair value option was \$566 million. The increase (decrease) to the embedded derivatives on fixed-indexed annuity, indexed universal life, and variable annuity products as a result of hypothetical changes in interest rates, non-performance risk premium, and equity market prices is summarized in the table below. This sensitivity considers the direct effect of such changes only and not changes in any other assumptions used in or items considered in the measurement of such balances.



	March 31, 2021			
	FIA	IUL	VA	VA (FVO)
<i>(\$ in thousands)</i>				
Balance	\$ 896,582	\$ 434,242	\$ 88,327	\$ 565,642
<b>Hypothetical change:</b>				
+50 bps interest rates	(22,090)	(4,260)	(65,781)	(33,550)
-50 bps interest rates	25,328	5,035	76,520	36,401
+25bps non-performance risk premium	13,875	2,250	16,627	10,809
-25bps non-performance risk premium	(13,875)	(2,250)	(16,627)	(10,809)
+10% equity market prices	264,429	45,380	(49,876)	(25,010)
-10% equity market prices	(212,655)	(67,640)	61,853	29,250

Note: Hypothetical changes to the liability balances do not reflect the impact of related hedges.

*Valuation of embedded derivatives in modified coinsurance or funds withheld*

Global Atlantic's reinsurance agreements include modified coinsurance and coinsurance with funds withheld arrangements that include terms that require payment by the ceding company of a principal amount plus a return that is based on a proportion of the ceding company's return on a designated portfolio of assets. Because the return on the receivable held by the assuming company is not clearly and closely related to the host insurance contract, these contracts are deemed to contain embedded derivatives, which are measured at fair value. Global Atlantic is exposed to both the market risk and the credit risk of the assets. Changes in discount rates and other assumptions can have a significant impact on this embedded derivative. The fair value of the embedded derivatives is included in the funds withheld receivable at interest and funds withheld payable at interest line items on the consolidated statement of financial condition. The change in the fair value of the embedded derivatives is recorded in net investment gains (losses) in the consolidated statement of operations.

As of March 31, 2021, the embedded derivative balance for modified coinsurance or funds withheld arrangements was a \$369.1 million net asset (\$55.9 million in funds withheld receivables at interest, and \$(313.2) million in funds withheld payable at interest.) The increase (decrease) to the balance as a result of hypothetical changes in credit spreads and interest rates is summarized in the table below. This sensitivity considers the direct effect of such changes only and not changes in any other factors that impact the embedded derivative balance for modified coinsurance or funds withheld arrangements.

	March 31, 2021	
	Embedded derivative on funds withheld receivable at interest	Embedded derivative on funds withheld payable at interest
<i>(\$ in thousands)</i>		
Balance	\$ 55,883	\$ (313,230)
<b>Hypothetical change:</b>		
+25 bps credit spreads	(31,696)	(204,250)
-25 bps credit spreads	31,696	204,250
+50 bps interest rates	(25,046)	(441,000)
-50 bps interest rates	33,277	441,000

Note: Hypothetical changes to the funds withheld receivable and payable embedded derivative balances do not reflect the impact of related hedges or trading assets which back the funds withheld at interest.



## **Critical Accounting Policies - Combined**

### **Fair Value Measurements**

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date under current market conditions.

GAAP establishes a hierarchical disclosure framework which prioritizes and ranks the level of market price observability used in measuring financial instruments at fair value. Investments and other financial instruments measured and reported at fair value are classified and disclosed based on the observability of inputs used in the determination of fair values, as follows:

#### ***Level I***

Pricing inputs are unadjusted, quoted prices in active markets for identical assets or liabilities as of the measurement date.

#### ***Level II***

Pricing inputs are other than quoted prices in active markets, which are either directly or indirectly observable as of the measurement date, and fair value is determined through the use of models or other valuation methodologies.

#### ***Level III***

Pricing inputs are unobservable for the financial instruments and include situations where there is little, if any, market activity for the financial instrument. The inputs into the determination of fair value require significant management judgment or estimation. The valuation of our Level III investments at March 31, 2021 represents management's best estimate of the amounts that we would anticipate realizing on the sale of these investments in an orderly transaction at such date.

In certain cases, the inputs used to measure fair value may fall into different levels of the fair value hierarchy. In such cases, the level in the fair value hierarchy within which the fair value measurement in its entirety falls has been determined based on the lowest level input that is significant to the fair value measurement in its entirety.

#### ***Level III Valuation Methodologies***

Our investments and financial instruments are impacted by various economic conditions and events outside of our control that are difficult to quantify or predict, which may have a significant impact on the valuation of our investments and, therefore, on the carried interest and investment income we realize. Additionally, a change in interest rates could have a significant impact on valuations.

Across the total Level III private equity investment portfolio (including core investments), and including investments in both consolidated and unconsolidated investment funds, approximately 60% of the fair value is derived from investments that are valued based exactly 50% on market comparables and 50% on a discounted cash flow analysis. Less than 5% of the fair value of this Level III private equity investment portfolio is derived from investments that are valued either based 100% on market comparables or 100% on a discounted cash flow analysis. As of March 31, 2021, the overall weights ascribed to the market comparables methodology, the discounted cash flow methodology, and a methodology based on pending sales for this portfolio of Level III private equity investments were 39%, 51%, and 10%, respectively.

There is inherent uncertainty involved in the valuation of Level III investments, and there is no assurance that, upon liquidation, KKR will realize the values reflected in our valuations. Our valuations may differ significantly from the values that would have been used had an active market for the investments existed, and it is reasonably possible that the difference could be material. See "—Business Environment" for more details on factors that impact our business, financial performance, operating results and valuations.

Key unobservable inputs that have a significant impact on our Level III valuations as described above are included in Note 9 "Fair Value Measurements" to our financial statements included elsewhere in this report.

### ***Level III Valuation Process***

The valuation process involved for Level III measurements is completed on a quarterly basis and is designed to subject the valuation of Level III investments to an appropriate level of consistency, oversight, and review.

For Private Markets investments classified as Level III, investment professionals prepare preliminary valuations based on their evaluation of financial and operating data, company specific developments, market valuations of comparable companies and other factors. KKR begins its procedures to determine the fair values of its Level III assets one month prior to the end of a reporting period, and KKR follows additional procedures to ensure that its determinations of fair value for its Level III assets are appropriate as of the relevant reporting date. These preliminary valuations are reviewed by an independent valuation firm engaged by KKR to perform certain procedures in order to assess the reasonableness of KKR's valuations annually for all Level III investments in Private Markets and quarterly for investments other than certain investments, which have values less than preset value thresholds and which in the aggregate comprise less than 1% of the total value of KKR's Level III Private Markets investments. The valuations of certain real asset investments are determined solely by independent valuation firms without the preparation of preliminary valuations by our investment professionals, and instead such independent valuation firms rely on valuation information available to it as a broker or valuation firm. For credit investments in Public Markets, an independent valuation firm is generally engaged by KKR to assist with the valuations of most investments classified as Level III. The valuation firm either provides a value, provides a valuation range from which KKR's investment professionals select a point in the range to determine the valuation, or performs certain procedures in order to assess the reasonableness of KKR's valuations. After reflecting any input from the independent valuation firm, the valuation proposals are submitted for review and approval by KKR's valuation committees. As of March 31, 2021, less than 4% of the total value of our Level III credit investments were not valued with the engagement of an independent valuation firm.

For Level III investments in Asset Management, KKR has a global valuation committee that is responsible for coordinating and implementing the firm's valuation process to ensure consistency in the application of valuation principles across portfolio investments and between periods. The global valuation committee is assisted by the asset class-specific valuation committees that exist for private equity (including core investments and certain impact investments), growth equity (including certain impact investments), real estate, energy, infrastructure and credit. The asset class-specific valuation committees are responsible for the review and approval of all preliminary Level III valuations in their respective asset classes on a quarterly basis. The members of these valuation committees are comprised of investment professionals, including the heads of each respective strategy, and professionals from business operations functions such as legal, compliance and finance, who are not primarily responsible for the management of the investments. All Level III valuations for investments in Asset Management are also subject to approval by the global valuation committee, which is comprised of senior employees including investment professionals and professionals from business operations functions, and includes one of KKR's Co-Presidents/Co-Chief Operating Officers and its Chief Financial Officer, General Counsel and Chief Compliance Officer. When valuations are approved by the global valuation committee after reflecting any input from it, the valuations of Level III investments, as well as the valuations of Level I and Level II investments, are presented to the Audit Committee of the Board of Directors of KKR & Co. Inc. and are then reported to the Board of Directors.

Level III investments held by Global Atlantic are valued on the basis of pricing services, reputable broker-dealers or internal models. Global Atlantic performs a quantitative and qualitative analysis and review of the information and prices received from independent pricing services as well as broker-dealers to verify that it represents a reasonable estimate of fair value. For all the internally developed models, Global Atlantic seeks to verify the reasonableness of fair values by analyzing the inputs and other assumptions used. As of March 31, 2021, approximately 58% of these investments were priced via external sources, while approximately 42% were valued on the basis of internal models. When valuations are approved by Global Atlantic's management, the valuations of its Level III investments, as well as the valuations of Level I and Level II investments, are presented to the Audit Committee of the Board of Directors of KKR & Co. Inc. and are then reported to the Board of Directors.

As of March 31, 2021, upon completion by, where applicable, independent valuation firms of certain limited procedures requested to be performed by them on certain Level III investments, the independent valuation firms concluded that the fair values, as determined by KKR (including Global Atlantic), of those investments reviewed by them were reasonable. The limited procedures did not involve an audit, review, compilation or any other form of examination or attestation under generally accepted auditing standards and were not conducted on all Level III investments. We are responsible for determining the fair value of investments in good faith, and the limited procedures performed by an independent valuation firm are supplementary to the inquiries and procedures that we are required to undertake to determine the fair value of the commensurate investments.

There were no changes made to our Level III valuation process as a result of COVID-19.

As described above, Level II and Level III investments were valued using internal models with significant unobservable inputs, and our determinations of the fair values of these investments may differ materially from the values that would have resulted if readily observable inputs had existed. Additional external factors may cause those values, and the values of investments for which readily observable inputs exist, to increase or decrease over time, which may create volatility in our earnings and the amounts of assets and stockholders' equity that we report from time to time.

Changes in the fair value of investments impacts the amount of carried interest that is recognized as well as the amount of investment income that is recognized for investments held directly in Asset Management and through our consolidated funds as described below. We estimate that an immediate 10% decrease in the fair value of investments held directly and through consolidated investment funds generally would result in a commensurate change in the amount of net gains (losses) from investment activities for investments held directly and through investment funds and a more significant impact to the amount of carried interest recognized, regardless of whether the investment was valued using observable market prices or management estimates with significant unobservable pricing inputs. With respect to consolidated investment funds, the impact that the consequential decrease in investment income would have on net income attributable to KKR would generally be significantly less than the amount described above, given that a majority of the change in fair value of our consolidated funds would be attributable to noncontrolling interests and therefore we are only impacted to the extent of our carried interest and our balance sheet investments. With respect to Insurance, a decrease in investment income for certain assets where investment gains and losses are recognized through the statement of operations would impact KKR only to the extent of our economic ownership interest in Global Atlantic.

As of March 31, 2021, there were no investments which represented greater than 5% of total investments on a GAAP basis. On a non-GAAP basis, as of March 31, 2021, investments which represented greater than 5% of total non-GAAP investments consisted of Fiserv, Inc. and USI, Inc. valued at \$1,400.3 million and \$987.8 million, respectively. Our investment income on a GAAP basis and our book value can be impacted by volatility in the public markets related to our holdings of publicly traded securities, including our sizable holdings of Fiserv, Inc. and BridgeBio Pharma Inc. See "—Business Environment" for a discussion on the impact of global equity markets on our financial condition and "—Non-GAAP Balance Sheet Measures" for additional information regarding our largest holdings on a non-GAAP basis.

### **Recently Issued Accounting Pronouncements**

For a full discussion of recently issued accounting pronouncements, see Note 2 "Summary of Significant Accounting Policies" to the financial statements included elsewhere in this report.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The acquisition of Global Atlantic on February 1, 2021 added certain risks to KKR, some of which represent incremental exposure to risks existing prior to the Global Atlantic acquisition, and some of which represent new risks. For a discussion of market risks faced by KKR's asset management business, see "Quantitative and Qualitative Disclosures about Market Risk" in our Annual Report on Form 10-K for the year ended December 31, 2020, filed with the SEC on February 19, 2021.

The following is a discussion of the significant market risk exposures for Global Atlantic.

Global Atlantic has material exposure to market volatility in interest rates, equity prices and credit spreads. Global Atlantic's insurance liabilities, many of which are structured to have exposure to market level changes, and financial instruments held in its investment portfolio and used in its hedge program, expose us to these risks.

#### *Hedge program*

To manage market risk, Global Atlantic established a hedge program that seeks to mitigate economic impacts primarily from interest rate and equity price movements, while taking into consideration accounting and capital impacts. For Global Atlantic's fixed-indexed annuity and indexed universal life policies, Global Atlantic generally seeks to use static hedges to offset the exposure primarily created by changes in embedded derivative balances. For Global Atlantic's variable policies, including variable annuity policies and variable universal life policies, Global Atlantic generally seeks to dynamically hedge its exposure to changes in the value of the guarantee Global Atlantic provides to policyholders. In the context of specific reinsurance or other transactions in Global Atlantic's institutional channel or strategic acquisitions, Global Atlantic may also enter into hedges which are designed to limit short-term market risks to the economic value of the target assets. From time to time, Global Atlantic also enters into hedges designed to limit the volatility associated with changes in the value of its general account assets or changes to net investment income as a result of interest rate or credit spread movements, while also taking into consideration economic impacts. While not the primary focus of its hedging strategy, Global Atlantic also enters into currency swaps and forwards to manage foreign exchange rate risks with respect to certain investments denominated in foreign currencies. Global Atlantic also enters into inflation swaps to manage inflation risk associated with inflation-indexed preneed policies. Where Global Atlantic has derivative instruments that are designated and qualify as accounting hedges, these derivative instruments receive hedge accounting.

Global Atlantic's hedge program is not designed to, and may not be effective in, offsetting all impacts to net income, statutory capital or economic values. Movements in market variables other than interest rates and equity market prices that are not explicitly hedged can also cause net income volatility. See "Risk factors—Risks Related to Global Atlantic—Global Atlantic's use of derivative financial instruments within its risk management strategy may not be effective or sufficient." and "Risk factors—Risks Related to Global Atlantic—Global Atlantic may experience volatility in its net income under GAAP due to its funds withheld coinsurance transactions." in our Annual Report.

#### *Sensitivities*

Global Atlantic evaluates the sensitivity of net income to specific changes in interest rates, credit spreads and equity prices projected using internal models. All of the estimated sensitivities assume that all other factors remain constant and reflect the impact of related hedges assuming no hedge rebalancing in Global Atlantic's dynamic program, as explained further below.

Global Atlantic's internal models project impacts as of a specific date, and are measured relative to a starting level reflecting its assets and liabilities at that date and the actuarial factors, investment activity, and assumed investment returns associated with insurance liabilities. The models measure the impact of changing one factor at a time and assume that all other factors remain unchanged. Actual results can differ significantly from these estimates for a variety of reasons, including the interaction among these factors when more than one changes, discretionary actions by management in response to such changes, differences between the return of the underlying fund and the return on the index being hedged, actual experience differing from the assumptions, changes in business mix, effective tax rates and other market factors, and limitations inherent in the use of models. For these reasons, the sensitivities should only be viewed as directional estimates of the impacts on Global Atlantic's net income and shareholders' equity, excluding accumulated other comprehensive income ("AOCI"), and actual changes in response to such scenarios may differ materially from estimates provided.

For the dynamic portion of the hedge program, Global Atlantic primarily uses interest rate and equity futures to hedge liabilities which have option-like embedded derivatives. As such, Global Atlantic's program requires frequent rebalancing as markets move to ensure that the hedges are being re-sized to the new liability exposure. In addition, certain of the underlying variable annuity separate account funds are managed volatility funds, so Global Atlantic's market exposures may change

substantially after sharp market moves. The point-in-time estimates provided in this section assume no hedge rebalancing and, as such, the impact on Global Atlantic's consolidated net income may be different from what is shown below.

*Interest rate risk*

Global Atlantic is exposed to interest rate risk as a result of changes in the level and volatility of interest rates. Changes in the level and volatility of interest rates primarily impacts the fair value reported in our consolidated financial statements of the following:

- embedded derivatives associated with modified coinsurance and coinsurance with funds withheld business;
- embedded derivatives associated with variable annuities, fixed-indexed annuities and indexed universal life products; and
- financial instruments held in Global Atlantic's investment portfolio and used in its hedge program.

Changes in fair value of the foregoing are generally recorded as gains or losses in the consolidated statement of operations. For specific derivatives designated as cash flow hedges of forecasted bond purchases and receiving hedge accounting treatment, gains or losses are recorded in accumulated other comprehensive income and reclassified to net investment income following the qualifying purchases of available-for-sale securities, as an adjustment to the yield earned over the life of the purchased securities, using the effective interest method.

Due to the dynamic lapse sensitivities within Global Atlantic's models, market volatility in interest rates also impacts the reserves and deferred acquisition costs of certain fixed annuity products, changes in which are recorded in the consolidated statement of operations.

In periods following interest rate moves, Global Atlantic will also recognize a change in the income earned on certain of its floating-rate assets and the cost of funding on certain of Global Atlantic's liabilities recorded in the consolidated statement of operations.

Effect of interest rate sensitivity

In the table below, Global Atlantic estimates the impact of a 50 basis point increase/(decrease) in interest rates, from a parallel shift in the yield curve, from levels as of March 31, 2021 to net income and shareholders' equity, excluding AOCI. These sensitivities include the impact of related hedges and adjustments to DAC attributable to interest rate changes.

	<b>March 31, 2021</b>			
	<b>Hypothetical change<sup>(1)</sup></b>			
	<b>+50 Basis points</b>		<b>-50 Basis points</b>	
<i>(\$ in thousands)</i>				
Total estimated net income and shareholders' equity excluding AOCI sensitivity (point in time)	\$	(13,600)	\$	14,800
Total estimated net income and shareholders' equity excluding AOCI sensitivity (over 12 months) <sup>(2)</sup>	\$	17,300	\$	(17,300)

1. The point in time and over 12 months total estimated impacts reflect the impact of hedges within Global Atlantic's liability hedging program, as well as hedges designed to limit surplus volatility resulting from interest rate movements.
2. Excludes point in time impact. Estimated sensitivity to a hypothetical change over 12 months does not take into account any management actions that may be taken to mitigate actual impacts.

The estimated point in time impact is driven by a net decrease/(increase) in the value of the embedded derivatives associated with Global Atlantic's modified coinsurance and coinsurance with funds withheld business and the embedded derivatives associated with its variable annuity, fixed-indexed annuity and indexed universal life products, and largely offset by a loss/(gain) in financial instruments used in its hedging program, investments classified as trading, and loans designated under the fair value option, based on balances in place at quarter end. These estimated changes include the impact of related amortization of deferred revenue and expenses and related income tax impacts. In addition, the point in time impact includes a decrease/(increase) in the value of the reserve and (decrease)/increase in the deferred acquisition cost balance of certain fixed annuity blocks of business due to the dynamic lapse sensitivities within Global Atlantic's models.

The impact over 12 months is driven by an increase/(decrease) in the income earned on Global Atlantic's floating rate assets, and partially offset by an increase/(decrease) in the cost of its floating-rate liabilities.

In the table below we estimate the impact of a 50 basis point increase/(decrease) in interest rates, for a parallel shift in the yield curve, from levels as of March 31, 2021 to Global Atlantic's AOCI.

	<b>March 31, 2021</b>	
	<b>Hypothetical change<sup>(1)</sup></b>	
	<b>+50 Basis points</b>	<b>-50 Basis points</b>
<i>(\$ in thousands)</i>		
Total estimated AOCI sensitivity (point in time)	\$ (1,602,771)	\$ 1,938,185

The estimated point in time impact is driven by a net (decrease)/increase in the value of Global Atlantic's available-for-sale fixed maturity securities which are carried at fair value with unrealized gains and losses, net of certain offsets, reported in AOCI. The estimated changes include the impact of related amortization of deferred revenue and expenses and related income tax impacts.

*Credit spread risk*

Global Atlantic is exposed to credit spread risk as a result of changes in the spread between the yields on its funds withheld receivable at interest and yields on comparable U.S. Treasury securities. Global Atlantic's reinsurance agreements include modified coinsurance and funds withheld coinsurance arrangements. Such arrangements are deemed to contain embedded derivatives, which are measured at fair value, and are therefore impacted by the mark-to-market value of the related assets. Changes in the credit spreads associated with the assets impact the mark-to-market value of the assets. There is additional credit spread risk exposure inherent in Global Atlantic's own credit spread used in valuing embedded derivative liabilities, which serves to mitigate net credit exposure. Global Atlantic may choose to enter into hedge positions to manage credit spread risk. As of March 31, 2021, Global Atlantic had a \$1.7 million credit derivative position.

Effect of credit spread sensitivity

In the table below, Global Atlantic estimates the impact of a 50 basis points increase/(decrease) in credit spreads from levels as of March 31, 2021 to its net income and shareholders' equity, excluding AOCI.

	<b>March 31, 2021</b>	
	<b>Hypothetical change</b>	
	<b>+50 Basis points</b>	<b>-50 Basis points</b>
<i>(\$ in thousands)</i>		
Total estimated net income and shareholders' equity excluding AOCI sensitivity (point in time)	\$ 1,600	\$ (1,600)

These estimated changes include the impact of related amortization of deferred revenues and expenses and related income tax impacts and include impacts on Global Atlantic's own credit spread used in valuing embedded derivative liabilities.

*Equity price risk*

Global Atlantic is exposed to equity price risk as a result of changes in the level and volatility of equity prices.

Changes in the level and volatility of equity prices primarily impacts the fair value reported in the consolidated financial statements of the following:

- embedded derivatives and policy liabilities associated with Global Atlantic's variable annuities, fixed-indexed annuities and indexed universal life products;
- financial instruments held in Global Atlantic's investment portfolio and used in its hedge program; and
- certain of Global Atlantic's alternative assets.

Changes in fair value of the foregoing are recorded as gains or losses in our consolidated statements of operations.

In addition, certain of the fees Global Atlantic earns in its variable annuity and variable universal life blocks are calculated on the account values, which are exposed to equity price risk. These changes impact our net income over the periods following equity price moves.

Effect of equity price sensitivity

In the table below, Global Atlantic estimates the impact of a 10% increase/(decrease) in equity prices from levels as of March 31, 2021 to its net income and shareholders' equity, excluding AOCI. These sensitivities include the impact of related hedges but exclude the potential impact of alternative assets, because the fair value of these investments do not necessarily move directly in line with movements in public equity markets.

	<b>March 31, 2021</b>	
	<b>Hypothetical change<sup>(1)</sup></b>	
	<b>+10% Equity Prices</b>	<b>-10% Equity Prices</b>
<i>(\$ in thousands)</i>		
Total estimated net income and shareholders' equity excluding AOCI sensitivity (point in time)	\$ (29,800)	\$ 23,100
Total estimated net income and shareholders' equity excluding AOCI sensitivity (over 12 months) <sup>(2)</sup>	\$ 4,100	\$ (4,700)

(1) From time to time, Global Atlantic may choose to enter into additional hedges to mitigate economic exposure to equity markets. Sensitivities as of March 31, 2021 include a macro equity hedge position established in December 2018.

(2) Excludes point in time impact. Estimated sensitivity to a hypothetical change over 12 months does not take into account any management actions that may be taken to mitigate actual impacts.

The estimated point-in-time impact is driven by an increase/(decrease) in the value of the embedded derivatives associated with Global Atlantic's fixed-indexed annuity and indexed universal life products, and largely offset by a decrease / (increase) in Global Atlantic's variable annuity embedded derivatives and policy benefits, and gains or losses on financial instruments used in Global Atlantic's hedging program. These estimated changes include the impact of related amortization of deferred revenue and expenses and related income tax impacts.

For a discussion of current market conditions, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Business Environment."

**ITEM 4. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

We maintain disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act) that are designed to ensure that the information required to be disclosed by us in the reports filed or submitted by us under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms and such information is accumulated and communicated to management, including the Co-Chief Executive Officers and the Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Any controls and procedures, no matter how well designed and operated, can provide only reasonable assurances of achieving the desired control objectives.

We carried out an evaluation, under the supervision and with the participation of our management, including the Co-Chief Executive Officers and the Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures as of March 31, 2021. Based upon that evaluation, our Co-Chief Executive Officers and Chief Financial Officer have concluded that, as of March 31, 2021, our disclosure controls and procedures were effective to accomplish their objectives at the reasonable assurance level.

As discussed in Note 3 of our financial statements included elsewhere in this report, we acquired Global Atlantic on February 1, 2021. We are in the process of evaluating the internal controls of Global Atlantic. However, as permitted by related SEC staff interpretive guidance for newly acquired businesses, the internal control over financial reporting of Global Atlantic was excluded from the evaluation of the effectiveness of our disclosure controls and procedures as of March 31, 2021. In the aggregate, Global Atlantic represented approximately 61% of our total consolidated assets and approximately 30% of our total consolidated revenues as of and for the three months ended March 31, 2021.

**Changes in Internal Control Over Financial Reporting**

No changes in our internal control over financial reporting (as such term is defined in Rule 13a-15(f) of the Exchange Act) occurred during the three months ended March 31, 2021 that materially affected, or are reasonably likely to materially affect, our internal control over financial reporting. As noted above, we acquired Global Atlantic on February 1, 2021. We are in the process of reviewing the internal control structure of Global Atlantic and, if necessary, will make appropriate changes as we continue to integrate Global Atlantic into our overall internal control over financial reporting process.



## **PART II — OTHER INFORMATION**

### **ITEM 1. LEGAL PROCEEDINGS.**

The section entitled "Litigation" appearing in Note 23 "Commitments and Contingencies" to our financial statements included elsewhere in this report is incorporated herein by reference.

### **ITEM 1A. RISK FACTORS.**

Other than as set forth in "Management's Discussion and Analysis of Financial Condition and Results of Operations—Business Environment" in this report, there were no material changes to the risk factors disclosed in our Annual Report.

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

**Share Repurchases in the First Quarter of 2021**

Under the repurchase program, KKR is authorized to repurchase its common stock from time to time in open market transactions, in privately negotiated transactions or otherwise. The timing, manner, price and amount of any common stock repurchases will be determined by KKR in its discretion and will depend on a variety of factors, including legal requirements, price and economic and market conditions. KKR expects that the program, which has no expiration date, will continue to be in effect unless the program is not extended after the maximum approved dollar amount has been completely spent. As of May 7, 2021, the current program will be extended before the current maximum approved dollar amount will be completely spent. The program does not require KKR to repurchase any specific number of shares of common stock, and the program may be suspended, extended, modified or discontinued at any time.

In addition to the repurchases of common stock described above, subsequent to May 3, 2018, the repurchase program is used for the retirement (by cash settlement or the payment of tax withholding amounts upon net settlement) of equity awards issued pursuant to our Equity Incentive Plans. From October 27, 2015 through March 31, 2021, KKR has paid approximately \$462 million in cash to satisfy tax withholding and cash settlement obligations in lieu of issuing shares of common stock or its equivalent upon the vesting of equity awards representing 20.5 million shares of common stock. Of these amounts, equity awards representing 11.0 million shares of common stock or its equivalent were retired for \$190 million prior to May 3, 2018 and did not count against the amounts remaining under the repurchase program.

The table below sets forth the information with respect to repurchases made by or on behalf of KKR & Co. Inc. or any "affiliated purchaser" (as defined in Rule 10b-18(a)(3) under the Exchange Act) of our common stock for the periods presented. During the first quarter of 2021, 1.5 million shares of common stock were repurchased, and 1.3 million equity awards were retired. From inception of the repurchase program in 2015 through March 31, 2021, we have repurchased or retired a total of approximately 63.2 million shares of common stock under the program at an average price of approximately \$20.55 per share.

**Issuer Purchases of Common Stock**  
(amounts in thousands, except share and per share amounts)

	Total Number of Shares Purchased	Average Price Paid Per Share	Cumulative Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs <sup>(1)</sup>
Month #1 (January 1, 2021 to January 31, 2021)	—	\$ —	52,283,838	\$ 407,339
Month #2 (February 1, 2021 to February 28, 2021)	743,558	\$ 47.64	53,027,396	\$ 371,917
Month #3 (March 1, 2021 to March 31, 2021)	758,000	\$ 47.42	53,785,396	\$ 335,974
<b>Total through March 31, 2021</b>	<b>1,501,558</b>			

(1) Amounts have been reduced by retirements of equity awards occurring after May 3, 2018. On May 6, 2020, KKR announced the increase to the total available amount under the repurchase program to \$500 million.

**Other Equity Securities**

During the first quarter of 2021, 2,258,781 KKR Group Partnership Units were exchanged by KKR Holdings for an equal number of shares of our common stock. This resulted in an increase in our ownership of KKR Group Partnership and a corresponding decrease in the ownership of KKR Group Partnership by KKR Holdings. In May 2021, approximately 2.3 million KKR Group Partnership Units are expected to be exchanged by KKR Holdings into an equal number of shares of our common stock.

### Unregistered Sales of Equity Securities

Following the closing of the Global Atlantic acquisition, on February 2, 2021, we issued 0.96 million newly issued shares of KKR & Co. Inc. common stock for an aggregate purchase price equal to \$38.5 million to certain members of Global Atlantic's senior management who agreed to invest a portion of their proceeds from the acquisition into KKR & Co. Inc. common stock. These members of Global Atlantic's senior management agreed not to transfer the shares received in this issuance for a three-year period following the acquisition, subject to certain exceptions, and to continue to own at least 25% of such shares so long as such person is employed with Global Atlantic. These shares were issued in a private placement exemption from registration under Section 4(a)(2) of the Securities Act.

### ITEM 3. DEFAULTS UPON SENIOR SECURITIES.

Not applicable.

### ITEM 4. MINE SAFETY DISCLOSURES.

Not applicable.

### ITEM 5. OTHER INFORMATION

KKR's 2021 Annual Meeting of Stockholders (the "Annual Meeting") will be held on Tuesday, June 22, 2021 at 9:00 a.m., Eastern Time. The Annual Meeting will be held in a virtual meeting format only. Only stockholders of record at the close of business on May 21, 2021 may attend the meeting. To receive further information about how to attend the meeting, please register by sending an e-mail to [Investor-Relations@kk.com](mailto:Investor-Relations@kk.com) with the following information between May 21, 2021 and June 20, 2021. Please write "KKR 2021 Annual Meeting Registration" in the subject line of the e-mail, include your full name, address, and the number of shares of common stock owned by you as of the record date, and be prepared to confirm your ownership of such shares as of the record date. Please note that no discussion of KKR's business will be presented at the Annual Meeting, and no matter will be presented to its stockholders for a vote. Therefore, no action is expected to be taken at the Annual Meeting.

### ITEM 6. EXHIBITS.

The following is a list of all exhibits filed or furnished as part of this report:

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
3.1	<a href="#">Amended and Restated Certificate of Incorporation of KKR &amp; Co. Inc. (incorporated by reference to Exhibit 3.1 to the KKR &amp; Co. Inc. Quarterly Report on Form 10-Q filed on May 11, 2020).</a>
3.2	<a href="#">Amended and Restated Bylaws of KKR &amp; Co. Inc. (incorporated by reference to Exhibit 3.2 to the KKR &amp; Co. Inc. Quarterly Report on Form 10-Q filed on May 11, 2020).</a>
4.1	<a href="#">Indenture dated as of March 31, 2021 among KKR Group Finance Co. IX LLC, KKR &amp; Co. Inc., KKR Group Partnership L.P. and The Bank of New York Mellon Trust Company, N.A., as trustee (incorporated by reference to Exhibit 4.1 to the KKR &amp; Co. Inc. Current Report on Form 8-K filed on March 31, 2021).</a>
4.2	<a href="#">First Supplemental Indenture dated as of March 31, 2021 among KKR Group Finance Co. IX LLC, KKR &amp; Co. Inc., KKR Group Partnership L.P. and The Bank of New York Mellon Trust Company, N.A., as trustee (incorporated by reference to Exhibit 4.2 to the KKR &amp; Co. Inc. Current Report on Form 8-K filed on March 31, 2021).</a>
4.3	<a href="#">Form of 4.625% Subordinated Note due 2061 of KKR Group Finance Co. IX LLC (included within Exhibit 4.2 to the KKR &amp; Co. Inc. Current Report on Form 8-K filed on March 31, 2021).</a>
10.1 †	<a href="#">364-Day Revolving Credit Agreement, dated as of April 9, 2021, among KKR Capital Markets Holdings L.P., certain subsidiaries of KKR Capital Markets Holdings L.P., Mizuho Bank, Ltd., as administrative agent, and the one or more lenders party thereto.</a>
10.2 †	<a href="#">Second Amendment, dated April 9, 2021, among KKR Capital Markets Holdings L.P., certain subsidiaries of KKR Capital Markets Holdings L.P., Mizuho Bank, Ltd., as administrative agent, and the one or more lenders party thereto, to the Third Amended and Restated 5-Year Revolving Credit Agreement dated March 20, 2020.</a>
10.3 †	<a href="#">Second Amended and Restated Credit Agreement, dated as of May 21, 2018, by and among Commonwealth Re Midco Limited, Global Atlantic (FIN) Company, certain other subsidiaries of Commonwealth Re Midco Limited from time to time as guarantors, the lenders from time to time and Royal Bank of Canada, as administrative agent and the other agents and arrangers party thereto.</a>
10.4 †	<a href="#">Amendment to Second Amended and Restated Credit Agreement, dated as of November 6, 2020, by and among Global Atlantic Financial Limited (f/k/a Commonwealth Re Midco Limited), Global Atlantic (FIN) Company, the lenders party thereto and Royal Bank of Canada, as administrative agent.</a>
22.1	<a href="#">Subsidiary Issuer of Guaranteed Securities.</a>

<b>Exhibit No.</b>	<b>Description of Exhibit</b>
31.1	<a href="#">Certification of Co-Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.2	<a href="#">Certification of Co-Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
31.3	<a href="#">Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) of the Securities Exchange Act of 1934, as amended, as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</a>
32.1	<a href="#">Certification of Co-Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.2	<a href="#">Certification of Co-Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
32.3	<a href="#">Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.</a>
101	Interactive data files pursuant to Rule 405 of Regulation S-T, formatted in Inline XBRL (eXtensible Business Reporting Language): (i) the Condensed Consolidated Statements of Financial Condition as of March 31, 2021 and December 31, 2020, (ii) the Condensed Consolidated Statements of Operations for the three months ended March 31, 2021 and March 31, 2020, (iii) the Condensed Consolidated Statements of Comprehensive Income for the three months ended March 31, 2021 and March 31, 2020; (iv) the Condensed Consolidated Statements of Changes in Equity for the three months ended March 31, 2021 and March 31, 2020, (v) the Condensed Consolidated Statements of Cash Flows for the three months ended March 31, 2021 and March 31, 2020, and (vi) the Notes to the Condensed Consolidated Financial Statements.
104	Cover page interactive data file, formatted in Inline XBRL and contained in Exhibit 101.

† Certain information contained in this agreement has been omitted because it is not material and is the type that the registrant treats as private or confidential.

The agreements and other documents filed as exhibits to this report are not intended to provide factual information or other disclosure other than with respect to the terms of the agreements or other documents themselves, and you should not rely on them for that purpose. In particular, any representations and warranties made by us in these agreements or other documents were made solely within the specific context of the relevant agreement or document and may not describe the actual state of affairs as of the date they were made or at any other time.

**SIGNATURES**

Pursuant to 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.

**KKR & CO. INC.**

By: \_\_\_\_\_  
/s/ ROBERT H. LEWIN  
Robert H. Lewin  
*Chief Financial Officer*  
*(principal financial and accounting officer)*

DATE: May 10, 2021

CERTAIN INFORMATION, IDENTIFIED BY, AND REPLACED WITH, A MARK OF “[\*\*]” HAS BEEN EXCLUDED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

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\$750,000,000

**364-DAY REVOLVING CREDIT AGREEMENT**

Dated as of April 9, 2021

Among

**KKR CAPITAL MARKETS HOLDINGS L.P.,  
KKR CORPORATE LENDING LLC,  
KKR CORPORATE LENDING (CA) LLC,  
KKR CORPORATE LENDING (TN) LLC**  
*and*  
**KKR CORPORATE LENDING (UK) LLC**  
*as Borrowers,*

**THE LENDERS PARTY HERETO**

*and*

**MIZUHO BANK, LTD.,**  
*as Administrative Agent*

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**MIZUHO BANK, LTD.,**  
*as Sole Lead Arranger and Sole Bookrunner*

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## TABLE OF CONTENTS

Section	Page
ARTICLE I	
DEFINITIONS	1
SECTION 1.01. Defined Terms	1
SECTION 1.02. Terms Generally	31
SECTION 1.03. Accounting Terms; GAAP; Calculation of Debt to Equity Ratio	31
SECTION 1.04. Divisions	32
SECTION 1.05. Interest Rates	32
ARTICLE II	
THE COMMITMENTS	32
SECTION 2.01. The Loans.	32
SECTION 2.02. Letter of Credit Facility.	35
SECTION 2.03. Fees.	39
SECTION 2.04. Changes of Commitments.	40
SECTION 2.05. Concerning Joint and Several Liability of the Borrowers.	40
SECTION 2.06. Contribution.	43
ARTICLE III	
PAYMENTS	44
SECTION 3.01. Repayment	44
SECTION 3.02. Interest.	44
SECTION 3.03. Eurocurrency Reserves	45
SECTION 3.04. Interest Rate Determinations.	45
SECTION 3.05. Voluntary Conversion or Continuation of Loans.	49
SECTION 3.06. Prepayments of Loans.	49
SECTION 3.07. Payments; Computations; Etc.	50
SECTION 3.08. Sharing of Payments, Etc.	53
SECTION 3.09. Increased Costs.	53
SECTION 3.10. Illegality	54
SECTION 3.11. Taxes.	55
SECTION 3.12. Break Funding Payments	57
SECTION 3.13. Mitigation Obligations; Replacement of Lenders.	58
SECTION 3.14. Defaulting Lenders	59
ARTICLE IV	
CONDITIONS PRECEDENT	61
SECTION 4.01. Closing Conditions	61
SECTION 4.02. Conditions Precedent to Each Borrowing and Issuance	62

ARTICLE V	
REPRESENTATIONS AND WARRANTIES	63
SECTION 5.01. Representations and Warranties	63
ARTICLE VI	
COVENANTS	66
SECTION 6.01. Affirmative Covenants	66
SECTION 6.02. Negative Covenants	71
SECTION 6.03. Financial Covenant	77
ARTICLE VII	
EVENTS OF DEFAULT	77
SECTION 7.01. Events of Default	77
SECTION 7.02. Investors' Right to Cure.	79
ARTICLE VIII	
THE ADMINISTRATIVE AGENT	80
SECTION 8.01. Appointment and Authority	80
SECTION 8.02. Rights as a Lender	81
SECTION 8.03. Exculpatory Provisions.	81
SECTION 8.04. Reliance by Administrative Agent	82
SECTION 8.05. Delegation of Duties	82
SECTION 8.06. Resignation of Administrative Agent	82
SECTION 8.07. Non-Reliance on Administrative Agent and Other Lenders	83
SECTION 8.08. No Other Duties; Etc.	83
SECTION 8.09. Intercreditor Agreement Governs	83
SECTION 8.10. Collateral Matters; Credit Bidding	84
ARTICLE IX	
MISCELLANEOUS	85
SECTION 9.01. Amendments, Etc.	85
SECTION 9.02. Notices, KCMH as Administrative Borrower, Etc.	86
SECTION 9.03. No Waiver; Remedies; Setoff.	89
SECTION 9.04. Expenses; Indemnity; Damage Waiver.	89
SECTION 9.05. Binding Effect, Successors and Assigns	91
SECTION 9.06. Assignments and Participations.	91
SECTION 9.07. <b>GOVERNING LAW; JURISDICTION; ETC.</b>	94
SECTION 9.08. Severability	95
SECTION 9.09. Counterparts; Effectiveness; Execution.	95
SECTION 9.10. Survival	95
SECTION 9.11. Waiver of Jury Trial	95
SECTION 9.12. Confidentiality	96



SECTION 9.13. No Fiduciary Relationship	96
SECTION 9.14. Headings	97
SECTION 9.15. USA PATRIOT Act	97
SECTION 9.16. Judgment Currency	97
SECTION 9.17. European Monetary Union	98
SECTION 9.18. Acknowledgement and Consent to Bail-In of Affected Financial Institutions	99

ANNEXES

Annex A Pricing Grid

SCHEDULES

Schedule I Lenders and Commitments

Schedule II Subsidiaries

EXHIBITS

Exhibit A Form of Note

Exhibit B Form of Guarantee and Security Agreement

Exhibit C Form of Notice of Borrowing

Exhibit D Form of Assignment and Assumption

Exhibit E-1 Form of Tax Statement for Non-U.S. Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes

Exhibit E-2 Form of Tax Statement for Non-U.S. Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes

Exhibit E-3 Form of Tax Statement for Non-U.S. Participants That Are Partnerships For U.S. Federal Income Tax Purposes

Exhibit E-4 Form of Tax Statement for Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes

Exhibit F Form of Additional Borrower Joinder Agreement

**364-DAY REVOLVING CREDIT AGREEMENT** dated as of April 9, 2021 (as further amended or otherwise modified from time to time, this "Agreement") among KKR CAPITAL MARKETS HOLDINGS L.P., a Delaware limited partnership ("KCMH"), KKR CORPORATE LENDING LLC, a Delaware limited liability company ("KCL U.S."), KKR CORPORATE LENDING (CA) LLC, a Delaware limited liability company ("KCL C.A."), KKR CORPORATE LENDING (TN) LLC, a Delaware limited liability company ("KCL T.N.") and KKR CORPORATE LENDING (UK) LLC, a Delaware limited liability company ("KCL U.K."; KCMH, KCL U.S., KCL C.A., KCL T.N. and KCL U.K. and any Additional Borrower are collectively referred to herein as the "Borrowers" and individually sometimes as a "Borrower"), each of the Lenders (as defined below), and MIZUHO BANK, LTD., as administrative agent for the Lenders (in such capacity, the "Administrative Agent").

WHEREAS, the parties hereto hereby agree, as follows:

## ARTICLE I

### DEFINITIONS

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

"ABR" means a fluctuating interest rate per annum which shall at any time be the higher of:

- (a) the rate of interest established by the Administrative Agent as its "prime rate" in effect at its principal office in New York, New York; and
- (b) 1/2 of 1.00% per annum above the Federal Funds Rate.

The "prime rate" is a rate established by MHC B based upon various factors including MHC B's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate established by MHC B shall take effect at the opening of business on the day specified by MHC B of such change.

"ABR Loan" means, at any time, a Loan which bears interest at rates based upon the ABR.

"Additional Borrower" shall mean any Person who shall from time to time after the Closing Date become a party hereto as a "Borrower" hereunder upon the satisfaction of the conditions set forth in Section 6.01(i)(ii).

"Additional Borrower Joinder Agreement" shall mean the joinder agreement substantially in the form of Exhibit F.

"Administrative Agent" has the meaning specified in the introduction hereto.

“Administrative Agent’s Account” means, with respect to any Currency, the account of the Administrative Agent for such Currency most recently designated by it as such by notice to KCMH and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with such specified Person.

“Aggregate Borrowing Availability” means, at any time, the Aggregate Facility Amount at such time minus the Total Credit Exposure at such time.

“Aggregate Facility Amount” means, at any time, the aggregate amount of the Commitments then in effect. The initial Aggregate Facility Amount is \$750,000,000.

“Allocable Amount” has the meaning specified in Section 2.06(b).

“Alternate Currency” means the Euro, British Pounds Sterling and any other currency acceptable to the Lenders that is freely convertible into Dollars and available to be borrowed in the interbank market in London or the Principal Financial Center for such currency, so long as no central bank or other governmental authorization in the country of issue of such currency (including, in the case of the Euro, any authorization by the European Central Bank) is required to permit the use of such currency by any Lender for making any Loan hereunder and/or permit a Borrower to borrow and repay the principal thereof and to pay the interest thereon, unless such authorization has been obtained and is in full force and effect.

“Alternate Currency Equivalent” means, on any date, with respect to any amount denominated in a given currency, the amount of Alternate Currency that would be required to purchase such amount of such given currency at or about 11:00 a.m., Local Time, on such date, for delivery two Business Days later, as determined by the Administrative Agent on the basis of the spot selling rate for the offering of such given currency for Alternate Currency in the Principal Financial Center for the applicable given currency, all determinations thereof by the Administrative Agent to be conclusive and binding on the parties in the absence of manifest error.

“Applicable Lending Office” means, with respect to any Lender, such Lender’s Domestic Lending Office in the case of an ABR Loan and such Lender’s Eurocurrency Lending Office in the case of a Eurocurrency Loan.

“Applicable Margin” has the meaning specified in Annex A.

“Applicable SOFR Adjustment” means the percentage set forth below for the corresponding Interest Period that is then in effect with respect to each Eurocurrency Loan denominated in Dollars outstanding immediately prior to the Benchmark Replacement Date applicable to USD LIBOR:

<b>Interest Period</b>	<b>Percentage</b>
1-month	0.11448%
3-month	0.26161%
6-month	0.42826%

“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.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.06(b)) and accepted by the Administrative Agent, substantially in the form of Exhibit D or any other form approved by the Administrative Agent.

“Available Tenor” means, as of any date of determination and with respect to the relevant then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of this Section titled “Benchmark Replacement Setting.”

“Availability Period” means the period from the Closing Date until the earlier of (a) the Commitment Termination Date and (b) the date of termination of the Commitments.

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

“Benchmark” means, initially, each Relevant LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event (solely with respect to Eurocurrency Loans denominated in Dollars) or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to a 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 clause (a) or (b) of this Section titled “Benchmark Replacement Setting.”

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of any Loan denominated in an Alternate Currency, other than British Pounds Sterling, “Benchmark Replacement” shall mean the alternative set forth in (3) below:

- (1) (A) in the case of any Eurocurrency Loan denominated in Dollars, the sum of: (a) Term SOFR and (b) the related Applicable SOFR Adjustment;
- (B) [Reserved]; or
- (2) (A) in the case of any Eurocurrency Loan denominated in Dollars, the sum of: (a) Daily Simple SOFR and (b) the related Applicable SOFR Adjustment;
- (B) [Reserved]; or

(3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor 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 for the then-current Benchmark for syndicated credit facilities denominated in the applicable Alternate Currency at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1)(A), Term SOFR is 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; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, solely with respect to Eurocurrency Loans denominated in Dollars, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Applicable SOFR Adjustment, as set forth in clause (1)(A) of this definition (subject to the first proviso above). If a Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor applicable to such Benchmark Replacement, 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, 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 for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in Dollars or the applicable Alternate Currency, as applicable; provided that such adjustment shall not be in the form of an increase of the Applicable Margin.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice applicable to such Benchmark Replacement (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 such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to a then-current Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

- (1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of 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);
- (2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) solely with respect to Eurocurrency Loans denominated in Dollars, in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to clause (b) of this Section titled “Benchmark Replacement Setting”; or

(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to a Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the relevant Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the relevant “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) or with respect to any relevant 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:

(1) a public statement or publication of information by or on behalf of the administrator (in the case of any Relevant LIBOR, ICE Benchmark Administration) 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);

(2) a public statement or publication of information by the regulatory supervisor (in the case of any Relevant LIBOR, the U.K. Financial Conduct Authority) for the administrator of such Benchmark (or the published component used in the calculation thereof), 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



(3) a public statement or publication of information by the regulatory supervisor (in the case of any Relevant LIBOR, the U.K. Financial Conduct Authority) for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” (a) will be deemed to have occurred with respect to a 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) and (b) with respect to each Relevant LIBOR, has occurred as a result of the March 5th Announcements.

“Benchmark Unavailability Period”, with respect to each applicable then-current Benchmark, means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section titled “Benchmark Replacement Setting” and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section titled “Benchmark Replacement Setting.”

“Borrowers” and “Borrower” have the respective meanings specified in the heading hereof.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type made by the Lenders to a Borrower pursuant to Section 2.01.

“Broker-Dealer Subsidiary” means each of KCM U.K., KCM U.S., KCM Asia, KCM Japan, KCM Ireland and any other direct or indirect broker-dealer Subsidiary of KCMH.

“Business Day” means (a) a day on which commercial banks are not authorized by law or required to close in New York City, (b) if such day relates to a Eurocurrency Loan denominated in Dollars, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market, (c) if such day relates to a Borrowing of, or a payment or prepayment of principal of or interest on or an Interest Period for a Eurocurrency Loan denominated in an Alternate Currency (other than Euros or British Pound Sterling), or a notice with respect thereto, that is also a day on which commercial banks and foreign exchange markets settle payments in the Principal Financial Center for such currency, (d) if such day relates to a Borrowing of, or a payment or prepayment of principal of or interest on or an Interest Period for, a Eurocurrency Loan denominated in Euros, or a notice with respect thereto, that is also a Target Operating Day (as defined in Section 9.17), and (e) if such day relates to a Borrowing of, or a payment or prepayment of principal of or interest on, any SONIA Rate Loan, or a notice with respect thereto, a London Banking Day.

“Cash Equivalents” means:

- (a) securities issued or unconditionally guaranteed by the United States government or any agency or instrumentality thereof, in each case having maturities of not more than 12 months from the date of acquisition thereof;
- (b) securities issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than 12 months from the date of acquisition thereof and, at the time of acquisition, having an investment grade rating generally obtainable from either S&P or Moody’s (or, if at any time neither S&P nor Moody’s shall be rating such obligations, then from another nationally recognized rating service);
- (c) commercial paper issued by any Lender or any bank holding company owning any Lender;
- (d) commercial paper maturing no more than 12 months after the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or P-1 from either S&P or Moody’s (or, if at any time neither S&P nor Moody’s shall be rating such obligations, an equivalent rating from another nationally recognized rating service);
- (e) domestic and LIBOR certificates of deposit or bankers’ acceptances, having a rating of at least A-1 or P-1 from either S&P or Moody’s (or, if at any time neither S&P nor Moody’s shall be rating such obligations, an equivalent rating from another nationally recognized rating service), maturing no more than one year after the date of acquisition thereof issued by any Lender or any other bank having combined capital and surplus of not less than \$200,000,000 in the case of domestic banks and \$100,000,000 (or the Dollar Equivalent thereof) in the case of foreign banks;
- (f) repurchase agreements with a term of not more than 90 days for underlying securities of the type described in clauses (a), (b) and (e) above entered into with any bank meeting the qualifications specified in clause (e) above or securities dealers of recognized national standing;
- (g) marketable short-term money market and similar funds having a rating of at least A-1 or P-1 from either S&P or Moody’s (or, if at any time neither S&P nor Moody’s shall be rating such obligations, an equivalent rating from another nationally recognized rating service);
- (h) shares of investment companies that are registered under the Investment Company Act of 1940 and substantially all the investments of which are one or more of the types of securities described in clauses (a) through (g) above; and
- (i) in the case of any non-U.S. organized Subsidiary or investment made in a country outside the United States, other customarily utilized high-quality investment in the country where such non-U.S. organized Subsidiary is located or in which such investment is made and of a type analogous to the foregoing.

“Change in Law” means the occurrence, after the date of this Agreement, of the adoption of any law, rule, regulation or treaty, or of any change in applicable law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority having jurisdiction or the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) 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, as amended (including as such law forms a part of domestic law in the United Kingdom by virtue of the European Union (Withdrawal) Act 2018 (as amended, including without limitation, by the European Union (Withdrawal Agreement) Act 2020)), shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued; provided further, that any increased costs associated with a Change in Law based on the foregoing clauses (a) and/or (b) may only be imposed to the extent the relevant Lender or Issuing Lender, as applicable, imposes the same charges generally on other similarly situated borrowers under comparable credit facilities.

“Change of Control” means, and shall be deemed to have occurred if, (a) KKR and/or its Affiliates shall at any time not own, directly or indirectly, beneficially and of record, (i) more than 50% of the voting power of the outstanding Voting Shares of KCMH and (ii) at least 25% of the outstanding Equity Interests of KCMH; (b) KCMH shall at any time not own, directly or indirectly, beneficially and of record, more than 50% of the voting power of the outstanding Voting Shares of KCM U.S., KCM U.K. or KCM Asia; or (c) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of KCMH cease to be composed of individuals who are employees, partners, members, directors or officers of KKR or its Affiliates.

“Closing Date” means April 9, 2021.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” has the meaning specified in the Guarantee and Security Agreement.

“Commitment” means, as to each Lender, the commitment of such Lender to make Loans to the Borrowers under Section 2.01(a)(i) and purchase participations in L/C Exposure in an aggregate amount at any one time outstanding up to the amount set forth opposite such Lender’s name on Schedule I or, if such Lender has entered into an Assignment and Assumption, set forth for such Lender in the Register, as such amount may be reduced pursuant to Section 2.04(b).

“Commitment Percentage” means, with respect to any Lender, at any time, the percentage of the Aggregate Facility Amount represented by such Lender’s Commitment; provided, that if the Commitments have terminated or expired, the Commitment

Percentages shall equal the percentage of aggregate outstanding Loans and L/C Exposure held by such Lender and if there is no outstanding Loans and L/C Exposure, the Commitment Percentage shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Commitment Termination Date” means the date 364 days after the Closing Date, provided that if such date is not a Business Day, the Commitment Termination Date shall be the immediately preceding Business Day.

“Continuation”, “Continue” and “Continued” refer to a continuation of Eurocurrency Loans (other than SONIA Rate Loans) from one Interest Period to the next Interest Period pursuant to Section 3.05(b).

“Control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise, and “Controlling” and “Controlled” have meanings correlative thereto.

“Convert”, “Conversion” and “Converted” refer to a conversion of Loans of one Type into Loans of the other Type pursuant to Section 3.04 or Section 3.05.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Cure Right” has the meaning specified in Section 7.02.

“Currencies” means, collectively, Dollars and the Alternate Currencies.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may, in consultation with the Borrower, establish another convention in its reasonable discretion, which shall be consistent with the then prevailing market conventions.

“Daily Simple SONIA” shall mean, for any day, an interest rate per annum equal to SONIA for the day that is five Business Days prior to (a) if such day is a Business Day, such day or (b) if such day is not a Business Day, the Business Day immediately preceding such day; provided that if such rate as determined above is less than zero, such rate shall be deemed to be zero. Any change in Daily Simple SONIA due to a change in SONIA shall be effective from and including the effective date of such change in SONIA without notice to the Borrowers.

“Debt to Equity Ratio” means, as of any date of determination, the ratio of Total Debt to Total Equity.

“Default” means any event or condition that constitutes an Event of Default or that, with notice or lapse of time or both, would become an Event of Default.

“Defaulting Lender” means, subject to Section 3.14(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the requesting 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, the Issuing Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified KCMH, the Administrative Agent or the Issuing Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or KCMH, to confirm in writing to the Administrative Agent and KCMH 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 KCMH), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any bankruptcy, insolvency, reorganization or similar law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.14(b)) upon delivery of written notice of such determination to KCMH, the Issuing Lender and each Lender.

“Designated Entity” means at any time, any corporation, partnership, limited liability company or other entity formed or acquired after the Closing Date that is not a Borrower and of which at least a majority but less than 100% of the Voting Shares are at the time directly or indirectly owned or controlled by KCMH or one or more Subsidiaries

of KCMH, which has been designated in a written notice from KCMH to the Administrative Agent as a Designated Entity; provided that at the time of such designation (a) no Default or Event of Default would result from such designation and (b) after giving pro forma effect to such designation the Debt to Equity Ratio is less than or equal to **[\*\*]** to 1.00. KCMH may, by written notice to the Administrative Agent, de-designate any Designated Entity and thereafter such entity shall not longer constitute a Designated Entity, but only if (a) no Default or Event of Default would result from such de-designation and (b) after giving pro forma effect to such de-designation the Debt to Equity Ratio is less than or equal to **[\*\*]** to 1.00; provided further that notwithstanding the foregoing, KKR-MM Vector GP LLC, KKR-MM Vector L.P., Merchant Capital Solutions LLC, MCS Corporate Lending LLC, MCS Capital Markets LLC, **[\*\*]**, **[\*\*]**, any entity formed for the purpose of acting in an administrative or other agency roles in respect of financings (with written notice thereof provided by KCMH to the Administrative Agent) and any of their respective direct or indirect subsidiaries, now existing or hereafter formed, shall each be deemed a Designated Entity (unless otherwise de-designated by KCMH in accordance with this definition).

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Equity Interests other than Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Equity Interests other than Disqualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d) above, prior to the date that is ninety-one days after the Commitment Termination Date.

“Dollar Equivalent” means, on any date, with respect to any amount denominated in an Alternate Currency, the amount of Dollars that would be required to purchase such amount of such Alternate Currency at or about 11:00 a.m., Local Time, on such date, for delivery two Business Days later, as determined by the Administrative Agent on the basis of the spot selling rate for the offering of such Alternate Currency for Dollars in the Principal Financial Center for the applicable Alternate Currency, all determinations thereof by the Administrative Agent to be conclusive and binding on the parties in the absence of manifest error.

“Dollars” and “\$” refers to lawful money of the United States.

“Domestic Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Domestic Lending Office” in the Administrative Questionnaire of such Lender or in the Assignment and Assumption pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to KCMH and the Administrative Agent.

**[\*\*]** = *Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

“Domestic Subsidiary” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“Early Opt-in Election” means,

(a) if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as the then current benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the Administrative Agent of written notice of such election to the Lenders; and

(b) if the then-current Benchmark is not USD LIBOR in the case of Eurocurrency Loans denominated in an Alternate Currency, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that syndicated credit facilities denominated in the relevant Alternate Currency being executed at such time, or that include language similar to that contained in this Section titled “Benchmark Replacement Setting” are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace such Benchmark for such Alternate Currency, and

(2) the joint election by the Administrative Agent and the Borrower that an Early Opt-in Election has occurred and the provision by the Administrative Agent of written notice of such election to the Lenders.

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

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

“EEA Resolution Authority” means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“Eligible Assignee” means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by the Administrative Agent and the Issuing Lender and, unless an Event of Default of the kind referred to in Section 7.01(a), 7.01(b), 7.01(g) or 7.01(h) has occurred and is continuing, by KCMH (each such approval not to be unreasonably withheld or delayed); provided, that notwithstanding the foregoing, assignments to any private equity fund, credit fund, hedge fund or other similar investment vehicle shall require the consent of KCMH in its sole discretion.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company (including any securities convertible or exchangeable for such stock or interests), beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

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

“ERISA Affiliate” means any Person that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than those events for which the 30-day notice period is waived pursuant to Department of Labor Reg. Section 4043 as in effect on the date hereof); (b) the failure of any Plan to satisfy the minimum funding standards (as defined in Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any of its ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from the Borrower or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA.



“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.

“Euro” has the meaning specified in Section 9.17.

“Eurocurrency Liabilities” has the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Eurocurrency Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Eurocurrency Lending Office” in the Administrative Questionnaire of such Lender or in the Assignment and Assumption pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such other office of such Lender as such Lender may from time to time specify to KCMH and the Administrative Agent. It is understood and agreed that unless otherwise hereafter notified, the Eurocurrency Lending Office for MHC B and its Affiliates shall be its New York branch.

“Eurocurrency Loan” means, at any time, a Loan which bears interest at rates based upon the Eurocurrency Rate.

“Eurocurrency Rate” means, for each Eurocurrency Loan denominated in (x) a particular Currency (other than British Pound Sterling) comprising part of the same Borrowing for any Interest Period, an interest rate per annum equal to the rate per annum for deposits in such Currency having a maturity closest to such Interest Period which appears on the relevant Screen Page as of 11:00 a.m., London time, on the day two Business Days prior to the first day of such Interest Period and (y) British Pound Sterling comprising part of the same Borrowing, SONIA Rate; *provided* that if the Eurocurrency Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement.

“Events of Default” has the meaning specified in Section 7.01.

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

“Excluded Taxes” means, with respect to any recipient of any payment to be made by or on such recipient’s account of any obligation of the Borrowers hereunder to the Administrative Agent and each Lender, Taxes (a) imposed on or measured by its overall net income (however denominated), franchise Taxes and branch profit Taxes, in each case, imposed by a jurisdiction (or any political subdivision thereof) as a result of a present or former connection between such recipient and the jurisdiction (or political subdivision thereof) imposing such tax (other than any such connection arising solely as a result of such recipient having executed, delivered or performed its obligations under or received a payment pursuant to this Agreement), (b) that are attributable to such recipient’s failure to comply with the requirements of paragraph (e) or (f) of Section 3.11, (c) that are withholding taxes imposed on amounts payable to such recipient pursuant to a law in effect on the date on which (i) such recipient acquires an applicable interest in a

Loan or Commitment or (ii) such recipient changes its lending office, except in each case to the extent that such recipient's assignor (if any) was entitled, immediately before the time of assignment, to receive additional amounts from the Borrower with respect to such Taxes pursuant to Section 3.11(b) or immediately before it changed its lending office and (d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain 364-Day Revolving Credit Agreement dated June 27, 2019 among KCMH, KCL U.S., KCL, U.K., MHCB as administrative agent and the lenders party thereto, as from time to time further amended, modified, supplemented, refinanced or replaced.

“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 and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any law, regulation, rule, promulgation, or official agreement implementing an official government agreement with respect to the foregoing.

“Federal Funds Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Finance Lease Obligation” shall mean, as applied to any Person, an obligation that is required to be accounted for as a finance or capital lease (and not an operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP. At the time any determination thereof is to be made, the amount of the liability in respect of a finance or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP.

“Finance Subsidiary” means KCL U.K., KCL U.S., KCL C.A., KCL T.N., KCL Cayman, KKR Nitro and any other direct or indirect Subsidiary of KCMH formed for the purpose of providing financing in KCMH's financing business.

“Finance Subsidiary Debt” means Indebtedness under any warehouse credit facility or other similar line of credit entered into for the purpose of funding Indebtedness originated or extended by any Finance Subsidiary.

“Financial Officer” means the chief financial officer, principal financial officer, treasurer, controller or a director of a Borrower.

“FINRA” means the Financial Industry Regulatory Authority, or any other Self Regulatory Organization that succeeds to the functions thereof.

“Five-Year Credit Agreement” means that certain Third Amended and Restated 5-Year Revolving Credit Agreement dated March 20, 2020 among KCMH, KCL U.S., KCL, U.K., MHC B as administrative agent and the lenders party thereto, as from time to time further amended, modified, supplemented, refinanced or replaced.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to Dollars or any Alternate Currency.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

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

“General Partner” means KKR Capital Markets Holdings GP LLC, a Delaware limited liability company.

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

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

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or to advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness; 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 an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made (or, if such Guarantee is limited by its terms to a lesser amount, such lesser amount) or, if not stated

or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guarantee and Security Agreement” means the Guaranty and Security Agreement, dated as of the date hereof, among the Obligors and the Administrative Agent in substantially the form of Exhibit B, as from time to time amended, modified or supplemented.

“Guarantors” means, at any time, collectively, those Subsidiaries of KCMH that are parties to the Guarantee and Security Agreement.

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement or other derivative transaction.

“Indebtedness” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (b) the deferred purchase price of assets or services that in accordance with GAAP would be included as a liability on the balance sheet of such Person, (c) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder and all direct obligations arising under bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all Indebtedness of any other Person secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (e) the principal component of all Finance Lease Obligations, (f) all obligations of such Person under interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity price protection agreements or other commodity price hedging agreements and other similar agreements, (g) without duplication, all Guarantees by such Person of Indebtedness of others and (h) all obligations of such Person in respect of Disqualified Equity Interests, provided that Indebtedness shall not include (i) trade and other ordinary course payables and accrued expenses arising in the ordinary course of business, (ii) deferred or prepaid revenue and (iii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller. The amount of Indebtedness of any Person for purposes of clause (d) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning specified in Section 9.04(b).

“Intercreditor Agreement” means that certain First Lien Intercreditor Agreement dated April 9, 2021, among the Administrative Agent, the administrative agent in respect of the Five-Year Credit Agreement, the other parties thereto from time to time and acknowledged by the Obligors, as from time to time amended, modified, supplemented or replaced.

“Interest Period” means, for any Eurocurrency Loan (other than a SONIA Rate Loan), the period beginning on the date such Eurocurrency Loan is made, or Continued or Converted from an ABR 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 therefor and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one month, or if agreed by the Administrative Agent, two, three or six months (or if available to all relevant Lenders, nine or twelve months), as the Borrower may select by notice to the Administrative Agent no later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to such nine- or twelve-month periods, fourth Business Day) prior to the first day of such Interest Period.

Notwithstanding the foregoing:

(w) if any Interest Period would otherwise commence before and end after the Commitment Termination Date, such Interest Period shall end on the Commitment Termination Date,

(x) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day, unless such next succeeding Business Day would fall in the succeeding month, in which case such Interest Period shall end on the next preceding Business Day,

(y) each Interest Period that commences on the last day of a month (or on any day for which there is no numerically corresponding day in the appropriate subsequent month) shall end on the last Business Day of the appropriate subsequent calendar month, and

(z) Interest Periods commencing on the same day for Eurocurrency Loans comprising part of the same Borrowing shall be of the same duration.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person.

“Issuing Lender” means MHCBC, and/or any other Lender from time to time designated as an Issuing Lender in a writing signed by such Lender, KCMH and the Administrative Agent (MHCBC and such other Lender being collectively referred to herein as the “Issuing Lender” unless the context otherwise requires).

“KCL Cayman” means KKR Corporate Lending (Cayman) Ltd., a Cayman limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCL C.A.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCL T.N.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCL U.K.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCL U.S.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCMH” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCM Asia” means KKR Capital Markets Asia Limited, a Hong Kong limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM Group Entity” means KCMH and any entity in which KCMH, directly or indirectly, owns an Equity Interest.

“KCM Ireland” means KKR Capital Markets (Ireland) Limited, an Ireland limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM Japan” means KKR Capital Markets Japan Holdings LLC, a Delaware limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM U.S.” means KKR Capital Markets LLC, a Delaware limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM U.K.” means KKR Capital Markets Limited, a United Kingdom limited liability company, and includes any successor thereto in accordance with this Agreement.

“KKR” means Kohlberg Kravis Roberts & Co. L.P., a Delaware limited partnership and includes any successor thereto in accordance with this Agreement.

“KKR Nitro” means KKR Nitro Holdings Limited, a Cayman limited liability company, and includes any successor thereto in accordance with this Agreement.

“L/C Exposure” means, at any time, the sum of (a) the aggregate undrawn face amount of all outstanding Letters of Credit and (b) the aggregate amount of unreimbursed L/C Payments under all outstanding Letters of Credit (or, if applicable with respect to clauses (a) and (b), the Dollar Equivalent thereof).

“L/C Payment” means a payment by an Issuing Lender of a draft or demand drawn under a Letter of Credit.

(ii). “L/C Reimbursement Obligation” means the obligation of a Borrower to reimburse an Issuing Lender for an L/C Payment pursuant to Section 2.02(d)

“L/C Related Documents” has the meaning specified in Section 2.02(c)(i).

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

“Lead Arranger” means MHC, in its capacity as sole lead arranger and sole bookrunner.

“Lender” means each bank or other financial institution listed on the signature pages hereof and each Person that shall become a party hereto pursuant to 9.06.

“Letter of Credit” has the meaning specified in Section 2.02(a)(i).

“Letter of Credit Facility Amount” means the lesser of (a) \$0 and (b) the Aggregate Facility Amount.

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

“Loan” has the meaning specified in Section 2.01(a)(i).

“Loan Documents” means, collectively, this Agreement, the Notes, the Guarantee and Security Agreement and the Intercreditor Agreement.

“Local Time” means (a) with respect to any Loan denominated or any payment to be made in Dollars, New York time, and (b) with respect to any Eurocurrency Loan denominated or any payment to be made in an Alternate Currency, the local time in the Principal Financial Center for such Alternate Currency.

“London Banking Day” means any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

“Majority Lenders” means, at any time, (a) Lenders holding more than 50% of the Commitments, or (b) if the Commitments have terminated or expired, Lenders having

collectively more than 50% of the sum of (i) aggregate amount of the unpaid principal amount of the Loans and (ii) L/C Exposure (computed at any time, in the case of Loans and L/C Exposure denominated in an Alternate Currency, as the Dollar Equivalent thereof as determined by the Administrative Agent); provided that the unused Commitment of, and the portion of the Total Credit Exposure held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Majority Lenders.

“March 5th Announcements” means the announcement by the U.K. Financial Conduct Authority (“FCA”), the regulatory supervisor of ICE Benchmark Administration Limited (“IBA”), and the IBA, in each case on March 5, 2021, regarding the future cessation and loss of representativeness of each tenor setting of the London Interbank Offered Rates.

“Material Adverse Effect” means a material adverse effect on (a) the business, financial condition, properties or operations of KCMH and its Subsidiaries taken as a whole, (b) the ability of any Obligor to perform any of its material obligations under any Loan Document or (c) the material rights and remedies of, or benefits available, to the Administrative Agent or the Lenders under any Loan Document.

“Material Domestic Subsidiary” means any Domestic Subsidiary that is a Material Subsidiary.

“Material Foreign Subsidiary” means any Foreign Subsidiary (inclusive of its Subsidiaries) that, as of the last day of the fiscal quarter of KCMH most recently ended for which financial statements have been delivered pursuant to Section 6.01(a)(i) or (ii), (a) generated over 25% of consolidated revenues of KCMH and its Subsidiaries for the period of two years ended at the end of such fiscal quarter or (b) to which more than \$[\*\*] of the Aggregate Facility Amount has been funded as of such date and has been funded for the period of six months immediately preceding such date.

“Material Indebtedness” means Indebtedness of the type described in clause (a) of the definition thereof issued or incurred under any agreement or instrument in an aggregate outstanding principal amount of \$[\*\*] or more.

“Material Subsidiary” means any Subsidiary that constitutes a “significant subsidiary” as defined under Regulation S-X promulgated by the SEC, as in effect from time to time; provided that each of KCM U.S. and KCM U.K. shall be a Material Subsidiary.

“MHCB” means Mizuho Bank, Ltd. or any successor thereto.

“Moody’s” means Moody’s Investors Service, Inc. or any successor thereto.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

[\*\*] = *Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*



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

“Non-U.S. Lender” has the meaning specified in Section 3.11(e).

“Note” has the meaning specified in Section 2.01(e).

“Notice of Borrowing” has the meaning specified in Section 2.01(b)(ii).

“Notice of Issuance” has the meaning specified in Section 2.02(c)(i).

“Obligations” means (a) all obligations of the Borrowers under the Loan Documents to pay the principal of and interest on the Loans and the L/C Reimbursement Obligations and all fees, premiums, costs, expenses, indemnification payments and other amounts or obligations whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Secured Creditors arising under, out of, or in connection with the Loan Documents and all obligations of the Borrowers to any Lender (or any Affiliate thereof) under any Hedging Agreement and (b) in the case of each of the foregoing, including all interest thereon and expenses related thereto, including any interest or expenses accruing or arising after the commencement of any case with respect to any Obligor under the United States Bankruptcy Code or any other bankruptcy or insolvency law (whether or not such interest or expenses are allowed or allowable as a claim in whole or in part in such case).

“Obligors” means, collectively, the Borrowers and the Guarantors.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“Participant” has the meaning specified in Section 9.06(d).

“Patriot Act” has the meaning specified in Section 9.15.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in Section 4002 of ERISA and any successor entity performing similar functions.

“Permitted Liens” means:

(a) Liens for taxes, assessments or governmental charges or claims not yet overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP, or for property taxes on property that the Borrower or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge or claim is to such property;

(b) Liens in respect of property or assets of KCMH or any of its Subsidiaries imposed by law, such as carriers', warehousemen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, in each case so long as such Liens arise in the ordinary course of business and do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens arising from judgments or decrees in circumstances not constituting an Event of Default under 7.01(j);

(d) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business;

(e) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(f) easements, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the business of KCMH and its Subsidiaries, taken as a whole;

(g) any interest or title of a lessor or secured by a lessor's interest under any lease permitted by this Agreement;

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

(i) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of KCMH and its Subsidiaries, taken as a whole;

(j) Liens arising from precautionary UCC financing statement or similar filings made in respect of operating leases entered into by the Borrower or any of its Subsidiaries;

(k) Liens created in the ordinary course of business in favor of banks and other financial institutions over credit balances of any bank accounts, brokerage accounts or commodities accounts of KCMH and its Subsidiaries held at such banks or financial institutions, including any accounts maintained with any clearing or settlement bank or other financial institution; and

(l) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of KCMH and its Subsidiaries, taken as a whole.

"Permitted Subordinated Debt" shall mean senior subordinated notes, or other senior subordinated Indebtedness, issued by a Borrower or any Guarantor, (a) the terms

of which (i) do not provide for any scheduled repayment, mandatory redemption or sinking fund obligation prior to a date 91 days after Commitment Termination Date (other than customary offers to purchase upon a change of control, asset sale or event of loss and customary acceleration rights after an event of default) and (ii) provide for customary subordination to the obligations of the Obligors under the Loan Documents, (b) the covenants, events of default, guarantees, collateral and other terms of which (other than interest rate and redemption premiums), taken as a whole, are not more restrictive to KCMH and its Subsidiaries than those herein; provided that a certificate of a Financial Officer of KCMH is delivered to the Administrative Agent at least seven Business Days (or such shorter period as the Administrative Agent may reasonably agree) prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that KCMH has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies KCMH within such period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees), (c) of which no Subsidiary of KCMH (other than a Guarantor) is an obligor and (d) after giving pro forma effect to the issuance thereof, KCMH shall be in compliance with the financial covenant set forth in Section 6.03.

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

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledged Equity” has the meaning specified in the Guarantee and Security Agreement.

“Principal Financial Center” means, for any Currency, the principal financial center in the country of issue of such Currency, as reasonably determined by the Administrative Agent.

“Property” of any Person means any property or assets, or interest therein, of such Person.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“Register” has the meaning specified in Section 9.06(c).

“Regulations T, U and X” means, respectively, Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as from time to time amended, modified or supplemented.

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

“Relevant Governmental Body” means (i) with respect to USD LIBOR, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, (ii) with respect to a Benchmark Replacement in respect of Eurocurrency Loans denominated in British Pounds Sterling, the Bank of England, or a committee officially endorsed or convened by the Bank of England or, in each case, any successor thereto, or (iii) with respect to a Benchmark denominated in an Alternate Currency (other than British Pounds Sterling), (a) the central bank for such Alternate Currency in which such Benchmark is denominated or any central bank or the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), (b) any working group or committee officially endorsed or convened by (1) the central bank for such Alternate Currency in which such Benchmark is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark or (B) the administrator of such Benchmark, (3) a group of those central banks or other supervisors, (4) the Financial Stability Board or any part thereof, (c) an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), (d) a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or (e) a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component).

“Relevant LIBOR” means (a) with respect to any Eurocurrency Loan denominated in Dollars, USD LIBOR and (b) with respect to any Eurocurrency Loan denominated in an Alternate Currency other than British Pounds Sterling, the London Interbank Offered Rate, if any, for such Alternate Currency.

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

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

“Rule 15c3-1” means Rule 15c3-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act (17 CFR 240, 15c3-1), as from time to

time amended, modified or supplemented, or such other rule or regulation of the SEC which replaces Rule 15c3-1.

“S&P” means Standard & Poor’s Rating Services or any successor thereto.

“Screen Page” means the Reuters Page LIBOR01 or LIBOR02 or such other Reuters screen page displaying interbank offered rates for the applicable Currency (other than British Pound Sterling) or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion. If at least two relevant rates appear on said page with respect to an Interest Period, the Eurocurrency Rate (other than SONIA Rate) for that Interest Period will be based upon the arithmetic mean of such rates.

“Secured Creditors” means, collectively, the Lenders (including each Issuing Lender) and the Administrative Agent, any other holder from time to time of any of the Obligations and, in each case, their respective successors and assigns.

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

“Self Regulatory Organization” has the meaning assigned to such term in Section 3(a)(26) of the Exchange Act.

“SIPA” means the Securities Investor Protection Act of 1970, as from time to time amended, modified or supplemented.

“SIPC” means the Securities Investor Protection Corporation established pursuant to SIPA or any other corporation succeeding to the principal functions thereof.

“SOFR” means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator’s Website on the immediately succeeding Business Day.

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

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Solvent” and “Solvency” mean, with respect to any Person, that as of the Closing Date, (a) (i) the sum of such Person’s debts (including contingent liabilities) does not exceed the present fair saleable value of such Person’s present assets; (ii) such Person’s capital is not unreasonably small in relation to its business as contemplated on the

Closing Date; and (iii) such Person has not incurred and does not intend to incur, or believe that it will incur, debts including current obligations beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (b) such Person is “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“SONIA” means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator’s Website on the immediately succeeding Business Day.

“SONIA Administrator” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“SONIA Administrator’s Website” means the Bank of England’s website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

“SONIA Rate” when used in reference to any Loan or Borrowing, refers to such Loan, or the Loans comprising such Borrowing, which are bearing interest at a rate determined by reference to Daily Simple SONIA.

“Subordinated Indebtedness” means any Permitted Subordinated Debt or any other Indebtedness the terms of which provide for customary subordination in right of payment to the obligations of a Borrower or any of its Subsidiaries, as applicable, under this Agreement and the other Loan Documents.

“Subsidiary” means, at any time, any corporation, partnership, limited liability company or other entity of which at least a majority of the Voting Shares are at the time directly or indirectly owned or controlled by KCMH or one or more Subsidiaries of KCMH; provided that no Designated Entity shall be a Subsidiary.

“Support Payment” has the meaning specified in Section 2.06(a).

“Taxes” means all present and future taxes, duties, levies, imposts, deductions, charges or withholdings or similar charges, with respect to any amount payable on or in respect of any Loan Document, Loans, Notes or Letters of Credit, and all interest, penalties and similar amounts with respect thereto, now or thereafter imposed, assessed, levied or collected by any jurisdiction from which any amount payable under the Loan Documents is paid, or any political subdivision or taxing authority thereof or therein, or any organization or federation of which any of the foregoing may be a member or associated.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means, solely in the case of Eurocurrency Loans denominated in Dollars, the occurrence of both (i) the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with the Section titled “Benchmark Replacement Setting” that is not Term SOFR, and (ii) a prior written consent by the Borrower to the delivery of a Term SOFR Notice by the Administrative Agent.

“Total Credit Exposure” means, at any time, the sum of (a) the aggregate outstanding principal amount of the Loans (being the Dollar Equivalent thereof in the case of Eurocurrency Loans denominated in an Alternate Currency) plus (b) the aggregate outstanding L/C Exposure.

“Total Debt” means, at any date, (a) all Indebtedness of the types described in clause (a), clause (c) (but, in the case of clause (c), only to the extent of any unreimbursed drawings under any letter of credit) and clause (e) of the definition thereof actually owing by KCMH and/or its Subsidiaries on such date to the extent appearing on the consolidated balance sheet of KCMH determined in accordance with GAAP (provided that the amount of any Finance Lease Obligations or any such Indebtedness issued at a discount to its face value shall be determined in accordance with GAAP) minus (b) the aggregate cash and Cash Equivalents included on the consolidated balance sheet of KCMH as at such date to the extent the use thereof for application to the payment of Indebtedness is not prohibited by law or any contract to which KCMH or any Subsidiary is a party; provided that for the purposes of this definition, Indebtedness shall not include (i) any Finance Subsidiary Debt (unless such Indebtedness is incurred by a Finance Subsidiary that is also a Borrower under this Agreement), (ii) any liabilities includable solely based on the application of ASC 810 or ASC 860 and (iii) any Indebtedness of any Designated Entity.

“Total Equity” means, as of any date of determination, (a) KCMH’s consolidated partners’ capital (or stockholders’ equity, as the case may be) measured on a GAAP basis, minus (b) the sum of (i) any declared but unpaid distribution or dividend to KCMH’s general or limited partners (or any other equity holders) and (ii) any loans or advances made to KCMH’s general or limited partners (or any other equity holders); provided that Total Equity shall not include KCMH’s partners’ capital (or stockholders’ equity, as the case may be) attributable to any Designated Entity and, in the event all or a substantial portion of the equity in a Finance Subsidiary is pledged to a third party, such Finance Subsidiary.

“Type” refers to whether a Loan is an ABR Loan, a Eurocurrency Loan or a SONIA Rate Loan.

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

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“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.

“United States” or “U.S.” means the United States of America.

“USD LIBOR” means the London interbank offered rate for Dollars.

“Voting Shares” means, with respect to any Person, such Person’s Equity Interests having the right to vote for the election of directors, or other individuals performing similar functions, of such Person under ordinary circumstances.

“Wholly-Owned Subsidiary” means, with respect to any Person, any Subsidiary of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares) are directly or indirectly owned or controlled by such Person or one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

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

“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. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”. The words “include”, “includes” and “including” shall be deemed in each case to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed in each case as referring to such agreement, instrument or other document as from time to time amended, modified or supplemented, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed in each case to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import shall be construed in each case to refer to this Agreement in its entirety and not to any particular provision hereof, and (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement. For the avoidance of doubt, references in Articles VIII and IX to the Lenders shall include in each case the Issuing Lender, unless the context otherwise requires. For the purposes of Section 2.05 only, the term “Borrower” or “Borrowers” shall exclude any Broker-Dealer Subsidiary.

SECTION 1.03. Accounting Terms; GAAP; Calculation of Debt to Equity Ratio.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that if the Borrower notifies the Administrative Agent that it requests an amendment to any provision 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 (or if the Administrative Agent notifies the Borrower that the Majority 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.

(b) Calculation of the Debt to Equity Ratio shall be based on relevant information in the financial statements and asset schedules delivered pursuant to Sections 6.01(a)(i), (ii) and (vi) giving pro forma effect to such information where appropriate; provided that the amount of Total Debt shall be the amount outstanding as of the date of determination after giving effect to the incurrence of any Indebtedness on such date of determination.

SECTION 1.04. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.05. Interest Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or the Screen Page or with respect to any alternative or successor rate thereto, or replacement rate thereof including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 3.04(c), whether upon the occurrence of a Benchmark Transition Event, Term SOFR Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 3.04(c)(iii), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, LIBOR or the Eurodollar Rate or have the same volume or liquidity as did LIBOR or the Eurodollar Rate prior to the discontinuance or unavailability of LIBOR.

The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation, administration of, submission of, calculation of or any other matter related to SONIA, any component definition thereof or rate referenced in the definition thereof or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including without limitation whether the composition or characteristics of any such alternative, comparable or successor or alternative rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, Daily Simple SONIA or any other Benchmark prior to its discontinuance or unavailability. The Administrative Agent and its Affiliates and/or other related entities may engage in transactions that affect the calculation of any Daily Simple SONIA, any alternative, successor or alternative rate (including any Benchmark Replacement) and/or any relevant adjustments thereto.

## ARTICLE II

### THE COMMITMENTS

#### SECTION 2.01. The Loans.

(a) (i) Each Lender severally agrees, on and subject to the terms and conditions of this Agreement, to make loans to the Borrowers under this Section 2.01(a)(i) (each, a "Loan") from time to time on any Business Day during the Availability Period, in an aggregate principal amount at any one time outstanding up to but not exceeding the Commitment of such Lender and, as to all Lenders and all Borrowers, in an aggregate principal amount at any one

time outstanding up to but not exceeding the Aggregate Borrowing Availability (or the Alternate Currency Equivalent thereof).

(ii) ABR Loans shall be denominated in Dollars, Eurocurrency Loans may be denominated in Dollars or one or more Alternate Currencies, and SONIA Rate Loans shall be denominated in British Pounds Sterling.

(iii) Anything in this Agreement to the contrary notwithstanding, the Total Credit Exposure shall not at any time exceed the then Aggregate Facility Amount.

(iv) Within such limits, the Borrowers may from time to time borrow under this Section 2.01, prepay Loans in whole or in part pursuant to Section 3.06(a) and reborrow under this Section 2.01.

(v) The Borrowers shall be co-borrowers with respect to each Borrowing, and shall be jointly and severally liable for all obligations and liabilities with respect thereto in accordance with Sections 2.05 and 2.06.

(b) Borrowing Procedure. (i) Each Borrowing shall be in a minimum amount of \$5,000,000 in the case of a Borrowing of Eurocurrency Loans, or \$1,000,000, in the case of a Borrowing of ABR Loans, or in each case an integral multiple of \$1,000,000 in excess thereof (or, in the case of a Borrowing denominated in an Alternate Currency, the Alternate Currency Equivalent thereof, rounded to the nearest 1,000 units of such Alternate Currency), and shall be made on notice by the requesting Borrower to the Administrative Agent not later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to Interest Periods other than one, two, three or six months, fourth Business Day) prior to the date of such Borrowing in the case of a Borrowing consisting of Eurocurrency Loans or not later than 11:00 a.m. (New York time) on the date of such Borrowing in the case of a Borrowing consisting of ABR Loans, and the Administrative Agent shall give each Lender prompt notice thereof.

(ii) Each such notice of a Borrowing (a “Notice of Borrowing”) shall be irrevocable and binding on the Borrowers and shall be in substantially the form of Exhibit C, specifying therein the requested (1) date of such Borrowing (which shall be a Business Day), (2) Type of Loans comprising such Borrowing, (3) aggregate amount of such Borrowing, stated in Dollars, and the Currency thereof and (4) in the case of a Borrowing of Eurocurrency Loans (other than SONIA Rate Loans), initial Interest Period for such Loans.

(iii) Each Lender shall, before 1:00 p.m. (New York time) on the date of such Borrowing, make available for the account of its Applicable Lending Office to the Administrative Agent at the Administrative Agent’s Account, in same day funds, such Lender’s ratable portion of such Borrowing.

(iv) After the Administrative Agent’s receipt of such funds, and subject to the satisfaction of the applicable conditions set forth in Article IV, the Administrative Agent will make such funds available to the requesting Borrower by promptly crediting the

amounts so received, in like funds, to such account of such Borrower as the Administrative Agent and such Borrower may agree.

(v) If the requesting Borrower fails to specify a Type of Loan in a Notice of Borrowing, then the applicable Loans shall be made as ABR Loans. If the requesting Borrower fails to provide a timely notice of Conversion or Continuation with respect to a Borrowing of Eurocurrency Loans (other than SONIA Rate Loans), then such Borrower shall be deemed to have requested a Continuation with respect thereto with an Interest Period of one month. If the requesting Borrower requests a Borrowing of, Conversion to, or Continuation of Eurocurrency Loans (other than SONIA Rate Loans) in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. If the requesting Borrower requests a Borrowing of, Conversion to, or Continuation of Eurocurrency Loans in any such Notice of Borrowing, but fails to specify the Currency thereof, it will be deemed to have specified such Loans in Dollars.

(vi) After giving effect to all Borrowings, all Conversions and all Continuations, there shall not be more than 15 Interest Periods in effect.

(c) Types of Loans. Each Borrowing and each Conversion or Continuation thereof shall consist of Loans of the same Type (and, if such Loans are Eurocurrency Loans (other than SONIA Rate Loans), having the same Interest Period) made, Continued or Converted on the same day by the Lenders ratably according to their Commitment Percentages.

(d) Accounts. (i) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(ii) The Administrative Agent shall maintain accounts in which it shall record (x) the amount of each Loan, the Type thereof, the Borrowing Category applicable thereto and the Interest Period applicable thereto, (y) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (z) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(iii) The entries made in the accounts maintained pursuant to this clause (d) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans made to any Borrower or make payments for other obligations (including L/C Reimbursement Obligations) in accordance with the terms of this Agreement.

(e) Notes. Any Lender may, through the Administrative Agent, request that the Loans to be made by it be evidenced by a promissory note of the Borrowers. In such event, the Borrowers shall prepare, execute and deliver to such Lender a joint and several promissory

note payable to such Lender (or its registered assigns), substantially in the form of Exhibit A (each, a “Note”), in the amount of the Commitment of such Lender, dated the Closing Date and otherwise appropriately completed.

SECTION 2.02. Letter of Credit Facility.

(a) Letters of Credit. (i) Each Issuing Lender agrees, on and subject to the terms and conditions of this Agreement, to issue one or more letters of credit (each, a “Letter of Credit”) for the account of a Borrower from time to time on any Business Day during the period from the Closing Date until the date ten Business Days before the Commitment Termination Date, provided, that the total L/C Exposure with respect to Letters of Credit may not at any time exceed the Letter of Credit Facility Amount.

(ii) Letters of Credit may be denominated in Dollars or any Alternate Currency, as requested in writing by the Borrower.

(iii) Anything in this Agreement to the contrary notwithstanding, the issuance of Letters of Credit shall be subject to the limitations set forth in Section 2.01(a)(iii).

(iv) Within the foregoing limits, and subject to the terms and conditions hereof, a Borrower’s ability to obtain Letters of Credit shall be revolving, and accordingly a Borrower may, during the period referred to in clause (i) above, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(v) The Borrowers shall be co-obligors with respect to each Letter of Credit, and shall be jointly and severally liable for all obligations and liabilities with respect thereto in accordance with Sections 2.05 and 2.06.

(b) Terms: Issuance. (i) Each Letter of Credit shall be in a form reasonably satisfactory to the relevant Issuing Lender and have a stated expiration date that is no later than the earlier of (x) one year after its date of issuance and (y) five Business Days prior to the Commitment Termination Date; provided that a Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond a date five Business Days prior to the Commitment Termination Date (except that one or more Letters of Credit may expire up to one year after the Commitment Termination Date if each such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the Borrowers, the relevant Issuing Lender and the Administrative Agent)).

(ii) An Issuing Lender shall be under no obligation to issue any Letter of Credit if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Lender from issuing such Letter of Credit, or any law applicable to such Issuing Lender or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or direct that such Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Lender is not otherwise

compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such Issuing Lender is not otherwise compensated hereunder), or (B) the issuance of such Letter of Credit would violate any laws binding upon such Issuing Lender.

(c) Issuance Procedure. (i) Each Letter of Credit shall be issued upon notice, given not later than 11:00 a.m. (New York time) on the third Business Day prior to the proposed issuance date of such Letter of Credit, by the requesting Borrower to the relevant Issuing Lender (or such shorter notice as shall be acceptable to such Issuing Lender), with a copy to the Administrative Agent, and the Administrative Agent shall give to each Lender prompt notice thereof by telecopier or email. Each such notice from the requesting Borrower (a "Notice of Issuance") shall be by telecopier or email, confirmed promptly by hard copy, specifying therein the Issuing Lender and the requested date of issuance (which shall be a Business Day) of such Letter of Credit, its face amount and expiration date and the name and address of the beneficiary thereof, and shall attach the proposed form thereof (or such other information as shall be necessary to prepare such Letter of Credit). If requested by the applicable Issuing Lender, the requesting Borrower shall supply such application and agreement for letter of credit, in the form reasonably satisfactory to the relevant Issuing Lender, as the relevant Issuing Lender may require in connection with such requested Letter of Credit ("L/C Related Documents") along with such other information reasonably related to the requested Letter of Credit.

(ii) If the proposed Letter of Credit complies with the requirements of this Section 2.02, such Issuing Lender will, unless the Issuing Lender has received written notice from the Administrative Agent, that one or more of the applicable conditions set forth in Article IV shall not be satisfied, make such Letter of Credit available to the requesting Borrower as agreed with the requesting Borrower in connection with such issuance. In the event and to the extent that the provisions of any L/C Related Documents shall conflict with this Agreement, the provisions of this Agreement shall govern.

(iii) Each Issuing Lender shall furnish (A) upon request of the Administrative Agent, copies of the Letters of Credit issued by it hereunder, and (B) to the Administrative Agent on the first Business Day of each fiscal quarter a written report setting forth the Letters of Credit issued in Alternate Currencies, solely for purposes of determining the Dollar Equivalent thereof.

(d) Reimbursement; Syndicate Participation. (i) Automatically upon the issuance of each Letter of Credit, each Lender shall be deemed to have automatically and unconditionally acquired a participation therein to the extent of such Lender's Commitment Percentage on the terms provided in this clause (d) without any further action.

(ii) Upon receipt from the beneficiary of any Letter of Credit of any notice of drawing under such Letter of Credit, the relevant Issuing Lender shall notify the requesting Borrower and the Administrative Agent thereof. Not later than 1:00 p.m. (New York time) on the second Business Day following any L/C Payment by an Issuing

Lender (the "Honor Date"), the Borrowers jointly and severally agree to reimburse such Issuing Lender directly in an amount equal to the amount of such L/C Payment.

(iii) If the Borrowers fail to so reimburse such Issuing Lender by such date, or if any amounts reimbursed by any Borrower are required to be returned or disgorged for any reason, such Issuing Lender shall promptly notify the Administrative Agent and the Administrative Agent shall promptly notify each Lender of the Honor Date, the unreimbursed amount of such L/C Payment (the "Unreimbursed Amount"), and the amount of such Lender's pro rata share thereof. In such event, such Borrower shall be irrevocably deemed to have requested a Borrowing of ABR Loans to be disbursed on the Honor Date in an aggregate Dollar Equivalent amount equal to the Unreimbursed Amount (without regard to the minimum and multiples specified in Section 2.01(b)); provided that, notwithstanding any other provision to the contrary in this Section 2.02, no such Borrowing of ABR Loans shall be permitted unless the Debt to Equity Ratio shall be less than or equal to [\*\*] to 1.00 after giving pro forma effect to such Borrowing and the conditions specified in clauses (a) and (b) of Section 4.02 have been satisfied on or as of the date of such Borrowing. Any notice given by an Issuing Lender or the Administrative Agent pursuant to this Section 2.02(d)(iii) may be given by telephone if immediately confirmed in writing; provided, that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(iv) Subject to the proviso in Section 2.02(d)(iii), each Lender (including any Lender acting as an Issuing Lender) unconditionally agrees upon any notice pursuant to Section 2.02(d)(iii) to make funds available to the Administrative Agent for the account of the relevant Issuing Lender at the Administrative Agent's Account in an amount equal to its Commitment Percentage of the unpaid L/C Reimbursement Obligation not later than 1:00 p.m. (New York time) on the Business Day specified in such notice by the Administrative Agent, whereupon each Lender that so makes funds available shall be deemed to have made an ABR Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant Issuing Lender.

(v) The Borrowers jointly and severally agree to pay interest on the unreimbursed amount of each L/C Reimbursement Obligation to the relevant Issuing Lender, for each day from the date of the relevant L/C Payment until such L/C Reimbursement Obligation is reimbursed or refinanced in full as herein provided, at the rate provided in Section 3.02(b)(ii).

(vi) Subject to the proviso in Section 2.02(d)(iii), each Lender's obligation to make the payments provided in clause (iv) above to reimburse an Issuing Lender for any L/C Payment shall be absolute and unconditional and shall not be affected by (A) any setoff or counterclaim which such Lender may have against an Issuing Lender, any Borrower or any other Person, (B) the occurrence or continuance of a Default or any reduction or termination of the Commitments or any of them, (C) any of the matters referred to in clause (e) below or (D) any other circumstance whatsoever.

[\*\*] = *Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

(vii) If any Lender fails timely to make available to the Administrative Agent for the account of an Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.02, such Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect (without duplication of amounts paid by any Borrower under clause (v) above). A certificate of such Issuing Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vii) shall be conclusive absent manifest error.

(viii) At any time after an Issuing Lender has made an L/C Payment and has received funds from a Lender in respect of such payment in accordance with Section 2.02, if the Administrative Agent receives for the account of such Issuing Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from a Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Administrative Agent will promptly distribute to such Lender its pro rata share thereof in the same funds as those received by the Administrative Agent.

(e) Borrowers Obligations Unconditional. The joint and several obligation of the Borrowers to reimburse each Issuing Lender for each L/C Payment under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, any Loan Document or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower may have at any time against any beneficiary of such Letter of Credit (or any Person for whom any such beneficiary may be acting), such Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto; or

(iii) any sight draft, demand, certificate or 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, or any loss or delay in the transmission or otherwise of any document required in order to obtain an L/C Payment under such Letter of Credit; or

(iv) any payment by such Issuing Lender under such Letter of Credit against presentation of a sight draft or certificate that does not strictly comply with the terms of such Letter of Credit or any payment made by such Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or



successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any bankruptcy, insolvency, reorganization or similar law.

(f) Issuing Lender Rights. Each Lender and each Borrower agrees that, in making any L/C Payment under a Letter of Credit, the relevant Issuing Lender shall not have any responsibility to obtain any document (other than any sight draft, certificate and other document expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering the same. None of the Issuing Lenders, the Administrative Agent, any of the respective Related Parties, nor any correspondents, participants or assignees of the Issuing Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Majority Lenders, as applicable, (ii) any action taken or omitted in the absence of bad faith, gross negligence or willful misconduct, or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Related Document. None of the Issuing Lenders, the Administrative Agent, any of the respective Related Parties, nor any correspondents, participants or assignees of the Issuing Lender, shall be liable or responsible for any of the matters described in Section 2.02(e); provided that anything therein or elsewhere in this Agreement to the contrary notwithstanding, the Borrowers may have a claim against an Issuing Lender, and such Issuing Lender may be liable to the Borrowers, to the extent, but only to the extent, of any direct (as opposed to special, indirect, consequential or punitive) damages suffered by the Borrowers which were directly caused by such Issuing Lender's bad faith, willful misconduct or gross negligence as determined by a final and nonappealable ruling of a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

(g) Applicability of ISP98. Unless otherwise expressly agreed by an Issuing Lender and the requesting Borrower when a Letter of Credit is issued, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Letter of Credit.

#### SECTION 2.03. Fees.

(a) Agency Fee. The Borrowers jointly and severally agree to pay to the Administrative Agent, for the Administrative Agent's own account, an administrative agency fee at the times and in the amounts as agreed in writing by KCMH and the Administrative Agent.

(b) Facility Fee. The Borrowers jointly and severally agree to pay to the Administrative Agent, for the account of each Lender, a facility fee on the amount of the Commitment of such Lender for each day during the period from the date hereof until the Commitment Termination Date, at the rate per annum described in the fee schedule set forth on Annex A, payable quarterly in arrears on the entire Aggregate Facility Amount (irrespective of usage) on the last Business Day of March, June, September and December of each year, on the Commitment Termination Date and on the date of termination of the Commitments.

(c) Letter of Credit Fees.

(i) The Borrowers jointly and severally agree to pay to the Administrative Agent, for the pro rata account of the Lenders based on their respective Commitment Percentages, a commission on the average daily undrawn amount of each outstanding Letter of Credit at a rate equal to the Applicable Margin then in effect for Eurocurrency Loans (other than SONIA Rate Loans) (minus the amount of the fronting fee referred to below), payable quarterly in arrears on the last Business Day of March, June, September and December of each year and on the Commitment Termination Date, commencing on the first such date after the date hereof.

(ii) The Borrowers jointly and severally agree to pay to each Issuing Lender, for the sole account of such Issuing Lender, (x) a fronting fee with respect to each Letter of Credit issued by such Issuing Lender, payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Commitment Termination Date, in an amount equal to [\*\*]% per annum of the average daily available amount of such Letter of Credit and (y) such customary fees and charges in connection with the issuance or administration of each Letter of Credit issued by such Issuing Lender as may be agreed in writing between KCMH and such Issuing Lender from time to time. The Issuing Lender will notify the Borrowers of any and all such fees and charges payable under this Section.

(d) Other Fees. The Borrower shall pay to the Administrative Agent and the Lead Arranger for their own respective accounts such other fees in the amounts and at the times as may be agreed in writing between KCMH and the Administrative Agent and/or the Lead Arranger.

SECTION 2.04. Changes of Commitments.

(a) Commitment Termination Date. The Commitment of each Lender shall be automatically reduced to zero on the Commitment Termination Date.

(b) Commitment Termination or Reduction. KCMH shall have the right, upon at least three Business Days' notice to the Administrative Agent, to terminate in whole or reduce ratably in part the unused portions of the Commitments; provided, that (i) each partial reduction shall be in a minimum aggregate amount of \$5,000,000 and (ii) after giving effect to such termination or reduction, (A) the Total Credit Exposure does not exceed the Aggregate Facility Amount and (B) the L/C Exposure does not exceed the Letter of Credit Facility Amount. Once terminated or reduced, the Commitments may not be reinstated.

SECTION 2.05. Concerning Joint and Several Liability of the Borrowers.

(a) Each of the Borrowers is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders and the Administrative Agent under this Agreement, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of each other Borrower to accept joint and several liability for the Obligations.

*[\*\*] = Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

(b) Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a primary obligor and co-debtor, joint and several liability with each other Borrower, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 2.05), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them.

(c) If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then, in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each of the Borrowers under the provisions of this Section 2.05 constitute the full recourse Obligations of each of the Borrowers enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or the other Loan Documents or any other circumstance whatsoever.

(e) Except as otherwise expressly provided herein, each Borrower hereby waives promptness, diligence, presentment, demand, protest, notice of acceptance of its joint and several liability, notice of any and all advances of the Loans made under this Agreement and any promissory note issued hereunder, notice of occurrence of any Default or Event of Default (except to the extent notice is expressly required to be given pursuant to the terms of this Agreement or any of the other Loan Documents), or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or the Lenders under or in respect of any of the Obligations hereunder, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement and the other Loan Documents. Each Borrower hereby waives all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshaling of assets of the Borrowers and any other entity or Person primarily or secondarily liable with respect to any of the Obligations, and all surety ship defenses generally. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment, or place or manner for payment, compromise, refinancing, consolidation or renewals of any of the Obligations hereunder, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent and the Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement and the other Loan Documents, any and all other indulgences whatsoever by the Administrative Agent and the Lenders in respect of any of the Obligations hereunder, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of such Obligations or the addition, substitution or release, in whole or in part, of any Borrower or any other entity or Person primarily or secondarily liable for any Obligation. Each Borrower further agrees that its Obligations shall not be released or discharged, in whole or in part, or otherwise affected by the adequacy of any rights which the Administrative Agent or any Lender may have against any collateral security, guaranty or other means of obtaining repayment of any of the Obligations, the impairment of any collateral security securing or guaranty supporting the Obligations, including, without limitation, the failure to protect or preserve any

rights which any Administrative Agent or any Lender may have in such collateral security or guaranty or the substitution, exchange, surrender, release, loss or destruction of any such collateral security, any other act or omission which might in any manner or to any extent vary the risk of such Borrower, or otherwise operate as a release or discharge of such Borrower, all of which may be done without notice to such Borrower. If for any reason any other Borrower has no legal existence or is under no legal obligation to discharge any of the Obligations, or if any of the Obligations have become irrecoverable from any other Borrower by reason of such other Borrower's insolvency, bankruptcy or reorganization or by other operation of law or for any reason, this Agreement and the other Loan Documents to which it is a party shall nevertheless be binding on such Borrower to the same extent as if such Borrower at all times had been the sole obligor on such Obligations. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent and the Lenders, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder which might, but for the provisions of this Section 2.05, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 2.05, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the obligations of such Borrower under this Section 2.05 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.05 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any reconstruction or similar proceeding with respect to any other Borrower, or any of the Lenders. The joint and several liability of the Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, ownership, membership, constitution or place of formation of any Borrower or the Lenders. Each of the Borrowers acknowledges and confirms that it has itself established its own adequate means of obtaining from the other Borrowers on a continuing basis all information desired by such Borrower concerning the financial condition of the other Borrowers and that each such Borrower will look to the other Borrowers and not to the Administrative Agent or any Lender in order for such Borrower to keep adequately informed of changes in the other Borrowers' respective financial conditions.

(f) The provisions of this Section 2.05 are made for the benefit of the Lenders and the Administrative Agent and their respective permitted successors and assigns, and may be enforced by it or them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Lenders, the Administrative Agent or such successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against the other Borrowers or to exhaust any remedies available to it or them against any other Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.05 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied and all Commitments terminated. If at any time, any payment, or any part thereof made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by any Lender or the Administrative Agent upon the insolvency, bankruptcy or reorganization of any of the Borrowers, or otherwise, the provisions of this Section 2.05 will forthwith be reinstated in effect, as though such payment had not been made.

(g) Each of the Borrowers hereby agrees that it will not enforce any of its rights of reimbursement, contribution, subrogation or the like against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to any of the Lenders or the Administrative Agent with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been indefeasibly paid in full in cash and all Commitments terminated. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Lenders or the Administrative Agent hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor.

(h) Each of the Borrowers hereby agrees that the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior payment in full in cash of the Obligations and the termination of the all Commitments. Each Borrower hereby agrees that after the occurrence and during the continuance of any Event of Default, unless the Administrative Agent otherwise agrees, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for the Administrative Agent on account of the Obligations and shall be paid promptly after receipt to the Administrative Agent.

#### SECTION 2.06. Contribution.

(a) To the extent that any Borrower shall make a payment under Section 2.05 of all or any of the Obligations (other than Loans made to that Borrower for which it is primarily liable) (a "Support Payment") that, taking into account all other Support Payments then previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Support Payment in the same portion that such Borrower's Allocable Amount (as determined immediately prior to such Support Payment) bore to the aggregate Allocable Amounts of each of the Borrowers as determined immediately prior to the making of such Support Payment, then, following indefeasible payment in full in cash of the Obligations and termination of the Commitments, such Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, the other Borrowers for the net amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Support Payment.

(b) As of any date of determination, the "Allocable Amount" of any Borrower shall be equal to the maximum amount of the claim that could then be recovered from such

Borrower under Section 2.06(a) without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(c) This Section 2.06 is intended only to define the relative rights of Borrowers and nothing set forth in this Section 2.06 is intended or shall impair the obligations of the Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement, including Section 2.05. Nothing contained in this Section 2.06 shall limit the liability of any Borrower to pay the Loans or L/C Reimbursement Obligations made directly or indirectly to or for the benefit of that Borrower and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(d) The parties hereto acknowledge that the rights of contribution and indemnification of any Borrower under this Section 2.06 shall constitute assets of such Borrower.

(e) The rights of an indemnifying Borrower against the other Borrowers under this Section 2.06 shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of Commitments.

### ARTICLE III

#### PAYMENTS

SECTION 3.01. Repayment. Each Borrower agrees to repay the full principal amount of each Loan by each Lender, and each such Loan shall mature, on the Commitment Termination Date.

#### SECTION 3.02. Interest.

(a) Ordinary Interest. The Borrowers jointly and severally agree to pay interest on the unpaid principal amount of each Loan, from the date of such Loan until such principal amount shall be paid in full, at the following rates per annum:

(i) ABR Loans. While such Loan is an ABR Loan, a rate per annum equal to the ABR in effect from time to time plus the Applicable Margin as in effect from time to time, interest under this clause (i) to be payable quarterly in arrears on the last Business Day of each March, June, September and December and on the date such ABR Loan shall be Converted and on the date of each payment of principal thereof.

(ii) Eurocurrency Loans. While such Loan is a Eurocurrency Loan (other than a SONIA Rate Loan), a rate per annum for each such Interest Period for such Loan equal to such Eurocurrency Rate for such Interest Period plus the Applicable Margin as in effect from time to time, interest under this clause (ii) to be payable on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on the date three months after the first day of such Interest Period, and on each

date on which such Eurocurrency Loan shall be Continued or Converted and on the date of each payment of principal thereof.

(iii) SONIA Rate Loans. While such Loan is a SONIA Rate Loan, a rate per annum equal to the SONIA Rate in effect from time to time plus the Applicable Margin as in effect from time to time, interest under this clause (iii) to be payable quarterly in arrears on the last Business Day of each March, June, September and December and on the date such SONIA Rate Loan shall be Converted and on the date of each payment of principal thereof.

(b) Default Interest. Notwithstanding the foregoing, the Borrowers jointly and severally shall pay interest on:

(i) any principal of any Loan that is not paid when due (whether at scheduled maturity or otherwise), payable on demand and in any event on the date such amount shall be paid, at a rate per annum equal at all times to two percent (2%) per annum above the rate per annum required to be paid on such Loan pursuant to said Section 3.02(a)(i) or (a)(ii), as applicable; and

(ii) any interest, fee or other amount thereof (other than any principal) that is not paid when due, from the due date thereof until such amount shall be paid, payable on demand and in any event on the date such amount shall be paid in full, at a rate per annum equal at all times to two percent (2%) per annum above the rate per annum then required to be paid on ABR Loans.

SECTION 3.03. Eurocurrency Reserves. The Borrowers jointly and severally shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided KCMH shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant interest payment date, such additional interest shall be due and payable 10 days from receipt of such notice.

SECTION 3.04. Interest Rate Determinations.

(a) Notice of Interest Rates. The Administrative Agent shall give prompt notice to KCMH and the Lenders of the applicable interest rates determined by the Administrative Agent.

(b) Eurocurrency Rate Inadequate. If, with respect to any Eurocurrency Loan, (x) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurocurrency Rate (including because the Screen Page is not available or published on a current basis for such Interest Period) or (y) the Majority Lenders notify the Administrative Agent that

the Eurocurrency Rate for such Loans will not fairly reflect the cost to such Majority Lenders of making, funding or maintaining their respective Eurocurrency Loans, the Administrative Agent shall so notify KCMH and the Lenders, whereupon:

- (i) any Notice of Borrowing requesting a Borrowing comprised of Eurocurrency Loans shall be ineffective;
- (ii) each Eurocurrency Loan will automatically, on the last day of the then current Interest Period (in the case of a Eurocurrency Loan other than a SONIA Rate Loan) or calendar quarter (in the case of a SONIA Rate Loan), as applicable, therefor, be Converted into an ABR Loan; and
- (iii) the obligation of the Lenders to make or Continue, or to Convert Loans into, Eurocurrency Loans shall be suspended until the Administrative Agent shall notify KCMH and such Lenders that the circumstances causing such suspension no longer exist.

(c) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedging Agreement shall be deemed not to be a "Loan Document" for purposes of this Section titled "Benchmark Replacement Setting"), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the relevant then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided by the Administrative Agent to the Lenders and the Borrower without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(ii) Notwithstanding anything to the contrary herein or in any other Loan Document, solely in the case of Eurocurrency Loans denominated in Dollars and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark for Eurocurrency Loans denominated in



Dollars, then the applicable Benchmark Replacement will replace such then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (ii) shall not be effective unless (x) the Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice and (y) the Borrower has provided its prior written consent to the delivery of such Term SOFR Notice in accordance with clause (ii) of the definition of “Term SOFR Transition Event.”

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

(iv) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (u) any occurrence of a Benchmark Transition Event (other than the March 5th Announcements), a Term SOFR Transition Event or an Early Opt-in Election, as applicable, (v) the occurrence of a Benchmark Replacement Date, (w) the implementation of any Benchmark Replacement, (x) the effectiveness of any Benchmark Replacement Conforming Changes, (y) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (v) below and (z) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent, the Borrower or, if applicable, any Lender (or group of Lenders) pursuant to this Section titled “Benchmark Replacement Setting,” 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 titled “Benchmark Replacement Setting.”

(v) 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), (x) if a then-current Benchmark is a term rate (including Term SOFR or a Relevant LIBOR) and either (A) 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 (B) 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 (1) is no longer representative or will no longer be representative as of a specified date or (2) will cease to be provided by the administrator permanently or indefinitely as of a specified date, then the Administrative Agent may modify the

definition of “Interest Period” for any setting of such Benchmark at or after such time to remove such affected tenor and (y) if a tenor that was removed pursuant to clause (x) above either (A) is subsequently displayed on a screen or information service for such Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is no longer or will no longer be representative for such Benchmark (including a Benchmark Replacement) or will cease to be provided by the administrator, then the Administrative Agent may modify the definition of “Interest Period” for all settings of such Benchmark at or after such time to reinstate such previously removed tenor.

(vi) Benchmark Unavailability Period. Upon the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a borrowing of, Conversion to or Continuation of Eurocurrency Loans to be made, Converted or Continued in the relevant then-current Benchmark subject to such Benchmark Unavailability Period during any Benchmark Unavailability Period and, failing that, either (x) the Borrower will be deemed to have Converted (1) any request for a borrowing of Eurocurrency Loans denominated in Dollars into a request for a borrowing of or Conversion to ABR Loans and (2) any request for a borrowing of Eurocurrency Loans denominated in an Alternate Currency shall be ineffective. Furthermore, if any Eurocurrency Loan is outstanding on the date of the Borrower’s receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Eurocurrency Loan, (i) if such Eurocurrency Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be prepaid by the Borrower on such day or Converted by the Administrative Agent to, and shall constitute, an ABR Loan on such day, (ii) if such Eurocurrency Loan is denominated in any Alternate Currency, then such Loan shall, on the last day of the Interest Period or calendar quarter, as applicable, to such Loan (or the next succeeding Business Day if such day is not a Business Day), at the Borrower’s election prior to such day, (A) be prepaid by the Borrower on such day or (B) be Converted by the Administrative Agent to, and (subject to the remainder of this subclause (B)) shall constitute, an ABR Loan denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternate Currency) on such day (it being understood and agreed that if the Borrower does not so prepay such Loan on such day by 12:00 noon, New York City time, the Administrative Agent is authorized to effect such Conversion of such Eurocurrency Loan into an ABR Loan), and, in the case of such subclause (B), upon any subsequent implementation of a Benchmark Replacement in respect of such Alternate Currency pursuant to this Section titled “Benchmark Replacement Setting”, such ABR Loan shall then be Converted by the Administrative Agent to, and shall constitute, a Eurocurrency Loan denominated in such original Alternate Currency (in an amount equal to the Alternate Currency Equivalent thereof) on the day of such implementation, giving effect to such Benchmark Replacement in respect of such Alternate Currency.

(d) Certain Mandatory Conversions.

(i) Upon the occurrence and during the continuance of any Event of Default, (x) each Eurocurrency Loan will automatically, on the last day of the then current

Interest Period (in the case of a Eurocurrency Loan other than a SONIA Rate Loan) or calendar quarter (in the case of a SONIA Rate Loan), as applicable, therefor, be Converted into an ABR Loan and (y) the obligation of the Lenders to make or Continue, or to Convert Loans into, Eurocurrency Loans shall be suspended.

(ii) If this Agreement shall require that any Eurocurrency Loan be Converted to an ABR Loan and such Eurocurrency Loan is denominated in an Alternate Currency, the Borrowers jointly and severally shall on the last day of the current Interest Period (in the case of a Eurocurrency Loan other than a SONIA Rate Loan) or calendar quarter (in the case of a SONIA Rate Loan), as applicable, pay or prepay the full amount of such Eurocurrency Loan (provided, that the foregoing shall not prevent the Borrower from borrowing additional Loans to the extent otherwise permitted hereunder).

#### SECTION 3.05. Voluntary Conversion or Continuation of Loans.

(a) Conversions. The requesting Borrower may on any Business Day, upon written notice (or telephonic notice promptly confirmed in writing) given to the Administrative Agent not later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to Interest Periods other than one, two, three or six months, fourth Business Day) prior to the date of the proposed Conversion, Convert all or any portion of the outstanding Loans of one Type comprising part of the same Borrowing into Loans of the other Type; provided that in the case of any such Conversion of a Eurocurrency Loan into an ABR Loan on a day other than the last day of an Interest Period (in the case of a Eurocurrency Loan other than a SONIA Rate Loan) or calendar quarter (in the case of a SONIA Rate Loan), as applicable, therefor, the Borrowers jointly and severally shall promptly reimburse the Lenders the amounts provided in Section 3.12 relating to such prepayment. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Loans to be Converted, and (z) if such Conversion is into Eurocurrency Loans (other than SONIA Rate Loans), the duration of the initial Interest Period for each such Loan. Each notice of Conversion shall be irrevocable and binding on the Borrowers.

(b) Continuations. The requesting Borrower may, on any Business Day, upon written notice (or telephonic notice promptly confirmed in writing) given to the Administrative Agent not later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to Interest Periods other than one, two, three or six months, fourth Business Day) prior to the date of the proposed Continuation, Continue all or any portion of the outstanding Eurocurrency Loans comprising part of the same Borrowing for one or more Interest Periods. Each such notice of a Continuation shall, within the restrictions specified above, specify (i) the date of such Continuation, (ii) the Eurocurrency Loans (other than SONIA Rate Loans) to be Continued and (y) the duration of the next such Interest Period for such Eurocurrency Loans subject to such Continuation. Each notice of Continuation shall be irrevocable and binding on the Borrowers.

#### SECTION 3.06. Prepayments of Loans.

(a) Optional Prepayment. The requesting Borrower may, on notice (given not later than 11:00 a.m. (New York time) on the Business Day of the proposed prepayment of

Loans, with respect to ABR Loans, and on the third Business Day prior to the date of prepayment with respect to Eurocurrency Loans ) stating the proposed date and aggregate principal amount (stated in Dollars) of the prepayment, and if such notice is given the Borrowers jointly and severally shall, prepay the outstanding principal amounts of the Loans comprising part of the same Borrowing in whole or ratably in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; provided, however, that (i) each partial prepayment shall be in an aggregate principal amount not less than \$5,000,000 or integral multiples of \$1,000,000 in excess thereof (or, in the case of Loans denominated in an Alternate Currency, the Alternate Currency Equivalent thereof in such Alternate Currency) and (ii) in the case of any such prepayment of a Eurocurrency Loan (other than a SONIA Rate Loan) on a day other than the last day of an Interest Period therefor, the Borrowers jointly and severally shall reimburse the Lenders the amounts provided in Section 3.12 relating to such prepayment.

(b) Alternate Currency Revaluation. If at any time by reason of fluctuations in foreign exchange rates the Total Credit Exposure exceeds 105% of the then aggregate amount of the Commitments, and the Majority Lenders so request, the Administrative Agent shall use all reasonable efforts to give prompt written notice thereof to KCMH, specifying the amount to be prepaid under this clause (b), and the Borrowers jointly and severally shall prepay Loans or, if no Loans are outstanding, provide cash collateral for or otherwise backstop outstanding Letters of Credit on terms reasonably satisfactory to KCMH, the Issuing Lender and the Administrative Agent, in such aggregate amount as may be required to cause the Total Credit Exposure (treating such cash collateralization or other backstopping for purposes hereof as a reduction in such Total Credit Exposure) to be equal to or less than the aggregate amount of the Commitments, such payments or other measures to be made within 10 Business Days of demand or, in the case of prepayment of Eurocurrency Loans (other than SONIA Rate Loans), on the date that is the earlier of (i) the last day of the then current Interest Period therefor and (ii) the last Business Day of the first full calendar month after such revaluation, provided that any such prepayment shall be accompanied by any amounts payable under Section 3.12. The determinations of the Administrative Agent hereunder shall be conclusive and binding on the Borrowers in the absence of manifest error.

SECTION 3.07. Payments; Computations; Etc.

(a) Pro Rata Payments. The Loans comprising each Borrowing shall be made pro rata among the Lenders based on their respective Commitment Percentages. Except as otherwise provided hereunder, all payments of principal of and interest on the Loans shall be made for the pro rata account of the Lenders based on the respective outstanding principal amounts thereof, and all payments of commitment fees and letter of credit commission shall be made for the pro rata account of the Lenders based on their respective Commitment Percentages.

(b) Lenders' Obligations Several. The obligations of the Lenders under this Agreement are several and the failure of any Lender to make any Loan or any payment required to be made by it hereunder shall not relieve any other Lender of its obligations hereunder, nor shall any Lender be responsible for any other Lender's failure to make any Loan required to be made by such other Lender.

(c) Currencies. All payments by the Borrower of or in respect of principal of and interest on and other amounts directly relating to any Loan that are denominated in an Alternate Currency shall be made in such Alternate Currency. All payments of principal and interest on any Loan denominated in Dollars, all payments in respect of any Letter of Credit, and all payments of fees payable pursuant to Section 2.03(c), commitment fees and agency fees hereunder and all other payments by any Borrower provided for in this Agreement, except as provided in the preceding sentence, shall be made in Dollars.

(d) Payments.

(i) The Borrowers shall make each payment hereunder and under each other Loan Document without set-off, counterclaim or deduction of any kind to the Administrative Agent at the Administrative Agent's Account in the Principal Financial Center for the relevant Currency not later than 11:00 a.m. Local Time on the due date of such payment (each such payment made after such time on such date to be deemed to have been made on the next Business Day).

(ii) The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest ratably to the Lenders as provided in Section 3.07(a) for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Assumption and recording of the information contained therein in the Register pursuant to Section 9.06(c), from and after the assignment date set forth therein, the Administrative Agent shall remit all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such assignment date directly between themselves.

(e) Computations. All computations of interest based on the ABR (except any Federal Funds Rate component thereof) or the SONIA Rate shall be made by the Administrative Agent on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. All computations of interest based on the Eurocurrency Rate (other than the SONIA Rate) or the Federal Funds Rate and of commitment fee shall be made by the Administrative Agent, and any computations of amounts payable pursuant to Section 3.03, shall be made on the basis of a year of 360 days, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or other amount is payable. Each determination by the Administrative Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(f) Payment Dates. Whenever any payment hereunder or under the Notes would be due on a day other than a Business Day, such due date shall be extended to the next succeeding Business Day, and any such extension of such due date shall in such case be included in the computation of interest; provided, that if such extension would cause payment of principal

or interest in respect of Eurocurrency Loans to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(g) Presumption by Administrative Agent.

(i) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed time of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made its share available at such time in accordance with Section 2.01(b) and may (but shall not be obligated), in reliance upon such assumption, make available to a 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 (A) the applicable Lender, on one hand, and (B) the Borrowers on a joint and several basis on the other hand, 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 a Borrower to but excluding the date of payment to the Administrative Agent, at (x) in the case of a payment to be made by such Lender, the greater of (I) the Federal Funds Rate and (II)(a) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (if such Loan is denominated in Dollars), (b) at the overnight London interbank offered rate for the relevant Currency (if such Loan is denominated in an Alternate Currency, other than British Pound Sterling) or (c) at SONIA Rate if such Loan is denominated in British Pound Sterling and (y) in the case of a payment to be made by a Borrower, the interest rate applicable to ABR Loans. If a 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 such Borrower the amount of such interest paid by such 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 a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Unless the Administrative Agent shall have received notice from KCMH prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may (but shall not be obligated), in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of (x) the Federal Funds Rate and (y)(i) a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (if such Loan is denominated in Dollars), (ii) at the overnight London interbank offered rate for the relevant Currency (if such Loan is denominated in an Alternate Currency, other than

British Pound Sterling) or (iii) at SONIA Rate if such Loan is denominated in British Pound Sterling.

SECTION 3.08. Sharing of Payments, Etc. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided, that:

(i) if any such participation is purchased and all or any portion of the related payment is recovered, such participation shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this subsection shall not be construed to apply to (x) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans other than to a Borrower or any Subsidiary thereof (as to which the provisions of this subsection shall apply).

The Borrowers consent to the foregoing and agree, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers, jointly and severally, rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation.

SECTION 3.09. Increased Costs.

(a) Eurocurrency Costs. 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 contemplated by Section 3.03) or the Issuing Lender; or

(ii) impose on any Lender or the Issuing Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any Eurocurrency Loan), or to increase the cost to such Lender or the Issuing Lender of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any

Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Lender hereunder (whether of principal, interest or any other amount) then, from time to time upon request of such Lender or the Issuing Lender, the Borrowers jointly and severally will pay to such Lender or the Issuing Lender such additional amount or amounts as will compensate such Lender or the Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered. This Section 3.09 shall not apply to Excluded Taxes or any matters covered by Section 3.11 relating to Taxes.

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

(c) Certificates for Reimbursement. A certificate of any Lender or the Issuing Lender setting forth the amount or amounts and a reasonable basis for the determination thereof necessary to compensate such Lender or the Issuing Lender or its holding company, as the case may be, as specified in clauses (a) or (b) of this Section 3.09 and delivered to KCMH shall be conclusive on all Borrowers absent manifest error. The Borrowers jointly and severally shall pay such Lender or the Issuing Lender, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to this Section 3.09 shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation, provided, that the Borrowers shall not be required to compensate a Lender or the Issuing Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or the Issuing Lender, as the case may be, notifies KCMH of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Lender'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 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.10. Illegality. Notwithstanding any other provision of this Agreement, if any Lender shall notify the Administrative Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, for such Lender or its Eurocurrency



Lending Office to perform its obligations hereunder to make or continue Eurocurrency Loans or to fund or otherwise maintain Eurocurrency Loans hereunder, (a) the obligation of such Lender to make or Continue, or to Convert Loans into, Eurocurrency Loans shall be suspended until the Administrative Agent shall notify KCMH and the Lenders that the circumstances causing such suspension no longer exist and (b) each Eurocurrency Loan of such Lender shall Convert into an ABR Loan at the end of the then current Interest Period for such Eurocurrency Loan (in the case of a Eurocurrency Loan other than a SONIA Rate Loan) or calendar quarter (in the case of a SONIA Rate Loan), as applicable, if such Lender may lawfully continue to maintain such Eurocurrency Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Loans.

SECTION 3.11. Taxes.

(a) All payments on account of the principal of and interest on the Loans and the Notes, fees and all other amounts whatsoever payable by the Borrowers under the Loan Documents shall be made free and clear of and without reduction or liability for any Taxes, except as required by applicable law, decree or regulation.

(b) In the event that any Borrower or the Administrative Agent shall be required by applicable law, decree or regulation to deduct or withhold any Tax from any amounts payable to the Administrative Agent or any Lender on, under or in respect of this Agreement, the Loans or any Loan Document, the Borrowers jointly and severally 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, decree or regulation and, if such Tax is an Indemnified Tax, then the Borrowers jointly and severally shall promptly pay such recipient such additional amounts as may be required, after the deduction or withholding of Indemnified Taxes, to enable such recipient to receive from the Borrowers on the due date thereof an amount equal to the full amount stated to be payable to such recipient.

(c) The Borrowers jointly and severally shall indemnify the Administrative Agent and each Lender (including each Issuing Lender) against, and reimburse them upon demand for, any incremental Taxes, interest or penalties, that they may incur at any time arising out of or in connection with any such failure of the Borrowers to make any payment of Indemnified Taxes when due.

(d) KCMH shall furnish to the Administrative Agent original or certified copies of official tax receipts in respect of each payment of Indemnified Taxes required under this Section 3.11, as soon as practicable after the date such payment is made, and the Borrowers shall promptly furnish to the Administrative Agent at its request or at the request of any Lender (through the Administrative Agent) to KCMH any other information, documents and receipts that the Administrative Agent or such Lender may reasonably require to establish that full and timely payment has been made of all Indemnified Taxes required to be paid under this Section 3.11.

(e)

(i) Each Lender or Participant that is not a “U.S. Person” as defined in Section 7701(a)(30) of the Code (a “Non-U.S. Lender”) shall deliver to KCMH and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable, Form W-8ECI, Form W-8 IMY, Form W-8 EXP, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of “portfolio interest”, a statement substantially in the form of Exhibit E-1, Exhibit E-2, Exhibit E-3 or Exhibit E-4, as applicable, and a Form W-8BEN or W-8BEN-E, as applicable, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation).

(ii) Each Lender that is a “U.S. Person” as defined in Section 7701(a)(30) of the Code shall deliver to KCMH and the Administrative Agent (or, in the case of a Participant of a Non-U.S. Lender, to such Non-U.S. Lender) 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 KCMH or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender or Participant, as applicable, is exempt from U.S. Federal backup withholding tax.

(f) Each Lender shall deliver to any Borrower and the Administrative Agent at the time or times prescribed by applicable law and at such time or times reasonably requested by such Borrower or the Administrative Agent such documentation prescribed by applicable law and such additional documentation reasonably requested by such Borrower or the Administrative Agent as may be necessary for such Borrower or the Administrative Agent to comply with any obligations of such Borrower of the Administrative Agent under FATCA or any similar regime arising as a result of the transactions contemplated under any Loan Document.

In addition, each Non-U.S. Lender shall deliver such forms promptly upon the written request of KCMH after the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify KCMH at any time it determines that it is no longer in a position to provide any previously delivered certificate to KCMH (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(g) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to

KCMH (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by KCMH, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate, provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender.

(h) If the Administrative Agent, any Lender or the Issuing Lender determines, in its sole discretion, that it has received a refund or credit (in lieu of such refund) of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which a Borrower has paid additional amounts pursuant to this Section 3.11, it shall pay to such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 3.11 with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of the Administrative Agent, any Lender or the Issuing Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Borrower, upon the request of the Administrative Agent, any Lender or the Issuing Lender, agrees to repay the amount paid over to such Borrower to the Administrative Agent, any Lender or the Issuing Lender in the event the Administrative Agent, any Lender or the Issuing Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the Issuing Lender to make available its tax returns or its books or records (or any other information relating to its taxes that it deems confidential) to any Borrower or any other Person.

(i) If pursuant to this Section 3.11 a Borrower is required to pay to or for the account of any Lender any additional amounts, then such Lender shall use commercially reasonable efforts to change the jurisdiction of its Applicable Lending Office if, in the sole and absolute judgment of such Lender, such change (i) would eliminate or reduce any such excess additional amounts and (ii) would not otherwise be materially disadvantageous to such Lender.

SECTION 3.12. Break Funding Payments. The Borrowers jointly and severally agree to indemnify each Lender and to hold each Lender harmless from any loss, cost or expense incurred by such Lender which is in the nature of funding breakage costs or costs of liquidation or redeployment of deposits or other funds and any other related expense (but excluding loss of margin or other loss of anticipated profit), which such Lender may sustain or incur as a consequence of (a) default by any Borrower in making any Borrowing of Eurocurrency Loans after a Borrower has given a Notice of Borrowing requesting the same in accordance with the provisions of this Agreement (including as a result of any failure to fulfill, on or before the date specified in such Notice of Borrowing, the applicable conditions set forth in Article IV), (b) default by any Borrower in making any prepayment of any Eurocurrency Loan when due after such Borrower has given notice thereof in accordance with this Agreement, (c) the making by any Borrower of a prepayment of any Eurocurrency Loan (other than a SONIA Rate Loan) on a day which is not the last day of an Interest Period with respect thereto, (d) default by any Borrower in payment when due of the principal of or interest on any Eurocurrency Loan, (e) the Conversion or Continuation of any Eurocurrency Loan (other than a SONIA Rate Loan) on a day other than on the last day of an Interest Period with respect thereto, and (f) any assignment such

Lender is required to make pursuant to Section 3.13(b) if such Lender holds Eurocurrency Loans at the time of such assignment. A certificate of any Lender setting forth any amount or amounts and a reasonable basis for the determination thereof that such Lender is entitled to receive pursuant to this Section and delivered to KCMH shall be conclusive absent manifest error. The Borrowers jointly and severally shall pay to such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 3.13. Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.09, or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.11, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, if, in the sole and absolute judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.09 or 3.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.09, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.11, or if any Lender becomes a Defaulting Lender, or if any Lender has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 9.01, requires the consent of all of the Lenders or all of the Lenders affected (and such Lender is an affected Lender) and with respect to which the Majority Lenders shall have granted their consent, then such Borrower may, at the Borrowers' joint and several 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 9.06), all of its interests, rights 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) no Default or Event of Default has occurred and is continuing on and as of the date of such notice and the date of such assignment;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.12) 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 3.09 or payments required to be made pursuant to Section 3.11, such assignment will result in a reduction in such compensation or payments thereafter; and

- (iv) such assignment does not conflict with applicable Laws.

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 a Borrower to require such assignment and delegation cease to apply. A Lender so replaced shall not be required to pay the processing and recordation fee referred to in Section 9.06(b).

SECTION 3.14. Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as 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 Majority Lenders.

(ii) Reallocation of Payments. 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 VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.03 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 the Issuing Lender hereunder; *third*, to cash collateralize the Issuing Lenders' L/C Exposure with respect to such Defaulting Lender; *fourth*, as any 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 KCMH, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Issuing Lender's future L/C Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Lender 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 any Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Payments in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be

applied solely to pay the Loans of, and L/C Payments owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Payments owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Reimbursement Obligations are held by the Lenders pro rata in accordance with their Commitments without giving effect to Section 3.14(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 3.14(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. Each Defaulting Lender shall be entitled to receive the facility fee pursuant to Section 2.03(b) for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the outstanding principal amount of the Revolving Loans funded by it, and (2) its Commitment Percentage of the stated amount of Letters of Credit for which it has provided cash collateral. Each Defaulting Lender shall be entitled to receive letter of credit fees pursuant to Section 2.03(c) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of Letters of Credit for which it has provided cash collateral pursuant to the terms hereof. With respect to any facility fee or letter of credit fee not required to be paid to any Defaulting Lender pursuant to this Section 3.14(a)(iii), the Borrowers jointly and severally 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 Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's L/C Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce L/C Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Commitment Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x), if requested by the applicable Issuing Lender, the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate of the Total Credit Exposure allocable to any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall jointly and severally, without prejudice to any right or remedy available to it hereunder or under law, promptly cash collateralize the Issuing Lenders' L/C Exposure.

(b) Defaulting Lender Cure. If KCMH, the Administrative Agent and the Issuing Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be 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), such Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a *pro rata* basis by the Lenders in accordance with their Commitment Percentages (without giving effect to Section 3.14(a)(iv)), whereupon that 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 Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is reasonably satisfied that it will have no L/C Exposure after giving effect thereto.

#### ARTICLE IV

##### CONDITIONS PRECEDENT

SECTION 4.01. Closing Conditions. Effectiveness of this Agreement is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent's receipt of the following:

(i) this Agreement, duly executed and delivered by the Borrower and each of the other parties hereto;

(ii) the Guarantee and Security Agreement, duly executed and delivered by the Borrowers as of the Closing Date, together with duly prepared financing statements in form for filing under the applicable UCC in the jurisdiction of formation of each Borrower;

(iii) certified copies of (x) the constitutive documents of each Borrower and (y) resolutions or other authorizing documentation of each Obligor and the General Partner evidencing the taking of all necessary action authorizing and approving the execution, delivery and performance by each Borrower of the Loan Documents to which it is a party;

(iv) a certificate of an officer of each Borrower certifying the names and true signatures of the officers authorized to sign the Loan Documents and any other documents to be delivered hereunder by each Borrower;

(v) the legal opinion of Simpson Thacher & Bartlett LLP, counsel to the Borrowers, in a form reasonably acceptable to the Administrative Agent;

(vi) a certificate of an officer of KCMH, dated the Closing Date, certifying that (a) the representations and warranties contained in Section 5.01 and in the other Loan Documents are true and correct in all material respects on and as of such date as though made on and as of such date and (b) no event has occurred and is continuing on and as of such date which constitutes a Default or an Event of Default;

(vii) a certificate attesting to the Solvency of KCMH and its Subsidiaries, taken as a whole, after giving effect to the effectiveness of this Agreement and any Loans made or Letters of Credit issued or outstanding on the Closing Date; and

(viii) (a) all documentation and other information reasonably requested in writing at least five Business Days prior to the Closing Date in order to allow the Administrative Agent to comply with applicable "know your customer" and anti-money laundering rules and regulations, including without limitation, the Patriot Act and (b) any other such documents in customary form and previously agreed between the parties.

(b) KCMH shall have (a) paid (i) all accrued and unpaid fees and any outstanding and accrued and unpaid principal and interest thereon under the Existing Credit Agreement and (ii) all fees and expenses (including fees, charges and disbursements of counsel invoiced prior to the Closing Date) required to be paid on or prior to the Closing Date to the Administrative Agent or the Lead Arranger in connection with this Agreement and (b) delivered a written notice of termination of the Existing Credit Agreement in form and substance reasonably acceptable to the Administrative Agent.

The Administrative Agent will promptly notify the Lenders of the occurrence of the Closing Date.

SECTION 4.02. Conditions Precedent to Each Borrowing and Issuance. The obligation of each Lender to make a Loan during the Availability Period on the occasion of each Borrowing and of the Issuing Lender to issue each Letter of Credit shall be subject to the conditions precedent that on the date of and after giving effect to such Borrowing or issuance, the Total Credit Exposure shall not exceed the then Aggregate Facility Amount, and that the following statements shall be true:

(a) the representations and warranties contained in Section 5.01 and in the other Loan Documents are true and correct in all material respects on and as of the date of such Borrowing or issuance as though made on and as of such date, except to the extent such representation or warranty expressly relates to an earlier date, in which case it is true and correct in all material respects on and as of such earlier date;



- (b) no event has occurred and is continuing, or would result from such Borrowing or issuance or from the application of the proceeds from such Borrowing, which constitutes a Default or an Event of Default;
- (c) the Debt to Equity Ratio shall be less than or equal to **[\*\*]** to 1.00 after giving pro forma effect to such Borrowing or issuance; and
- (d) the Administrative Agent and, if applicable, the Issuing Lender shall have received a request for Borrowing or issuance of Letter of Credit in accordance with the requirements hereof.

Each request for a Borrowing or issuance of a Letter of Credit (other than a notice for Conversion or Continuation of Loans) submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in clauses (a), (b) and (c) of this Section 4.02 have been satisfied on and as of the date of such request.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

SECTION 5.01. Representations and Warranties. Each Borrower represents and warrants to the Administrative Agent and the Lenders as follows:

(a) Organization. Each Borrower is duly organized, validly existing and in good standing as a limited partnership or limited liability company, as applicable, under the laws of Delaware, and each Guarantor and the General Partner is duly organized, validly existing and in good standing (to the extent such concept is recognized under such law) under the laws of its jurisdiction of organization. Each Obligor (i) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (ii) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (i)(A) or (ii), to the extent that failure to do so would not reasonably be expected to result in a Material Adverse Effect

(b) Authorization. The execution, delivery and performance by each Borrower of this Agreement and the other Loan Documents are within its powers as set forth in its applicable constituent documents, as the case may be, and have been duly authorized by all necessary action thereunder, and the execution, delivery and performance by each Guarantor of the Guarantee and Security Agreement are within the powers of such Guarantor and have been duly authorized by all necessary action and the execution, delivery and performance by KCMH of the Loan Documents have been duly authorized by all necessary action of the General Partner.

(c) Approvals; No Conflicts; Etc. The execution, delivery and performance by each Obligor of the Loan Documents to which it is a party (i) do not require any consent or

*[\*\*] = Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

approval of, or registration or filing with, any Governmental Authority or Self Regulatory Organization (except for (A) such as have been obtained or made and are in full force and effect in all material respects, (B) filings and recordings in respect of Liens created pursuant to the Guarantee and Security Agreement and (C) such licenses, approvals, authorizations or consents the failure to obtain or make would not reasonably be expected to result in a Material Adverse Effect), (ii) will not violate any applicable Law, regulation or order of any Governmental Authority the violation of which would be reasonably expected to result in a Material Adverse Effect, and (iii) will not violate or constitute an event of default under any credit agreement, loan agreement, note or indenture, or any other material agreement, binding upon it or its Property; and no Default has occurred and is continuing.

(d) Enforceability. Each Obligor has duly executed and delivered each Loan Document to which it is a party and each such Loan Document constitutes the legal, valid and binding obligation of such Obligor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity.

(e) No Material Adverse Change. Since December 31, 2019, no event or circumstance has occurred that has had, or would reasonably be expected to have, a Material Adverse Effect.

(f) No Litigation. There are no actions, suits or proceedings by or before any Governmental Authority pending against or, to the knowledge of KCMH, threatened against or affecting it or any of its Subsidiaries that would reasonably be expected to result in a Material Adverse Effect.

(g) Compliance with Laws. Each Obligor is in compliance with all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or its Property (including, without limitation, the Patriot Act, ERISA, environmental laws and Rule 15c3-1), except where the failure to be in compliance, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(h) Investment Company Status; Margin Regulations. None of the Obligors is required to register under and none of the Obligors is subject to regulation under the Investment Company Act of 1940, as amended. No Borrower is engaged and no Borrower will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock, in each case in violation of such Regulation U. Each U.S. Broker-Dealer Subsidiary is a broker-dealer subject to Regulation T. Neither the making of any Loan hereunder, nor the use of proceeds thereof, will violate or be inconsistent with the provisions of Regulation T, U or X.

(i) Disclosure. No written report, financial statement, certificate or other written information furnished by or on behalf of it to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in the

light of the circumstances under which they were made, not misleading; provided that with respect to projected financial information, it represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and that actual results may differ materially from such information.

(j) Use of Proceeds. The proceeds of the Loans and Letters of Credit shall be used by KCMH and/or its Subsidiaries to facilitate debt capital markets “fronting” arrangements pursuant to which KCMH or such Subsidiary is acting as the initial purchaser or lender of a debt instrument that has been reserved by KCMH or such Subsidiary for purchase by another Person from whom an order has been received and such arrangement involves terms that are customary in the market for “fronting” transactions.

(k) Guarantee and Security Agreement. The Guarantee and Security Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Creditors, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors’ rights generally and subject to general principles of equity). Subject to the Intercreditor Agreement, in the case of the Pledged Stock represented by certificates described in the Guarantee and Security Agreement, when any stock certificates representing such Pledged Stock are delivered to the Administrative Agent (or its designee), and in the case of the other Collateral described in the Guarantee and Security Agreement, when financing statements in appropriate form are duly completed and filed in the offices specified on Annex I to the Guarantee and Security Agreement and such other filings as are specified on Annex I to the Guarantee and Security Agreement have been completed, the Guarantee and Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Obligors in such Collateral and the proceeds thereof, as security for the Obligations (as defined in the Guarantee and Security Agreement), in each case prior and superior in right to any other Person (other than with respect to Liens permitted by this Agreement), in each case to the extent security interests in such Collateral may be perfected by delivery of such certificates representing Pledged Stock or such filings.

(l) Ownership of Property. KCMH and each of its Subsidiaries has good record and marketable title to, or valid leasehold interests in, all property necessary in the ordinary conduct of its business, except for such defects in title as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(m) Taxes. Except as would not reasonably be expected to have a Material Adverse Effect, KCMH and each of its Subsidiaries have paid and discharged all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, other than those (i) not yet delinquent or (ii) contested in good faith as to which adequate reserves have been provided to the extent required by Law and in accordance with GAAP and which would not reasonably be expected to result in a Material Adverse Effect.

(n) ERISA Matters. (i) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan and (ii) neither KCMH nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan,

which in either case of (i) or (ii) has not been fully satisfied or, with respect to clauses (i) and (ii), except as would not reasonably be expect to result in any Material Adverse Effect.

(o) Subsidiaries. Schedule II is a complete list of Subsidiaries of KCMH as of the Closing Date.

(p) Registered Broker-Dealer; Membership. Each of KCM U.S. and each other U.S. Broker-Dealer Subsidiary is duly registered with the SEC as a broker-dealer and is a member in good standing of FINRA, and each non-U.S. Broker-Dealer Subsidiary is duly registered with, or licensed by, any Governmental Authority that requires registration or licensing and is a member in good standing of any local body similar to FINRA, including, but not limited to, the Financial Services Authority (in the case of KCM U.K.) and the Securities and Futures Commission (in the case of KCM Asia) to the extent that such membership is required by any Governmental Authority.

(q) SIPC Assessments. No U.S. Broker-Dealer Subsidiary is in arrears with respect to any assessment made upon it by the SIPC, and no non-U.S. Broker Dealer Subsidiary is in arrears with respect to any assessment made upon it by any local body which is similar to the SIPC.

## ARTICLE VI

### COVENANTS

SECTION 6.01. Affirmative Covenants. So long as any principal of or interest on any Loan or any other amount or obligation under the Loan Documents (other than contingent indemnity obligations not then due) shall remain unpaid or unsatisfied or any Lender shall have any Commitment or any Letter of Credit shall remain outstanding hereunder (unless such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender), KCMH covenants and agrees that, unless the Majority Lenders shall otherwise consent in writing:

(a) Reporting Requirements. KCMH will furnish to the Lenders:

(i) within 50 days after the end of each of the first three fiscal quarters, its unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows, in each case as of the end of and for such fiscal quarter, setting forth in each case in comparative form (if applicable) the figures for the corresponding period of the previous fiscal year, certified by a Financial Officer to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of KCMH and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to the absence of (or absence of a requirement to have) footnotes and to year-end adjustments;

(ii) within 100 days after the end of each fiscal year, KCMH's unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such fiscal year, setting forth in each case in

comparative form (if applicable) the figures for the previous fiscal year, certified by a Financial Officer to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of KCMH and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to the absence of (or absence of a requirement to have) footnotes;

(iii) concurrently with any delivery of financial statements under clauses (i) and (ii) above, a certificate of a Financial Officer (x) certifying that no Default has occurred or, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (y) identifying any Subsidiary that has become a Material Foreign Subsidiary during the most recently ended fiscal quarter and (z) setting forth calculations demonstrating in reasonable detail compliance with Section 6.03;

(iv) concurrently with the delivery of financial statements under clause (ii) above, an operating income budget of KCMH in reasonable detail for the current fiscal year as customarily prepared by management of KCMH for their internal use, setting forth the principal assumptions upon which such budget is based;

(v) as soon as available, but in any event within five Business Days of delivery to any Governmental Authority or Self Regulatory Organization, the audited annual financial statements of any Broker-Dealer Subsidiary required to be furnished to such Governmental Authority or Self Regulatory Organization; and

(vi) promptly upon request by the Administrative Agent on behalf of the Majority Lenders, such other information regarding the business, operations and financial condition of any Obligor as such Lender may reasonably request (it being understood that the Administrative Agent shall use reasonable efforts to coordinate any such requests).

(b) Existence; Conduct of Business. It will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and, except to the extent that failure to do so would not reasonably be expected to result in a Material Adverse Effect, the rights, licenses, permits, privileges and franchises material to the conduct of its business (including, in the case of each Broker-Dealer Subsidiary, its registration, license or qualification as a broker-dealer with the SEC and/or such other applicable domestic or foreign Governmental Authority); provided that the foregoing shall not prohibit any transaction expressly permitted under Section 6.02(c).

(c) Compliance with Laws. It will, and will cause each of its Subsidiaries to, comply with all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it, its business or its Property (including, in the case of each Broker-Dealer Subsidiary, such rules and regulations of the SEC, FINRA and/or such other applicable domestic or foreign Governmental Authority or Self Regulatory Organization) except, with respect to all matters other than noncompliance by any Broker-Dealer Subsidiary with applicable minimum capital requirements, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(d) Maintenance of Insurance. It will, and will cause each of its Subsidiaries to, maintain with financially sound and reputable insurance companies insurance on all its tangible Property in at least such amounts and against at least such risks as KCMH believes (in the good faith judgment of KCMH) are usually insured against in the same general area by companies of a similar size engaged in the same or a similar business and in a manner that is consistent with KCMH's and its Subsidiaries' past practices.

(e) Payment of Taxes. It will, and will cause each of its Subsidiaries to, pay and discharge, all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which material penalties attach thereto, and all lawful material claims in respect of any Taxes imposed, assessed or levied that, if unpaid, could reasonably be expected to become a material Lien upon any Property of KCMH or any Subsidiary, provided that neither KCMH, nor any Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings if it has maintained adequate reserves (in the good faith judgment of management of KCMH) with respect thereto in accordance with GAAP and the failure to pay would not reasonably be expected to result in a Material Adverse Effect.

(f) Maintenance of Properties. It will, and will cause each of its Subsidiaries to, keep and maintain all Property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except to the extent failure to do so would not reasonably be expected to result in a Material Adverse Effect.

(g) Books and Records; Visitation and Inspection Rights. It will, and will cause each Borrower as well as each of its Material Subsidiaries to, keep proper books of record and account in accordance with GAAP, and permit representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants (it being agreed that KCMH shall be given the opportunity to participate in any such discussion with its independent accountants), all at the reasonable expense of KCMH and at such reasonable times during normal business hours, but in each case subject to and in accordance with all applicable laws of any Governmental Authority and such confidentiality measures relating thereto as KCMH may reasonably require; provided that, other than after the occurrence of and during the continuance of an Event of Default, (i) such visitations and inspections shall not be permitted on more than two instances in any calendar year and (ii) only one such visitation and inspection shall be at the expense of KCMH.

(h) Notices of Material Events. It will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(i) the occurrence of any Default or Event of Default;

(ii) the filing or commencement of any action, suit or proceeding by or before any Governmental Authority against or affecting it or any of its Subsidiaries which would reasonably be expected to be adversely determined and, if so determined, would reasonably be expected to result in a Material Adverse Effect; and

- (iii) any other event that has had, or would reasonably be expected to have, a Material Adverse Effect.

Each notice delivered under this subsection shall be accompanied by a statement of a Financial Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

(i) Additional Guarantors and Grantors; Additional Borrowers.

(i) Subject to any applicable limitations set forth in the Guarantee and Security Agreement, KCMH will promptly cause each direct or indirect Wholly-Owned Domestic Subsidiary (other than any Domestic Subsidiary of a Foreign Subsidiary or a Domestic Subsidiary substantially all of whose assets consist of capital stock and/or indebtedness of one or more Foreign Subsidiaries) formed or otherwise purchased or acquired after the date hereof, to execute a supplement to the Guarantee and Security Agreement substantially in the form attached to the Guarantee and Security Agreement (or otherwise in a form reasonable satisfactory to the Administrative Agent) in order to become a Guarantor and a grantor thereunder and take all other action reasonably requested by the Administrative Agent to grant a perfected security interest in its assets to substantially the same extent as granted by the Obligors on the Closing Date; provided that in any event, no Broker-Dealer Subsidiary shall be required to enter into, provide a guarantee, or grant any security interests in its assets under the Guarantee and Security Agreement or any other Loan Document.

(ii) From time to time after the Closing Date, with fifteen Business Days' prior written notice to the Administrative Agent and subject to the satisfaction of the conditions set forth in this Section 6.01(i)(ii), KCHM may designate any Subsidiary as an Additional Borrower; provided that in no event shall a Subsidiary become an Additional Borrower if such Subsidiary either (A) is an entity that would not be required to be an additional Guarantor under Section 6.01(i)(i), or (B) is a direct or indirect Subsidiary of a Person that is not required to be an additional Guarantor under Section 6.01(i)(i); and provided further that:

(A) such Subsidiary is a Wholly-Owned Subsidiary of KCMH organized or incorporated in the United States or a jurisdiction otherwise approved by the Administrative Agent and the applicable Lenders; provided that, in the case of a jurisdiction in which no Borrower is organized or incorporated on the Closing Date, such designation shall be prohibited if the Administrative Agent or any applicable Lender shall not have the ability or authorization to lend into such jurisdiction;

(B) such Subsidiary is or becomes a Guarantor prior to or contemporaneously with becoming an Additional Borrower;

(C) no Default or Event of Default has occurred and is continuing or would result from such Subsidiary becoming an Additional Borrower;

(D) the Administrative Agent and the Lenders shall have received at least ten Business Days prior to the date such Subsidiary becomes an Additional Borrower such documentation and information as is reasonably requested in writing by the Administrative Agent or any applicable Lender to the extent required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Patriot Act;

(E) the Administrative Agent shall have received a duly executed and delivered Additional Borrower Joinder Agreement and a duly executed and delivered pledge of the equity of such Subsidiary in accordance with the Guarantee and Security Agreement; and

(F) the Administrative Agent shall have received (i) a copy of the resolutions of the board of directors or other managers of such Subsidiary (or a duly authorized committee thereof) authorizing (a) the execution, delivery, and performance of the Additional Borrower Joinder Agreement and the other Loan Documents (and any agreements relating thereto) to which it is a party and (b) the extensions of credit contemplated hereunder, (ii) the certificate of incorporation and by-laws, certificate of formation and operating agreement or other comparable organizational documents, as applicable, of such Subsidiary, (iii) signature and incumbency certificates (or other comparable documents evidencing the same) of the authorized officers of such Subsidiary executing the Additional Borrower Joinder Agreement and the other Loan Documents to which it is a party, and (iv) if requested by Administrative Agent, a customary legal opinion from outside counsel to the Borrower as to customary joinder matters.

(iii) Upon any Subsidiary becoming an Additional Borrower in accordance with Section 6.01(i), such Subsidiary shall be, jointly and severally, for all purposes, and with all rights and obligations of, a “Borrower” under this Agreement and the other Loan Documents.

(j) Pledge of Material Foreign Subsidiaries. Subject to any applicable limitations set forth in the Guarantee and Security Agreement, KCMH will promptly deliver to the Administrative Agent a local law pledge agreement under the jurisdiction of organization or formation of each Subsidiary that is directly owned by an Obligor and identified as a Material Foreign Subsidiary in accordance with Section 6.01(a)(iii)(y) in a customary form reasonably satisfactory to the Administrative Agent, together with (i) copies of such Material Foreign Subsidiary’s constitutive documents and documents evidencing that such Material Foreign Subsidiary has taken of all necessary action authorizing and approving the execution, delivery and performance of the Loan Documents to which it is a party, and (ii) a legal opinion in a form reasonably satisfactory to the Administrative Agent from counsel to such Material Foreign Subsidiary.

(k) Pledge of Additional Stock and Evidence of Indebtedness. Subject to the Intercreditor Agreement and to any applicable limitations set forth in the Guarantee and Security Agreement or with respect to which, in the reasonable judgment of the Administrative Agent



(confirmed in writing by notice to KCMH), the cost or other consequences (including any adverse tax consequences) of doing so shall be excessive in view of the benefits to be obtained by the Lenders therefrom, KCMH will cause (i) all certificates representing Equity Interests (if any) of any Subsidiary held directly by any Borrower or any Guarantor and (ii) all evidences of Indebtedness in excess of \$5,000,000 received by any Borrower or any of the Guarantors, in each case, promptly to be delivered along with applicable instruments of transfer duly executed in blank to the Administrative Agent (or its designee) as security for the obligations owed under the Loan Documents, under the Guarantee and Security Agreement.

(l) Further Assurances. Subject to the Intercreditor Agreement, it will, and will cause each of the Guarantors to, from time to time give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other paper that is necessary to cause the Liens created by the Guarantee and Security Agreement to be valid first priority perfected Liens on the Property purported to be covered thereby (including after-acquired Property, it being understood that, except as set forth in paragraph (j) above, there shall be no requirement to enter into or deliver security agreements or pledge agreements governed by the laws of any non-U.S. jurisdiction or otherwise take steps to perfect any security interest or Lien securing the Obligations under the laws of any non-U.S. jurisdiction), subject to no equal or prior Lien except as otherwise permitted by the Loan Documents, and promptly from time to time obtain and maintain in full force and effect, and cause each of the Guarantors to obtain and maintain in full force and effect, all licenses, consents, authorizations and approvals of, and make all filings and registrations with, any Governmental Authority necessary under the Laws of the jurisdiction of organization of such Guarantor (or any other jurisdiction in which part of the Collateral owned by it or by any Guarantor may be situated) for the making and performance by it of the Loan Documents to which it is a party. Notwithstanding the foregoing or anything to the contrary in any Loan Document, it is hereby agreed and acknowledged that any requirement to take any action to establish perfection by control under any Loan Document is subject to the Intercreditor Agreement, and the establishment of such control by the Administrative Agent's designee or bailee set forth in the Intercreditor Agreement shall constitute compliance with any such requirement to establish such control by the Administrative Agent under the Loan Documents.

(m) Post Closing Actions. Notwithstanding anything to the contrary in any Loan Document, it will, within 60 days after the Closing Date (or such later date as the Administrative Agent shall reasonably agree) enter into an update to the existing control agreement, in a manner previously agreed between the Borrower and the Administrative Agent, with respect to the Pledged Deposit Account (as defined in the Guaranty and Security Agreement), in a form reasonably satisfactory to the Administrative Agent.

SECTION 6.02. Negative Covenants. So long as any principal of or interest on any Loan or any other amount or obligation under the Loan Documents (other than contingent indemnity obligations not then due) shall remain unpaid or unsatisfied or any Lender shall have any Commitment or any Letter of Credit shall remain outstanding hereunder (unless such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender), KCMH covenants and agrees that, unless the Majority Lenders shall otherwise consent in writing:

(a) Indebtedness. It will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, provided that KCMH and any Subsidiary may incur Indebtedness (and all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest with regard to such Indebtedness) if (x) immediately before and after such incurrence, no Default or Event of Default shall have occurred and be continuing and (y) the Debt to Equity Ratio is less than or equal to **[\*\*]** to 1.00 after giving pro forma effect thereto. The limitations set forth in the immediately preceding sentence shall not apply to any of the following items:

- (i) Indebtedness arising under the Loan Documents;
- (ii) Intercompany Indebtedness owed among the Borrowers and/or their Subsidiaries (including any Indebtedness used to finance any Financing Transaction);
- (iii) Permitted Subordinated Debt;
- (iv) Indebtedness in respect of Hedging Agreements;
- (v) Indebtedness in respect of overdraft facilities, netting services, automatic clearinghouse arrangements and other cash management and similar arrangements in the ordinary course of business;
- (vi) additional Indebtedness of KCMH and its Subsidiaries in an aggregate principal amount not to exceed \$**[\*\*]** at any time outstanding;
- (vii) Indebtedness arising under the Five-Year Credit Agreement (and the other Loan Documents (as defined therein)), and any refinancing, renewal or replacement thereof;
- (viii) Indebtedness arising under fronting and/or settlement facilities (“Fronting Facilities”); provided that, at least 10 Business Days prior to incurring any such Indebtedness (or such shorter period as MHCB shall reasonably agree, it being agreed MHCB shall use commercially reasonable efforts to provide a response to KCMH as soon as practicable after receipt of such notice), KCMH and/or the relevant Subsidiary shall have provided MHCB a bona fide opportunity (through a written notice to MHCB) to provide such Indebtedness, including an offer regarding the timing of establishing such indebtedness, and MHCB shall have either (1) declined (through a written notice from the Administrative Agent to KCMH and/or such Subsidiary) to accept such offer to provide such Indebtedness or (2) failed to respond in writing to such offer, in each case, within such 10 Business Day period; and
- (ix) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (viii) above.

(b) Liens. It will not, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any Property now owned or hereafter acquired by it,

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except Liens under the Guarantee and Security Agreement and other Liens in favor of the Administrative Agent as contemplated hereby and except:

- (i) Liens arising under the Loan Documents;
- (ii) Liens securing Finance Subsidiary Debt; provided that the terms of any Finance Subsidiary Debt (including any intercreditor arrangements entered into in connection therewith) shall provide that the Liens on the Collateral granted under the Guarantee and Security Agreement have at least second priority (to the extent the terms of such Finance Subsidiary Debt do not permit the obligations under the Loan Documents to be secured on a first priority basis pari passu with such Finance Subsidiary Debt) after giving effect to the incurrence of such Finance Subsidiary Debt; provided further that the assets securing any such Finance Subsidiary Debt shall be limited to (A) the assets of the Finance Subsidiary or Finance Subsidiaries incurring such Finance Subsidiary Debt and (B) the common equity interests of such Finance Subsidiary or Finance Subsidiaries;
- (iii) Permitted Liens;
- (iv) Liens securing Indebtedness or other obligations of a KCMH or any Subsidiary of KCMH in favor of KCMH or any Subsidiary of KCMH;
- (v) Liens (A) of a collecting bank arising under Section 4-208 of the UCC on items in the course of collection, (B) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business; and (C) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off);
- (vi) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business;
- (vii) Liens that are contractual rights of set-off (A) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (B) relating to pooled deposit or sweep accounts of KCMH or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of KCMH and its Subsidiaries or (C) relating to agreements entered into with customers of KCMH or any of its Subsidiaries in the ordinary course of business;
- (viii) additional Liens so long as the aggregate principal amount of the obligations secured thereby at any time outstanding does not exceed \$[\*\*];
- (ix) the modification, replacement, extension or renewal of any Lien permitted by this Section 6.02(b) upon or in the same assets theretofore subject to such Lien (or upon or in after-acquired property that is affixed or incorporated into the property covered by such Lien or any proceeds or products thereof) or the replacement, extension

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or renewal (without increase in the amount or change in any direct or contingent obligor except to the extent otherwise permitted hereunder) of the Indebtedness secured thereby;

(x) Liens securing obligations in respect of Indebtedness outstanding under Section 6.02(a)(vii), provided such Liens shall only extend to Collateral and shall be pari passu with the Liens securing the Obligations hereunder and subject to the Intercreditor Agreement, or junior to the Liens securing the Obligations and subject to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent and KCMH; and

(xi) Liens securing obligations in respect of Indebtedness outstanding under Section 6.02(a)(viii), provided such Liens only extend to the loans made pursuant to such Fronting Facility and other assets related thereto, and in each case, the proceeds thereof. It is agreed that upon the incurrence of a Lien permitted pursuant to this clause (xi), any Collateral subject to such Lien shall be automatically released from the Liens securing the Obligations (and the Administrative Agent shall take such actions as reasonably requested by KCMH to evidence such release (or absence) of such Lien, it being understood that the Lenders authorize the Administrative Agent to enter into any such documentation, with the Administrative Agent authorized to rely on a certificate from KCMH confirming the automatic release (or absence) of such Lien hereunder in delivering any such documentation).

(c) Mergers, Consolidations, Sales of Assets, Etc. It will not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its Property (in each case, whether now owned or hereafter acquired), or liquidate or dissolve (provided, that, if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing, any Person may merge into KCMH in a transaction in which KCMH is the surviving entity) and it will not permit any of its Subsidiaries to merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with any Subsidiary, if a Default or Event of Default would result as a result from any such merger or consolidation and, if involving a Borrower or a Guarantor, unless such Borrower or Guarantor is the surviving entity or such successor entity is a Subsidiary of KCMH immediately following such merger or consolidation and expressly assumes the obligations of such Borrower or Guarantor, as applicable, under the Loan Documents; provided further that Subsidiaries of KCMH shall be permitted to liquidate or dissolve, except to the extent such liquidation or dissolution would reasonably be expected to result in a Material Adverse Effect and provided that upon or prior to the liquidation or dissolution of any Borrower no Borrowings of such Borrower or Letters of Credit issued for the account of such Borrower are outstanding.

(d) Investments. Without the prior written consent of the Majority Lenders (such consent not to be unreasonably withheld), it will not, and will not permit any of its Subsidiaries to, make any Investment in KKR or its Affiliates; provided, that so long as no Event of Default has occurred and is continuing, KCMH and its Subsidiaries may make Investments in the ordinary course of KCMH and its Subsidiaries' capital markets business and in compliance

with Section 6.02(i) in (i) any KCM Group Entity, (ii) any portfolio company (or any entity controlled by a portfolio company) of any fund, separately managed account or partnership managed or controlled or sponsored by KKR and/or its Affiliates (any such fund, account or partnership, a “KKR Vehicle”) and (iii) any KKR Vehicle with publicly traded securities or securities issued pursuant to Rule 144A of the Securities Act of 1933 or any foreign equivalent or with respect to which a registration statement or equivalent foreign document has been filed.

(e) Dividends. It will not, and will not permit any of its Subsidiaries to, declare or pay any dividends or make distributions (other than dividends or distributions payable solely in its Equity Interests (other than Disqualified Equity Interests)) or return any capital to its equity holders or make any other distribution, payment or delivery of property or cash to its equity holders as such, or redeem, retire, purchase or otherwise acquire, directly or indirectly, for consideration, any of its Equity Interests or Equity Interests of any direct or indirect parent thereof now or hereafter outstanding, or set aside any funds for any of the foregoing purposes, or permit any of its Subsidiaries to purchase or otherwise acquire for consideration any Equity Interests of KCMH, now or hereafter outstanding (all of the foregoing, “dividends”), provided that KCMH and any Subsidiary may pay dividends if (x) immediately before and after paying such dividend, no (1) Default or (2) Event of Default shall have occurred and be continuing and (y) the Debt to Equity Ratio is less than or equal to  $[**]$  to 1.00 after giving pro forma effect thereto. The limitations set forth in the immediately preceding sentence (other than subclause (x)(2) in the proviso thereto) shall not apply to any of the following items so long as KCMH is in compliance with Section 6.03 after giving pro forma effect thereto:

(i) it may (or may pay dividends to permit any direct or indirect parent thereof to) redeem in whole or in part any of its Equity Interests for another class of its (or such parent’s) Equity Interests (other than Disqualified Equity Interests) or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests (other than Disqualified Equity Interests), provided that such new Equity Interests contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(ii) it may pay dividends, the proceeds of which will be used to pay (or to pay dividends to allow any direct or indirect parent of KCMH to pay (including to the individual owners of any direct or indirect parent of KCMH)) the tax liability of such parent and the individual owners of any direct or indirect parent, determined at the highest rate combined federal, state and local income tax rate applicable to an individual resident in New York City, attributable to KCMH or its Subsidiaries determined as if KCMH and its Subsidiaries filed separately;

(iii) it or any of its Subsidiaries may (i) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof and (ii) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion; and

(iv) any Subsidiary of KCMH may pay dividends to its direct parent; provided that if any such dividends are paid by a non-Wholly-Owned Subsidiary, such dividends

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shall be made ratably based on the equity holder's interests therein (or any other amount more favorable to KCMH), provided further that if the proceeds of any outstanding Loans or Letters of Credit have been used for an Investment in such non-Wholly-Owned Subsidiary, any cash dividends paid to such parent shall be applied to prepay such Loans or cash collateralize such Letters of Credit if no Loans are outstanding, at the option of the Administrative Agent, without application of Section 3.12 or at the end of the next Interest Period(s) (in the case of a Eurocurrency Loan other than a SONIA Rate Loan) or calendar quarter (in the case of an ABR Loan or SONIA Rate Loan), as applicable.

(f) Subordinated Debt Payments. It will not, and will not permit any of its Subsidiaries to, prepay, repurchase or redeem, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Subordinated Indebtedness; provided that KCMH and any Subsidiary may prepay, repurchase or redeem, defease or otherwise satisfy any Subordinated Indebtedness if (x) immediately before and after such payment, no Default or Event of Default shall have occurred and be continuing and (y) the Debt to Equity Ratio is less than or equal to **[\*\*]** to 1.00 after giving pro forma effect thereto. Notwithstanding the foregoing, nothing in this Section 6.02(f) shall prohibit the repayment or prepayment of intercompany Subordinated Indebtedness owed among KCMH and/or its Subsidiaries, in either case unless an Event of Default has occurred and is continuing and KCMH has received a notice from the Administrative Agent instructing it not to make or permit any such repayment or prepayment.

(g) Burdensome Agreements. It will not, and will not permit any of its Subsidiaries to, enter into or suffer to exist or become effective any agreement that prohibits or limits the ability (i) of any Obligor to create, incur, assume or suffer to exist any Lien upon any of its material Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Guarantor, its obligations under the Guarantee and Security Agreement, or (ii) of any Subsidiary to make Restricted Payments to any Borrower or any Guarantor or to otherwise transfer property to or invest in any Borrower or any Guarantor, other than (A) this Agreement and the other Loan Documents, (B) any agreements governing Finance Subsidiary Debt and, in the case of clause (i) above only, purchase money Liens (or any permitted refinancing in respect thereof) or Finance Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and in the case of any permitted refinancing of purchase money Indebtedness, no more restrictive than that in the relevant refinanced agreement), (C) any such agreement in effect at the time any Subsidiary becomes a Subsidiary of KCMH, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of KCMH, (D) any such agreement imposed or required by or otherwise entered into with any applicable Governmental Authority, (E) any agreement in respect of Indebtedness outstanding under Section 6.02(a)(vii) or (viii) and (F) any agreement in respect of Indebtedness permitted to be outstanding under this Agreement, provided such restrictions do not, in the good faith judgment of KCMH, impair in any material respect the ability of the Borrowers hereunder to comply with their payment obligations under the Loan Documents.

(h) Affiliate Transactions. It will not, and will not permit any of its Subsidiaries to, enter into any transaction, including, without limitation, any purchase, sale, lease

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or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than KCMH or any of its Subsidiaries) unless such transaction is (a) otherwise permitted under this Agreement, including the payment and receipt of any dividend permitted pursuant to Section 6.02(e), and (b) upon terms that, in the aggregate, are no less favorable to KCMH or such Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate; provided that nothing in this Section 6.02(h) shall prohibit KCMH or any of its Subsidiaries from providing placement, advisory or other services in the ordinary course of business so long as such services do not include a funding obligation of KCMH or such Subsidiary.

(i) Line of Business. It will not, nor will it permit any of its Subsidiaries to, enter into any business, either directly or through any Subsidiary, except for those businesses in which KCMH and its Subsidiaries are engaged on the Closing Date or that are reasonably related thereto.

(j) Change in Fiscal Year. It will not make any change to its fiscal year; provided that KCMH may, upon written notice to the Administrative Agent, change its fiscal year end to any other fiscal year end reasonably acceptable to the Administrative Agent, in which case KCMH and the Administrative Agent will, and are hereby authorized by the other parties hereto to, make any adjustments to this Agreement that are necessary to effect such change.

SECTION 6.03. Financial Covenant. So long as any principal of or interest on any Loan or any other amount or obligation under the Loan Documents (other than contingent indemnity obligations not then due) shall remain unpaid or unsatisfied or any Lender shall have any Commitment or any Letter of Credit shall remain outstanding hereunder (unless such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender and the Administrative Agent), KCMH covenants and agree that, unless the Majority Lenders shall otherwise consent in writing, KCMH will not permit the Debt to Equity Ratio on the last day of any fiscal quarter of KCMH to exceed **[\*\*]** to 1.00.

## ARTICLE VII

### EVENTS OF DEFAULT

SECTION 7.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

- (a) any Borrower shall fail to pay when due any principal of any Loan;
- (b) any Borrower shall fail for five Business Days or more to pay any interest, fee or L/C Reimbursement Obligation or any other amount (other than principal) payable by such Borrower under any Loan Document when and as the same shall become due and payable;
- (c) any representation or warranty made or deemed made by an Obligor in this Agreement, any other Loan Document or in any certificate furnished pursuant to this Agreement shall prove to have been untrue in any material respect when made or deemed made;

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(d) any Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 6.01(b) (with respect to the legal existence of such Borrower), (h)(i), 6.02 (other than those contained in clause (j) of such Section) or 6.03;

(e) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Section) or in any other Loan Document, and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to KCMH;

(f) any Borrower or any Subsidiary (other than any Finance Subsidiary that is not a Borrower) shall fail to make any payment of principal or of interest on any Material Indebtedness when and as the same shall become due and payable (beyond any period of grace, if any); or any event or condition occurs that results in the acceleration (or, solely with respect to any Material Indebtedness incurred under Section 6.02(a)(iii), permits the holders of such Indebtedness (or a trustee or agent on behalf of such holders) to cause such acceleration) of such Material Indebtedness prior to its scheduled maturity;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, winding up, reorganization or other relief in respect of any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) or its debts, or of a substantial part of its Property, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) or for a substantial part of its Property, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, winding up, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (g) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Material Subsidiary (other than any Finance Subsidiary) or for a substantial part of its Property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(i) any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;



(j) one or more judgments for the payment of money in an aggregate amount in excess of \$[\*\*] shall be rendered against KCMH or any Subsidiary and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any Property of KCMH or any Subsidiary to enforce any such judgment;

(k) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred for which liability has not been fully satisfied, would reasonably be expected to result in a Material Adverse Effect; or

(l) the Guarantee and Security Agreement shall cease to be valid and binding on, or enforceable against, (i) KCMH or (ii) any other Borrower or Guarantor which is a Material Subsidiary (other than pursuant to the terms hereof or thereof or as a result of acts or omissions of the Administrative Agent or any Lender), or KCMH or any such other Borrower or Guarantor shall so assert in writing; or

(m) a Change of Control shall occur;

then the Administrative Agent shall upon the request of the Majority Lenders, by notice to KCMH, take any or all of the following actions, at the same or different times: (i) terminate the Commitments and thereupon they shall terminate immediately, (ii) terminate any obligation of the Issuing Lender to issue Letters of Credit hereunder, and thereupon such obligations shall terminate, (iii) declare the Loans and all other amounts payable by the Obligors under the Loan Documents to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of each Borrower accrued and other amounts payable by the Obligors under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower, and/or (iv) require the Borrowers to jointly and severally provide cash collateral for L/C Reimbursement Obligations and the outstanding undrawn Letters of Credit in an aggregate amount equal to the then aggregate L/C Exposure and thereupon the Borrowers shall forthwith provide such cash collateral on terms and subject to documentation reasonably satisfactory to the relevant Issuing Lenders and the Administrative Agent; and in case of any event applicable to any Borrower described in clause (g) or (h) of this Section, the Commitments and such obligations of the Issuing Lender shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Obligors accrued under the Loan Documents, shall automatically become due and payable, and the Borrowers jointly and severally shall automatically be required to provide such cash collateral, all without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower. Nothing herein shall terminate or otherwise modify the obligations of the Lenders under Section 2.02(d).

#### SECTION 7.02. Investors' Right to Cure.

[\*\*] = *Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

(a) Notwithstanding anything to the contrary contained in Section 7.01(d), in the event that KCMH fails to comply with the requirements of the covenant set forth in Section 6.03, until the expiration of the tenth day after the date on which financial statements for the fiscal period in which the covenant set forth in such Section 6.03 is being measured are required to be delivered pursuant to Section 6.01(a), any Person shall have the right to make a direct or indirect equity investment in KCMH in cash (the “Cure Right”), and upon the receipt by such Person of net cash proceeds pursuant to the exercise of the Cure Right (including through the capital contribution of any such net cash proceeds to such Person), the covenant set forth in such Section 6.03 shall be recalculated, giving effect to a pro forma increase to Total Equity as of the relevant date of determination in an amount equal to such net cash proceeds.

(b) If, after the exercise of the Cure Right and the recalculations pursuant to clause (a) above, KCMH shall then be in compliance with the requirements of the covenant set forth in Section 6.03 for the relevant fiscal quarter, KCMH shall be deemed to have satisfied the requirements of such covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default or Event of Default under Section 7.01(d) that had occurred shall be deemed cured.

## ARTICLE VIII

### THE ADMINISTRATIVE AGENT

SECTION 8.01. Appointment and Authority. (a) Each of the Lenders hereby irrevocably appoints MHC B to act on its behalf as the Administrative Agent under and in connection with the Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders and the Borrowers shall have no rights as a third party beneficiary of any of such provisions.

(b) Each Issuing Lender shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each such Issuing Lender shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Article VIII with respect to any acts taken or omissions suffered by such Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in this Article VIII included such Issuing Lender with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such Issuing Lender.

(c) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders and the Issuing Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Obligors to secure any of the obligations of the Obligors under the Loan Documents, together with such powers and discretion as are reasonably incidental thereto. In

this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Loan Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article VIII and Article IX as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.02. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03. Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(iii) shall not, except as expressly set forth in the Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Obligor or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.01) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be

deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by a Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 8.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan or issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or such issuance. The Administrative Agent may consult with legal counsel (who may be counsel for a Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers under any Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent and any Issuing Lender may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent and the Issuing Lender, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 8.06. Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and KCMH. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right, in consultation with KCMH, to appoint a successor, which shall be a nationally recognized bank with an office in New York, New York or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of

its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above, provided, that if the Administrative Agent shall notify KCMH and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in this subsection. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this subsection). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between KCMH and such successor. After the retiring Administrative Agent's resignation, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

SECTION 8.07. Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon any Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 8.08. No Other Duties; Etc. Anything herein to the contrary notwithstanding, the Lead Arranger and any bookrunner listed on the cover page hereof shall not, in such capacities, have any powers, duties or responsibilities under any of the Loan Documents.

SECTION 8.09. Intercreditor Agreement Governs. The Administrative Agent, each Lender and each Obligor hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and any other intercreditor agreement entered into pursuant to the terms hereof. Each Lender hereby authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement and each other intercreditor agreement entered into pursuant to the terms hereof (including any amendments or other modifications thereof) and to subject the Liens securing the Obligations to the provisions thereof.

SECTION 8.10. Collateral Matters: Credit Bidding.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.03 or with respect to a Secured Creditor's right to file a proof of claim in an insolvency proceeding, no Secured Creditor shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Creditors in accordance with the terms thereof.

(b) The Secured Creditors hereby irrevocably authorize the Administrative Agent, at the direction of the Majority Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of any bankruptcy laws, including under Sections 363, 1123 or 1129 of the United States Bankruptcy Code, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law; *provided* that to the extent the Loans are paid in full in cash, the Commitments are terminated and the Letters of Credit cash collateralized in accordance with the terms hereof, the consent of Majority Lenders shall not be required in connection with any such credit bid. In connection with any such credit bid and purchase, the Obligations owed to the Secured Creditors shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Majority Lenders and, except as set forth above, with the consent of the Majority Lenders, on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid, (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Creditors' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Majority Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Majority Lenders contained in Section 9.01 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Creditors, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured

Creditor or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Creditors pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Creditor or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Creditor are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Creditor shall execute such documents and provide such information regarding the Secured Creditor (and/or any designee of the Secured Creditor which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

## ARTICLE IX

### MISCELLANEOUS

#### SECTION 9.01. Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by a Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrowers and the Majority Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that no amendment, waiver or consent shall, unless in writing and signed by each Lender directly and adversely affected thereby, do any of the following: (i) subject such Lender to any additional obligations including, without limitation, any extension of the expiry date of the Commitment of such Lender or increase the Commitment of such Lender, (ii) reduce the principal of, or rate of interest on, any Loan, L/C Reimbursement Obligation or any fees or other amounts payable hereunder, (iii) postpone any date for payment of principal of, or interest on, any Loan, L/C Reimbursement Obligation or any fees or other amounts payable hereunder when due (other than fees or other amounts payable for the sole account of an Issuing Lender), or (iv) modify any of the provisions of the Loan Documents relating to pro rata payments; and provided further, that no amendment, waiver or consent shall, unless in writing and signed by all of the Lenders, change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans, or the number of Lenders, which shall be required for the Lenders or any of them to take any action hereunder, (A) amend Section 3.07(a) or (b), or this Section 9.01, or (B) release all or substantially all of the Collateral or all or substantially all of the value of the Guarantees provided by the Guarantors; and provided further, that (x) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent and the Issuing Lenders in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent or, as the case may be, the Issuing Lenders under any Loan Document and (y) if the Administrative Agent and KCMH shall

have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any provision of the Loan Documents, then the Administrative Agent and KCMH 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 Majority Lenders within five Business Days after notice thereof. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders).

(b) This Agreement, the other Loan Documents and the other agreements provided for herein constitute the entire agreement of the parties hereto and thereto with respect to the subject matter hereof and thereof.

SECTION 9.02. Notices, KCMH as Administrative Borrower, Etc.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsections (b) and (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(i) if to any Borrower or any Guarantor:

c/o KKR Capital Markets Holdings L.P.  
30 Hudson Yards, Suite 7500  
New York, New York 10001  
Attention: [ ] – Financial Controller; [ ] - Counsel  
Telephone: [ ]  
Facsimile: [ ]  
Electronic Mail: [ ]

(ii) if to the Administrative Agent:

Mizuho Bank, Ltd.  
New York Branch  
1271 Avenue of the Americas  
New York, New York 10020  
Attention: [ ]  
Telephone: [ ]  
Facsimile: [ ]  
Electronic Mail: [ ]

(iii) if to the Issuing Lender:



Mizuho Bank, Ltd.  
New York Branch  
1271 Avenue of the Americas  
New York, New York 10020  
Attention: [ ]  
Telephone: [ ]  
Facsimile: [ ]  
Electronic Mail: [ ]

(iv) if to a Lender, to it at its address (or telecopier number, electronic mail address or telephone number) set forth in its Administrative Questionnaire;

provided, that any party may change its address, telecopier number, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties. Except as provided in clause (d) below, notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), except that notices and communications to the Administrative Agent pursuant to Article II or Article VII shall not be effective until received by the Administrative Agent. Notices delivered through electronic communications to the extent provided in clause (b) below, shall be effective as provided in said clause (b).

(b) Notices and other communications to any Lender 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 pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Each Borrower further agrees that the Administrative Agent may make communications to Lenders available to the Lenders by posting the communications on Intralinks or a substantially similar electronic transmission system (the "Platform"). THE

PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (COLLECTIVELY, THE “AGENT PARTIES”) HAVE ANY LIABILITY TO ANY OBLIGOR, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF SUCH OBLIGOR’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY AGENT PARTY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) The Administrative Agent agrees that the receipt of the communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the communications have been posted to the Platform shall constitute effective delivery of the communications to such Lender for purposes of the Loan Documents. Each Lender agrees (i) to provide to the Administrative Agent in writing (including by electronic communication), promptly after the date of this Agreement, one or more e-mail addresses to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address or addresses.

(e) Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

(f) The Borrowers each hereby irrevocably appoint KCMH as the administrative borrower with respect to this Agreement and the other Loan Documents, and all notices, demands and interactions with KCMH are hereby authorized by the other Borrowers, and shall be conclusive and binding on the other Borrowers, who duly and irrevocably authorize KCMH to act on their behalf for all purposes under this Agreement and the other Loan Documents, and the Administrative Agent and the Lenders may conclusively rely on all notices, directions, and other interactions with KCMH without consulting in any manner with the other Borrowers.

SECTION 9.03. No Waiver; Remedies; Setoff.

(a) No failure on the part of any Lender or the Administrative Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(b) If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Borrower against any and all of the obligations of such now or hereafter existing under this Agreement or any other Loan Document to such Lender irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify KCMH 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 9.04. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers jointly and severally shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Lead Arranger and their respective Affiliates (including the reasonable fees, charges and disbursements of one counsel (together with one local counsel in each relevant jurisdiction)), in connection with the syndication of the facility contemplated hereby, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof, (ii) all out-of-pocket expenses incurred by the Administrative Agent and the Lenders (including the fees, charges and disbursements of one counsel (together with one local counsel in each relevant jurisdiction) and, after notice to KCMH, of more than one such counsel to the extent the Administrative Agent or any Lender reasonably determines that there is an actual conflict of interest requiring the employment of separate counsel) in connection with the enforcement (including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect thereof) or, during the continuance of an Event of Default, protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section and (iii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder.

(b) Indemnification by the Borrower. The Borrowers jointly and severally hereby indemnify the Administrative Agent, the Lead Arranger, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of one counsel for the Indemnitees (together with one local counsel in each relevant jurisdiction) and, after notice to KCMH, of more than one such counsel to the extent any Indemnitee reasonably determines that there is an actual conflict of interest requiring the employment of separate counsel), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Obligor 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, or (iii) 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 any Borrower or any other Obligor and regardless of whether any Indemnitee is a party thereto, provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a final and nonappealable judgment of a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower against an Indemnitee for material breach of such Indemnitee’s obligations hereunder or under any other Loan Document, if such Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent, the Issuing Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent, the Issuing Lender or such Related Party, as the case may be, such Lender’s Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Issuing Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent or the Issuing Lender in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each party hereto agrees that it will not assert, and hereby waives, any claim against any other party hereto, 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, any Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any Letter of Credit or the use of proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee

through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the bad faith, gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than 15 Business Days after demand therefor.

SECTION 9.05. Binding Effect, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Borrowers, the Administrative Agent and each Lender and their respective successors and permitted assigns, except that no Borrower shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Administrative Agent and the Lenders.

SECTION 9.06. Assignments and Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of clause (b) of this Section, (ii) by way of participation in accordance with the provisions of clause (d) of this Section or (iii) by way of pledge or assignment of a security interest in accordance with clause (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided, that

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, unless each of the

Administrative Agent and, unless an Event of Default has occurred and is continuing, KCMH otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(iv) no assignment shall be made to a natural person.

Subject to notice to KCMH and acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section, from and after the Assignment Date specified in each Assignment and Assumption (an "Assignment Date"), the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.09, 3.11, 3.12 and 9.04 with respect to facts and circumstances occurring prior to such Assignment Date. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at its address specified in Section 9.02 a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or any Borrower or any of any of KCMH's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall

remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso of Section 9.01 that affects such Participant. Subject to clause (e) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits and obligations of Sections 3.09, 3.11, and 3.12 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 9.06. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, 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 to any Person (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) 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.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 3.09, 3.11 and 3.12 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(f) Certain Pledges. Any Lender, without the consent of any Borrower or the Administrative Agent may at any time grant security interest in all or any portion of its rights under this Agreement or any Note to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder.

(g) Resignation as Issuing Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time MHCB assigns all of its Commitment and Loans pursuant to Section 9.06(b), MHCB may, upon 30 days' notice to KCMH and the Lenders, resign as Issuing Lender. In the event of any such resignation as Issuing Lender, KCMH shall be entitled to appoint, from among the Lenders, a successor Issuing Lender hereunder; provided, however, that no failure by KCMH to appoint any such successor shall affect the resignation of MHCB as Issuing Lender. If MHCB resigns as Issuing Lender, it shall retain all the rights, powers, privileges and duties of the Issuing Lender hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Lender and all L/C Exposure with respect thereto. Upon the appointment of a successor Issuing Lender, (a)

such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, and (b) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to MHC B to effectively assume the obligations of MHC B with respect to such Letters of Credit.

**SECTION 9.07. GOVERNING LAW; JURISDICTION; ETC.**

(A) **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(B) **SUBMISSION TO JURISDICTION.** EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF 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, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(C) **WAIVER OF VENUE.** EACH BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (B) ABOVE. EACH BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT

(D) **SERVICE OF PROCESS.** EACH BORROWER AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED



**MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, AT ITS ADDRESS SET FORTH IN SECTION 9.02, OR AT SUCH OTHER ADDRESS OF WHICH THE ADMINISTRATIVE AGENT SHALL HAVE BEEN NOTIFIED IN WRITING BY KCMH.**

SECTION 9.08. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.09. Counterparts; Effectiveness; 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. This Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Loan Documents or any Assignments. The words "execution," "signed," "signature," and words of like import in this Agreement or any other Loan Documents or any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 9.10. Survival. The provisions of Sections 3.09, 3.11 and 3.12 and Article VIII and Section 9.04 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.11. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER

AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.12. Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be subject to customary confidentiality obligations of professional practice or will agree (which agreement may be oral or pursuant to company policy) to be bound by the terms of this Section 9.12 (or language substantially similar to this Section 9.12)), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any Self Regulatory Organization), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any action or proceeding relating to the Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations, (g) with the consent of KCMH or (h) 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 or any of their respective Affiliates on a non-confidential basis from a source other than KCMH or its Subsidiary.

For purposes of this Section, "Information" means all information received from KCMH or any of its Subsidiaries relating to KCMH or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by KCMH or any of its Subsidiaries. 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.

SECTION 9.13. No Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby, each Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) the credit facility provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's length commercial transaction between the Borrowers and their Affiliates, on the one hand, and the Administrative Agent and the Lead Arranger, on the other hand, and each Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification thereof); (b) in connection with the process leading to such transaction, the Administrative Agent and the Lead Arranger, each is and

has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for any Borrower or any of its Affiliates, equity holders, creditors or employees or any other Person; (c) neither the Administrative Agent nor the Lead Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of any Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent or the Lead Arranger has advised or is currently advising any Borrower or any of its Affiliates on other matters) and neither the Administrative Agent nor the Lead Arranger has any obligation to any Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (d) the Administrative Agent and the Lead Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers and their Affiliates, and neither the Administrative Agent nor the Lead Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Administrative Agent and the Lead Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrowers have consulted their own legal, accounting, regulator and tax advisors to the extent it has deemed appropriate. Each Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and the Lead Arranger with respect to any breach or alleged breach of agency or fiduciary duty.

SECTION 9.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.15. USA PATRIOT Act. Each Lender hereby notifies each Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies such Borrower, which information includes the name and address of the Borrowers and other information that will allow such Lender to identify such Borrower in accordance with the Patriot Act.

SECTION 9.16. Judgment Currency. This is an international loan transaction in which the specification of Dollars or an Alternate Currency, as the case may be (the "Specified Currency"), and any payment in New York City or the country of the Specified Currency, as the case may be (the "Specified Place"), is of the essence, and the Specified Currency shall be the currency of account in all events relating to amounts denominated in such Specified Currency. The payment obligations of the Borrowers under this Agreement and the other Loan Documents shall not be discharged by an amount paid in another currency or in another place, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on conversion to the Specified Currency and transfer to the Specified Place under normal banking procedures does not yield the amount of the Specified Currency at the Specified Place due hereunder. If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Specified Currency into another currency (the "Second Currency"), the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures the

Administrative Agent could purchase the Specified Currency with the Second Currency on the Business Day next preceding that on which such judgment is rendered. The obligation of the Borrowers in respect of any such sum due from it to the Administrative Agent or any Lender hereunder shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be due hereunder or under the Notes in the Second Currency to the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase and transfer to the Specified Place the Specified Currency with the amount of the Second Currency so adjudged to be due; and the Borrowers hereby, as a separate obligation and notwithstanding any such judgment, jointly and severally agree to indemnify the Administrative Agent or such Lender, as the case may be, against, and to pay the Administrative Agent or such Lender, as the case may be, on demand in the Specified Currency, any difference between the sum originally due to the Administrative Agent or such Lender, as the case may be, in the Specified Currency and the amount of the Specified Currency so purchased and transferred.

SECTION 9.17. European Monetary Union. (a) Definitions. In this Section 9.17 and in each other provision of this Agreement to which reference is made in this Section 9.17 (whether expressly or impliedly), the following terms have the following respective meanings:

“EMU” shall mean economic and monetary union as contemplated in the Treaty on European Union.

“EMU Legislation” shall mean legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency, being in part the implementation of the third stage of EMU.

“Euro” shall mean the single currency of Participating Member States of the European Union, which shall be a Currency under this Agreement.

“Euro Unit” shall mean a currency unit of the Euro.

“National Currency Unit” shall mean a unit of any Currency (other than a Euro Unit) of a Participating Member State.

“Participating Member State” shall mean each state so described in any EMU Legislation.

“Target Operating Day” shall mean any day that is not (a) a Saturday or Sunday, (b) Christmas Day or New Year’s Day or (c) any other day on which the Trans-European Real-time Gross Settlement Express Transfer system (or any successor settlement system) is not operating (as determined by the Administrative Agent).

“Treaty on European Union” shall mean the Treaty of Rome of March 25, 1957, as amended by the Single European Act 1986 and the Maastricht Treaty (which was signed at Maastricht on February 7, 1992, and came into force on November 1, 1993), as amended from time to time.

(b) Alternative Currencies. If and to the extent that any EMU Legislation provides that an amount denominated either in the Euro or in the National Currency Unit of a Participating Member State and payable within the Participating Member State by crediting an account of the creditor can be paid by the debtor either in the Euro Unit or in that National Currency Unit, any party to this Agreement shall be entitled to pay such amount either in the Euro Unit or in such National Currency Unit.

(c) Payments by the Administrative Agent Generally. With respect to the payment of any amount denominated in the Euro or in a National Currency Unit, the Administrative Agent shall not be liable to any Borrower or any of the Lenders in any way whatsoever for any delay, or the consequences of any delay, in the crediting to any account of any amount required by this Agreement to be paid by the Administrative Agent if the Administrative Agent shall have taken all relevant steps to achieve, on the date required by this Agreement, the payment of such amount in immediately available, freely transferable, cleared funds (in the Euro Unit or, as the case may be, in a National Currency Unit) to the account of any Borrower or any Lender, as the case may be, in the Principal Financial Center in the Participating Member State which the Borrower or, as the case may be, such Lender shall have specified for such purpose. In this paragraph (c), “all relevant steps” shall mean all such steps as may be prescribed from time to time by the regulations or operating procedures of such clearing or settlement system as the Administrative Agent may from time to time reasonably determine for the purpose of clearing or settling payments of the Euro.

(d) Determination of Eurocurrency Rate. For the purposes of determining the date on which the applicable rate for Eurocurrency Loans, as the case may be, is determined under this Agreement for any Loan denominated in the Euro (or any National Currency Unit) for any Interest Period therefor, references in this Agreement to London Banking Days shall be deemed to be references to Target Operating Days. In addition, if the Administrative Agent determines that there is no Eurocurrency Rate displayed on the Screen Page for deposits denominated in the National Currency Unit in which any Loans are denominated, the Eurocurrency Rate for such Loans shall be based upon the rate displayed on the applicable Screen Page for the offering of deposits denominated in Euro Units.

(e) Rounding. Without prejudice and in addition to any method of conversion or rounding prescribed by the EMU Legislation, each reference in this Agreement to a minimum amount (or a multiple thereof) in a National Currency Unit to be paid to or by the Administrative Agent shall be replaced by a reference to such reasonably comparable and convenient amount (or a multiple thereof) in the Euro Unit as the Administrative Agent may from time to time specify.

(f) Other Consequential Changes. Without prejudice to the respective liabilities of the Borrowers to the Lenders and the Lenders to the Borrowers under or pursuant to this Agreement, except as expressly provided in this Section 9.17, each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be necessary or appropriate to reflect the introduction of or changeover to the Euro in Participating Member States.

SECTION 9.18. 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 the applicable Resolution Authority.

[Signature Pages Follow]

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

KKR CAPITAL MARKETS HOLDINGS L.P.,  
as a Borrower

By: KKR CAPITAL MARKETS HOLDINGS  
GP LLC, its general partner

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

KKR CORPORATE LENDING LLC, as a Borrower

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

KKR CORPORATE LENDING (CA) LLC, as a Borrower

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

KKR CORPORATE LENDING (TN) LLC, as a Borrower

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

[Signature Page to 364-Day Revolving Credit Agreement]

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KKR CORPORATE LENDING (UK) LLC, as a Borrower

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

MIZUHO BANK, LTD., as Administrative Agent and as a Lender

By: /s/ Donna DeMagistris  
Name: Donna DeMagistris  
Title: Authorized Signatory

[Signature Page to 364-Day Revolving Credit Agreement]

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## PRICING GRID

The Applicable Margin (“Applicable Margin”) in respect of Borrowings, Letters of Credit under Section 2.03(c)(i) and the facility fee payable under Section 2.03(b) shall equal the amounts indicated in the pricing grid (the “Pricing Grid”) below (based, in the case of the Applicable Margin for Loans, on the number of days such Loan (or as applicable, Letter of Credit) remains outstanding after the date it is initially outstanding, as set forth below):

<b>DAYS FROM DATE LOAN (OR AS APPLICABLE LETTER OF CREDIT) IS INITIALLY OUTSTANDING</b>	<b>APPLICABLE MARGIN FOR EUROCURRENCY LOANS (INCLUDING FOR SONIA RATE LOANS)</b>	<b>APPLICABLE MARGIN FOR ABR LOANS</b>	<b>APPLICABLE MARGIN FOR FACILITY FEE</b>
[**]	1.50%	0.50%	[**]%
[**]	[**]%	[**]%	[**]%
[**]	[**]%	[**]%	[**]%
[**]	2.75%	1.75%	[**]%

[\*\*] = Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

GUARANTEE AND SECURITY AGREEMENT

GUARANTEE AND SECURITY AGREEMENT, dated as of April 9, 2021 (as amended, supplemented or otherwise modified from time to time, this "Agreement"), among KKR CAPITAL MARKETS HOLDINGS L.P., a Delaware limited partnership ("KCMH"), each Subsidiary of KCMH identified under the caption "GUARANTORS" on the signature pages hereto and each entity, if any, that becomes a "Guarantor" hereunder as contemplated by Section 7.13 hereof (individually, a "Guarantor" and, collectively, the "Guarantors" and, together with KCMH, the "Obligors"), and MIZUHO BANK, LTD., as administrative agent for the parties defined as "Lenders" under the Credit Agreement referred to below (in such capacity, together with its successors in such capacity, the "Administrative Agent").

Reference is made to that certain 364-Day Revolving Credit Agreement, dated as of April 9, 2021, among KCMH, KKR CORPORATE LENDING LLC, a Delaware limited liability company ("KCL U.S."), KKR CORPORATE LENDING (CA) LLC, a Delaware limited liability company ("KCL C.A."), KKR CORPORATE LENDING (TN) LLC, a Delaware limited liability company ("KCL T.N."), any Additional Borrower party thereto, and KKR CORPORATE LENDING (UK) LLC, a Delaware limited liability company ("KCL U.K."; each of KCMH, KCL U.S., KCL C.A., KCL T.N., KCL U.K. and any Additional Borrower party thereto are individually referred to herein as a "Borrower" and collectively referred to herein as the "Borrowers") and the Administrative Agent (as the same may be amended, modified, supplemented, refinanced or replaced from time to time, the "Credit Agreement"), providing, subject to the terms and conditions thereof, for extensions of credit (by means of loans and letters of credit) to be made by the Lenders to the Borrowers. In addition, the Borrowers may from time to time be obligated to various Lenders (or their Affiliates) in respect of one or more Hedging Agreements.

Each Obligor is, as of the date hereof, the owner of (a) the shares of Equity Interests (the "Initial Pledged Equity"), (b) the indebtedness (the "Initial Pledged Debt") and (c) the deposit account the ("Pledged Deposit Account"), each as set forth opposite such Obligor's name on Part A of Annex II hereto.

To induce each Lender to enter into the Credit Agreement and to extend credit thereunder and under any Hedging Agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Guarantor, jointly and severally with each other Guarantor, has agreed to guarantee the Guaranteed Obligations (as hereinafter defined) and each Obligor has agreed to grant a security interest in the Collateral (as so defined) as security for the Secured Obligations (as so defined) and each Guarantor and each other Obligor have agreed to enter into this Agreement pursuant to the terms set forth below.

- (a) Accordingly, the parties hereto hereby agree as follows:
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SECTION 1. DEFINITIONS, ETC.

1.01 Terms Generally. Terms used herein and not otherwise defined herein are used herein as defined in the Credit Agreement.

1.02 Certain Uniform Commercial Code Terms. As used herein, the terms “Account”, “Chattel Paper”, “Deposit Accounts”, “Document”, “Equipment”, “General Intangible”, “Instrument”, “Inventory”, “Investment Property”, “Letter-of-Credit Right”, “Commercial Tort Claims” and “Proceeds” have the respective meanings set forth in Article 9 of the UCC, and the terms “Entitlement Holder”, “Financial Asset” and “Securities Account” have the respective meanings set forth in Article 8 of the UCC.

1.03 Additional Definitions. In addition, as used herein:

“Bankruptcy Law” has the meaning assigned to such term in Section 2.01.

“Collateral” has the meaning assigned to such term in Section 4.

“Collateral Account” has the meaning assigned to such term in Section 5.01.

“Excess Funding Guarantor” has the meaning assigned to such term in Section 2.08.

“Excess Payment” has the meaning assigned to such term in Section 2.08.

“Guaranteed Obligations” has the meaning assigned to such term in Section 2.01.

“Initial Pledged Debt” has the meaning assigned to such term in the preamble hereto.

“Initial Pledged Equity” has the meaning assigned to such term in the preamble hereto.

“L/C Exposure Sub-Account” has the meaning assigned to such term in Section 5.04.

“Pledged Deposit Account” has the meaning assigned to such term in the preamble hereto.

“Pledged Debt” has the meaning assigned to such term in Section 4(b)(iv).

“Pledged Equity” has the meaning assigned to such term in Section 4(b)(iii).

“Pro Rata Share” has the meaning assigned to such term in Section 2.08.

“Secured Creditors” means, collectively, the Lenders (including each Issuing Lender) and the Administrative Agent, any other holder from time to time of any of the Secured Obligations and, in each case, their respective successors and assigns.

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“Secured Obligations” means, collectively, (a) in the case of the Borrowers, (i) all obligations of the Borrowers under the Loan Documents to pay the principal of and interest on the Loans and the L/C Reimbursement Obligations and all fees, premiums, costs, expenses, indemnification payments and other amounts or obligations whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Secured Creditors or any of them under the Loan Documents and (ii) all obligations of the Borrowers to any Lender (or any Affiliate thereof) under any Hedging Agreement, (b) in the case of the Guarantors, all obligations of the Guarantors under Section 2 hereof and (c) in the case of each of the foregoing, including all interest thereon and expenses related thereto, including any interest or expenses accruing or arising after the commencement of any case with respect to any Obligor under the United States Bankruptcy Code or any other bankruptcy or insolvency law (whether or not such interest or expenses are allowed or allowable as a claim in whole or in part in such case).

“Security Collateral” has the meaning assigned to such term in Section 4(b).

“Subagent” has the meaning assigned to such term in Section 6.15(b).

“Subordinated Obligations” has the meaning assigned to such term in Section 2.10.

1.04 Treatment of Hedging Agreements. For purposes hereof, it is understood that any obligations of any Borrower to a Person arising under a Hedging Agreement entered into with a Lender or an Affiliate thereof shall nevertheless continue to constitute Secured Obligations and Guaranteed Obligations, and such Person shall continue to be a Secured Creditor, for purposes hereof, notwithstanding that such Person (or its Affiliates) may have assigned all of its Loans and other interests in the Credit Agreement and, therefore, at the time a claim is to be made in respect of such obligations, such Person (or its Affiliates) is no longer a “Lender” party to the Credit Agreement.

## SECTION 2. GUARANTEE.

2.01 The Guarantee. Each Guarantor hereby absolutely, unconditionally and irrevocably guarantees to each of the Secured Creditors and their respective successors and assigns the prompt payment in full when due (whether at stated maturity, by acceleration or otherwise) of:

(a) the principal of and interest on the Loans and the L/C Reimbursement Obligations and all fees, premiums, costs, expenses, indemnification payments and other amounts or obligations whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Lenders or the Administrative Agent or any of them by any Obligor under any of the Loan Documents, and

(b) all obligations of any Borrower to any Lender (or any Affiliate thereof) under any Hedging Agreement,

in each case in accordance with the terms thereof and including all interest and expenses accrued or incurred subsequent to the commencement of any bankruptcy or insolvency proceeding with respect to any Obligor, whether or not such interest or expenses are allowed as a claim in such

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proceeding (such obligations being herein collectively called the “Guaranteed Obligations”). Each Guarantor hereby further jointly and severally agrees that if any Obligor shall fail to pay in full when due (whether at stated maturity, by acceleration or otherwise) any of the Guaranteed Obligations, such Guarantor will promptly pay the same, without any demand or notice whatsoever, and that in the case of any extension of time of payment or renewal of any of the Guaranteed Obligations, the same will be promptly paid in full when due (whether at extended maturity, by acceleration or otherwise) in accordance with the terms of such extension or renewal.

Each Guarantor, the Administrative Agent and each other Secured Creditor, hereby confirms that it is the intention of all such Persons that this Agreement and the obligations of each Guarantor hereunder do not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law (as hereinafter defined), the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Agreement and the obligations of each Guarantor hereunder. To effectuate the foregoing intention, the Administrative Agent, the other Secured Creditors and the Guarantors hereby irrevocably agree that the Guaranteed Obligations of each Guarantor at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor not constituting a fraudulent transfer or conveyance. For purposes hereof, “Bankruptcy Law” means any proceeding of the type referred to in Sections 7.01(g) or (h) of the Credit Agreement or under Title 11, U.S. Code, or any similar foreign, federal or state law for the relief of debtors.

2.02 Obligations Unconditional. The obligations of each Guarantor under Section 2.01 are absolute and unconditional, joint and several, irrespective of the value, genuineness, validity, regularity or enforceability of the obligations of any Obligor under any of the Loan Documents or any substitution, release or exchange of any other guarantee or security for any of the Guaranteed Obligations, and, to the fullest extent permitted by applicable law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 2.02 that the obligations of such Guarantor hereunder shall be absolute and unconditional, joint and several, under any and all circumstances. Without limiting the generality of the foregoing, it is agreed that the occurrence of any one or more of the following shall not alter or impair the liability of such Guarantor hereunder, which shall remain absolute and unconditional as described above:

- (a) at any time or from time to time, without notice to the Guarantors, the time for any performance of or compliance with any of the Guaranteed Obligations shall be extended, or such performance or compliance shall be waived;
  - (b) any of the acts mentioned in any of the provisions of the Loan Documents or any other agreement or instrument referred to herein or therein shall be done or omitted;
  - (c) the maturity of any of the Guaranteed Obligations shall be accelerated, or any of the Guaranteed Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents shall be waived or any other guarantee of any of the Guaranteed Obligations or any security therefor shall be released or exchanged in whole or in part or otherwise dealt with;
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- (d) any Lien in favor of any Secured Creditor as security for any of the Guaranteed Obligations shall fail to be perfected or be released;
- (e) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto; or
- (f) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by any Secured Creditor that might otherwise constitute a defense available to, or discharge of, any Obligor or any other guarantor or surety.

Each Guarantor hereby expressly, unconditionally and irrevocably waive diligence, presentment, promptness, demand of payment, protest, default, acceleration and all notices whatsoever, and any requirement that any Secured Creditor exhaust any right, power or remedy or proceed against any Obligor under any of the Loan Documents or against any other Person under any other guarantee of, or security for, any of the Guaranteed Obligations.

Each Guarantor hereby unconditionally and irrevocably waives (a) any defense arising by reason of any claim or defense based upon an election of remedies by any Secured Creditor that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Obligors, any other guarantor or any other Person or any Collateral and (b) any defense based on any right of set-off or counterclaim against or in respect of the obligations of such Guarantor hereunder.

Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in this Section 2 are knowingly made in contemplation of such benefits.

2.03 Reinstatement. The obligations of each Guarantor under this Section 2 shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Borrower in respect of the Guaranteed Obligations is rescinded or must be otherwise restored by any holder of any of the Guaranteed Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Guarantor jointly and severally agrees that it will indemnify the Secured Creditors on demand for all reasonable costs and expenses (including fees of counsel) incurred by the Secured Creditors in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

2.04 Subrogation. Each Guarantor jointly and severally agrees that, until the payment and satisfaction in full of all Guaranteed Obligations (other than contingent indemnity obligations not then due) and the expiration and termination of the Commitments under the Credit Agreement and the expiry, termination or cash collateralization or other back-stopping on terms reasonably satisfactory to the relevant Issuing Lender, the Administrative Agent and KCMH of all Letters of Credit thereunder, they shall not exercise any right or remedy (whether or not arising in equity or under contract, statute or common law) arising by reason of any existence, payment, enforcement or performance by such Guarantor of its obligations under any Loan Document, whether by subrogation or otherwise, against any Obligor or any other

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guarantor of any of the Guaranteed Obligations or any security for any of the Guaranteed Obligations.

2.05 Remedies. Each Guarantor jointly and severally agrees that, as between such Guarantor and the Lenders, the obligations of any Borrower under the Credit Agreement may be declared to be forthwith due and payable as provided in Article VII of the Credit Agreement (and shall be deemed to have become automatically due and payable in the circumstances provided in said Article VII) for purposes of Section 2.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or such obligations from becoming automatically due and payable) as against any Borrower and that, in the event of such declaration (or such obligations being deemed to have become automatically due and payable), such obligations (whether or not due and payable by any Borrower) shall forthwith become due and payable by the Guarantors for purposes of Section 2.01.

2.06 Instrument for the Payment of Money. Each Guarantor acknowledges that the guarantee in this Section 2 constitutes an instrument for the payment of money, and consents and agrees that any Secured Creditor, at its sole option, in the event of a dispute by such Guarantor in the payment of any moneys due hereunder, shall have the right to bring motion-action under New York CPLR Section 3213.

2.07 Continuing Guarantee; Assignments. The guarantee in this Section 2 is a continuing guarantee, and shall (a) remain in full force and effect until the latest of (i) the payment in full in cash of the Guaranteed Obligations (other than any contingent indemnity obligations not then due), (ii) the termination or expiration of all the Commitments of the Lenders and (iii) the latest date of expiration or termination of all Letters of Credit (unless cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender, the Administrative Agent and KCMH), (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Secured Creditors and their successors, transferees and assigns. Without limiting the generality of clause (c) of the immediately preceding sentence, any Secured Creditor may assign or otherwise transfer all or any portion of its rights and obligations under the Credit Agreement (including, without limitation, all or any portion of its Commitments, the Loans owing to it and the Note or Notes held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Secured Creditor herein or otherwise, in each case as and to the extent provided in Section 9.06 of the Credit Agreement.

2.08 Rights of Contribution. The Guarantors hereby agree, as between themselves, that if any Guarantor shall become an Excess Funding Guarantor (as defined below) by reason of the payment by such Guarantor of any Guaranteed Obligations, then each other Guarantor shall, upon the demand of such Excess Funding Guarantor (but subject to the next sentence), pay to such Excess Funding Guarantor an amount equal to such Guarantor's Pro Rata Share (as defined below and determined, for this purpose, without reference to the properties, debts and liabilities of such Excess Funding Guarantor) of the Excess Payment (as defined below) in respect of such Guaranteed Obligations. The payment obligation of a Guarantor to any Excess Funding Guarantor under this Section 2.08 shall be subordinate and subject in right of payment to the prior payment in full of the obligations of such Guarantor to the Secured Creditor under the other provisions of this Section 2 and such Excess Funding Guarantor shall not

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exercise any right or remedy with respect to such excess until payment and satisfaction in full of all of such obligations.

For purposes of this Section 2.08, (a) "Excess Funding Guarantor" means, in respect of any Guaranteed Obligations, a Guarantor that has paid an amount in excess of its Pro Rata Share of such Guaranteed Obligations, (b) "Excess Payment" means, in respect of any Guaranteed Obligations, the amount paid by an Excess Funding Guarantor in excess of its Pro Rata Share of such Guaranteed Obligations and (c) "Pro Rata Share" means, for any Guarantor, the ratio (expressed as a percentage) of (x) the amount by which the aggregate fair saleable value of all properties of such Guarantor (excluding any shares of stock or other equity interest of any other Guarantor) exceeds the amount of all the debts and liabilities of such Guarantor (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of such Guarantor hereunder and any obligations of any other Guarantor that have been Guaranteed by such Guarantor) to (y) the amount by which the aggregate fair saleable value of all properties of all of the Guarantors exceeds the amount of all the debts and liabilities (including contingent, subordinated, unmatured and unliquidated liabilities, but excluding the obligations of the Guarantors hereunder and under the other Loan Documents) of all of the Guarantors, determined (i) with respect to any Guarantor that is a party hereto on the date hereof, as of the date hereof, and (ii) with respect to any other Guarantor, as of the date such Guarantor becomes a Guarantor hereunder.

2.09 Payments Free and Clear of Taxes, Etc. Any and all payments made by any Guarantor under or in respect of this Agreement or any other Loan Document shall be made free and clear of and without deduction for any and all present or future Indemnified Taxes or Other Taxes on the same terms and to the same extent that payments by the Borrowers are required to be made free and clear of Indemnified Taxes and Other Taxes pursuant to Section 3.11 of the Credit Agreement.

2.10 Subordination. Each Guarantor hereby subordinates any and all debts, liabilities and other obligations owed to such Guarantor by each other Obligor (the "Subordinated Obligations") to the Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 2.10:

(a) Prohibited Payments, Etc. Except after the occurrence of and during the continuance of an Event of Default (including the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Obligor), each Guarantor may receive regularly scheduled payments from any other Obligor on account of the Subordinated Obligations.

(b) Prior Payment of Guaranteed Obligations. After the occurrence and during the continuance of any Default or Event of Default (including the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Obligor), however, unless the Administrative Agent otherwise agrees, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations.

(c) Prior Payment of Guaranteed Obligations. In any proceeding under any Bankruptcy Law relating to any other Obligor, each Guarantor agrees that the Secured Creditors shall be entitled to receive payment in full in cash of all Guaranteed Obligations before such Guarantor receives payment of any Subordinated Obligations.

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(d) Turn-Over. After the occurrence and during the continuance of any Event of Default (including the commencement and continuation of any proceeding under any Bankruptcy Law relating to any other Obligor), each Guarantor shall, if the Administrative Agent so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Secured Creditors and deliver such payments to the Administrative Agent on account of the Guaranteed Obligations, together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Agreement.

2.11 Covenants. Each Guarantor covenants and agrees that, so long as any part of the Guaranteed Obligations shall remain unpaid (other than any contingent indemnity obligations not then due), any Letter of Credit shall be outstanding (unless cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender, the Administrative Agent and KCMH) or any Lender shall have any Commitment, such Guarantor will perform and observe, and cause each of its Subsidiaries to perform and observe, all of the terms, covenants and agreements set forth in the Loan Documents that any Borrower has agreed to cause such Guarantor or such Subsidiaries to perform or observe.

SECTION 3. REPRESENTATIONS AND WARRANTIES. Each Obligor represents and warrants to the Lenders and the Administrative Agent for the benefit of the Secured Creditors that:

3.01 Organizational Matters; Enforceability, Etc. In the case of each Guarantor the representations and warranties of the Borrowers relating to such Guarantor in Article V of the Credit Agreement are true as of the date such representations were made.

3.02 Title. Such Obligor is the sole beneficial owner of the Collateral in which it purports to grant a security interest pursuant to Section 4 and no Lien exists upon the Collateral (and no right or option to acquire the same exists in favor of any other Person) other than (a) Liens permitted by the Credit Agreement and (b) the security interest created or provided for herein, which security interest constitutes a valid first priority perfected Lien on the Collateral (or in the case of Collateral upon which Liens permitted by Section 6.02(b)(ii) of the Credit Agreement exist, a valid second priority perfected Lien on the Collateral) subject to Liens permitted by the Credit Agreement; provided that, except in the case of the Pledged Deposit Agreement listed on Part A of Annex II (subject to Section 6.01(m) of the Credit Agreement) or any other deposit account used as the primary account to deposit funds from the Credit Agreement, possession of certificated securities and Instruments, no Obligor shall be required to perfect the security interest created or provided for herein by any means other than filings pursuant to the UCC or with the United States Patent and Trademark Office (“PTO”) or the United States Copyright Office (and any similar office in any other country).

3.03 Names, Etc. The full and correct legal name, type of organization, jurisdiction of organization, organizational identification number (if applicable) and mailing address of each Obligor as of the date hereof are correctly set forth in Annex I hereto. Said Annex I correctly specifies (a) the place of business of such Obligor or, if such Obligor has more than one place of business, the location of the chief executive office of such Obligor, and (b) each location where any financing statement naming such Obligor as debtor is currently on file.

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3.04 Changes in Circumstances. Such Obligor has not (a) within the period of three months prior to the date hereof, changed its location (as defined in Section 9-307 of the UCC), (b) heretofore changed its name, type of organization, jurisdiction of organization or organizational identification number or (c) heretofore become a “new debtor” (as defined in Section 9-102(a)(56) of the UCC) with respect to a currently effective security agreement previously entered into by any other Person.

3.05 Guarantors. Each Wholly-Owned Subsidiary of KCMH that is a Domestic Subsidiary, other than any Broker-Dealer Subsidiary, existing on the date hereof, has executed this Agreement and is identified under the caption “GUARANTOR” on the signature pages hereto.

3.06 Security

(a) If such Obligor is an issuer of Security Collateral, such Obligor confirms that it has received notice of the security interest granted hereunder.

(b) The Pledged Equity pledged by such Obligor hereunder, to the extent such Pledged Equity has been issued by another Obligor or Subsidiary of KCMH, has been duly authorized and validly issued and is fully paid and non-assessable (to the extent such terms are applicable). The Pledged Debt pledged by such Obligor hereunder, to the extent such Pledged Debt has been issued by another Obligor or Subsidiary of KCMH, has been duly authorized, authenticated or issued and delivered, is the legal, valid and binding obligation of the issuers thereof.

(c) The Initial Pledged Equity pledged by such Obligor constitutes, as of the date hereof, the percentage of the issued and outstanding Equity Interests of the issuers thereof indicated on Annex II hereto. The Initial Pledged Debt constitutes all of the outstanding indebtedness owed to such Obligor by the issuers thereof that is evidenced by instruments on the date hereof and is outstanding in the principal amount indicated on Annex II hereto.

(d) As of the date hereof, other than as set forth on Annex II, such Obligor has (i) no deposit accounts and (ii) no Securities Accounts.

SECTION 4. COLLATERAL. As collateral security for the payment in full when due (whether at stated maturity, by acceleration or otherwise) of the Secured Obligations, each Obligor hereby pledges and grants to the Administrative Agent for the ratable benefit of the Secured Creditors, as hereinafter provided, a security interest in all of such Obligor’s right, title and interest in, to and under the following property, in each case whether tangible or intangible, wherever located, and whether now owned by such Obligor or hereafter acquired and whether now existing or hereafter coming into existence:

(a) all Accounts, Chattel Paper, Collateral Accounts, Deposit Accounts, Documents, Equipment, General Intangibles, Instruments, Inventory, Investment Property, money; and

(b) the following (collectively, the “Security Collateral”):

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(i) the Initial Pledged Equity and the certificates, if any, representing the Initial Pledged Equity, and all dividends, distributions, return of capital, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Initial Pledged Equity, all warrants, rights or options issued thereon or with respect thereto and all general intangibles (including membership status, control rights and economic interests) arising therefrom;

(ii) the Initial Pledged Debt and the instruments, if any, evidencing the Initial Pledged Debt, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Initial Pledged Debt;

(iii) all additional shares of stock and other Equity Interests from time to time acquired by such Obligor in any manner (such shares and other Equity Interests, together with the Initial Pledged Equity, being the “Pledged Equity”), and the certificates, if any, representing such additional shares or other Equity Interest, and all dividends, distributions, return of capital, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such shares or other Equity Interests, all warrants, rights or options issued thereon or with respect thereto and all general intangibles (including membership status, control rights and economic interests) arising therefrom;

(iv) all additional indebtedness from time to time owed to such Obligor (such indebtedness, together with the Initial Pledged Debt, being the “Pledged Debt”) and the instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness;

(v) the Securities Accounts, all security entitlements with respect to all financial assets from time to time credited to the Securities Accounts, and all financial assets, and all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such security entitlements or financial assets and all warrants, rights or options issued thereon or with respect thereto; and

(vi) all other investment property (including, without limitation, all (A) securities, whether certificated or uncertificated, (B) security entitlements, (C) securities accounts, (D) commodity contracts and (E) commodity accounts) in which such Obligor has now, or acquires from time to time hereafter, any right, title or interest in any manner, and the certificates or instruments, if any, representing or evidencing such investment property, and all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such investment property and all warrants, rights or options issued thereon or with respect thereto;

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(c) all Proceeds of, collateral for, income, royalties and other economic rights or payments now or hereafter due and payable with respect to, any of the Collateral, all substitutions and replacements for, any of the Collateral, cash and, to the extent related to any Collateral, all books, correspondence, credit files, records, invoices and other papers (including all tapes, cards, computer runs and other papers and documents in the possession or under the control of such Obligor or any computer bureau or service company from time to time acting for such Obligor),

(all of the property described in this Section 4 being collectively referred to herein as "Collateral") PROVIDED, HOWEVER, that notwithstanding anything to the contrary in this Agreement, this Agreement shall not constitute a grant of a security interest in (a) more than 65% of the issued and outstanding Voting Shares of any non-Domestic Subsidiary (or any Domestic Subsidiary substantially all of whose assets consist of capital stock and/or indebtedness of one of more Foreign Subsidiaries), (b) motor vehicles and other assets subject to certificates of title, Letter of Credit Rights and Commercial Tort Claims, (c) any application for registration of a trademark filed with the PTO on an intent-to-use basis until such time (if any) as a statement of use or amendment to allege use is accepted by the PTO, at which time such trademark shall automatically become part of the Collateral and subject to the security interest pledged, (d) those assets over which the granting of security interests in such assets would be prohibited by applicable law, regulation, or agreements containing anti-assignment clauses not overridden by the UCC or other applicable law and (e) those assets as to which the Administrative Agent and the Borrower reasonably determine that the cost of obtaining such a security interest or perfection thereof are excessive in relation to the benefit to the Lenders of the security to be afforded thereby.

SECTION 5. Collateral Account and Deposit Account.

5.01 Collateral Account. The Administrative Agent will, if so directed by the Issuing Lender or the Majority Lenders, as applicable, cause to be established at the Administrative Agent a collateral account (the "Collateral Account"), that

(a) to the extent of all Investment Property or Financial Assets (other than cash) credited thereto shall be a Securities Account in respect of which the Administrative Agent shall be the Entitlement Holder or which shall be subject to a control agreement in form and substance satisfactory to the Administrative Agent, and

(b) to the extent of any cash credited thereto shall be a Deposit Account in respect of which the Administrative Agent shall be the depository bank's customer and shall have control over such Deposit Account, and

into which each Obligor agrees to deposit from time to time the cash proceeds of any of the Collateral required to be delivered to the Administrative Agent pursuant hereto or pursuant to any other Loan Document, and into which the Obligors may from time to time deposit any additional amounts that it wishes to provide as additional collateral security hereunder. The Collateral Account, and any money or other property from time to time therein, shall constitute part of the Collateral hereunder and shall not constitute payment of the Secured Obligations until applied as hereinafter provided.

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5.02 Withdrawals. The balance from time to time in the Collateral Account shall be subject to withdrawal only as provided in this Section 5.02 and Section 5.03 below. The Administrative Agent shall (except as otherwise provided in the last sentence of this Section 5.02 and except after the occurrence of and during the continuation of an Event of Default) remit the collected balance standing to the credit of the Collateral Account to or upon the order of the relevant Obligor as such Obligor (through KCMH) shall from time to time instruct. At any time following the occurrence of and during the continuance of an Event of Default, the Administrative Agent may (and, if instructed by the Lenders as provided in the Credit Agreement, shall) in its (or their) discretion, after written notice to KCMH, apply or cause to be applied (subject to collection) the balance from time to time standing to the credit of the Collateral Account (regardless of the origin thereof) to the prepayment of the principal of the Loans (and/or to provide payment or cover for L/C Exposure) in the manner specified in Article VII of the Credit Agreement.

5.03 Investment of Balance in Collateral Account. The cash balance standing to the credit of the Collateral Account shall be invested from time to time as the respective Obligor through KCMH or, after the occurrence and during the continuance of an Event of Default, the Administrative Agent shall determine which investments shall be held in the name and be under the control of the Administrative Agent (and credited to the Collateral Account); provided that at any time after the occurrence and during the continuance of an Event of Default, the Administrative Agent may (and, if instructed by the Lenders as provided in the Credit Agreement, shall) in its (or their) discretion at any time and from time to time elect to liquidate any such investments and to apply or cause to be applied the proceeds thereof to the payment of the Secured Obligations then due and payable in the manner specified in Section 6.08.

5.04 Cover for L/C Exposure. Amounts deposited into the Collateral Account as cover for L/C Exposure under the Credit Agreement as contemplated by Article VII thereof shall be held by the Administrative Agent in a separate sub-account (designated "L/C Exposure Sub-Account") and all amounts held in such sub-account shall constitute collateral security first for the L/C Exposure outstanding from time to time and second as collateral security for the other Secured Obligations hereunder.

5.05 Delivery of Security Collateral. All certificates or instruments representing or evidencing Security Collateral (if and to the extent certificated and, with respect to Indebtedness (other than Intercompany Indebtedness), in an amount in excess of \$5,000,000), other than Security Collateral that is subject to a Lien permitted by Section 6.02(b)(ii), shall be promptly delivered to and held by or on behalf of the Administrative Agent (or its bailee or designee) pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Administrative Agent (or its bailee or designee).

5.06 Maintaining Pledged Deposit Account. Subject to Section 6.01(m) of the Credit Agreement, so long as any Guaranteed Obligation or Secured Obligation shall remain unpaid (other than any contingent obligations not then due), any Letter of Credit shall be outstanding (unless cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender, the Administrative Agent and KCMH), or any Lender shall have any Commitment, each Obligor will maintain the primary account to deposit funds from the Credit Agreement only with the financial institution acting as Administrative Agent

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hereunder or with a bank that has agreed with such Obligor and the Administrative Agent (or its bailee or designee) to comply with instructions originated by the Administrative Agent (or its bailee or designee) directing the disposition of funds in such deposit account without the further consent of such Obligor, such agreement to be in form and substance reasonably satisfactory to the Administrative Agent (or its bailee or designee). As of the Closing Date the Pledged Deposit Account is used as the primary account to deposit funds from the Credit Agreement and, for the avoidance of doubt, such Pledged Deposit Account may be replaced by another deposit account as the primary account to deposit funds from the Credit Agreement, subject to the requirements of this Section 5.06.

SECTION 6. COLLATERAL ACCOUNT AND DEPOSIT FURTHER ASSURANCES; REMEDIES. In furtherance of the grant of the security interest pursuant to Section 4, each Obligor hereby, jointly and severally with each other Obligor, agrees with the Administrative Agent for the benefit of the Secured Creditors as follows:

6.01 Delivery and Other Perfection. Each Obligor shall promptly from time to time give, execute, deliver, file, record, authorize or obtain all such financing statements, continuation statements, notices, instruments, documents, agreements or consents or other papers as may be necessary to create, preserve, perfect, maintain the perfection of or validate the security interest granted pursuant hereto or to enable the Administrative Agent to exercise and enforce its rights hereunder with respect to such security interest, including recordings before the PTO, United States Copyright Office (and any similar office in any other country), as appropriate. Each Obligor hereby authorizes the Administrative Agent to file one or more financing statements indicating that such financing statement covers all assets or all personal property (or words of similar effect) of such Obligor, in each case without the signature of such Obligor, and regardless of whether any particular asset described in such financing statements falls within the scope of the UCC or the granting clause of this Agreement. A photocopy or other reproduction of this Agreement shall be sufficient as a financing statement where permitted by law.

6.02 Other Financing Statements or Control. Subject to the Intercreditor Agreement and except to the extent otherwise permitted by the Loan Documents, no Obligor shall (a) file or suffer to be on file, or authorize or permit to be filed or to be on file, in any jurisdiction, any financing statement or like instrument with respect to any of the Collateral in which the Administrative Agent is not named as the sole secured party for the benefit of the Secured Creditors, or (b) cause or permit any Person other than the Administrative Agent to have "control" (as defined in Section 9-106 of the UCC) of any Equity Interest held by such Obligor in any of its Subsidiaries constituting part of the Collateral.

6.03 Preservation of Rights. The Administrative Agent shall not be required to take steps necessary to preserve any rights against prior parties to any of the Collateral.

6.04 Remedies. (a) Rights and Remedies Generally upon Default. Subject to the Intercreditor Agreement, if an Event of Default shall have occurred and is continuing, the Administrative Agent, in addition to other rights and remedies provided for herein or in any other Loan Document, or otherwise available to it, shall have all of the rights and remedies with respect to the Collateral of a secured party under the UCC (whether or not the UCC is in effect in the jurisdiction where the rights and remedies are asserted) and such additional rights and remedies to which a secured party is entitled under the laws in effect in any jurisdiction where

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any rights and remedies hereunder may be asserted, including the right, to the fullest extent permitted by law, to exercise all voting, consensual and other powers of ownership pertaining to the Collateral as if the Administrative Agent were the sole and absolute owner thereof (and each Obligor agrees to take all such action as may be appropriate to give effect to such right); and without limiting the foregoing:

(i) the Administrative Agent in its discretion may, in its name or in the name of any Obligor or otherwise, demand, sue for, collect or receive any money or other property at any time payable or receivable on account of or in exchange for any of the Collateral, but shall be under no obligation to do so;

(ii) the Administrative Agent may make any reasonable compromise or settlement deemed desirable with respect to any of the Collateral and may extend the time of payment, arrange for payment in installments, or otherwise modify the terms of, any of the Collateral; provided that the Administrative Agent shall provide KCMH with prior notice thereof;

(iii) the Administrative Agent may require the Obligors to notify (and each Obligor hereby authorizes the Administrative Agent to so notify) each account debtor in respect of any Account, Chattel Paper or General Intangible, and each obligor on any Instrument, constituting part of the Collateral that such Collateral has been assigned to the Administrative Agent hereunder, and to instruct that any payments due or to become due in respect of such Collateral shall be made directly to the Administrative Agent or as it may direct (and if any such payments, or any other Proceeds of Collateral, are received by any Obligor they shall be held in trust by such Obligor for the benefit of the Administrative Agent and as promptly as possible remitted or delivered to the Administrative Agent for application as provided herein);

(iv) the Administrative Agent may prohibit withdrawals from, and/or apply to the payment of the Secured Obligations, any money or other property in the Collateral Account; provided that the Administrative Agent shall provide KCMH with prior notice thereof;

(v) the Administrative Agent may require the Obligors to cause any securities constituting part of the Collateral, to be transferred of record into the name of the Administrative Agent or its nominee (and the Administrative Agent agrees that if any of such securities is transferred into its name or the name of its nominee, the Administrative Agent will thereafter promptly give to respective Obligor (through KCMH) copies of any notices and communications received by it with respect to such securities);

(vi) the Administrative Agent may sell, lease, license, assign or otherwise dispose of all or any part of the Collateral now owned or hereafter acquired at such place or places as the Administrative Agent deems best, and for cash or for credit or for future delivery (without thereby assuming any credit risk), at public or private sale, without demand of performance or notice of intention to effect any such disposition or of the time or place thereof (except such notice as is required by applicable statute and cannot be waived), and the Administrative Agent or any other Secured Creditor or anyone else may be the purchaser, lessee, licensee, assignee or recipient of any or all of the Collateral so disposed of at any public sale (or, to the extent permitted by law, at any private sale) and thereafter hold the same absolutely, free from any claim or right of whatsoever kind, including any right or equity of redemption (statutory or otherwise), of the Obligors, any such demand, notice and right or equity being

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hereby expressly waived and released. The Administrative Agent may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the sale may be so adjourned; and

(vii) if the Administrative Agent shall determine to exercise its right to sell all or any of the Security Collateral of any Obligor pursuant this Section 6, each Obligor agrees that, upon the request of the Administrative Agent, such Obligor will, at its own expense, do or cause to be done all such other acts and things as may be necessary to make such sale of such Security Collateral or any part thereof valid and binding and in compliance with applicable law.

The Proceeds of each collection, sale or other disposition under this Section 6.04, shall be applied in accordance with Section 6.08.

(b) Certain Securities Act Limitations. The Obligors recognize that, by reason of certain prohibitions contained in the Securities Act of 1933, as amended, and applicable state securities laws, the Administrative Agent may be compelled, with respect to any sale of all or any part of the Collateral, to limit purchasers to those who will agree, among other things, to acquire the Collateral for their own account, for investment and not with a view to the distribution or resale thereof. The Obligors acknowledge that any such public sales may be at prices and on terms less favorable to the Administrative Agent than those obtainable through a public sale without such restrictions, and, notwithstanding such circumstances, agree that any such public sale shall be deemed to have been made in a commercially reasonable manner and that the Administrative Agent shall have no obligation to engage in public sales and no obligation to delay the sale of any Collateral for the period of time necessary to permit the issuer thereof to register it for public sale.

(c) Notice. The Obligors agree that to the extent the Administrative Agent is required by applicable law to give reasonable prior notice of any sale or other disposition of any Collateral, fifteen Business Days' notice shall be deemed to constitute reasonable prior notice.

6.05 Deficiency. If the proceeds of sale, collection or other realization of or upon the Collateral pursuant to Section 6.04 are insufficient to cover the costs and expenses of such realization and the payment in full of the Secured Obligations, the Obligors shall remain liable for any deficiency.

6.06 Locations; Names; Etc. Without at least 30 days' prior written notice to the Administrative Agent (or such shorter period of time as the Administrative Agent shall reasonably agree), no Obligor shall (a) change its location (as defined in Section 9-307 of the UCC) or (b) change its name, type of organization, mailing address or jurisdiction of organization from those set forth in Annex I hereto.

6.07 Public Sale. None of the Secured Creditors and the Administrative Agent shall incur any liability as a result of the sale of the Collateral, or any part thereof, at any public sale pursuant to Section 6.04 conducted in a commercially reasonable manner. Each Obligor hereby waives any claims against the Secured Creditors or the Administrative Agent arising by

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reason of the fact that the price at which the Collateral may have been sold at such a public sale was less than the price that might have been obtained at a public sale without such restrictions or was less than the aggregate amount of the Secured Obligations, even if the Administrative Agent accepts the first offer received and does not offer the Collateral to more than one offeree.

6.08 Application of Proceeds. Subject to the Intercreditor Agreement, except as otherwise herein expressly provided and except as provided below in this Section 6.08, the Proceeds of any collection, sale or other realization of all or any part of the Collateral pursuant hereto, and any other cash at the time held by the Administrative Agent under Section 5 or this Section 6, shall be applied by the Administrative Agent:

First, to the payment of the costs and expenses of such collection, sale or other realization, including reasonable out-of-pocket costs and expenses of the Administrative Agent and the fees and expenses of its agents and counsel, and all expenses incurred and advances made by the Administrative Agent in connection therewith;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts (other than principal and interest but including fees, charges and disbursements of counsel to the Administrative Agent) payable to the Administrative Agent in its capacity as such;

Third, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit fees) payable to the Lenders and the Issuing Lender (including fees, charges and disbursements of counsel to the respective Lenders and the Issuing Lender), equally and ratably in accordance with the respective amounts thereof then due and owing;

Fourth, to payment of that portion of the Secured Obligations constituting accrued and unpaid Letter of Credit fees and interest on the Loans, L/C Reimbursement Obligations and other obligations of the Obligors under the Loan Documents, equally and ratably in accordance with the respective amounts thereof then due and owing;

Fifth, to the payment in full of the Secured Obligations (other than those specified in clauses Second, Third and Fourth above), in each case equally and ratably in accordance with the respective amounts thereof then due and owing or as the Lenders holding the same may otherwise agree; and

Finally, to the payment to the relevant Obligor, or its successors or assigns, or as a court of competent jurisdiction may direct, of any surplus then remaining.

Notwithstanding the foregoing, the proceeds of any cash or other amounts held in the L/C Exposure Sub-Account of the Collateral Account pursuant to Section 5.04 shall be applied first to the L/C Exposure outstanding from time to time and second to the other Secured Obligations in the manner provided above in this Section 6.08.

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6.09 Attorney-in-Fact. Without limiting any rights or powers granted by this Agreement to the Administrative Agent while no Event of Default has occurred and be continuing, upon the occurrence and during the continuance of any Event of Default the Administrative Agent is hereby appointed the attorney-in-fact of each Obligor for the purpose of carrying out the provisions of this Section 6 and taking any action and executing any instruments that the Administrative Agent may deem necessary or advisable to accomplish the purposes hereof, which appointment as attorney-in-fact is irrevocable and coupled with an interest. Without limiting the generality of the foregoing, so long as the Administrative Agent shall be entitled under this Section 6 to make collections in respect of the Collateral, the Administrative Agent shall have the right and power to receive, endorse and collect all checks made payable to the order of any Obligor representing any dividend, payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same.

6.10 Continuing Security Interest; Assignments. (a) This Agreement shall create a continuing security interest in the Collateral and shall, subject to clause (b) below, (i) remain in full force and effect until the latest of (A) the payment in full in cash of the Secured Obligations (other than any contingent obligations indemnity not then due), (B) the termination or expiration of all of the Commitments of the Lenders and (C) the termination or expiration of all Letters of Credit (unless cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender, the Administrative Agent and KCMH), (ii) be binding upon each Obligor, its successors and assigns and (iii) inure, together with the rights and remedies of the Administrative Agent hereunder, to the benefit of the Secured Creditors and their respective successors, transferees and permitted assigns. Without limiting the generality of the foregoing clause (iii), any Lender may assign or otherwise transfer all or any portion of its rights and obligations under the Credit Agreement (including, without limitation, all or any portion of its Commitments, the Loans owing to it and the Note or Notes, if any, held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender Party herein or otherwise, in each case as provided in Section 9.06 of the Credit Agreement.

(b) If any of the Collateral shall be sold, transferred or otherwise disposed of by any Obligor in a transaction not otherwise prohibited by any Loan Document, then such Collateral shall automatically be released from the Liens created hereby or under any other Loan Document and the Administrative Agent, at the request and sole expense of any Obligor, shall execute and deliver to such Obligor all releases or other documents reasonably necessary or desirable for the release of the Liens created hereby on such Collateral. At the request and sole expense of any Obligor, such Obligor (other than KCMH) shall be released from its obligations hereunder in the event that such Obligor shall cease to be a Wholly-Owned Subsidiary of KCMH pursuant to a transaction not otherwise prohibited by any Loan Document.

6.11 Termination. When all Secured Obligations shall have been paid in full in cash (other than contingent indemnity obligations not then due) and the Commitments of the Lenders under the Credit Agreement and all L/C Exposure shall have expired or been terminated or have been cash collateralized or otherwise back-stopped on terms reasonably satisfactory to the relevant Issuing Lender, the Administrative Agent and KCMH, this Agreement shall terminate, and the Administrative Agent shall forthwith cause to be assigned, transferred and delivered, against receipt but without any recourse, warranty or representation whatsoever, any remaining Collateral and money received in respect thereof, to or on the order of the relevant

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Obligor. The Administrative Agent shall also, at the expense of such Obligor, execute and deliver to the respective Obligor upon such termination such UCC termination statements, as shall be reasonably requested by the respective Obligor to effect the termination and release of the Liens on the Collateral as required by this Section 6.11.

6.12 Further Assurances and Post-Closing Matters. Subject to the Intercreditor Agreement, each Obligor agrees that from time to time (at the expense of such Obligor) upon the written request of the Administrative Agent, such Obligor will execute and deliver such further instruments and documents and do such other acts and things as the Administrative Agent may reasonably request in order to fully effect the purposes of this Agreement and to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral.

6.13 Voting Rights; Dividends; Etc. (a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Obligor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Security Collateral of such Obligor or any part thereof for any purpose not in violation of this Agreement or the other Loan Documents;

(ii) Each Obligor shall be entitled to receive and retain any and all dividends, interest and other distributions paid in respect of the Security Collateral of such Obligor if and to the extent that the payment thereof is not otherwise prohibited by the terms of the Loan Documents; provided, however, that any and all dividends, interest and other distributions paid or payable other than in cash in respect of, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, any Security Collateral shall, if received by such Obligor, be received in trust for the benefit of the Administrative Agent and, if required by Section 5.05, promptly be delivered to the Administrative Agent and held as Security Collateral in the same form received (with any necessary endorsements); and

(iii) The Administrative Agent will execute and deliver (or cause to be executed and delivered) to each Obligor all such proxies and other instruments as such Obligor may reasonably request for the purpose of enabling such Obligor to exercise the voting and other rights that it is entitled to exercise pursuant to paragraph (i) above and to receive the dividends, interest and other payments that it is authorized to receive and retain pursuant to paragraph (ii) above.

(b) Subject to the Intercreditor Agreement, after the occurrence and during the continuance of an Event of Default:

(iv) All rights of each Obligor (x) to exercise or refrain from exercising the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to Section 6.13(a) shall, upon notice to such Obligor by the Administrative Agent, cease and (y) to receive the dividends, interest and other distributions that it would otherwise be authorized to receive and retain pursuant to Section 6.13(a) shall, upon notice to such Obligor by the Administrative Agent, cease, and all such rights shall thereupon become vested in the Administrative Agent, which shall thereupon have the sole right to exercise or refrain from exercising such voting and other consensual rights and to receive and hold as Security Collateral such dividends, interest and other distributions.

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(v) All dividends, interest and other distributions that are received by any Obligor contrary to the provisions of paragraph (i) of this Section 6.13(b) shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other funds of such Obligor and shall be forthwith paid over to the Administrative Agent as Security Collateral in the same form as so received (with any necessary endorsement).

6.14 Administrative Agent May Perform. If any Obligor fails to perform any agreement contained herein, the Administrative Agent may, but without any obligation to do so and without notice, itself perform, or cause the performance of, such agreement, and the reasonable expenses of the Administrative Agent incurred in connection therewith shall be payable by such Obligor.

6.15 The Administrative Agent's Duties. (a) The powers conferred on the Administrative Agent hereunder are solely to protect the Secured Creditors' interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrative Agent shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not any Secured Creditor has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property.

(b) Anything contained herein to the contrary notwithstanding, the Administrative Agent may from time to time, when the Administrative Agent deems it to be necessary, appoint one or more subagents (each a "Subagent") for the Administrative Agent hereunder with respect to all or any part of the Collateral. In the event that the Administrative Agent so appoints any Subagent with respect to any Collateral, (i) the assignment and pledge of such Collateral and the security interest granted in such Collateral by each Obligor hereunder shall be deemed, for purposes of this Agreement, to have been made to such Subagent, in addition to the Administrative Agent, for the ratable benefit of the Secured Creditors, as security for the Secured Obligations of such Obligor, (ii) such Subagent shall automatically be vested, in addition to the Administrative Agent, with all rights, powers, privileges, interests and remedies of the Administrative Agent hereunder with respect to such Collateral and (iii) the term "Administrative Agent," when used herein in relation to any rights, powers, privileges, interests and remedies of the Administrative Agent with respect to such Collateral, shall include such Subagent; provided, however, that no such Subagent shall be authorized to take any action with respect to any such Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent.

#### SECTION 7. MISCELLANEOUS.

7.01 Notices. All notices, requests, consents and demands hereunder shall be in writing and telecopied or delivered to the intended recipient at its "address for notices" specified pursuant to Section 9.02 of the Credit Agreement and shall be deemed to have been given at the

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times specified in said Section 9.02. Any notice to be delivered to any Guarantor hereunder shall be delivered to KCMH (at its aforesaid address) on behalf of such Guarantor.

7.02 No Waiver. No failure on the part of any Secured Creditor to exercise, and no course of dealing with respect to, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by any Secured Creditor of any right, power or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein are cumulative and are not exclusive of any remedies provided by law.

7.03 Amendments, Etc. The terms of this Agreement may be waived, altered or amended only by an instrument in writing duly executed by each applicable Obligor and the Administrative Agent (with the consent of the Lenders as specified in Section 9.01 of the Credit Agreement). Any such amendment or waiver shall be binding upon the Secured Creditors and each Obligor.

7.04 Indemnification by the Obligors. Each Obligor shall indemnify each Secured Creditor and each Related Party (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of one counsel for the Indemnitees (together with one local counsel in each relevant jurisdiction) and, after notice to KCMH, of more than one such counsel to the extent any Indemnitee reasonably determines that there is an actual conflict of interest requiring the employment of separate counsel), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Obligor arising out of, in connection with, or as a result of, this Agreement, including, without limitation, enforcement of this Agreement, whether based on contract, tort or any other theory, whether brought by a third party or by any Obligor and regardless of whether any Indemnitee is a party thereto, provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by an Obligor against an Indemnitee for material breach of such Indemnitee's obligations hereunder, if such Obligor has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

7.05 Expenses. The Obligors jointly and severally agree to reimburse each of the Secured Creditors for all reasonable costs and expenses incurred by them (including the reasonable fees and expenses of one legal counsel for the Secured Creditors in each relevant jurisdiction or of more than one such legal counsel to the extent any Secured Creditor reasonably determines that there is an actual conflict of interest requiring the employment of separate legal counsel) in connection with (a) any enforcement of their rights hereunder, or, during the continuation of an Event of Default, protection of its rights in connection with this Agreement or collection proceeding resulting therefrom, including, without limitation, all manner of participation in or other involvement with (i) performance by the Administrative Agent of any obligations of the Obligors in respect of the Collateral that the Obligors have failed or refused to perform, (ii) bankruptcy, insolvency, receivership, foreclosure, winding up or liquidation proceedings, or any actual or attempted sale, or any exchange, enforcement, collection, compromise or settlement in respect of any of the Collateral, and for the care of the Collateral

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and defending or asserting rights and claims of the Administrative Agent in respect thereof, by litigation or otherwise, including expenses of insurance, (iii) judicial or regulatory proceedings and (iv) workout, restructuring or other negotiations or proceedings (whether or not the workout, restructuring or transaction contemplated thereby is consummated), (b) the enforcement of this Section 7.05, (c) the administration of this Agreement and (d) the custody, preservation, use or sale of any of the Collateral, and all such costs and expenses shall be Secured Obligations entitled to the benefits of the collateral security provided pursuant to Section 4.

7.06 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of each Obligor and the Secured Creditors; provided that no Obligor shall assign or transfer its rights or obligations hereunder without the prior written consent of the Administrative Agent.

7.07 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

7.08 Governing Law; Submission to Jurisdiction; Etc. (a) Governing Law. This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Submission to Jurisdiction. Each Guarantor hereby irrevocably and unconditionally submits, for itself and its Property, to the nonexclusive jurisdiction of 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, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each Guarantor irrevocably agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State or, to the extent permitted by applicable law, in such Federal court. Each Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that any Secured Creditor may otherwise have to bring any action or proceeding relating to this Agreement against any Obligor or its properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Guarantor hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any court referred to in paragraph (b) of this Section 7.08. Each Guarantor 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.

7.09 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO

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(A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

7.10 Captions. The captions and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

7.11 Agents and Attorneys-in-Fact. The Administrative Agent may employ agents and attorneys-in-fact in connection herewith and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it in good faith.

7.12 Severability. If any provision hereof is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law, (a) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Secured Creditors in order to carry out the intentions of the parties hereto as nearly as may be possible and (b) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

7.13 Additional Subsidiary Guarantors. The Obligors shall cause any Wholly-Owned Subsidiary of KCMH that is a Domestic Subsidiary, other than any Broker-Dealer Subsidiary or any Domestic Subsidiary of a Foreign Subsidiary or a Domestic Subsidiary substantially all of whose assets consist of capital stock and/or indebtedness of one or more Foreign Subsidiaries, formed or acquired after the date hereof to become a "Guarantor" and an "Obligor" under this Agreement, by executing and delivering to the Administrative Agent a Guarantee Assumption Agreement in the form of Exhibit 1 hereto (together with an appropriate legal opinion of counsel, as referred to in said Exhibit 1). Accordingly, upon the execution and delivery of any such Guarantee Assumption Agreement by any such new Subsidiary, such new Subsidiary shall automatically and immediately, and without any further action on the part of any Person, become a "Guarantor" and an "Obligor" under and for all purposes of this Agreement and the other Loan Documents, each reference in this Agreement and the other Loan Documents to the "Collateral" shall also mean and be a reference to the Collateral granted by such new Subsidiary and each reference in this Agreement to an Annex shall also mean and be a reference to the annex as attached to such Guaranteed Assumption Agreement. In addition, upon the execution and delivery of any such Guarantee Assumption Agreement, the new Guarantor makes the representations and warranties set forth in Section 3 hereof. Notwithstanding the foregoing, none of (i) KCM U.S. nor any other Broker-Dealer Subsidiary or (ii) any Wholly-Owned Domestic Subsidiary, the giving of a guarantee hereunder would, in the reasonable determination of KCMH, materially and adversely affect the ability of such Subsidiary to comply with applicable Laws and regulations, shall be a Guarantor under this Agreement.

7.14 Set off. Subject to the Intercreditor Agreement, if an Event of Default shall have occurred and be continuing, each Secured Creditor is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency)

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at any time held and other obligations (in whatever currency) at any time owing by such Secured Creditor to or for the credit or the account of any Guarantor against any and all of the obligations of such now or hereafter existing under this Agreement or any other Loan Document to such Secured Creditor irrespective of whether or not such Secured Creditor shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Guarantor may be contingent or unmatured or are owed to a branch or office of such Secured Creditor different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Secured Creditor under this Section are in addition to other rights and remedies (including other rights of setoff) that such Secured Creditor may have. Each Secured Creditor agrees to notify such Guarantor 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.

7.15 Intercreditor Agreements. Notwithstanding anything herein to the contrary, the Lien and Security Interest granted to the Administrative Agent pursuant to this Agreement and the exercise of any right or remedy by the Administrative Agent hereunder, are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and the terms of this Agreement, the terms of such Intercreditor Agreement shall govern and control. No right, power or remedy granted to the Administrative Agent hereunder shall be exercised by the Administrative Agent, and no direction shall be given by the Administrative Agent, in contravention of any such Intercreditor Agreement.

*[Signature pages follow.]*

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IN WITNESS WHEREOF, the parties hereto have caused this Guarantee and Security Agreement to be duly executed and delivered as of the day and year first above written.

KKR CAPITAL MARKETS HOLDINGS L.P.

By: KKR CAPITAL MARKETS HOLDINGS GP LLC, its General Partner

By \_\_\_\_\_  
Name:  
Title:

GUARANTORS:

KKR CORPORATE LENDING LLC

By \_\_\_\_\_  
Name:  
Title:

KKR CORPORATE LENDING (CA) LLC

By \_\_\_\_\_  
Name:  
Title:

KKR CORPORATE LENDING (TN) LLC

By \_\_\_\_\_  
Name:  
Title:

KKR CORPORATE LENDING (UK) LLC

By \_\_\_\_\_  
Name:  
Title:

[Signature Page to Guarantee and Security Agreement]

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MIZUHO BANK, LTD.,  
as Administrative Agent

By \_\_\_\_\_

Name:

Title:

[Signature Page to Guarantee and Security Agreement]

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## EXECUTION VERSION

CERTAIN INFORMATION, IDENTIFIED BY, AND REPLACED WITH, A MARK OF “[\*]” HAS BEEN EXCLUDED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

## SECOND AMENDMENT

THIS SECOND AMENDMENT (this “Amendment”) is made as of April 9, 2021 by and among KKR Capital Markets Holdings L.P., a Delaware limited partnership (“KCMH”), KKR Corporate Lending LLC, a Delaware limited liability company (“KCL U.S.”), KKR Corporate Lending (CA) LLC, a Delaware limited liability company (“KCL C.A.”), KKR Corporate Lending (TN) LLC, a Delaware limited liability company (“KCL T.N.”), and KKR Corporate Lending (UK) LLC, a Delaware limited liability company (“KCL U.K.”; and together with KCMH, KCL U.S., KCL C.A. and KCL U.K., collectively, the “Borrowers” and individually each a “Borrower”), each of the Guarantors party to the Guarantee and Security Agreement described in the Existing Credit Agreement (as defined below), the Lender party to the Existing Credit Agreement, and Mizuho Bank, Ltd., as administrative agent (in such capacity, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the Existing Credit Agreement as modified by this Amendment.

## WITNESSETH:

WHEREAS, the Borrowers, the Lender and the Administrative Agent are parties to that certain Third Amended and Restated 5-Year Revolving Credit Agreement dated March 20, 2020 (as amended by the First Amendment, dated as of November 3, 2020, the “Existing Credit Agreement”, and as amended pursuant to this Amendment hereinafter referred to as the “Credit Agreement”);

WHEREAS, the Borrowers have requested that the Lenders party hereto agree to amend the Existing Credit Agreement in certain respects as hereinafter set forth;

WHEREAS, Section 9.01(a) of the Existing Credit Agreement provides that the Existing Credit Agreement may be amended by the Borrowers and the Majority Lenders, subject to the consent of each Lender directly affected thereby to amend terms that may affect the interest rate on Loans under the Credit Agreement;

WHEREAS, the Lender party hereto and listed on its signature page hereof has agreed to such amendments on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises set forth above, the terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

I. Amendments to the Existing Credit Agreement. Effective as of the Amendment Effective Date (as defined below) the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Existing Credit Agreement attached as Annex A hereto (the “Amended Credit Agreement”).

II. Conditions of Effectiveness. This Amendment shall become effective on the date that each of the following conditions is met or waived (the “Amendment Effective Date”):

(a) Execution of Counterparts. The Administrative Agent shall have received counterparts of this Amendment executed by each Borrower, each Guarantor, the Lender and the

Administrative Agent.

(b) Representations and Warranties. As of the Amendment Effective Date, immediately before and after giving effect to this Amendment, the representations and warranties of each Borrower set forth in the Loan Documents shall be true and correct in all material respects on and as of the Amendment Effective Date with the same effect as though made on and as of the Amendment Effective Date; provided that, to the extent that such representations and warranties specifically refer to an earlier date, they shall be true and correct in all material respects as of such earlier date; provided further that any representation and warranty that is qualified as to “materiality,” “Material Adverse Effect” or similar language shall be true and correct in all respects on and as of the Amendment Effective Date or on such earlier date, as the case may be.

(c) No Default or Event of Default. As of the Amendment Effective Date, immediately before and after giving effect to this Amendment, no Default or Event of Default shall have occurred and be continuing.

(d) Resolutions. The Administrative Agent shall have received resolutions or other authorizing documentation of each Obligor and the General Partner evidencing the taking of all necessary action authorizing and approving the execution, delivery and performance by each Borrower of the Second Amendment and any other documents to be delivered hereunder by each Borrower.

(e) Fees and Expenses. KCMH shall have paid all fees and expenses (including fees, charges and disbursements of counsel invoiced prior to the Amendment Effective Date) required to be paid on or prior to the Amendment Effective Date to the Administrative Agent in connection with this Amendment.

### III. Representations and Warranties

(a) To induce the other parties hereto to enter into this Amendment, the Borrowers represent and warrant to the Lender and the Administrative Agent, as of the Amendment Effective Date and after giving effect to the transactions and amendments to occur on the Amendment Effective Date, this Amendment has been duly authorized, executed and delivered by each of the Borrowers and constitutes, and the Existing Credit Agreement, as amended hereby on the Amendment Effective Date, will constitute, its legal, valid and binding obligation, enforceable against the Borrowers and in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors’ rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) Immediately before and after giving effect to this Amendment, the representations and warranties of each Borrower set forth in the Loan Documents shall be true and correct in all material respects on and as of the Amendment Effective Date with the same effect as though made on and as of such date, except to the extent (i) such representations and warranties expressly relate to an earlier date (in which case such representations and warranties were true and correct in all material respects as of such earlier date) or (ii) such representations and warranties are qualified as to “materiality,” “Material Adverse Effect” or similar language (in which case such representation and warranties are true and correct in all respects as of the Amendment Effective Date or as of such earlier date, as the case may be).

(c) Immediately before and after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing on the Amendment Effective Date.

IV. Effect of Amendment.

(a) Except as expressly set forth herein, this Amendment shall not by implication or otherwise limit, impair, constitute a waiver of, or otherwise affect the rights and remedies of, the Lender or the Administrative Agent under the Existing Credit Agreement or any other Loan Document, and shall not alter, modify, amend or in any way affect any of the terms, conditions, obligations, covenants or agreements contained in the Existing Credit Agreement or any other Loan Document, all of which are ratified and affirmed in all respects and shall continue in full force and effect. In addition, and in furtherance of the foregoing, the Guarantors expressly acknowledge and agree to the terms of this Amendment, and the terms of the Guarantee and Security Agreement continue to apply with full force and effect to any amounts outstanding under or in connection with the Commitment as well as other amounts incurred pursuant to the terms of the Existing Credit Agreement. Nothing herein shall be deemed to establish a precedent for purposes of interpreting the provisions of the Credit Agreement or entitle any Loan Party to a consent to, or a waiver, amendment, modification or other change of, any of the terms, conditions, obligations, covenants or agreements contained in the Credit Agreement or any other Loan Document in similar or different circumstances. This Amendment shall apply to and be effective only with respect to the provisions of the Existing Credit Agreement specifically referred to herein.

(b) On and after the Amendment Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import, and each reference to the Credit Agreement, “thereunder”, “thereof”, “therein” or words of like import in any other Loan Document, shall be deemed a reference to the Existing Credit Agreement as amended hereby. This Amendment shall constitute a “Loan Document” for all purposes of the Credit Agreement and the other Loan Documents.

V. Governing Law. This Amendment and the rights and obligations of the parties hereto shall be governed by, and construed and interpreted in accordance with, the laws of the State of New York. The provisions of Sections 9.07 and 9.11 of the Existing Credit Agreement shall apply to this Amendment to the same extent as if fully set forth herein.

VI. Counterparts and Electronic Signatures. This Amendment may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of any executed counterpart of a signature page of this Amendment by facsimile transmission or other electronic means shall be effective as delivery of a manually executed counterpart hereof. The words “delivery”, “execute,” “execution,” “signed,” “signature,” and words of like import in this Amendment and any document executed in connection herewith 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, physical delivery thereof or the use of a paper-based recordkeeping system,

as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary neither the Administrative Agent nor any Lender is under any obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent or such Lender pursuant to procedures approved by it and provided further without limiting the foregoing, upon the request of any party, any electronic signature shall be promptly followed by such manually executed counterpart.

VII. Headings. The headings of this Amendment are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

VIII. Successors and Assigns. The consent of any Lender to this Amendment shall be binding upon such Lender's successors, assigns and participants permitted by the Existing Credit Agreement. Further, the provisions of this Amendment shall be binding and inure to the benefit of, such Lender's successors, assigns and participants permitted by the Existing Credit Agreement.

*[Signature pages follow]*

IN WITNESS WHEREOF, the parties thereto have caused this Amendment to be duly executed and delivered by their officers as of the date first above written.

KKR CAPITAL MARKETS HOLDINGS L.P.,  
as a Borrower

By: KKR CAPITAL MARKETS HOLDINGS  
GP LLC, its general partner

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

KKR CORPORATE LENDING LLC,  
as a Borrower and as a Guarantor

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

KKR CORPORATE LENDING (CA) LLC,  
as a Borrower and as a Guarantor

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

KKR CORPORATE LENDING (TN) LLC,  
as a Borrower and as a Guarantor

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

KKR CORPORATE LENDING (UK) LLC,  
as a Borrower and as a Guarantor

By: /s/ Adam Smith  
Name: Adam Smith  
Title: Chief Executive Officer

[Signature Page to Second Amendment]

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MIZUHO BANK, LTD.,  
as Administrative Agent and as a Lender

By: /s/ Donna DeMagistris  
Name: Donna DeMagistris  
Title: Authorized Signator

[Signature Page to Second Amendment]

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**\$750,000,000**

**THIRD AMENDED AND RESTATED 5-YEAR REVOLVING CREDIT AGREEMENT**

Dated as of March 20, 2020

Among

**KKR CAPITAL MARKETS HOLDINGS L.P.,  
KKR CORPORATE LENDING LLC,  
KKR CORPORATE LENDING (CA) LLC,  
KKR CORPORATE LENDING (TN) LLC**

*and*

**KKR CORPORATE LENDING (UK) LLC**

*as Borrowers,*

**THE LENDERS PARTY HERETO**

*and*

**MIZUHO BANK, LTD.,  
*as Administrative Agent***

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**MIZUHO BANK, LTD.,  
*as Sole Lead Arranger and Sole Bookrunner***

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## TABLE OF CONTENTS

Section	Page
ARTICLE I	
DEFINITIONS	1
SECTION 1.01. Defined Terms	1
SECTION 1.02. Terms Generally	<del>25</del> <u>33</u>
SECTION 1.03. Accounting Terms; GAAP; Calculation of Debt to Equity Ratio	<del>26</del> <u>33</u>
SECTION 1.04. Divisions	<del>26</del> <u>33</u>
<u>SECTION 1.05. Interest Rates</u>	<u>34</u>
ARTICLE II	
THE COMMITMENTS	<del>26</del> <u>34</u>
SECTION 2.01. The Loans.	<del>26</del> <u>34</u>
SECTION 2.02. Letter of Credit Facility.	<del>28</del> <u>36</u>
SECTION 2.03. Fees.	<del>33</del> <u>41</u>
SECTION 2.04. Changes of Commitments.	<del>34</del> <u>42</u>
SECTION 2.05. Concerning Joint and Several Liability of the Borrowers.	<del>34</del> <u>42</u>
SECTION 2.06. Contribution.	<del>37</del> <u>45</u>
ARTICLE III	
PAYMENTS	<del>38</del> <u>46</u>
SECTION 3.01. Repayment	<del>38</del> <u>46</u>
SECTION 3.02. Interest.	<del>38</del> <u>46</u>
SECTION 3.03. Eurocurrency Reserves	<del>39</del> <u>47</u>
SECTION 3.04. Interest Rate Determinations.	<del>39</del> <u>47</u>
SECTION 3.05. Voluntary Conversion or Continuation of Loans.	<del>41</del> <u>50</u>
SECTION 3.06. Prepayments of Loans.	<del>41</del> <u>51</u>
SECTION 3.07. Payments; Computations; Etc.	<del>42</del> <u>52</u>
SECTION 3.08. Sharing of Payments, Etc.	<del>44</del> <u>54</u>
SECTION 3.09. Increased Costs.	<del>45</del> <u>54</u>
SECTION 3.10. Illegality	<del>46</del> <u>56</u>
SECTION 3.11. Taxes.	<del>46</del> <u>56</u>
SECTION 3.12. Break Funding Payments	<del>49</del> <u>58</u>
SECTION 3.13. Mitigation Obligations; Replacement of Lenders.	<del>49</del> <u>59</u>
SECTION 3.14. Defaulting Lenders	<del>50</del> <u>60</u>
ARTICLE IV	
CONDITIONS PRECEDENT	<del>53</del> <u>62</u>
SECTION 4.01. Closing Conditions	<del>53</del> <u>62</u>

SECTION 4.02.	Conditions Precedent to Each Borrowing and Issuance	<u>5463</u>
ARTICLE V		
REPRESENTATIONS AND WARRANTIES		<u>5464</u>
SECTION 5.01.	Representations and Warranties	<u>5464</u>
ARTICLE VI		
COVENANTS		<u>5867</u>
SECTION 6.01.	Affirmative Covenants	<u>5867</u>
SECTION 6.02.	Negative Covenants	<u>6373</u>
SECTION 6.03.	Financial Covenant	<u>6978</u>
ARTICLE VII		
EVENTS OF DEFAULT		<u>6979</u>
SECTION 7.01.	Events of Default	<u>6979</u>
SECTION 7.02.	Investors' Right to Cure.	<u>7181</u>
ARTICLE VIII		
THE ADMINISTRATIVE AGENT		<u>7281</u>
SECTION 8.01.	Appointment and Authority	<u>7281</u>
SECTION 8.02.	Rights as a Lender	<u>7282</u>
SECTION 8.03.	Exculpatory Provisions.	<u>7382</u>
SECTION 8.04.	Reliance by Administrative Agent	<u>7383</u>
SECTION 8.05.	Delegation of Duties	<u>7483</u>
SECTION 8.06.	Resignation of Administrative Agent	<u>7484</u>
SECTION 8.07.	Non-Reliance on Administrative Agent and Other Lenders	<u>7584</u>
SECTION 8.08.	No Other Duties; Etc.	<u>7585</u>
SECTION 8.09.	Intercreditor Agreement Governs	<u>7585</u>
SECTION 8.10.	Collateral Matters; Credit Bidding.	<u>7585</u>
ARTICLE IX		
MISCELLANEOUS		<u>7786</u>
SECTION 9.01.	Amendments, Etc.	<u>7786</u>
SECTION 9.02.	Notices, KCMH as Administrative Borrower, Etc.	<u>7787</u>
SECTION 9.03.	No Waiver; Remedies; Setoff.	<u>8090</u>
SECTION 9.04.	Expenses; Indemnity; Damage Waiver.	<u>8190</u>
SECTION 9.05.	Binding Effect, Successors and Assigns	<u>8292</u>
SECTION 9.06.	Assignments and Participations.	<u>8292</u>
SECTION 9.07.	GOVERNING LAW; JURISDICTION; ETC.	<u>8595</u>
SECTION 9.08.	Severability	<u>8696</u>
SECTION 9.09.	Counterparts; Effectiveness; Execution.	<u>8696</u>
SECTION 9.10.	Survival	<u>8797</u>

SECTION 9.11.	Waiver of Jury Trial	<u>8797</u>
SECTION 9.12.	Confidentiality	<u>8797</u>
SECTION 9.13.	No Fiduciary Relationship	<u>8898</u>
SECTION 9.14.	Headings	<u>8998</u>
SECTION 9.15.	USA PATRIOT Act	<u>8998</u>
SECTION 9.16.	Judgment Currency	<u>8999</u>
SECTION 9.17.	European Monetary Union	<u>9099</u>
SECTION 9.18.	Acknowledgement and Consent to Bail-In of Affected Financial Institutions	<u>91101</u>
SECTION 9.19.	Existing Letters of Credit and Existing Loans	<u>92101</u>

ANNEXES

Annex A	Pricing Grid
Annex B	Concentration Limits

SCHEDULES

Schedule I	Lenders and Commitments
Schedule II	Subsidiaries
Schedule III	Existing Letters of Credit

EXHIBITS

Exhibit A	Form of Note
Exhibit B	Form of Third Amended and Restated Guarantee and Security Agreement
Exhibit C	Form of Notice of Borrowing
Exhibit D	Form of Assignment and Assumption
Exhibit E-1	Form of Tax Statement for Non-U.S. Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes
Exhibit E-2	Form of Tax Statement for Non-U.S. Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes
Exhibit E-3	Form of Tax Statement for Non-U.S. Participants That Are Partnerships For U.S. Federal Income Tax Purposes
Exhibit E-4	Form of Tax Statement for Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes
Exhibit F	Form of Additional Borrower Joinder Agreement

### THIRD AMENDED AND RESTATED REVOLVING CREDIT

**AGREEMENT** dated as of March 20, 2020 (as further amended or otherwise modified from time to time, this "Agreement") among KKR CAPITAL MARKETS HOLDINGS L.P., a Delaware limited partnership ("KCMH"), KKR CORPORATE LENDING LLC, a Delaware limited liability company ("KCL U.S."), KKR CORPORATE LENDING (CA) LLC, a Delaware limited liability company ("KCL C.A."), KKR CORPORATE LENDING (TN) LLC, a Delaware limited liability company ("KCL T.N.") and KKR CORPORATE LENDING (UK) LLC, a Delaware limited liability company ("KCL U.K."; KCMH, KCL U.S., KCL C.A., KCL T.N. and KCL U.K. and any Additional Borrower are collectively referred to herein as the "Borrowers" and individually sometimes as a "Borrower"), each of the Lenders (as defined below), and MIZUHO BANK, LTD., as administrative agent for the Lenders (in such capacity, the "Administrative Agent").

WHEREAS, KCMH, the Existing Lenders (as defined below) and the Administrative Agent are parties to the Existing Credit Agreement (as defined below); and

WHEREAS, the Borrowers have requested, and the Lenders have consented to, the amendment and restatement of the Existing Credit Agreement upon the terms and subject to the conditions set forth herein.

NOW THEREFORE, effective as of the Closing Date, the Existing Credit Agreement is hereby amended and restated in its entirety, and the parties hereto hereby agree, as follows:

#### ARTICLE I

##### DEFINITIONS

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

"364-Day Credit Agreement" means that certain 364-Day Revolving Credit Agreement dated June 27, 2019, among KCMH, KCL U.S., KCL C.A., KCL T.N., KCL U.K., MHC B as administrative agent and the lenders party thereto, as from time to time amended, modified, supplemented, refinanced or replaced.

"ABR" means a fluctuating interest rate per annum which shall at any time be the higher of:

- (a) the rate of interest established by the Administrative Agent as its "prime rate" in effect at its principal office in New York, New York; and
- (b) 1/2 of 1.00% per annum above the Federal Funds Rate.

The "prime rate" is a rate established by MHC B based upon various factors including MHC B's costs and desired return, general economic conditions and other factors, and is

used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such rate established by MHCBC shall take effect at the opening of business on the day specified by MHCBC of such change.

“ABR Loan” means, at any time, a Loan which bears interest at rates based upon the ABR.

“Additional Borrower” shall mean any Person who shall from time to time after the Closing Date become a party hereto as a “Borrower” hereunder upon the satisfaction of the conditions set forth in Section 6.01(i)(ii).

“Additional Borrower Joinder Agreement” shall mean the joinder agreement substantially in the form of Exhibit E.

“Administrative Agent” has the meaning specified in the introduction hereto.

“Administrative Agent’s Account” means, with respect to any Currency, the account of the Administrative Agent for such Currency most recently designated by it as such by notice to KCMH and the Lenders.

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

“Affiliate” means, with respect to a specified Person, another Person that directly or indirectly Controls or is Controlled by or is under common Control with such specified Person.

“Aggregate Borrowing Availability” means, at any time, the Aggregate Facility Amount at such time minus the Total Credit Exposure at such time.

“Aggregate Facility Amount” means, at any time, the aggregate amount of the Commitments then in effect. The initial Aggregate Facility Amount is \$750,000,000.

“Allocable Amount” has the meaning specified in Section 2.06(b).

“Alternate Currency” means the Euro, British Pounds Sterling and any other currency acceptable to the Lenders that is freely convertible into Dollars and available to be borrowed in the interbank market in London or the Principal Financial Center for such currency, so long as no central bank or other governmental authorization in the country of issue of such currency (including, in the case of the Euro, any authorization by the European Central Bank) is required to permit the use of such currency by any Lender for making any Loan hereunder and/or permit a Borrower to borrow and repay the principal thereof and to pay the interest thereon, unless such authorization has been obtained and is in full force and effect.

“Alternate Currency Equivalent” means, on any date, with respect to any amount denominated in a given currency, the amount of Alternate Currency that would be required to purchase such amount of such given currency at or about 11:00 a.m., Local Time, on such date, for delivery two Business Days later, as determined by the Administrative Agent on the basis of the spot selling rate for the offering of such given currency for Alternate Currency in the Principal Financial Center for the applicable given currency, all determinations thereof by the Administrative Agent to be conclusive and binding on the parties in the absence of manifest error.

“Applicable Lending Office” means, with respect to any Lender, such Lender’s Domestic Lending Office in the case of an ABR Loan and such Lender’s Eurocurrency Lending Office in the case of a Eurocurrency Loan.

“Applicable Margin” has the meaning specified in Annex A.

“Applicable SOFR Adjustment” means the percentage set forth below for the corresponding Interest Period that is then in effect with respect to each Eurocurrency Loan denominated in Dollars outstanding immediately prior to the Benchmark Replacement Date applicable to USD LIBOR:

<u>Interest Period</u>	<u>Percentage</u>
<u>1-month</u>	<u>0.11448%</u>
<u>3-month</u>	<u>0.26161%</u>
<u>6-month</u>	<u>0.42826%</u>
<u>12-month</u>	<u>0.71513%</u>

“Applicable SONIA Adjustment” means the percentage set forth below for the corresponding Interest Period that is then in effect with respect to each Eurocurrency Loan denominated in British Pound Sterling outstanding immediately prior to the Benchmark Replacement Date applicable to GBP LIBOR:

<u>Interest Period</u>	<u>Percentage</u>
<u>1-month</u>	<u>0.0326%</u>
<u>3-month</u>	<u>0.1193%</u>
<u>6-month</u>	<u>0.2766%</u>
<u>12-month</u>	<u>0.4644%</u>

“Available Tenor” means, as of any date of determination and with respect to the relevant then-current Benchmark, as applicable, any tenor for such Benchmark or payment period for interest calculated with reference to such Benchmark, as applicable, that is or may be used for determining the length of an Interest Period pursuant to this Agreement as of such date and not including, for the avoidance of doubt, any tenor for



such Benchmark that is then-removed from the definition of “Interest Period” pursuant to clause (e) of this Section titled “Benchmark Replacement Setting.”

“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.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 9.06(b)) and accepted by the Administrative Agent, substantially in the form of Exhibit D or any other form approved by the Administrative Agent.

“Availability Period” means the period from the Closing Date until the earlier of (a) the Commitment Termination Date and (b) the date of termination of the Commitments.

“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).

“Benchmark” means, initially, each Relevant LIBOR; provided that if a Benchmark Transition Event, a Term SOFR Transition Event (solely with respect to Eurocurrency Loans denominated in Dollars) or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred with respect to a 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 clause (a) or (b) of the Section titled “Benchmark Replacement Setting.”

“Benchmark Replacement” means, for any Available Tenor, the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date; provided that, in the case of any Loan denominated in an Alternate Currency, other than British Pounds Sterling, “Benchmark Replacement” shall mean the alternative set forth in (3) below:

- (1) (A) in the case of any Eurocurrency Loan denominated in Dollars, the sum of: (a) Term SOFR and (b) the related Applicable SOFR Adjustment;

- (B) in the case of any Eurocurrency Loan denominated in British Pounds Sterling, the sum of (a) Daily Simple SONIA and (b) the related Applicable SONIA Adjustment; or
- (2) (A) in the case of any Eurocurrency Loan denominated in Dollars, the sum of: (a) Daily Simple SOFR and (b) the related Applicable SOFR Adjustment;
- (B) [Reserved]; or
- (3) the sum of: (a) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower as the replacement for the then-current Benchmark for the applicable Corresponding Tenor 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 for the then-current Benchmark for syndicated credit facilities denominated in the applicable Alternate Currency at such time and (b) the related Benchmark Replacement Adjustment;

provided that, in the case of clause (1)(A), Term SOFR is 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; provided further that, notwithstanding anything to the contrary in this Agreement or in any other Loan Document, solely with respect to Eurocurrency Loans denominated in Dollars, upon the occurrence of a Term SOFR Transition Event, and the delivery of a Term SOFR Notice, on the applicable Benchmark Replacement Date the “Benchmark Replacement” shall revert to and shall be deemed to be the sum of (a) Term SOFR and (b) the related Applicable SOFR Adjustment, as set forth in clause (1)(A) of this definition (subject to the first proviso above). If a Benchmark Replacement as determined pursuant to clause (1), (2) or (3) above would be less than the Floor applicable to such Benchmark Replacement, 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, 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 for the applicable Corresponding Tenor giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for syndicated credit facilities denominated in Dollars or the applicable Alternate

Currency, as applicable; provided that such adjustment shall not be in the form of an increase of the Applicable Margin.

“Benchmark Replacement Conforming Changes” means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of “ABR,” the definition of “Business Day,” the definition of “Interest Period,” timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, length of lookback periods, the applicability of breakage provisions, and other technical, administrative or operational matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice applicable to such Benchmark Replacement (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 such Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

“Benchmark Replacement Date” means, with respect to a then-current Benchmark, the earliest to occur of the following events with respect to such then-current Benchmark:

(1) in the case of clause (1) or (2) of the definition of “Benchmark Transition Event,” the later of (a) the date of the public statement or publication of information referenced therein and (b) the date on which the administrator of 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);

(2) in the case of clause (3) of the definition of “Benchmark Transition Event,” the date of the public statement or publication of information referenced therein;

(3) solely with respect to Eurocurrency Loans denominated in Dollars, in the case of a Term SOFR Transition Event, the date that is thirty (30) days after the date a Term SOFR Notice is provided to the Lenders and the Borrower pursuant to clause (b) of this Section titled “Benchmark Replacement Setting”; or

(4) in the case of an Early Opt-in Election, the sixth (6th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, so long as the Administrative Agent has not received, by 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Early Opt-in Election is provided to the Lenders, written notice of objection to such Early Opt-in Election from Lenders comprising the Required Lenders.

For the avoidance of doubt, (i) if the event giving rise to a Benchmark Replacement Date occurs on the same day as, but earlier than, the Reference Time in respect of any determination, the relevant Benchmark Replacement Date will be deemed to have occurred prior to the Reference Time for such determination and (ii) the relevant “Benchmark Replacement Date” will be deemed to have occurred in the case of clause (1) or (2) or with respect to any relevant 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:

(1) a public statement or publication of information by or on behalf of the administrator (in the case of any Relevant LIBOR, ICE Benchmark Administration) 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);

(2) a public statement or publication of information by the regulatory supervisor (in the case of any Relevant LIBOR, the U.K. Financial Conduct Authority) for the administrator of such Benchmark (or the published component used in the calculation thereof), 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

(3) a public statement or publication of information by the regulatory supervisor (in the case of any Relevant LIBOR, the U.K. Financial Conduct Authority) for the administrator of such Benchmark (or the published component used in the calculation thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer representative.

For the avoidance of doubt, a “Benchmark Transition Event” (a) will be deemed to have occurred with respect to a 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) and (b) with

respect to each Relevant LIBOR, has occurred as a result of the March 5th Announcements.

“Benchmark Unavailability Period”, with respect to each applicable then-current Benchmark, means the period (if any) (x) beginning at the time that a Benchmark Replacement Date pursuant to clauses (1) or (2) of that definition has occurred if, at such time, no Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section titled “Benchmark Replacement Setting” and (y) ending at the time that a Benchmark Replacement has replaced such then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with this Section titled “Benchmark Replacement Setting.”

“Borrowers” and “Borrower” have the respective meanings specified in the heading hereof.

“Borrowing” means a borrowing consisting of simultaneous Loans of the same Type made by the Lenders to a Borrower pursuant to Section 2.01.

“Borrowing Category” means a Category I Borrowing, a Category II Borrowing, a Category III Borrowing, a Category IV Borrowing or a Category V Borrowing.

“Broker-Dealer Subsidiary” means each of KCM U.K., KCM U.S., KCM Asia, KCM Japan, KCM Ireland and any other direct or indirect broker-dealer Subsidiary of KCMH.

“Business Day” means (a) a day on which commercial banks are not authorized by law or required to close in New York City, (b) if such day relates to a Eurocurrency Loan denominated in Dollars, that is also a day on which dealings in Dollar deposits are carried out in the London interbank market, (c) if such day relates to a Borrowing of, or a payment or prepayment of principal of or interest on or an Interest Period for a Eurocurrency Loan denominated in an Alternate Currency (other than Euros), or a notice with respect thereto, that is also a day on which commercial banks and foreign exchange markets settle payments in the Principal Financial Center for such Currency, and (d) if such day relates to a Borrowing of, or a payment or prepayment of principal of or interest on or an Interest Period for, a Eurocurrency Loan denominated in Euros, or a notice with respect thereto, that is also a Target Operating Day (as defined in Section 9.17).

“Cash Equivalents” means:

(a) securities issued or unconditionally guaranteed by the United States government or any agency or instrumentality thereof, in each case having maturities of not more than 12 months from the date of acquisition thereof;

(b) securities issued by any state of the United States or any political subdivision of any such state or any public instrumentality thereof or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than 12 months from the date of acquisition thereof and, at the time of

acquisition, having an investment grade rating generally obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, then from another nationally recognized rating service);

(c) commercial paper issued by any Lender or any bank holding company owning any Lender;

(d) commercial paper maturing no more than 12 months after the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(e) domestic and LIBOR certificates of deposit or bankers' acceptances, having a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service), maturing no more than one year after the date of acquisition thereof issued by any Lender or any other bank having combined capital and surplus of not less than \$200,000,000 in the case of domestic banks and \$100,000,000 (or the Dollar Equivalent thereof) in the case of foreign banks;

(f) repurchase agreements with a term of not more than 90 days for underlying securities of the type described in clauses (a), (b) and (e) above entered into with any bank meeting the qualifications specified in clause (e) above or securities dealers of recognized national standing;

(g) marketable short-term money market and similar funds having a rating of at least A-1 or P-1 from either S&P or Moody's (or, if at any time neither S&P nor Moody's shall be rating such obligations, an equivalent rating from another nationally recognized rating service);

(h) shares of investment companies that are registered under the Investment Company Act of 1940 and substantially all the investments of which are one or more of the types of securities described in clauses (a) through (g) above; and

(i) in the case of any non-U.S. organized Subsidiary or investment made in a country outside the United States, other customarily utilized high-quality investment in the country where such non-U.S. organized Subsidiary is located or in which such investment is made and of a type analogous to the foregoing.

“Category I Borrowing” means a Borrowing made or a Letter of Credit issued for general corporate purposes or to finance the working capital needs of KCMH or any Subsidiary of KCMH, including financing the regulatory capital requirements of any Broker-Dealer Subsidiary.

“Category II Borrowing” means a Borrowing made or a Letter of Credit issued to finance obligations of KCMH or any Subsidiary of KCMH relating to any Senior Debt Transaction.

“Category III Borrowing” means a Borrowing made or a Letter of Credit issued to finance obligations of KCMH or any Subsidiary of KCMH relating to a Subordinated Debt Transaction.

“Category IV Borrowing” means a Borrowing made or a Letter of Credit issued to finance obligations of KCMH or any Subsidiary of KCMH relating to an Equity Bridge Transaction.

“Category V Borrowing” means a Borrowing made to finance KCMH’s, or any Subsidiary of KCMH’s, facilitation of a debt capital markets “fronting” arrangement pursuant to which KCMH or such Subsidiary is acting as the initial purchaser or lender of a debt instrument that has been reserved by KCMH or such Subsidiary for purchase by another Person from whom an order has been received and such arrangement involves terms that are customary in the market for “fronting” transactions (and such Borrowing, for the avoidance of doubt, shall not be deemed to be outstanding under any other Borrowing Category unless such Borrowing remains outstanding for 45 days after the date on which such Borrowing was initially made, at which time the outstanding amount of such Borrowing shall be converted to, and deemed to be outstanding under, the Borrowing Category that otherwise would have applied based upon the type of transaction being financed); provided that only the portion of a Borrowing constituting such “fronting” arrangement may be deemed a Category V Borrowing, with the portion not constituting such “fronting” arrangement being allocated to such other applicable Borrowing Category. On or prior to the making of a Borrowing any portion of which constitutes a Category V Borrowing, the applicable Borrower shall deliver the certificate required pursuant to Section 4.02(e), which shall specify the “fronting” portion of such Borrowing and the applicable Borrowing Category for any portion that is not a “fronting” portion.

“Change in Law” means the occurrence, after the date of this Agreement, of the adoption of any law, rule, regulation or treaty, or of any change in applicable law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority having jurisdiction or the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (a) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (b) 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; provided further, that any increased costs associated with a Change in Law based on the foregoing clauses (a) and/or (b) may only be imposed to the extent the relevant Lender or Issuing Lender, as applicable, imposes the same charges generally on other similarly situated borrowers under comparable credit facilities.

“Change of Control” means, and shall be deemed to have occurred if, (a) KKR and/or its Affiliates shall at any time not own, directly or indirectly, beneficially and of

record, (i) more than 50% of the voting power of the outstanding Voting Shares of KCMH and (ii) at least 25% of the outstanding Equity Interests of KCMH; (b) KCMH shall at any time not own, directly or indirectly, beneficially and of record, more than 50% of the voting power of the outstanding Voting Shares of KCM U.S., KCM U.K. or KCM Asia; or (c) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of KCMH cease to be composed of individuals who are employees, partners, members, directors or officers of KKR or its Affiliates.

“Closing Date” means March 20, 2020.

“Code” means the Internal Revenue Code of 1986, as amended from time to time.

“Collateral” has the meaning specified in the Guarantee and Security Agreement.

“Commitment” means, as to each Lender, the commitment of such Lender to make Loans to the Borrowers under Section 2.01(a)(i) and purchase participations in L/C Exposure in an aggregate amount at any one time outstanding up to the amount set forth opposite such Lender’s name on Schedule I or, if such Lender has entered into an Assignment and Assumption, set forth for such Lender in the Register, as such amount may be reduced pursuant to Section 2.04(b).

“Commitment Percentage” means, with respect to any Lender, at any time, the percentage of the Aggregate Facility Amount represented by such Lender’s Commitment; provided, that if the Commitments have terminated or expired, the Commitment Percentages shall equal the percentage of aggregate outstanding Loans and L/C Exposure held by such Lender and if there is no outstanding Loans and L/C Exposure, the Commitment Percentage shall be determined based upon the Commitments most recently in effect, giving effect to any assignments.

“Commitment Termination Date” means the date five years after the Closing Date, provided that if such date is not a Business Day, the Commitment Termination Date shall be the immediately preceding Business Day.

“Concentration Limits” has the meaning specified in Annex B.

“Continuation”, “Continue” and “Continued” refer to a continuation of Eurocurrency Loans from one Interest Period to the next Interest Period pursuant to Section 3.05(b).

“Control” of a Person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ability to exercise voting power, by contract or otherwise, and “Controlling” and “Controlled” have meanings correlative thereto.

“Convert”, “Conversion” and “Converted” refer to a conversion of Loans of one Type into Loans of the other Type pursuant to Section 3.04 or Section 3.05.



“Cure Right” has the meaning specified in Section 7.02.

“Currencies” means, collectively, Dollars and the Alternate Currencies.

“Corresponding Tenor” with respect to any Available Tenor means, as applicable, either a tenor (including overnight) or an interest payment period having approximately the same length (disregarding business day adjustment) as such Available Tenor.

“Daily Simple SOFR” means, for any day, SOFR, with the conventions for this rate (which will include a lookback) being established by the Administrative Agent in accordance with the conventions for this rate selected or recommended by the Relevant Governmental Body for determining “Daily Simple SOFR” for syndicated business loans; provided, that if the Administrative Agent decides that any such convention is not administratively feasible for the Administrative Agent, then the Administrative Agent may, in consultation with the Borrower, establish another convention in its reasonable discretion, which shall be consistent with the then prevailing market conventions.

“Daily Simple SONIA” means, for any day, SONIA, an interest rate per annum equal to SONIA for the day that is five Business Days prior to (a) if such day is a Business Day, such day or (b) if such day is not a Business Day, the Business Day immediately preceding such day; provided that if such rate as determined above is less than zero, such rate shall be deemed to be zero. Any change in Daily Simple SONIA due to a change in SONIA shall be effective from and including the effective date of such change in SONIA without notice to the Borrowers.

“Debt to Equity Ratio” means, as of any date of determination, the ratio of Total Debt to Total Equity.

“Default” means any event or condition that constitutes an Event of Default or that, with notice or lapse of time or both, would become an Event of Default.

“Defaulting Lender” means, subject to Section 3.14(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the requesting 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, the Issuing Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit) within two Business Days of the date when due, (b) has notified KCMH, the Administrative Agent or the Issuing Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement)

cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or KCMH, to confirm in writing to the Administrative Agent and KCMH 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 KCMH), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any bankruptcy, insolvency, reorganization or similar law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 3.14(b)) upon delivery of written notice of such determination to KCMH, the Issuing Lender and each Lender.

“Designated Entity” means at any time, any corporation, partnership, limited liability company or other entity formed or acquired after the Closing Date that is not a Borrower and of which at least a majority but less than 100% of the Voting Shares are at the time directly or indirectly owned or controlled by KCMH or one or more Subsidiaries of KCMH, which has been designated in a written notice from KCMH to the Administrative Agent as a Designated Entity; provided that at the time of such designation (a) no Default or Event of Default would result from such designation and (b) after giving pro forma effect to such designation the Debt to Equity Ratio is less than or equal to  $[**]$  to 1.00. KCMH may, by written notice to the Administrative Agent, de-designate any Designated Entity and thereafter such entity shall not longer constitute a Designated Entity, but only if (a) no Default or Event of Default would result from such de-designation and (b) after giving pro forma effect to such de-designation the Debt to Equity Ratio is less than or equal to  $[**]$  to 1.00; provided further that notwithstanding the foregoing, KKR-MM Vector GP LLC, KKR-MM Vector L.P., Merchant Capital Solutions LLC, MCS Corporate Lending LLC, MCS Capital Markets LLC,  $[**]$ ,  $[**]$ , any entity formed for the purpose of acting in an administrative or other agency roles in respect of financings (with written notice thereof provided by KCMH to the Administrative Agent) and any of their respective direct or indirect subsidiaries, now existing or hereafter formed, shall each be deemed a Designated Entity (unless otherwise de-designated by KCMH in accordance with this definition).

$[**]$  = *Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

“Disqualified Equity Interests” means any Equity Interest which, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Equity Interests other than Disqualified Equity Interests), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Equity Interests other than Disqualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case of clauses (a) through (d) above, prior to the date that is ninety-one days after the Commitment Termination Date.

“Dollar Equivalent” means, on any date, with respect to any amount denominated in an Alternate Currency, the amount of Dollars that would be required to purchase such amount of such Alternate Currency at or about 11:00 a.m., Local Time, on such date, for delivery two Business Days later, as determined by the Administrative Agent on the basis of the spot selling rate for the offering of such Alternate Currency for Dollars in the Principal Financial Center for the applicable Alternate Currency, all determinations thereof by the Administrative Agent to be conclusive and binding on the parties in the absence of manifest error.

“Dollars” and “\$” refers to lawful money of the United States.

“Domestic Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Domestic Lending Office” in the Administrative Questionnaire of such Lender or in the Assignment and Assumption pursuant to which it became a Lender, or such other office of such Lender as such Lender may from time to time specify to KCMH and the Administrative Agent.

“Domestic Subsidiary” means any Subsidiary that is organized under the Laws of the United States, any state thereof or the District of Columbia.

“Early Opt-in Election” means:

(a) if the then-current Benchmark is USD LIBOR, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that at least five currently outstanding U.S. dollar-denominated syndicated credit facilities at such time contain (as a result of amendment or as originally executed) a SOFR-based rate (including SOFR, a term SOFR or any other rate based upon SOFR) as the then current benchmark rate (and such syndicated credit facilities are identified in such notice and are publicly available for review), and

(2) the joint election by the Administrative Agent and the Borrower to trigger a fallback from USD LIBOR and the provision by the

Administrative Agent of written notice of such election to the Lenders; and

(b) if the then-current Benchmark is not USD LIBOR in the case of Eurocurrency Loans denominated in an Alternate Currency, the occurrence of:

(1) a notification by the Administrative Agent to (or the request by the Borrower to the Administrative Agent to notify) each of the other parties hereto that syndicated credit facilities denominated in the relevant Alternate Currency being executed at such time, or that include language similar to that contained in this Section titled "Benchmark Replacement Setting" are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace such Benchmark for such Alternate Currency, and

(2) the joint election by the Administrative Agent and the Borrower that an Early Opt-in Election has occurred and the provision by the Administrative Agent of written notice of such election to the Lenders.

"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 delegatee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means (a) a Lender, (b) an Affiliate of a Lender, (c) an Approved Fund, and (d) any other Person (other than a natural person) approved by the Administrative Agent and the Issuing Lender and, unless an Event of Default of the kind referred to in Section 7.01(a), 7.01(b), 7.01(g) or 7.01(h) has occurred and is continuing, by KCMH (each such approval not to be unreasonably withheld or delayed); provided, that notwithstanding the foregoing, assignments to any private equity fund, credit fund, hedge fund or other similar investment vehicle shall require the consent of KCMH in its sole discretion.

"Equity Bridge Transaction" means an equity underwriting or commitment of KCMH or any Subsidiary of KCMH.

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company (including any securities convertible or exchangeable for such stock or interests), beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

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

“ERISA Affiliate” means any Person that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

“ERISA Event” means (a) any “reportable event”, as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than those events for which the 30-day notice period is waived pursuant to Department of Labor Reg. Section 4043 as in effect on the date hereof); (b) the failure of any Plan to satisfy the minimum funding standards (as defined in Section 412 of the Code or Section 302 of ERISA) applicable to such Plan, whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by the Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by the Borrower or any of its ERISA Affiliates from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by the Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by the Borrower or any of its ERISA Affiliates of any notice, or the receipt by any Multiemployer Plan from the Borrower or any of its ERISA Affiliates of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent within the meaning of Title IV of ERISA.

“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.

“Euro” has the meaning specified in Section 9.17.

“Eurocurrency Liabilities” has the meaning assigned to that term in Regulation D of the Board of Governors of the Federal Reserve System, as in effect from time to time.

“Eurocurrency Lending Office” means, with respect to any Lender, the office of such Lender specified as its “Eurocurrency Lending Office” in the Administrative Questionnaire of such Lender or in the Assignment and Assumption pursuant to which it became a Lender (or, if no such office is specified, its Domestic Lending Office), or such

other office of such Lender as such Lender may from time to time specify to KCMH and the Administrative Agent. It is understood and agreed that unless otherwise hereafter notified, the Eurocurrency Lending Office for MHC B and its Affiliates shall be its New York branch.

“Eurocurrency Loan” means, at any time, a Loan which bears interest at rates based upon the Eurocurrency Rate.

“Eurocurrency Rate” means, for any Interest Period for each Eurocurrency Loan denominated in a particular Currency comprising part of the same Borrowing, an interest rate per annum equal to the rate per annum for deposits in such Currency having a maturity closest to such Interest Period which appears on the relevant Screen Page as of 11:00 a.m., London time, on the day two Business Days prior to the first day of such Interest Period.

“Events of Default” has the meaning specified in Section 7.01.

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

“Excluded Taxes” means, with respect to any recipient of any payment to be made by or on such recipient’s account of any obligation of the Borrowers hereunder to the Administrative Agent and each Lender, Taxes (a) imposed on or measured by its overall net income (however denominated), franchise Taxes and branch profit Taxes, in each case, imposed by a jurisdiction (or any political subdivision thereof) as a result of a present or former connection between such recipient and the jurisdiction (or political subdivision thereof) imposing such tax (other than any such connection arising solely as a result of such recipient having executed, delivered or performed its obligations under or received a payment pursuant to this Agreement), (b) that are attributable to such recipient’s failure to comply with the requirements of paragraph (e) or (f) of Section 3.11, (c) that are withholding taxes imposed on amounts payable to such recipient pursuant to a law in effect on the date on which (i) such recipient acquires an applicable interest in a Loan or Commitment or (ii) such recipient changes its lending office, except in each case to the extent that such recipient’s assignor (if any) was entitled, immediately before the time of assignment, to receive additional amounts from the Borrower with respect to such Taxes pursuant to Section 3.11(b) or immediately before it changed its lending office and (d) any withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Second Amended and Restated 5-Year Revolving Credit Agreement dated March 30, 2016 among KCMH, KCL U.S., KCL C.A., KCL T.N., KCL U.K., MHC B as administrative agent and the lenders party thereto, as amended from time to time prior to the date hereof.

“Existing Lenders” means the “Lenders” as defined in the Existing Credit Agreement.

“Existing Letter of Credit” means each letter of credit issued prior to the Closing Date and listed on Schedule III.

“Existing Loans” means any Loans (as defined in the Existing Credit Agreement) outstanding on the Closing Date under the Existing Credit Agreement immediately before the closing of this Agreement.

“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 and any agreements entered into pursuant to Section 1471(b)(1) of the Internal Revenue Code and any law, regulation, rule, promulgation, or official agreement implementing an official government agreement with respect to the foregoing.

“Federal Funds Rate” means, for any day, the weighted average (rounded upwards, if necessary, to the next 1/100 of 1%) of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day that is a Business Day, the average (rounded upwards, if necessary, to the next 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

“Finance Lease Obligation” shall mean, as applied to any Person, an obligation that is required to be accounted for as a finance or capital lease (and not an operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP. At the time any determination thereof is to be made, the amount of the liability in respect of a finance or capital lease would be the amount required to be reflected as a liability on such balance sheet (excluding the footnotes thereto) in accordance with GAAP.

“Finance Subsidiary” means KCL U.K., KCL U.S., KCL C.A., KCL T.N., KCL Cayman, KKR Nitro and any other direct or indirect Subsidiary of KCMH formed for the purpose of providing financing in KCMH’s financing business.

“Finance Subsidiary Debt” means Indebtedness under any warehouse credit facility or other similar line of credit entered into for the purpose of funding Indebtedness originated or extended by any Finance Subsidiary.

“Financial Officer” means the chief financial officer, principal financial officer, treasurer, controller or a director of a Borrower.

“Financing Transaction” means any Equity Bridge Transaction, Senior Debt Transaction or Subordinated Debt Transaction.

“Financing Transaction Borrowing” means any Category II Borrowing, Category III Borrowing or Category IV Borrowing.

“FINRA” means the Financial Industry Regulatory Authority, or any other Self Regulatory Organization that succeeds to the functions thereof.

“Floor” means the benchmark rate floor, if any, provided in this Agreement initially (as of the execution of this Agreement, the modification, amendment or renewal of this Agreement or otherwise) with respect to Dollars or any Alternate Currency.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

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

“General Partner” means KKR Capital Markets Holdings GP LLC, a Delaware limited liability company.

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

“GBP LIBOR” means the London interbank offered rate for British Pounds Sterling.

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

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or to advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guarantee issued to support such Indebtedness; 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 an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made (or, if such Guarantee is limited by its terms to a lesser amount, such lesser amount) or, if not stated



or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith.

“Guarantee and Security Agreement” means the Third Amended and Restated Guaranty and Security Agreement, dated as of the date hereof, among the Obligors and the Administrative Agent in substantially the form of Exhibit B, as from time to time amended, modified or supplemented.

“Guarantors” means, at any time, collectively, those Subsidiaries of KCMH that are parties to the Guarantee and Security Agreement.

“Hedging Agreement” means any interest rate protection agreement, foreign currency exchange agreement or other derivative transaction.

“Indebtedness” of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or similar instruments, (b) the deferred purchase price of assets or services that in accordance with GAAP would be included as a liability on the balance sheet of such Person, (c) the face amount of all letters of credit issued for the account of such Person and, without duplication, all drafts drawn thereunder and all direct obligations arising under bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all Indebtedness of any other Person secured by any Lien on any property owned by such Person, whether or not such Indebtedness has been assumed by such Person, (e) the principal component of all Finance Lease Obligations, (f) all obligations of such Person under interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity price protection agreements or other commodity price hedging agreements and other similar agreements, (g) without duplication, all Guarantees by such Person of Indebtedness of others and (h) all obligations of such Person in respect of Disqualified Equity Interests, provided that Indebtedness shall not include (i) trade and other ordinary course payables and accrued expenses arising in the ordinary course of business, (ii) deferred or prepaid revenue and (iii) purchase price holdbacks in respect of a portion of the purchase price of an asset to satisfy warranty or other unperformed obligations of the respective seller. The amount of Indebtedness of any Person for purposes of clause (d) shall be deemed to be equal to the lesser of (i) the aggregate unpaid amount of such Indebtedness and (ii) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“Indemnified Taxes” means Taxes other than Excluded Taxes.

“Indemnitee” has the meaning specified in Section 9.04(b).

“Intercreditor Agreement” means that certain First Lien Intercreditor Agreement dated March 20, 2020, among the Administrative Agent, the administrative agent in respect of the 364-Day Credit Agreement, the other parties thereto from time to time and acknowledged by the Obligors, as from time to time amended, modified, supplemented or replaced.

“Interest Period” means, for any Eurocurrency Loan, the period beginning on the date such Eurocurrency Loan is made, or Continued or Converted from an ABR 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 therefor and ending on the last day of the period selected by the Borrower pursuant to the provisions below. The duration of each Interest Period shall be one, two, three or six months (or if available to all relevant Lenders, nine or twelve months), as the Borrower may select by notice to the Administrative Agent no later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to such nine- or twelve-month periods, fourth Business Day) prior to the first day of such Interest Period.

Notwithstanding the foregoing:

(w) if any Interest Period would otherwise commence before and end after the Commitment Termination Date, such Interest Period shall end on the Commitment Termination Date,

(x) each Interest Period that would otherwise end on a day that is not a Business Day shall end on the next succeeding Business Day, unless such next succeeding Business Day would fall in the succeeding month, in which case such Interest Period shall end on the next preceding Business Day,

(y) each Interest Period that commences on the last day of a month (or on any day for which there is no numerically corresponding day in the appropriate subsequent month) shall end on the last Business Day of the appropriate subsequent calendar month, and

(z) Interest Periods commencing on the same day for Eurocurrency Loans comprising part of the same Borrowing shall be of the same duration.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or interest in, another Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit or all or a substantial part of the business of, such Person.

“Issuing Lender” means MHCB, and/or any other Lender from time to time designated as an Issuing Lender in a writing signed by such Lender, KCMH and the Administrative Agent (MHCB and such other Lender being collectively referred to herein as the “Issuing Lender” unless the context otherwise requires).

“KCL Cayman” means KKR Corporate Lending (Cayman) Ltd., a Cayman limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCL C.A.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCL T.N.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCL U.K.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCL U.S.” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCMH” has the meaning specified in the heading hereof, and includes any successor thereto in accordance with this Agreement.

“KCM Asia” means KKR Capital Markets Asia Limited, a Hong Kong limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM Group Entity” means KCMH and any entity in which KCMH, directly or indirectly, owns an Equity Interest.

“KCM Ireland” means KKR Capital Markets (Ireland) Limited, an Ireland limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM Japan” means KKR Capital Markets Japan Holdings LLC, a Delaware limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM U.S.” means KKR Capital Markets LLC, a Delaware limited liability company, and includes any successor thereto in accordance with this Agreement.

“KCM U.K.” means KKR Capital Markets Limited, a United Kingdom limited liability company, and includes any successor thereto in accordance with this Agreement.

“KKR” means Kohlberg Kravis Roberts & Co. L.P., a Delaware limited partnership and includes any successor thereto in accordance with this Agreement.

“KKR Nitro” means KKR Nitro Holdings Limited, a Cayman limited liability company, and includes any successor thereto in accordance with this Agreement.

“L/C Exposure” means, at any time, the sum of (a) the aggregate undrawn face amount of all outstanding Letters of Credit and (b) the aggregate amount of unreimbursed L/C Payments under all outstanding Letters of Credit (or, if applicable with respect to clauses (a) and (b), the Dollar Equivalent thereof).

“L/C Payment” means a payment by an Issuing Lender of a draft or demand drawn under a Letter of Credit.

(ii). “L/C Reimbursement Obligation” means the obligation of a Borrower to reimburse an Issuing Lender for an L/C Payment pursuant to Section 2.02(d)

“L/C Related Documents” has the meaning specified in Section 2.02(c)(i).

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

“Lead Arranger” means MHC, in its capacity as sole lead arranger and sole bookrunner.

“Lender” means each bank or other financial institution listed on the signature pages hereof and each Person that shall become a party hereto pursuant to 9.06.

“Letter of Credit” has the meaning specified in Section 2.02(a)(i) and shall include each Existing Letter of Credit.

“Letter of Credit Facility Amount” means the lesser of (a) \$750,000,000 and (b) the Aggregate Facility Amount.

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

“Loan” has the meaning specified in Section 2.01(a)(i).

“Loan Documents” means, collectively, this Agreement, the Notes, the Guarantee and Security Agreement and the Intercreditor Agreement.

“Local Time” means (a) with respect to any Loan denominated or any payment to be made in Dollars, New York time, and (b) with respect to any Eurocurrency Loan denominated or any payment to be made in an Alternate Currency, the local time in the Principal Financial Center for such Alternate Currency.

“London Banking Day” means any day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

“Majority Lenders” means, at any time, (a) Lenders holding more than 50% of the Commitments, or (b) if the Commitments have terminated or expired, Lenders having collectively more than 50% of the sum of (i) aggregate amount of the unpaid principal amount of the Loans and (ii) L/C Exposure (computed at any time, in the case of Loans and L/C Exposure denominated in an Alternate Currency, as the Dollar Equivalent thereof as determined by the Administrative Agent); provided that the unused Commitment of, and the portion of the Total Credit Exposure held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Majority Lenders.

“March 5th Announcements” means the announcement by the U.K. Financial Conduct Authority (“FCA”), the regulatory supervisor of ICE Benchmark Administration Limited (“IBA”), and the IBA, in each case on March 5, 2021, regarding the future cessation and loss of representativeness of each tenor setting of the London Interbank Offered Rates.

“Material Adverse Effect” means a material adverse effect on (a) the business, financial condition, properties or operations of KCMH and its Subsidiaries taken as a whole, (b) the ability of any Obligor to perform any of its material obligations under any Loan Document or (c) the material rights and remedies of, or benefits available, to the Administrative Agent or the Lenders under any Loan Document.

“Material Domestic Subsidiary” means any Domestic Subsidiary that is a Material Subsidiary.

“Material Foreign Subsidiary” means any Foreign Subsidiary (inclusive of its Subsidiaries) that, as of the last day of the fiscal quarter of KCMH most recently ended for which financial statements have been delivered pursuant to Section 6.01(a)(i) or (ii), (a) generated over 25% of consolidated revenues of KCMH and its Subsidiaries for the period of two years ended at the end of such fiscal quarter or (b) to which more than \$[\*\*] of the Aggregate Facility Amount has been funded as of such date and has been funded for the period of six months immediately preceding such date.

“Material Indebtedness” means Indebtedness of the type described in clause (a) of the definition thereof issued or incurred under any agreement or instrument in an aggregate outstanding principal amount of \$[\*\*] or more.

“Material Subsidiary” means any Subsidiary that constitutes a “significant subsidiary” as defined under Regulation S-X promulgated by the SEC, as in effect from time to time; provided that each of KCM U.S. and KCM U.K. shall be a Material Subsidiary.

“MHCB” means Mizuho Bank, Ltd. or any successor thereto.

“Moody’s” means Moody’s Investors Service, Inc. or any successor thereto.

“Multiemployer Plan” means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

[\*\*] = *Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

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

“Non-U.S. Lender” has the meaning specified in Section 3.11(e).

“Note” has the meaning specified in Section 2.01(e).

“Notice of Borrowing” has the meaning specified in Section 2.01(b)(ii).

“Notice of Issuance” has the meaning specified in Section 2.02(c)(i).

“Obligations” means (a) all obligations of the Borrowers under the Loan Documents to pay the principal of and interest on the Loans and the L/C Reimbursement Obligations and all fees, premiums, costs, expenses, indemnification payments and other amounts or obligations whatsoever, whether direct or indirect, absolute or contingent, now or hereafter from time to time owing to the Secured Creditors arising under, out of, or in connection with the Loan Documents and all obligations of the Borrowers to any Lender (or any Affiliate thereof) under any Hedging Agreement and (b) in the case of each of the foregoing, including all interest thereon and expenses related thereto, including any interest or expenses accruing or arising after the commencement of any case with respect to any Obligor under the United States Bankruptcy Code or any other bankruptcy or insolvency law (whether or not such interest or expenses are allowed or allowable as a claim in whole or in part in such case).

“Obligors” means, collectively, the Borrowers and the Guarantors.

“Other Taxes” means all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made under any Loan Document or from the execution, delivery or enforcement of, or otherwise with respect to, any Loan Document.

“Participant” has the meaning specified in Section 9.06(d).

“Patriot Act” has the meaning specified in Section 9.15.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in Section 4002 of ERISA and any successor entity performing similar functions.

“Permitted Liens” means:

(a) Liens for taxes, assessments or governmental charges or claims not yet overdue for a period of more than 30 days or that are being contested in good faith and by appropriate proceedings for which appropriate reserves have been established to the extent required by and in accordance with GAAP, or for property taxes on property that

the Borrower or one of its Subsidiaries has determined to abandon if the sole recourse for such tax, assessment, charge or claim is to such property;

(b) Liens in respect of property or assets of KCMH or any of its Subsidiaries imposed by law, such as carriers', warehousemen's and mechanics' Liens and other similar Liens arising in the ordinary course of business, in each case so long as such Liens arise in the ordinary course of business and do not individually or in the aggregate have a Material Adverse Effect;

(c) Liens arising from judgments or decrees in circumstances not constituting an Event of Default under 7.01(j);

(d) Liens incurred or deposits made in connection with workers' compensation, unemployment insurance and other types of social security, or to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return-of-money bonds and other similar obligations incurred in the ordinary course of business;

(e) ground leases in respect of real property on which facilities owned or leased by the Borrower or any of its Subsidiaries are located;

(f) easements, rights-of-way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances not interfering in any material respect with the business of KCMH and its Subsidiaries, taken as a whole;

(g) any interest or title of a lessor or secured by a lessor's interest under any lease permitted by this Agreement;

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

(i) leases, licenses, subleases or sublicenses granted to others not interfering in any material respect with the business of KCMH and its Subsidiaries, taken as a whole;

(j) Liens arising from precautionary UCC financing statement or similar filings made in respect of operating leases entered into by the Borrower or any of its Subsidiaries;

(k) Liens created in the ordinary course of business in favor of banks and other financial institutions over credit balances of any bank accounts, brokerage accounts or commodities accounts of KCMH and its Subsidiaries held at such banks or financial institutions, including any accounts maintained with any clearing or settlement bank or other financial institution; and

(l) any zoning or similar law or right reserved to or vested in any Governmental Authority to control or regulate the use of any real property that does not materially interfere with the ordinary conduct of the business of KCMH and its Subsidiaries, taken as a whole.

“Permitted Subordinated Debt” shall mean senior subordinated notes, or other senior subordinated Indebtedness, issued by a Borrower or any Guarantor, (a) the terms of which (i) do not provide for any scheduled repayment, mandatory redemption or sinking fund obligation prior to a date 91 days after Commitment Termination Date (other than customary offers to purchase upon a change of control, asset sale or event of loss and customary acceleration rights after an event of default) and (ii) provide for customary subordination to the obligations of the Obligors under the Loan Documents, (b) the covenants, events of default, guarantees, collateral and other terms of which (other than interest rate and redemption premiums), taken as a whole, are not more restrictive to KCMH and its Subsidiaries than those herein; provided that a certificate of a Financial Officer of KCMH is delivered to the Administrative Agent at least seven Business Days (or such shorter period as the Administrative Agent may reasonably agree) prior to the incurrence of such Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Indebtedness or drafts of the documentation relating thereto, stating that KCMH has determined in good faith that such terms and conditions satisfy the foregoing requirement shall be conclusive evidence that such terms and conditions satisfy the foregoing requirement unless the Administrative Agent notifies KCMH within such period that it disagrees with such determination (including a reasonable description of the basis upon which it disagrees), (c) of which no Subsidiary of KCMH (other than a Guarantor) is an obligor and (d) after giving pro forma effect to the issuance thereof, KCMH shall be in compliance with the financial covenant set forth in Section 6.03.

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

“Plan” means any employee pension benefit plan (other than a Multiemployer Plan) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which the Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an “employer” as defined in Section 3(5) of ERISA.

“Pledged Equity” has the meaning specified in the Guarantee and Security Agreement.

“Principal Financial Center” means, for any Currency, the principal financial center in the country of issue of such Currency, as reasonably determined by the Administrative Agent.

“Property” of any Person means any property or assets, or interest therein, of such Person.

“Reference Time” with respect to any setting of the then-current Benchmark means (1) if such Benchmark is USD LIBOR, 11:00 a.m. (London time) on the day that



is two London banking days preceding the date of such setting, and (2) if such Benchmark is not USD LIBOR, the time determined by the Administrative Agent in its reasonable discretion.

“Register” has the meaning specified in Section 9.06(c).

“Regulations T, U and X” means, respectively, Regulations T, U and X of the Board of Governors of the Federal Reserve System (or any successor), as from time to time amended, modified or supplemented.

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

“Relevant Governmental Body” means (i) with respect to USD LIBOR, the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve System or the Federal Reserve Bank of New York, or any successor thereto, (ii) with respect to a Benchmark Replacement in respect of Eurocurrency Loans denominated in British Pounds Sterling, the Bank of England, or a committee officially endorsed or convened by the Bank of England or, in each case, any successor thereto, or (iii) with respect to a Benchmark denominated in an Alternate Currency (other than British Pounds Sterling), (a) the central bank for such Alternate Currency in which such Benchmark is denominated or any central bank or the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), (b) any working group or committee officially endorsed or convened by (1) the central bank for such Alternate Currency in which such Benchmark is denominated, (2) any central bank or other supervisor that is responsible for supervising either (A) such Benchmark or (B) the administrator of such Benchmark, (3) a group of those central banks or other supervisors, (4) the Financial Stability Board or any part thereof, (c) an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), (d) a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or (e) a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component).

“Relevant LIBOR” means (a) with respect to any Eurocurrency Loan denominated in Dollars, USD LIBOR, (b) with respect to any Eurocurrency Loan denominated in British Pounds Sterling, GBP LIBOR and (c) with respect to any Eurocurrency Loan denominated in an Alternate Currency other than British Pounds Sterling, the London Interbank Offered Rate, if any, for such Alternate Currency.

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

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Person, or any payment (whether in cash, securities or other property), including any

sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Person's stockholders, partners or members (or the equivalent Person thereof).

"Rule 15c3-1" means Rule 15c3-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act (17 CFR 240, 15c3-1), as from time to time amended, modified or supplemented, or such other rule or regulation of the SEC which replaces Rule 15c3-1.

"S&P" means Standard & Poor's Rating Services or any successor thereto.

"Screen Page" means the Reuters Page LIBOR01 or LIBOR02 or such other Reuters screen page displaying interbank offered rates for the applicable Currency (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion); provided that if the Screen Rate as so determined would be less than zero, such rate shall be deemed to zero for the purposes of this Agreement. If at least two relevant rates appear on said page with respect to an Interest Period, the Eurocurrency Rate for that Interest Period will be based upon the arithmetic mean of such rates.

"Secured Creditors" means, collectively, the Lenders (including each Issuing Lender) and the Administrative Agent, any other holder from time to time of any of the Obligations and, in each case, their respective successors and assigns.

"Senior Debt Transaction" means a senior debt underwriting or commitment of KCMH or any Subsidiary of KCMH.

"SEC" means the Securities and Exchange Commission, or any Governmental Authority succeeding to the principal functions thereof.

"Self Regulatory Organization" has the meaning assigned to such term in Section 3(a)(26) of the Exchange Act.

"SIPA" means the Securities Investor Protection Act of 1970, as from time to time amended, modified or supplemented.

"SIPC" means the Securities Investor Protection Corporation established pursuant to SIPA or any other corporation succeeding to the principal functions thereof.

"SOFR" means, with respect to any Business Day, a rate per annum equal to the secured overnight financing rate for such Business Day published by the SOFR Administrator on the SOFR Administrator's Website on the immediately succeeding Business Day.

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

“SOFR Administrator’s Website” means the website of the Federal Reserve Bank of New York, currently at <http://www.newyorkfed.org>, or any successor source for the secured overnight financing rate identified as such by the SOFR Administrator from time to time.

“Solvent” and “Solvency” mean, with respect to any Person, that as of the Closing Date, (a) (i) the sum of such Person’s debts (including contingent liabilities) does not exceed the present fair saleable value of such Person’s present assets; (ii) such Person’s capital is not unreasonably small in relation to its business as contemplated on the Closing Date; and (iii) such Person has not incurred and does not intend to incur, or believe that it will incur, debts including current obligations beyond its ability to pay such debts as they become due (whether at maturity or otherwise); and (b) such Person is “solvent” within the meaning given that term and similar terms under applicable laws relating to fraudulent transfers and conveyances. For purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

“SONIA” means, with respect to any Business Day, a rate per annum equal to the Sterling Overnight Index Average for such Business Day published by the SONIA Administrator on the SONIA Administrator’s Website on the immediately succeeding Business Day.

“SONIA Administrator” means the Bank of England (or any successor administrator of the Sterling Overnight Index Average).

“SONIA Administrator’s Website” means the Bank of England’s website, currently at <http://www.bankofengland.co.uk>, or any successor source for the Sterling Overnight Index Average identified as such by the SONIA Administrator from time to time.

“Subordinated Debt Transaction” means a subordinated debt underwriting or commitment of KCMH or any Subsidiary of KCMH.

“Subordinated Indebtedness” means any Permitted Subordinated Debt or any other Indebtedness the terms of which provide for customary subordination in right of payment to the obligations of a Borrower or any of its Subsidiaries, as applicable, under this Agreement and the other Loan Documents.

“Subsidiary” means, at any time, any corporation, partnership, limited liability company or other entity of which at least a majority of the Voting Shares are at the time directly or indirectly owned or controlled by KCMH or one or more Subsidiaries of KCMH; provided that no Designated Entity shall be a Subsidiary.

“Support Payment” has the meaning specified in Section 2.06(a).

“Taxes” means all present and future taxes, duties, levies, imposts, deductions, charges or withholdings or similar charges, with respect to any amount payable on or in respect of any Loan Document, Loans, Notes or Letters of Credit, and all interest, penalties and similar amounts with respect thereto, now or thereafter imposed, assessed, levied or collected by any jurisdiction from which any amount payable under the Loan Documents is paid, or any political subdivision or taxing authority thereof or therein, or any organization or federation of which any of the foregoing may be a member or associated.

“Term SOFR” means, for the applicable Corresponding Tenor as of the applicable Reference Time, the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

“Term SOFR Notice” means a notification by the Administrative Agent to the Lenders and the Borrower of the occurrence of a Term SOFR Transition Event.

“Term SOFR Transition Event” means, in the case of Eurocurrency Loans denominated in Dollars, the occurrence of both (i) the determination by the Administrative Agent that (a) Term SOFR has been recommended for use by the Relevant Governmental Body, (b) the administration of Term SOFR is administratively feasible for the Administrative Agent and (c) a Benchmark Transition Event or an Early Opt-in Election, as applicable, has previously occurred resulting in a Benchmark Replacement in accordance with the Section titled “Benchmark Replacement Setting” that is not Term SOFR, and (ii) a prior written consent by the Borrower to the delivery of a Term SOFR Notice by the Administrative Agent.

“Total Credit Exposure” means, at any time, the sum of (a) the aggregate outstanding principal amount of the Loans (being the Dollar Equivalent thereof in the case of Eurocurrency Loans denominated in an Alternate Currency) plus (b) the aggregate outstanding L/C Exposure.

“Total Debt” means, at any date, (a) all Indebtedness of the types described in clause (a), clause (c) (but, in the case of clause (c), only to the extent of any unreimbursed drawings under any letter of credit) and clause (e) of the definition thereof actually owing by KCMH and/or its Subsidiaries on such date to the extent appearing on the consolidated balance sheet of KCMH determined in accordance with GAAP (provided that the amount of any Finance Lease Obligations or any such Indebtedness issued at a discount to its face value shall be determined in accordance with GAAP) minus (b) the aggregate cash and Cash Equivalents included on the consolidated balance sheet of KCMH as at such date to the extent the use thereof for application to the payment of Indebtedness is not prohibited by law or any contract to which KCMH or any Subsidiary is a party; provided that for the purposes of this definition, Indebtedness shall not include

(i) any Finance Subsidiary Debt (unless such Indebtedness is incurred by a Finance Subsidiary that is also a Borrower under this Agreement), (ii) any liabilities includable solely based on the application of ASC 810 or ASC 860 and (iii) any Indebtedness of any Designated Entity.

“Total Equity” means, as of any date of determination, (a) KCMH’s consolidated partners’ capital (or stockholders’ equity, as the case may be) measured on a GAAP basis, minus (b) the sum of (i) any declared but unpaid distribution or dividend to KCMH’s general or limited partners (or any other equity holders) and (ii) any loans or advances made to KCMH’s general or limited partners (or any other equity holders); provided that Total Equity shall not include KCMH’s partners’ capital (or stockholders’ equity, as the case may be) attributable to any Designated Entity and, in the event all or a substantial portion of the equity in a Finance Subsidiary is pledged to a third party, such Finance Subsidiary.

“Type” refers to whether a Loan is an ABR Loan or a Eurocurrency Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“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.

“United States” or “U.S.” means the United States of America.

“USD LIBOR” means the London interbank offered rate for Dollars.

“Voting Shares” means, with respect to any Person, such Person’s Equity Interests having the right to vote for the election of directors, or other individuals performing similar functions, of such Person under ordinary circumstances.

“Wholly-Owned Subsidiary” means, with respect to any Person, any Subsidiary of which all of the Equity Interests (other than, in the case of a corporation, directors’ qualifying shares) are directly or indirectly owned or controlled by such Person or one or more Wholly-Owned Subsidiaries of such Person or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

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

“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. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to but excluding”. The words “include”, “includes” and “including” shall be deemed in each case to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed in each case as referring to such agreement, instrument or other document as from time to time amended, modified or supplemented, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed in each case to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import shall be construed in each case to refer to this Agreement in its entirety and not to any particular provision hereof, and (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement. For the avoidance of doubt, references in Articles VIII and IX to the Lenders shall include in each case the Issuing Lender, unless the context otherwise requires. For the purposes of Section 2.05 only, the term “Borrower” or “Borrowers” shall exclude any Broker-Dealer Subsidiary.

SECTION 1.03. Accounting Terms; GAAP; Calculation of Debt to Equity Ratio.

(a) Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that if the Borrower notifies the Administrative Agent that it requests an amendment to any provision 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 (or if the Administrative Agent notifies the Borrower that the Majority 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.

(b) Calculation of the Debt to Equity Ratio shall be based on relevant information in the financial statements and asset schedules delivered pursuant to Sections 6.01(a)(i), (ii) and (vi) giving pro forma effect to such information where appropriate; provided that the amount of Total Debt shall be the amount outstanding as of the date of determination after giving effect to the incurrence of any Indebtedness on such date of determination.

SECTION 1.04. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

SECTION 1.05. Interest Rates. The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to LIBOR or the Screen Page or with respect to any alternative or successor rate thereto, or replacement rate thereof including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 3.04(c), whether upon the occurrence of a Benchmark Transition Event, Term SOFR Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 3.04(c)(iii), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, LIBOR or the Eurodollar Rate or have the same volume or liquidity as did LIBOR or the Eurodollar Rate prior to the discontinuance or unavailability of LIBOR.

## ARTICLE II

### THE COMMITMENTS

SECTION 2.01. The Loans.

(a) (1) Each Lender severally agrees, on and subject to the terms and conditions of this Agreement, to make loans to the Borrowers under this Section 2.01(a)(i) (each, a “Loan”) from time to time on any Business Day during the Availability Period, in an aggregate principal amount at any one time outstanding up to but not exceeding the Commitment of such Lender and, as to all Lenders and all Borrowers, in an aggregate principal amount at any one time outstanding up to but not exceeding the Aggregate Borrowing Availability (or the Alternate Currency Equivalent thereof).

(i) ABR Loans shall be denominated in Dollars, and Eurocurrency Loans may be denominated in Dollars or one or more Alternate Currencies.

(ii) Anything in this Agreement to the contrary notwithstanding, (A) the Total Credit Exposure shall not at any time exceed the then Aggregate Facility Amount and (B) the obligation of the Lenders to make Loans is subject to the Concentration Limits.

(iii) Within such limits, the Borrowers may from time to time borrow under this Section 2.01, prepay Loans in whole or in part pursuant to Section 3.06(a) and reborrow under this Section 2.01.

(iv) The Borrowers shall be co-borrowers with respect to each Borrowing, and shall be jointly and severally liable for all obligations and liabilities with respect thereto in accordance with Sections 2.05 and 2.06.

(b) Borrowing Procedure. (2) Each Borrowing shall be in a minimum amount of \$5,000,000 in the case of a Borrowing of Eurocurrency Loans, or \$1,000,000, in the case of a Borrowing of ABR Loans, or in each case an integral multiple of \$1,000,000 in excess thereof (or, in the case of a Borrowing denominated in an Alternate Currency, the Alternate Currency Equivalent thereof, rounded to the nearest 1,000 units of such Alternate Currency), and shall be made on notice by the requesting Borrower to the Administrative Agent not later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to Interest Periods other than one, two, three or six months, fourth Business Day) prior to the date of such Borrowing in the case of a Borrowing consisting of Eurocurrency Loans or not later than 11:00 a.m. (New York time) on the date of such Borrowing in the case of a Borrowing consisting of ABR Loans, and the Administrative Agent shall give each Lender prompt notice thereof.

(i) Each such notice of a Borrowing (a “Notice of Borrowing”) shall be irrevocable and binding on the Borrowers and shall be in substantially the form of Exhibit C, specifying therein the requested (1) date of such Borrowing (which shall be a Business Day), (2) Type of Loans comprising such Borrowing, (3) the applicable Borrowing Category (or as applicable Borrowing Categories), (4) aggregate amount of such Borrowing, stated in Dollars, and the Currency thereof and (5) in the case of a Borrowing of Eurocurrency Loans, initial Interest Period for such Loans.

(ii) Each Lender shall, before 1:00 p.m. (New York time) on the date of such Borrowing, make available for the account of its Applicable Lending Office to the



Administrative Agent at the Administrative Agent's Account, in same day funds, such Lender's ratable portion of such Borrowing.

(iii) After the Administrative Agent's receipt of such funds, and subject to the satisfaction of the applicable conditions set forth in Article IV, the Administrative Agent will make such funds available to the requesting Borrower by promptly crediting the amounts so received, in like funds, to such account of such Borrower as the Administrative Agent and such Borrower may agree.

(iv) If the requesting Borrower fails to specify a Type of Loan in a Notice of Borrowing, then the applicable Loans shall be made as ABR Loans. If the requesting Borrower fails to provide a timely notice of Conversion or Continuation with respect to a Borrowing of Eurocurrency Loans, then such Borrower shall be deemed to have requested a Continuation with respect thereto with an Interest Period of one month. If the requesting Borrower requests a Borrowing of, Conversion to, or Continuation of Eurocurrency Loans in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. If the requesting Borrower requests a Borrowing of, Conversion to, or Continuation of Eurocurrency Loans in any such Notice of Borrowing, but fails to specify the Currency thereof, it will be deemed to have specified such Loans in Dollars.

(v) After giving effect to all Borrowings, all Conversions and all Continuations, there shall not be more than 15 Interest Periods in effect.

(c) Types of Loans. Each Borrowing and each Conversion or Continuation thereof shall consist of Loans of the same Type (and, if such Loans are Eurocurrency Loans, having the same Interest Period) made, Continued or Converted on the same day by the Lenders ratably according to their Commitment Percentages.

(d) Accounts. (3) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(i) The Administrative Agent shall maintain accounts in which it shall record (x) the amount of each Loan, the Type thereof, the Borrowing Category applicable thereto and the Interest Period applicable thereto, (y) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder and (z) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof.

(ii) The entries made in the accounts maintained pursuant to this clause (d) shall be prima facie evidence of the existence and amounts of the obligations recorded therein; provided, that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans made to any Borrower or make payments for other

obligations (including L/C Reimbursement Obligations) in accordance with the terms of this Agreement.

(e) Notes. Any Lender may, through the Administrative Agent, request that the Loans to be made by it be evidenced by a promissory note of the Borrowers. In such event, the Borrowers shall prepare, execute and deliver to such Lender a joint and several promissory note payable to such Lender (or its registered assigns), substantially in the form of Exhibit A (each, a "Note"), in the amount of the Commitment of such Lender, dated the Closing Date and otherwise appropriately completed.

(f) To the extent that prior to the Closing Date, Existing Loans were made to the Borrower under the Existing Credit Agreement which remain outstanding as of the Closing Date, subject to the terms and conditions set forth in this Agreement, the parties hereto agree that on the Closing Date, the Existing Loans shall be re-evidenced as Loans under this Agreement and the terms of the Existing Loans shall be evidenced by this Agreement.

SECTION 2.02. Letter of Credit Facility.

(a) Letters of Credit. (4) Each Issuing Lender agrees, on and subject to the terms and conditions of this Agreement, to issue one or more letters of credit (each, a "Letter of Credit") for the account of a Borrower from time to time on any Business Day during the period from the Closing Date until the date ten Business Days before the Commitment Termination Date, provided, that the total L/C Exposure with respect to Letters of Credit may not at any time exceed the Letter of Credit Facility Amount.

(i) Letters of Credit may be denominated in Dollars or any Alternate Currency, as requested in writing by the Borrower.

(ii) Anything in this Agreement to the contrary notwithstanding, the issuance of Letters of Credit shall be subject to the limitations set forth in Section 2.01(a)(iii) and to the Concentration Limits.

(iii) Within the foregoing limits, and subject to the terms and conditions hereof, a Borrower's ability to obtain Letters of Credit shall be revolving, and accordingly a Borrower may, during the period referred to in clause (i) above, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(iv) The Borrowers shall be co-obligors with respect to each Letter of Credit, and shall be jointly and severally liable for all obligations and liabilities with respect thereto in accordance with Sections 2.05 and 2.06.

(b) Terms: Issuance. (5) Each Letter of Credit shall be in a form reasonably satisfactory to the relevant Issuing Lender and have a stated expiration date that is no later than the earlier of (x) one year after its date of issuance and (y) five Business Days prior to the Commitment Termination Date; provided that a Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond a date five Business Days prior to the Commitment Termination Date (except that one or

more Letters of Credit may expire up to one year after the Commitment Termination Date if each such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the Borrowers, the relevant Issuing Lender and the Administrative Agent)).

(i) An Issuing Lender shall be under no obligation to issue any Letter of Credit if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Lender from issuing such Letter of Credit, or any law applicable to such Issuing Lender or any directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, or direct that such Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Lender is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Lender any unreimbursed loss, cost or expense which was not applicable on the Closing Date (for which such Issuing Lender is not otherwise compensated hereunder), or (B) the issuance of such Letter of Credit would violate any laws binding upon such Issuing Lender.

(c) Issuance Procedure. (6) Each Letter of Credit shall be issued upon notice, given not later than 11:00 a.m. (New York time) on the third Business Day prior to the proposed issuance date of such Letter of Credit, by the requesting Borrower to the relevant Issuing Lender (or such shorter notice as shall be acceptable to such Issuing Lender), with a copy to the Administrative Agent, and the Administrative Agent shall give to each Lender prompt notice thereof by telecopier or email. Each such notice from the requesting Borrower (a "Notice of Issuance") shall be by telecopier or email, confirmed promptly by hard copy, specifying therein the Issuing Lender and the requested date of issuance (which shall be a Business Day) of such Letter of Credit, its face amount and expiration date and the name and address of the beneficiary thereof, and shall attach the proposed form thereof (or such other information as shall be necessary to prepare such Letter of Credit). If requested by the applicable Issuing Lender, the requesting Borrower shall supply such application and agreement for letter of credit, in the form reasonably satisfactory to the relevant Issuing Lender, as the relevant Issuing Lender may require in connection with such requested Letter of Credit ("L/C Related Documents") along with such other information reasonably related to the requested Letter of Credit.

(i) If the proposed Letter of Credit complies with the requirements of this Section 2.02, such Issuing Lender will, unless the Issuing Lender has received written notice from the Administrative Agent, that one or more of the applicable conditions set forth in Article IV shall not be satisfied, make such Letter of Credit available to the requesting Borrower as agreed with the requesting Borrower in connection with such issuance. In the event and to the extent that the provisions of any L/C Related Documents shall conflict with this Agreement, the provisions of this Agreement shall govern.

(ii) Each Issuing Lender shall furnish (A) upon request of the Administrative Agent, copies of the Letters of Credit issued by it hereunder, and (B) to the Administrative Agent on the first Business Day of each fiscal quarter a written report

setting forth the Letters of Credit issued in Alternate Currencies, solely for purposes of determining the Dollar Equivalent thereof.

(d) Reimbursement; Syndicate Participation. (7) Automatically upon the issuance of each Letter of Credit, each Lender shall be deemed to have automatically and unconditionally acquired a participation therein to the extent of such Lender's Commitment Percentage on the terms provided in this clause (d) without any further action.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of drawing under such Letter of Credit, the relevant Issuing Lender shall notify the requesting Borrower and the Administrative Agent thereof. Not later than 1:00 p.m. (New York time) on the second Business Day following any L/C Payment by an Issuing Lender (the "Honor Date"), the Borrowers jointly and severally agree to reimburse such Issuing Lender directly in an amount equal to the amount of such L/C Payment.

(ii) If the Borrowers fail to so reimburse such Issuing Lender by such date, or if any amounts reimbursed by any Borrower are required to be returned or disgorged for any reason, such Issuing Lender shall promptly notify the Administrative Agent and the Administrative Agent shall promptly notify each Lender of the Honor Date, the unreimbursed amount of such L/C Payment (the "Unreimbursed Amount"), and the amount of such Lender's pro rata share thereof. In such event, such Borrower shall be irrevocably deemed to have requested a Borrowing of ABR Loans to be disbursed on the Honor Date in an aggregate Dollar Equivalent amount equal to the Unreimbursed Amount (without regard to the minimum and multiples specified in Section 2.01(b)); provided that, notwithstanding any other provision to the contrary in this Section 2.02, no such Borrowing of ABR Loans shall be permitted unless the Debt to Equity Ratio shall be less than or equal to [\*\*] to 1.00 after giving pro forma effect to such Borrowing and the conditions specified in clauses (a) and (b) of Section 4.02 have been satisfied on or as of the date of such Borrowing. Any notice given by an Issuing Lender or the Administrative Agent pursuant to this Section 2.02(d)(iii) may be given by telephone if immediately confirmed in writing; provided, that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(iii) Subject to the proviso in Section 2.02(d)(iii), each Lender (including any Lender acting as an Issuing Lender) unconditionally agrees upon any notice pursuant to Section 2.02(d)(iii) to make funds available to the Administrative Agent for the account of the relevant Issuing Lender at the Administrative Agent's Account in an amount equal to its Commitment Percentage of the unpaid L/C Reimbursement Obligation not later than 1:00 p.m. (New York time) on the Business Day specified in such notice by the Administrative Agent, whereupon each Lender that so makes funds available shall be deemed to have made an ABR Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the relevant Issuing Lender.

(iv) The Borrowers jointly and severally agree to pay interest on the unreimbursed amount of each L/C Reimbursement Obligation to the relevant Issuing Lender, for each day from the date of the relevant L/C Payment until such L/C

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Reimbursement Obligation is reimbursed or refinanced in full as herein provided, at the rate provided in Section 3.02(b)(ii).

(v) Subject to the proviso in Section 2.02(d)(iii), each Lender's obligation to make the payments provided in clause (iv) above to reimburse an Issuing Lender for any L/C Payment shall be absolute and unconditional and shall not be affected by (A) any setoff or counterclaim which such Lender may have against an Issuing Lender, any Borrower or any other Person, (B) the occurrence or continuance of a Default or any reduction or termination of the Commitments or any of them, (C) any of the matters referred to in clause (e) below or (D) any other circumstance whatsoever.

(vi) If any Lender fails timely to make available to the Administrative Agent for the account of an Issuing Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.02, such Issuing Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to such Issuing Lender at a rate per annum equal to the Federal Funds Rate from time to time in effect (without duplication of amounts paid by any Borrower under clause (v) above). A certificate of such Issuing Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(vii) At any time after an Issuing Lender has made an L/C Payment and has received funds from a Lender in respect of such payment in accordance with Section 2.02, if the Administrative Agent receives for the account of such Issuing Lender any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from a Borrower or otherwise, including proceeds of cash collateral applied thereto by the Administrative Agent), the Administrative Agent will promptly distribute to such Lender its pro rata share thereof in the same funds as those received by the Administrative Agent.

(e) Borrowers Obligations Unconditional. The joint and several obligation of the Borrowers to reimburse each Issuing Lender for each L/C Payment under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances whatsoever, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, any Loan Document or any other agreement or instrument relating thereto;

(ii) the existence of any claim, counterclaim, set-off, defense or other right that the Borrower may have at any time against any beneficiary of such Letter of Credit (or any Person for whom any such beneficiary may be acting), such Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto; or

(iii) any sight draft, demand, certificate or 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, or any loss or delay in the transmission or otherwise of any document required in order to obtain an L/C Payment under such Letter of Credit; or

(iv) any payment by such Issuing Lender under such Letter of Credit against presentation of a sight draft or certificate that does not strictly comply with the terms of such Letter of Credit or any payment made by such Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any bankruptcy, insolvency, reorganization or similar law.

(f) Issuing Lender Rights. Each Lender and each Borrower agrees that, in making any L/C Payment under a Letter of Credit, the relevant Issuing Lender shall not have any responsibility to obtain any document (other than any sight draft, certificate and other document expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering the same. None of the Issuing Lenders, the Administrative Agent, any of the respective Related Parties, nor any correspondents, participants or assignees of the Issuing Lender shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Majority Lenders, as applicable, (ii) any action taken or omitted in the absence of bad faith, gross negligence or willful misconduct, or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or L/C Related Document. None of the Issuing Lenders, the Administrative Agent, any of the respective Related Parties, nor any correspondents, participants or assignees of the Issuing Lender, shall be liable or responsible for any of the matters described in Section 2.02(e); provided that anything therein or elsewhere in this Agreement to the contrary notwithstanding, the Borrowers may have a claim against an Issuing Lender, and such Issuing Lender may be liable to the Borrowers, to the extent, but only to the extent, of any direct (as opposed to special, indirect, consequential or punitive) damages suffered by the Borrowers which were directly caused by such Issuing Lender's bad faith, willful misconduct or gross negligence as determined by a final and nonappealable ruling of a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each Issuing Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

(g) Applicability of ISP98. Unless otherwise expressly agreed by an Issuing Lender and the requesting Borrower when a Letter of Credit is issued, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance) shall apply to each Letter of Credit.

SECTION 2.03. Fees.

(a) Agency Fee. The Borrowers jointly and severally agree to pay to the Administrative Agent, for the Administrative Agent's own account, an administrative agency fee at the times and in the amounts as agreed in writing by KCMH and the Administrative Agent.

(b) Facility Fee. The Borrowers jointly and severally agree to pay to the Administrative Agent, for the account of each Lender, a facility fee on the amount of the Commitment of such Lender for each day during the period from the date hereof until the Commitment Termination Date, at the rate calculated based on usage of the Aggregate Facility Amount in accordance with the fee schedule set forth on Annex A, payable quarterly in arrears on the entire Aggregate Facility Amount (irrespective of usage) on the last Business Day of March, June, September and December of each year, on the Commitment Termination Date and on the date of termination of the Commitments.

(c) Letter of Credit Fees.

(i) The Borrowers jointly and severally agree to pay to the Administrative Agent, for the pro rata account of the Lenders based on their respective Commitment Percentages, a commission on the average daily undrawn amount of each outstanding Letter of Credit at a rate equal to the Applicable Margin then in effect for Eurocurrency Loans (minus the amount of the fronting fee referred to below), payable quarterly in arrears on the last Business Day of March, June, September and December of each year and on the Commitment Termination Date, commencing on the first such date after the date hereof.

(ii) The Borrowers jointly and severally agree to pay to each Issuing Lender, for the sole account of such Issuing Lender, (x) a fronting fee with respect to each Letter of Credit issued by such Issuing Lender, payable quarterly in arrears on the last Business Day of each March, June, September and December and on the Commitment Termination Date, in an amount equal to **[\*\*]**% per annum of the average daily available amount of such Letter of Credit and (y) such customary fees and charges in connection with the issuance or administration of each Letter of Credit issued by such Issuing Lender as may be agreed in writing between KCMH and such Issuing Lender from time to time. The Issuing Lender will notify the Borrowers of any and all such fees and charges payable under this Section.

(d) Other Fees. The Borrower shall pay to the Administrative Agent and the Lead Arranger for their own respective accounts such other fees in the amounts and at the times as may be agreed in writing between KCMH and the Administrative Agent and/or the Lead Arranger.

SECTION 2.04. Changes of Commitments.

(a) Commitment Termination Date. The Commitment of each Lender shall be automatically reduced to zero on the Commitment Termination Date.

(b) Commitment Termination or Reduction. KCMH shall have the right, upon at least three Business Days' notice to the Administrative Agent, to terminate in whole or reduce ratably in part the unused portions of the Commitments; provided, that (i) each partial

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reduction shall be in a minimum aggregate amount of \$5,000,000 and (ii) after giving effect to such termination or reduction, (A) the Total Credit Exposure does not exceed the Aggregate Facility Amount and (B) the L/C Exposure does not exceed the Letter of Credit Facility Amount. Once terminated or reduced, the Commitments may not be reinstated.

SECTION 2.05. Concerning Joint and Several Liability of the Borrowers.

(a) Each of the Borrowers is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lenders and the Administrative Agent under this Agreement, for the mutual benefit, directly and indirectly, of each of the Borrowers and in consideration of the undertakings of each other Borrower to accept joint and several liability for the Obligations.

(b) Each of the Borrowers, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a primary obligor and co-debtor, joint and several liability with each other Borrower, with respect to the payment and performance of all of the Obligations (including, without limitation, any Obligations arising under this Section 2.05), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each of the Borrowers without preferences or distinction among them.

(c) If and to the extent that any of the Borrowers shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in accordance with the terms thereof, then, in each such event, the other Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each of the Borrowers under the provisions of this Section 2.05 constitute the full recourse Obligations of each of the Borrowers enforceable against each such Person to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or the other Loan Documents or any other circumstance whatsoever.

(e) Except as otherwise expressly provided herein, each Borrower hereby waives promptness, diligence, presentment, demand, protest, notice of acceptance of its joint and several liability, notice of any and all advances of the Loans made under this Agreement and any promissory note issued hereunder, notice of occurrence of any Default or Event of Default (except to the extent notice is expressly required to be given pursuant to the terms of this Agreement or any of the other Loan Documents), or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by the Administrative Agent or the Lenders under or in respect of any of the Obligations hereunder, any requirement of diligence and, generally, all demands, notices and other formalities of every kind in connection with this Agreement and the other Loan Documents. Each Borrower hereby waives all defenses which may be available by virtue of any valuation, stay, moratorium law or other similar law now or hereafter in effect, any right to require the marshaling of assets of the Borrowers and any other entity or Person primarily or secondarily liable with respect to any of the Obligations, and all surety ship defenses generally. Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment, or place or manner for payment,



compromise, refinancing, consolidation or renewals of any of the Obligations hereunder, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by the Administrative Agent and the Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement and the other Loan Documents, any and all other indulgences whatsoever by the Administrative Agent and the Lenders in respect of any of the Obligations hereunder, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of such Obligations or the addition, substitution or release, in whole or in part, of any Borrower or any other entity or Person primarily or secondarily liable for any Obligation. Each Borrower further agrees that its Obligations shall not be released or discharged, in whole or in part, or otherwise affected by the adequacy of any rights which the Administrative Agent or any Lender may have against any collateral security, guaranty or other means of obtaining repayment of any of the Obligations, the impairment of any collateral security securing or guaranty supporting the Obligations, including, without limitation, the failure to protect or preserve any rights which any Administrative Agent or any Lender may have in such collateral security or guaranty or the substitution, exchange, surrender, release, loss or destruction of any such collateral security, any other act or omission which might in any manner or to any extent vary the risk of such Borrower, or otherwise operate as a release or discharge of such Borrower, all of which may be done without notice to such Borrower. If for any reason any other Borrower has no legal existence or is under no legal obligation to discharge any of the Obligations, or if any of the Obligations have become irrecoverable from any other Borrower by reason of such other Borrower's insolvency, bankruptcy or reorganization or by other operation of law or for any reason, this Agreement and the other Loan Documents to which it is a party shall nevertheless be binding on such Borrower to the same extent as if such Borrower at all times had been the sole obligor on such Obligations. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of the Administrative Agent and the Lenders, including, without limitation, any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder which might, but for the provisions of this Section 2.05, afford grounds for terminating, discharging or relieving such Borrower, in whole or in part, from any of its obligations under this Section 2.05, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the obligations of such Borrower under this Section 2.05 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.05 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any reconstruction or similar proceeding with respect to any other Borrower, or any of the Lenders. The joint and several liability of the Borrowers hereunder shall continue in full force and effect notwithstanding any absorption, merger, amalgamation or any other change whatsoever in the name, ownership, membership, constitution or place of formation of any Borrower or the Lenders. Each of the Borrowers acknowledges and confirms that it has itself established its own adequate means of obtaining from the other Borrowers on a continuing basis all information desired by such Borrower concerning the financial condition of the other Borrowers and that each such Borrower will look to the other Borrowers and not to the Administrative Agent or any Lender in order for such Borrower to keep adequately informed of changes in the other Borrowers' respective financial conditions.

(f) The provisions of this Section 2.05 are made for the benefit of the Lenders and the Administrative Agent and their respective permitted successors and assigns, and may be enforced by it or them from time to time against any or all of the Borrowers as often as occasion therefor may arise and without requirement on the part of the Lenders, the Administrative Agent or such successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against the other Borrowers or to exhaust any remedies available to it or them against any other Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.05 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied and all Commitments terminated. If at any time, any payment, or any part thereof made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by any Lender or the Administrative Agent upon the insolvency, bankruptcy or reorganization of any of the Borrowers, or otherwise, the provisions of this Section 2.05 will forthwith be reinstated in effect, as though such payment had not been made.

(g) Each of the Borrowers hereby agrees that it will not enforce any of its rights of reimbursement, contribution, subrogation or the like against any other Borrower with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to any of the Lenders or the Administrative Agent with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been indefeasibly paid in full in cash and all Commitments terminated. Any claim which any Borrower may have against any other Borrower with respect to any payments to the Lenders or the Administrative Agent hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Borrower, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Borrower therefor.

(h) Each of the Borrowers hereby agrees that the payment of any amounts due with respect to the indebtedness owing by any Borrower to any other Borrower is hereby subordinated to the prior payment in full in cash of the Obligations and the termination of the all Commitments. Each Borrower hereby agrees that after the occurrence and during the continuance of any Event of Default, unless the Administrative Agent otherwise agrees, such Borrower will not demand, sue for or otherwise attempt to collect any indebtedness of any other Borrower owing to such Borrower until the Obligations shall have been paid in full in cash. If, notwithstanding the foregoing sentence, such Borrower shall collect, enforce or receive any amounts in respect of such indebtedness, such amounts shall be collected, enforced and received by such Borrower as trustee for the Administrative Agent on account of the Obligations and shall be paid promptly after receipt to the Administrative Agent.

SECTION 2.06. Contribution.

(a) To the extent that any Borrower shall make a payment under Section 2.05 of all or any of the Obligations (other than Loans made to that Borrower for which it is primarily liable) (a “Support Payment”) that, taking into account all other Support Payments then previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Support Payment in the same portion that such Borrower’s Allocable Amount (as determined immediately prior to such Support Payment) bore to the aggregate Allocable Amounts of each of the Borrowers as determined immediately prior to the making of such Support Payment, then, following indefeasible payment in full in cash of the Obligations and termination of the Commitments, such Borrower shall be entitled to receive contribution and indemnification payments from, and be reimbursed by, the other Borrowers for the net amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Support Payment.

(b) As of any date of determination, the “Allocable Amount” of any Borrower shall be equal to the maximum amount of the claim that could then be recovered from such Borrower under Section 2.06(a) without rendering such claim voidable or avoidable under Section 548 of Chapter 11 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law.

(c) This Section 2.06 is intended only to define the relative rights of Borrowers and nothing set forth in this Section 2.06 is intended or shall impair the obligations of the Borrowers, jointly and severally, to pay any amounts as and when the same shall become due and payable in accordance with the terms of this Agreement, including Section 2.05. Nothing contained in this Section 2.06 shall limit the liability of any Borrower to pay the Loans or L/C Reimbursement Obligations made directly or indirectly to or for the benefit of that Borrower and accrued interest, fees and expenses with respect thereto for which such Borrower shall be primarily liable.

(d) The parties hereto acknowledge that the rights of contribution and indemnification of any Borrower under this Section 2.06 shall constitute assets of such Borrower.

(e) The rights of an indemnifying Borrower against the other Borrowers under this Section 2.06 shall be exercisable upon the full and indefeasible payment of the Obligations and the termination of Commitments.

### ARTICLE III

#### PAYMENTS

SECTION 3.01. Repayment. Each Borrower agrees to repay the full principal amount of each Loan by each Lender, and each such Loan shall mature, on the Commitment Termination Date.

SECTION 3.02. Interest.

(a) Ordinary Interest. The Borrowers jointly and severally agree to pay interest on the unpaid principal amount of each Loan, from the date of such Loan until such principal amount shall be paid in full, at the following rates per annum:

(i) ABR Loans. While such Loan is an ABR Loan, a rate per annum equal to the ABR in effect from time to time plus the Applicable Margin as in effect from time to time, interest under this clause (i) to be payable quarterly in arrears on the last Business Day of each March, June, September and December and on the date such ABR Loan shall be Converted and on the date of each payment of principal thereof.

(ii) Eurocurrency Loans. While such Loan is a Eurocurrency Loan, a rate per annum for each Interest Period for such Loan equal to the Eurocurrency Rate for such Interest Period plus the Applicable Margin as in effect from time to time, interest under this clause (ii) to be payable on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on the date three months after the first day of such Interest Period, and on each date on which such Eurocurrency Loan shall be Continued or Converted and on the date of each payment of principal thereof.

(b) Default Interest. Notwithstanding the foregoing, the Borrowers jointly and severally shall pay interest on:

(i) any principal of any Loan that is not paid when due (whether at scheduled maturity or otherwise), payable on demand and in any event on the date such amount shall be paid, at a rate per annum equal at all times to two percent (2%) per annum above the rate per annum required to be paid on such Loan pursuant to said Section 3.02(a)(i) or (a)(ii), as applicable; and

(ii) any interest, fee or other amount thereof (other than any principal) that is not paid when due, from the due date thereof until such amount shall be paid, payable on demand and in any event on the date such amount shall be paid in full, at a rate per annum equal at all times to two percent (2%) per annum above the rate per annum then required to be paid on ABR Loans.

SECTION 3.03. Eurocurrency Reserves. The Borrowers jointly and severally shall pay to each Lender, as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency Liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which shall be due and payable on each date on which interest is payable on such Loan, provided KCMH shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest from such Lender. If a Lender fails to give notice 10 days prior to the relevant interest payment date, such additional interest shall be due and payable 10 days from receipt of such notice.

SECTION 3.04. Interest Rate Determinations.

(a) Notice of Interest Rates. The Administrative Agent shall give prompt notice to KCMH and the Lenders of the applicable interest rates determined by the Administrative Agent.

(b) Eurocurrency Rate Inadequate. If, with respect to any Eurocurrency Loan, (x) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurocurrency Rate (including because the Screen Page is not available or published on a current basis), for such Interest Period or (y) the Majority Lenders notify the Administrative Agent that the Eurocurrency Rate for any Interest Period for such Loans will not fairly reflect the cost to such Majority Lenders of making, funding or maintaining their respective Eurocurrency Loans for such Interest Period, the Administrative Agent shall so notify KCMH and the Lenders, whereupon:

(i) any Notice of Borrowing requesting a Borrowing comprised of Eurocurrency Loans shall be ineffective;

(ii) each Eurocurrency Loan will automatically, on the last day of the then current Interest Period therefor, be Converted into an ABR Loan; and

(iii) the obligation of the Lenders to make or Continue, or to Convert Loans into, Eurocurrency Loans shall be suspended until the Administrative Agent shall notify KCMH and such Lenders that the circumstances causing such suspension no longer exist.

~~(e) Alternative Rate of Interest. If at any time the Administrative Agent determines (which determination shall be conclusive absent manifest error) that (i) the circumstances set forth in clause (b)(x) have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (b)(x) have not arisen but either (w) the supervisor for the administrator of the Screen Page has made a public statement that the administrator of the Screen Page is insolvent (and there is no successor administrator that will continue publication of the Screen Page), (x) the administrator of the Screen Page has made a public statement identifying a specific date after which the Screen Page will permanently or indefinitely cease to be published by it (and there is no successor administrator that will continue publication of the Screen Page), (y) the supervisor for the administrator of the Screen Page has made a public statement identifying a specific date after which the Screen Page will permanently or indefinitely cease to be published or (z) the supervisor for the administrator of the Screen Page or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Screen Page may no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrowers shall endeavor to establish an alternate rate of interest to the Eurocurrency Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable (but for the avoidance of doubt, such related changes shall not include a reduction of the Applicable Margin); provided that, if such alternate rate of interest as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.01, such amendment~~

shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Majority Lenders stating that such Majority Lenders object to such amendment. Until an alternate rate of interest shall be determined in accordance with this clause (c) (but, in the case of the circumstances described in clause (ii)(w), clause (ii)(x) or clause (ii)(y) of the first sentence of this Section 3.04(c), only to the extent the Screen Page for such Interest Period is not available or published at such time on a current basis), (x) any Notice of Borrowing that requests the conversion of any Borrowing to, or continuation of any Borrowing as, a Eurodollar Borrowing shall be ineffective and (y) if any Notice of Borrowing requests a Eurodollar Borrowing, such Borrowing shall be made as an ABR Borrowing.

(c) Benchmark Replacement Setting.

(i) Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document (and any Hedging Agreement shall be deemed not to be a "Loan Document" for purposes of this Section titled "Benchmark Replacement Setting"), if a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the relevant then-current Benchmark, then (x) if a Benchmark Replacement is determined in accordance with clause (1) or (2) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (y) if a Benchmark Replacement is determined in accordance with clause (3) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided by the Administrative Agent to the Lenders and the Borrower without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders.

(ii) Notwithstanding anything to the contrary herein or in any other Loan Document, solely in the case of Eurocurrency Loans denominated in Dollars and subject to the proviso below in this paragraph, if a Term SOFR Transition Event and its related Benchmark Replacement Date have occurred prior to the Reference Time in respect of any setting of the then-current Benchmark for Eurocurrency Loans denominated in Dollars, then the applicable Benchmark Replacement will replace such then-current Benchmark for all purposes hereunder or under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document; provided that, this clause (ii) shall not be effective unless (x) the

Administrative Agent has delivered to the Lenders and the Borrower a Term SOFR Notice and (y) the Borrower has provided its prior written consent to the delivery of such Term SOFR Notice in accordance with clause (ii) of the definition of “Term SOFR Transition Event.”

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

(iv) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (u) any occurrence of a Benchmark Transition Event (other than the March 5th Announcements), a Term SOFR Transition Event or an Early Opt-in Election, as applicable, (v) the occurrence of a Benchmark Replacement Date, (w) the implementation of any Benchmark Replacement, (x) the effectiveness of any Benchmark Replacement Conforming Changes, (y) the removal or reinstatement of any tenor of a Benchmark pursuant to clause (v) below and (z) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent, the Borrower or, if applicable, any Lender (or group of Lenders) pursuant to this Section titled “Benchmark Replacement Setting,” 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 titled “Benchmark Replacement Setting.”

(v) 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), (x) if a then-current Benchmark is a term rate (including Term SOFR or a Relevant LIBOR) and either (A) 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 (B) 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 (1) is no longer representative or will no longer be representative as of a specified date or (2) will cease to be provided by the administrator permanently or indefinitely as of a specified date, then the Administrative Agent may modify the definition of “Interest Period” for any setting of such Benchmark at or after such time to remove such affected tenor and (y) if a tenor that was removed pursuant to clause (x) above either (A) is subsequently displayed on a screen or information service for such Benchmark (including a Benchmark Replacement) or (B) is not, or is no longer, subject to an announcement that it is no longer or will no longer be representative for such

Benchmark (including a Benchmark Replacement) or will cease to be provided by the administrator, then the Administrative Agent may modify the definition of "Interest Period" for all settings of such Benchmark at or after such time to reinstate such previously removed tenor.

(vi) Benchmark Unavailability Period. Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower may revoke any request for a borrowing of, Conversion to or Continuation of Eurocurrency Loans to be made, Converted or Continued in the relevant then-current Benchmark subject to such Benchmark Unavailability Period during any Benchmark Unavailability Period and, failing that, either (x) the Borrower will be deemed to have Converted (1) any request for a borrowing of Eurocurrency Loans denominated in Dollars into a request for a borrowing of or Conversion to ABR Loans and (2) any request for a borrowing of Eurocurrency Loans denominated in an Alternate Currency shall be ineffective. Furthermore, if any Eurocurrency Loan is outstanding on the date of the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period with respect to a Eurocurrency Loan, (i) if such Eurocurrency Loan is denominated in Dollars, then on the last day of the Interest Period applicable to such Loan (or the next succeeding Business Day if such day is not a Business Day), such Loan shall be prepaid by the Borrower on such day or Converted by the Administrative Agent to, and shall constitute, an ABR Loan on such day, (ii) if such Eurocurrency Loan is denominated in any Alternate Currency, then such Loan shall, on the last day of the Interest Period or calendar quarter, as applicable, to such Loan (or the next succeeding Business Day if such day is not a Business Day), at the Borrower's election prior to such day, (A) be prepaid by the Borrower on such day or (B) be Converted by the Administrative Agent to, and (subject to the remainder of this subclause (B)) shall constitute, an ABR Loan denominated in Dollars (in an amount equal to the Dollar Equivalent of such Alternate Currency) on such day (it being understood and agreed that if the Borrower does not so prepay such Loan on such day by 12:00 noon, New York City time, the Administrative Agent is authorized to effect such Conversion of such Eurocurrency Loan into an ABR Loan), and, in the case of such subclause (B), upon any subsequent implementation of a Benchmark Replacement in respect of such Alternate Currency pursuant to this Section titled "Benchmark Replacement Setting", such ABR Loan shall then be Converted by the Administrative Agent to, and shall constitute, a Eurocurrency Loan denominated in such original Alternate Currency (in an amount equal to the Alternate Currency Equivalent thereof) on the day of such implementation, giving effect to such Benchmark Replacement in respect of such Alternate Currency.

(d) Certain Mandatory Conversions.

(i) Upon the occurrence and during the continuance of any Event of Default, (x) each Eurocurrency Loan will automatically, on the last day of the then current Interest Period therefor, be Converted into an ABR Loan and (y) the obligation of the Lenders to make or Continue, or to Convert Loans into, Eurocurrency Loans shall be suspended.



(ii) If this Agreement shall require that any Eurocurrency Loan be Converted to an ABR Loan and such Eurocurrency Loan is denominated in an Alternate Currency, the Borrowers jointly and severally shall on the last day of the current Interest Period pay or prepay the full amount of such Eurocurrency Loan (provided, that the foregoing shall not prevent the Borrower from borrowing additional Loans to the extent otherwise permitted hereunder).

SECTION 3.05. Voluntary Conversion or Continuation of Loans.

(a) Conversions. The requesting Borrower may on any Business Day, upon written notice (or telephonic notice promptly confirmed in writing) given to the Administrative Agent not later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to Interest Periods other than one, two, three or six months, fourth Business Day) prior to the date of the proposed Conversion, Convert all or any portion of the outstanding Loans of one Type comprising part of the same Borrowing into Loans of the other Type; provided that in the case of any such Conversion of a Eurocurrency Loan into an ABR Loan on a day other than the last day of an Interest Period therefor, the Borrowers jointly and severally shall promptly reimburse the Lenders the amounts provided in Section 3.12 relating to such prepayment. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Loans to be Converted, and (z) if such Conversion is into Eurocurrency Loans, the duration of the initial Interest Period for each such Loan. Each notice of Conversion shall be irrevocable and binding on the Borrowers.

(b) Continuations. The requesting Borrower may, on any Business Day, upon written notice (or telephonic notice promptly confirmed in writing) given to the Administrative Agent not later than 11:00 a.m. (New York time) on the third Business Day (or, with respect to Interest Periods other than one, two, three or six months, fourth Business Day) prior to the date of the proposed Continuation, Continue all or any portion of the outstanding Eurocurrency Loans comprising part of the same Borrowing for one or more Interest Periods. Each such notice of a Continuation shall, within the restrictions specified above, specify (i) the date of such Continuation, (ii) the Eurocurrency Loans to be Continued and (y) the duration of the next Interest Period for the Eurocurrency Loans subject to such Continuation. Each notice of Continuation shall be irrevocable and binding on the Borrowers.

SECTION 3.06. Prepayments of Loans.

(a) Optional Prepayment. The requesting Borrower may, on notice (given not later than 11:00 a.m. (New York time) on the Business Day of the proposed prepayment of Loans, with respect to ABR Loans, and on the third Business Day prior to the date of prepayment with respect to Eurocurrency Loans) stating the proposed date and aggregate principal amount (stated in Dollars) of the prepayment, and if such notice is given the Borrowers jointly and severally shall, prepay the outstanding principal amounts of the Loans comprising part of the same Borrowing in whole or ratably in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; provided, however, that (i) each partial prepayment shall be in an aggregate principal amount not less than \$5,000,000 or integral multiples of \$1,000,000 in excess thereof (or, in the case of Loans denominated in an Alternate Currency, the Alternate Currency Equivalent thereof in such Alternate Currency) and (ii) in the

case of any such prepayment of a Eurocurrency Loan on a day other than the last day of an Interest Period therefor, the Borrowers jointly and severally shall reimburse the Lenders the amounts provided in Section 3.12 relating to such prepayment.

(b) Alternate Currency Revaluation. If at any time by reason of fluctuations in foreign exchange rates the Total Credit Exposure exceeds 105% of the then aggregate amount of the Commitments, and the Majority Lenders so request, the Administrative Agent shall use all reasonable efforts to give prompt written notice thereof to KCMH, specifying the amount to be prepaid under this clause (b), and the Borrowers jointly and severally shall prepay Loans or, if no Loans are outstanding, provide cash collateral for or otherwise backstop outstanding Letters of Credit on terms reasonably satisfactory to KCMH, the Issuing Lender and the Administrative Agent, in such aggregate amount as may be required to cause the Total Credit Exposure (treating such cash collateralization or other backstopping for purposes hereof as a reduction in such Total Credit Exposure) to be equal to or less than the aggregate amount of the Commitments, such payments or other measures to be made within 10 Business Days of demand or, in the case of prepayment of Eurocurrency Loans, on the date that is the earlier of (i) the last day of the then current Interest Period therefor and (ii) the last Business Day of the first full calendar month after such revaluation, provided that any such prepayment shall be accompanied by any amounts payable under Section 3.12. The determinations of the Administrative Agent hereunder shall be conclusive and binding on the Borrowers in the absence of manifest error.

SECTION 3.07. Payments; Computations; Etc.

(a) Pro Rata Payments. The Loans comprising each Borrowing shall be made pro rata among the Lenders based on their respective Commitment Percentages. Except as otherwise provided hereunder, all payments of principal of and interest on the Loans shall be made for the pro rata account of the Lenders based on the respective outstanding principal amounts thereof, and all payments of commitment fees and letter of credit commission shall be made for the pro rata account of the Lenders based on their respective Commitment Percentages.

(b) Lenders' Obligations Several. The obligations of the Lenders under this Agreement are several and the failure of any Lender to make any Loan or any payment required to be made by it hereunder shall not relieve any other Lender of its obligations hereunder, nor shall any Lender be responsible for any other Lender's failure to make any Loan required to be made by such other Lender.

(c) Currencies. All payments by the Borrower of or in respect of principal of and interest on and other amounts directly relating to any Loan that are denominated in an Alternate Currency shall be made in such Alternate Currency. All payments of principal and interest on any Loan denominated in Dollars, all payments in respect of any Letter of Credit, and all payments of fees payable pursuant to Section 2.03(c), commitment fees and agency fees hereunder and all other payments by any Borrower provided for in this Agreement, except as provided in the preceding sentence, shall be made in Dollars.

(d) Payments.

(i) The Borrowers shall make each payment hereunder and under each other Loan Document without set-off, counterclaim or deduction of any kind to the Administrative Agent at the Administrative Agent's Account in the Principal Financial Center for the relevant Currency not later than 11:00 a.m. Local Time on the due date of such payment (each such payment made after such time on such date to be deemed to have been made on the next Business Day).

(ii) The Administrative Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal or interest ratably to the Lenders as provided in Section 3.07(a) for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Assumption and recording of the information contained therein in the Register pursuant to Section 9.06(c), from and after the assignment date set forth therein, the Administrative Agent shall remit all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such assignment date directly between themselves.

(e) Computations. All computations of interest based on the ABR (except any Federal Funds Rate component thereof) shall be made by the Administrative Agent on the basis of a year of 365 or 366 days, as the case may be, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest is payable. All computations of interest based on the Eurocurrency Rate or the Federal Funds Rate and of commitment fee shall be made by the Administrative Agent, and any computations of amounts payable pursuant to Section 3.03, shall be made on the basis of a year of 360 days, for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or other amount is payable. Each determination by the Administrative Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(f) Payment Dates. Whenever any payment hereunder or under the Notes would be due on a day other than a Business Day, such due date shall be extended to the next succeeding Business Day, and any such extension of such due date shall in such case be included in the computation of interest; provided, that if such extension would cause payment of principal or interest in respect of Eurocurrency Loans to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(g) Presumption by Administrative Agent.

(i) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed time of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made its share available at such time in accordance with Section 2.01(b) and may (but shall not be obligated), in reliance upon such assumption, make available to a 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 (A) the applicable Lender, on one hand, and (B) the Borrowers on a joint and several basis on the other hand, 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 a Borrower to but excluding the date of payment to the Administrative Agent, at (x) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (y) in the case of a payment to be made by a Borrower, the interest rate applicable to ABR Loans. If a 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 such Borrower the amount of such interest paid by such 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 a Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Unless the Administrative Agent shall have received notice from KCMH prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrowers will not make such payment, the Administrative Agent may assume that the Borrowers have made such payment on such date in accordance herewith and may (but shall not be obligated), in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrowers have not in fact made such payment, then each of the Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation (if such Loan is denominated in Dollars) or at the overnight London Interbank offered rate for the relevant Currency (if such Loan is denominated in an Alternate Currency).

SECTION 3.08. Sharing of Payments, Etc. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender's receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided, that:

(i) if any such participation is purchased and all or any portion of the related payment is recovered, such participation shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this subsection shall not be construed to apply to (x) any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or (y) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans other than to a Borrower or any Subsidiary thereof (as to which the provisions of this subsection shall apply).

The Borrowers consent to the foregoing and agree, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrowers, jointly and severally, rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrowers in the amount of such participation.

SECTION 3.09. Increased Costs.

(a) Eurocurrency Costs. 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 contemplated by Section 3.03) or the Issuing Lender; or

(ii) impose on any Lender or the Issuing Lender or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurocurrency Loan (or of maintaining its obligation to make any Eurocurrency Loan), or to increase the cost to such Lender or the Issuing Lender of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Issuing Lender hereunder (whether of principal, interest or any other amount) then, from time to time upon request of such Lender or the Issuing Lender, the Borrowers jointly and severally will pay to such Lender or the Issuing Lender such additional amount or amounts as will compensate such Lender or the Issuing Lender, as the case may be, for such additional costs incurred or reduction suffered. This Section 3.09 shall not apply to Excluded Taxes or any matters covered by Section 3.11 relating to Taxes.

(b) Capital Requirements. If any Lender or the Issuing Lender determines that any Change in Law affecting such Lender or the Issuing Lender or any lending office of such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company, if any, regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or the Issuing Lender's capital or on the capital of such Lender's or the Issuing Lender's holding company as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letter of Credit issued by the Issuing Lender, to a level below that which such Lender or the

Issuing Lender or such Lender's or the Issuing Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Issuing Lender's policies and the policies of such Lender's or the Issuing Lender's holding company with respect to capital adequacy), then from time to time upon request of such Lender or the Issuing Lender, the Borrowers jointly and severally will pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender's or the Issuing Lender's holding company for such reduction.

(c) Certificates for Reimbursement. A certificate of any Lender or the Issuing Lender setting forth the amount or amounts and a reasonable basis for the determination thereof necessary to compensate such Lender or the Issuing Lender or its holding company, as the case may be, as specified in clauses (a) or (b) of this Section 3.09 and delivered to KCMH shall be conclusive on all Borrowers absent manifest error. The Borrowers jointly and severally shall pay such Lender or the Issuing Lender, as the case may be, the amount shown as due on any such certificate within 10 Business Days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or the Issuing Lender to demand compensation pursuant to this Section 3.09 shall not constitute a waiver of such Lender's or the Issuing Lender's right to demand such compensation, provided, that the Borrowers shall not be required to compensate a Lender or the Issuing Lender pursuant to this Section for any increased costs incurred or reductions suffered more than 180 days prior to the date that such Lender or the Issuing Lender, as the case may be, notifies KCMH of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Issuing Lender'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 180-day period referred to above shall be extended to include the period of retroactive effect thereof).

SECTION 3.10. Illegality. Notwithstanding any other provision of this Agreement, if any Lender shall notify the Administrative Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, for such Lender or its Eurocurrency Lending Office to perform its obligations hereunder to make or continue Eurocurrency Loans or to fund or otherwise maintain Eurocurrency Loans hereunder, (a) the obligation of such Lender to make or Continue, or to Convert Loans into, Eurocurrency Loans shall be suspended until the Administrative Agent shall notify KCMH and the Lenders that the circumstances causing such suspension no longer exist and (b) each Eurocurrency Loan of such Lender shall convert into an ABR Loan at the end of the then current Interest Period for such Eurocurrency Loan, if such Lender may lawfully continue to maintain such Eurocurrency Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Loans.

SECTION 3.11. Taxes.

(a) All payments on account of the principal of and interest on the Loans and the Notes, fees and all other amounts whatsoever payable by the Borrowers under the Loan Documents shall be made free and clear of and without reduction or liability for any Taxes, except as required by applicable law, decree or regulation.

(b) In the event that any Borrower or the Administrative Agent shall be required by applicable law, decree or regulation to deduct or withhold any Tax from any amounts payable to the Administrative Agent or any Lender on, under or in respect of this Agreement, the Loans or any Loan Document, the Borrowers jointly and severally 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, decree or regulation and, if such Tax is an Indemnified Tax, then the Borrowers jointly and severally shall promptly pay such recipient such additional amounts as may be required, after the deduction or withholding of Indemnified Taxes, to enable such recipient to receive from the Borrowers on the due date thereof an amount equal to the full amount stated to be payable to such recipient.

(c) The Borrowers jointly and severally shall indemnify the Administrative Agent and each Lender (including each Issuing Lender) against, and reimburse them upon demand for, any incremental Taxes, interest or penalties, that they may incur at any time arising out of or in connection with any such failure of the Borrowers to make any payment of Indemnified Taxes when due.

(d) KCMH shall furnish to the Administrative Agent original or certified copies of official tax receipts in respect of each payment of Indemnified Taxes required under this Section 3.11, as soon as practicable after the date such payment is made, and the Borrowers shall promptly furnish to the Administrative Agent at its request or at the request of any Lender (through the Administrative Agent) to KCMH any other information, documents and receipts that the Administrative Agent or such Lender may reasonably require to establish that full and timely payment has been made of all Indemnified Taxes required to be paid under this Section 3.11.

(e)

(i) Each Lender or Participant that is not a "U.S. Person" as defined in Section 7701(a)(30) of the Code (a "Non-U.S. Lender") shall deliver to KCMH and the Administrative Agent (or, in the case of a Participant, to the Lender from which the related participation shall have been purchased) two copies of either U.S. Internal Revenue Service Form W-8BEN or W-8BEN-E, as applicable, Form W-8ECI, Form W-8 IMY, Form W-8 EXP, or, in the case of a Non-U.S. Lender claiming exemption from U.S. federal withholding tax under Section 871(h) or 881(c) of the Code with respect to payments of "portfolio interest", a statement substantially in the form of Exhibit E-1, Exhibit E-2, Exhibit E-3 or Exhibit E-4, as applicable, and a Form W-8BEN or W-8BEN-E, as applicable, or any subsequent versions thereof or successors thereto, properly completed and duly executed by such Non-U.S. Lender claiming complete exemption from, or a reduced rate of, U.S. federal withholding tax on all payments by the Borrower under this Agreement and the other Loan Documents. Such forms shall be delivered by each Non-U.S. Lender on or before the date it becomes a party to this Agreement (or, in the case of any Participant, on or before the date such Participant purchases the related participation).

(ii) Each Lender that is a "U.S. Person" as defined in Section 7701(a)(30) of the Code shall deliver to KCMH and the Administrative Agent (or, in the case of a

Participant of a Non-U.S. Lender, to such Non-U.S. Lender) 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 KCMH or the Administrative Agent), executed originals of IRS Form W-9 certifying that such Lender or Participant, as applicable, is exempt from U.S. Federal backup withholding tax.

(f) Each Lender shall deliver to any Borrower and the Administrative Agent at the time or times prescribed by applicable law and at such time or times reasonably requested by such Borrower or the Administrative Agent such documentation prescribed by applicable law and such additional documentation reasonably requested by such Borrower or the Administrative Agent as may be necessary for such Borrower or the Administrative Agent to comply with any obligations of such Borrower of the Administrative Agent under FATCA or any similar regime arising as a result of the transactions contemplated under any Loan Document.

In addition, each Non-U.S. Lender shall deliver such forms promptly upon the written request of KCMH after the obsolescence or invalidity of any form previously delivered by such Non-U.S. Lender. Each Non-U.S. Lender shall promptly notify KCMH at any time it determines that it is no longer in a position to provide any previously delivered certificate to KCMH (or any other form of certification adopted by the U.S. taxing authorities for such purpose). Notwithstanding any other provision of this paragraph, a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(g) A Lender that is entitled to an exemption from or reduction of non-U.S. withholding tax under the law of the jurisdiction in which a Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to KCMH (with a copy to the Administrative Agent), at the time or times prescribed by applicable law or reasonably requested by KCMH, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate, provided that such Lender is legally entitled to complete, execute and deliver such documentation and in such Lender's judgment such completion, execution or submission would not materially prejudice the legal position of such Lender.

(h) If the Administrative Agent, any Lender or the Issuing Lender determines, in its sole discretion, that it has received a refund or credit (in lieu of such refund) of any Taxes or Other Taxes as to which it has been indemnified by the Borrowers or with respect to which a Borrower has paid additional amounts pursuant to this Section 3.11, it shall pay to such Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 3.11 with respect to the Taxes or Other Taxes giving rise to such refund), net of all reasonable out-of-pocket expenses of the Administrative Agent, any Lender or the Issuing Lender, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Borrower, upon the request of the Administrative Agent, any Lender or the Issuing Lender, agrees to repay the amount paid over to such Borrower to the Administrative Agent, any Lender or the Issuing Lender in the event the Administrative Agent, any Lender or the Issuing Lender is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any



Lender or the Issuing Lender to make available its tax returns or its books or records (or any other information relating to its taxes that it deems confidential) to any Borrower or any other Person.

(i) If pursuant to this Section 3.11 a Borrower is required to pay to or for the account of any Lender any additional amounts, then such Lender shall use commercially reasonable efforts to change the jurisdiction of its Applicable Lending Office if, in the sole and absolute judgment of such Lender, such change (i) would eliminate or reduce any such excess additional amounts and (ii) would not otherwise be materially disadvantageous to such Lender.

SECTION 3.12. Break Funding Payments. The Borrowers jointly and severally agree to indemnify each Lender and to hold each Lender harmless from any loss, cost or expense incurred by such Lender which is in the nature of funding breakage costs or costs of liquidation or redeployment of deposits or other funds and any other related expense (but excluding loss of margin or other loss of anticipated profit), which such Lender may sustain or incur as a consequence of (a) default by any Borrower in making any Borrowing of Eurocurrency Loans after a Borrower has given a Notice of Borrowing requesting the same in accordance with the provisions of this Agreement (including as a result of any failure to fulfill, on or before the date specified in such Notice of Borrowing, the applicable conditions set forth in Article IV), (b) default by any Borrower in making any prepayment of any Eurocurrency Loan when due after such Borrower has given notice thereof in accordance with this Agreement, (c) the making by any Borrower of a prepayment of any Eurocurrency Loan on a day which is not the last day of an Interest Period with respect thereto, (d) default by any Borrower in payment when due of the principal of or interest on any Eurocurrency Loan, (e) the Conversion or Continuation of any Eurocurrency Loan on a day other than on the last day of an Interest Period with respect thereto, and (f) any assignment such Lender is required to make pursuant to Section 3.13(b) if such Lender holds Eurocurrency Loans at the time of such assignment. A certificate of any Lender setting forth any amount or amounts and a reasonable basis for the determination thereof that such Lender is entitled to receive pursuant to this Section and delivered to KCMH shall be conclusive absent manifest error. The Borrowers jointly and severally shall pay to such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 3.13. Mitigation Obligations: Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.09, or requires any Borrower to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.11, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, if, in the sole and absolute judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.09 or 3.11, as the case may be,

in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.09, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.11, or if any Lender becomes a Defaulting Lender, or if any Lender has failed to consent to a proposed amendment, waiver, discharge or termination that, pursuant to the terms of Section 9.01, requires the consent of all of the Lenders or all of the Lenders affected (and such Lender is an affected Lender) and with respect to which the Majority Lenders shall have granted their consent, then such Borrower may, at the Borrowers' joint and several 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 9.06), all of its interests, rights 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) no Default or Event of Default has occurred and is continuing on and as of the date of such notice and the date of such assignment;
- (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.12) 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 3.09 or payments required to be made pursuant to Section 3.11, such assignment will result in a reduction in such compensation or payments thereafter; and
- (iv) such assignment does not conflict with applicable Laws.

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 a Borrower to require such assignment and delegation cease to apply. A Lender so replaced shall not be required to pay the processing and recordation fee referred to in Section 9.06(b).

#### SECTION 3.14. Defaulting Lenders.

(a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as 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 Majority Lenders.

(ii) Reallocation of Payments. 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 VII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.03 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 the Issuing Lender hereunder; *third*, to cash collateralize the Issuing Lenders' L/C Exposure with respect to such Defaulting Lender; *fourth*, as any 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 KCMH, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) cash collateralize the Issuing Lender's future L/C Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement; *sixth*, to the payment of any amounts owing to the Lenders or the Issuing Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender or the Issuing Lender 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 any Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Payments in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Payments owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Payments owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Reimbursement Obligations are held by the Lenders pro rata in accordance with their Commitments without giving effect to Section 3.14(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post cash collateral pursuant to this Section 3.14(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. Each Defaulting Lender shall be entitled to receive the facility fee pursuant to Section 2.03(b) for any period during which that Lender is a Defaulting Lender only to extent allocable to the sum of (1) the outstanding principal

amount of the Revolving Loans funded by it, and (2) its Commitment Percentage of the stated amount of Letters of Credit for which it has provided cash collateral. Each Defaulting Lender shall be entitled to receive letter of credit fees pursuant to Section 2.03(c) for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Commitment Percentage of the stated amount of Letters of Credit for which it has provided cash collateral pursuant to the terms hereof. With respect to any facility fee or letter of credit fee not required to be paid to any Defaulting Lender pursuant to this Section 3.14(a)(iii), the Borrowers jointly and severally 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 Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Issuing Lender the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender's L/C Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce L/C Exposure. All or any part of such Defaulting Lender's participation in Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Commitment Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x), if requested by the applicable Issuing Lender, the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate of the Total Credit Exposure allocable to any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation

(v) Cash Collateral. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrowers shall jointly and severally, without prejudice to any right or remedy available to it hereunder or under law, promptly cash collateralize the Issuing Lenders' L/C Exposure.

(b) Defaulting Lender Cure. If KCMH, the Administrative Agent and the Issuing Lender agree in writing in their sole discretion that a Defaulting Lender should no longer be deemed to be 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), such Lender will, to the extent applicable, purchase that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a *pro rata* basis by the Lenders in accordance with their Commitment Percentages (without giving effect to Section 3.14(a)(iv)), whereupon that 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 Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is reasonably satisfied that it will have no L/C Exposure after giving effect thereto.

#### ARTICLE IV

#### CONDITIONS PRECEDENT

SECTION 4.01. Closing Conditions. Effectiveness of this Agreement is subject to the satisfaction or waiver of the following conditions precedent:

(a) The Administrative Agent's receipt of the following:

(i) this Agreement, duly executed and delivered by the Borrower and each of the other parties hereto;

(ii) the Guarantee and Security Agreement, duly executed and delivered by the Borrowers as of the Closing Date, together with duly prepared financing statements in form for filing under the applicable UCC in the jurisdiction of formation of each Borrower;

(iii) certified copies of (x) the constitutive documents of each Borrower and (y) resolutions or other authorizing documentation of each Obligor and the General Partner evidencing the taking of all necessary action authorizing and approving the execution, delivery and performance by each Borrower of the Loan Documents to which it is a party;

(iv) a certificate of an officer of each Borrower certifying the names and true signatures of the officers authorized to sign the Loan Documents and any other documents to be delivered hereunder by each Borrower;

(v) the legal opinion of Simpson Thacher & Bartlett LLP, counsel to the Borrowers, in a form reasonably acceptable to the Administrative Agent;

(vi) a certificate of an officer of KCMH, dated the Closing Date, certifying that (a) the representations and warranties contained in Section 5.01 and in the other Loan Documents are true and correct in all material respects on and as of such date as though made on and as of such date and (b) no event has occurred and is continuing on and as of such date which constitutes a Default or an Event of Default;

(vii) a certificate attesting to the Solvency of KCMH and its Subsidiaries, taken as a whole, after giving effect to the effectiveness of this Agreement and any Loans made or Letters of Credit issued or outstanding on the Closing Date; and

(viii) (a) all documentation and other information reasonably requested in writing at least five Business Days prior to the Closing Date in order to allow the Administrative Agent to comply with applicable “know your customer” and anti-money laundering rules and regulations, including without limitation, the Patriot Act and (b) any other such documents in customary form and previously agreed between the parties.

(b) KCMH shall have paid (i) all accrued and unpaid fees and any outstanding and accrued and unpaid interest thereon under the Existing Credit Agreement and (ii) all fees and expenses (including fees, charges and disbursements of counsel invoiced prior to the Closing Date) required to be paid on or prior to the Closing Date to the Administrative Agent or the Lead Arranger in connection with this Agreement.

The Administrative Agent will promptly notify the Lenders of the occurrence of the Closing Date.

SECTION 4.02. Conditions Precedent to Each Borrowing and Issuance. The obligation of each Lender to make a Loan during the Availability Period on the occasion of each Borrowing and of the Issuing Lender to issue each Letter of Credit shall be subject to the conditions precedent that on the date of and after giving effect to such Borrowing or issuance, the Total Credit Exposure shall not exceed the then Aggregate Facility Amount, and that the following statements shall be true:

(a) the representations and warranties contained in Section 5.01 and in the other Loan Documents are true and correct in all material respects on and as of the date of such Borrowing or issuance as though made on and as of such date, except to the extent such representation or warranty expressly relates to an earlier date, in which case it is true and correct in all material respects on and as of such earlier date;

(b) no event has occurred and is continuing, or would result from such Borrowing or issuance or from the application of the proceeds from such Borrowing, which constitutes a Default or an Event of Default;

(c) the Debt to Equity Ratio shall be less than or equal to *[\*\*]* to 1.00 after giving pro forma effect to such Borrowing or issuance;

(d) the Administrative Agent and, if applicable, the Issuing Lender shall have received a request for Borrowing or issuance of Letter of Credit in accordance with the requirements hereof; and

(e) in connection with Category V Borrowings, the Administrative Agent and, if applicable, the Issuing Lender shall have received a certificate from the Borrower setting out the information required pursuant to the definition of “Category V Borrowing”.

*[\*\*] = Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

Each request for a Borrowing or issuance of a Letter of Credit (other than a notice for Conversion or Continuation of Loans) submitted by a Borrower shall be deemed to be a representation and warranty that the conditions specified in clauses (a), (b) and (c) of this Section 4.02 have been satisfied on and as of the date of such request.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES

SECTION 5.01. Representations and Warranties. Each Borrower represents and warrants to the Administrative Agent and the Lenders as follows:

(a) Organization. Each Borrower is duly organized, validly existing and in good standing as a limited partnership or limited liability company, as applicable, under the laws of Delaware, and each Guarantor and the General Partner is duly organized, validly existing and in good standing (to the extent such concept is recognized under such law) under the laws of its jurisdiction of organization. Each Obligor (i) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (A) own or lease its assets and carry on its business and (B) execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (ii) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (i)(A) or (ii), to the extent that failure to do so would not reasonably be expected to result in a Material Adverse Effect

(b) Authorization. The execution, delivery and performance by each Borrower of this Agreement and the other Loan Documents are within its powers as set forth in its applicable constituent documents, as the case may be, and have been duly authorized by all necessary action thereunder, and the execution, delivery and performance by each Guarantor of the Guarantee and Security Agreement are within the powers of such Guarantor and have been duly authorized by all necessary action and the execution, delivery and performance by KCMH of the Loan Documents have been duly authorized by all necessary action of the General Partner.

(c) Approvals; No Conflicts; Etc. The execution, delivery and performance by each Obligor of the Loan Documents to which it is a party (i) do not require any consent or approval of, or registration or filing with, any Governmental Authority or Self Regulatory Organization (except for (A) such as have been obtained or made and are in full force and effect in all material respects, (B) filings and recordings in respect of Liens created pursuant to the Guarantee and Security Agreement and (C) such licenses, approvals, authorizations or consents the failure to obtain or make would not reasonably be expected to result in a Material Adverse Effect), (ii) will not violate any applicable Law, regulation or order of any Governmental Authority the violation of which would be reasonably expected to result in a Material Adverse Effect, and (iii) will not violate or constitute an event of default under any credit agreement, loan agreement, note or indenture, or any other material agreement, binding upon it or its Property; and no Default has occurred and is continuing.

(d) Enforceability. Each Obligor has duly executed and delivered each Loan Document to which it is a party and each such Loan Document constitutes the legal, valid and binding obligation of such Obligor enforceable in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity.

(e) No Material Adverse Change. Since December 31, 2019, no event or circumstance has occurred that has had, or would reasonably be expected to have, a Material Adverse Effect.

(f) No Litigation. There are no actions, suits or proceedings by or before any Governmental Authority pending against or, to the knowledge of KCMH, threatened against or affecting it or any of its Subsidiaries that would reasonably be expected to result in a Material Adverse Effect.

(g) Compliance with Laws. Each Obligor is in compliance with all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it or its Property (including, without limitation, the Patriot Act, ERISA, environmental laws and Rule 15c3-1), except where the failure to be in compliance, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(h) Investment Company Status; Margin Regulations. None of the Obligors is required to register under and none of the Obligors is subject to regulation under the Investment Company Act of 1940, as amended. No Borrower is engaged and no Borrower will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U), or extending credit for the purpose of purchasing or carrying margin stock, in each case in violation of such Regulation U. Each U.S. Broker-Dealer Subsidiary is a broker-dealer subject to Regulation T. Neither the making of any Loan hereunder, nor the use of proceeds thereof, will violate or be inconsistent with the provisions of Regulation T, U or X.

(i) Disclosure. No written report, financial statement, certificate or other written information furnished by or on behalf of it to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, taken as a whole, in the light of the circumstances under which they were made, not misleading; provided that with respect to projected financial information, it represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time and that actual results may differ materially from such information.

(j) Use of Proceeds. The proceeds of the Loans and Letters of Credit shall be used to fund (i) the capital requirements of KCMH and its Subsidiaries and (ii) the general corporate and working capital needs of KCMH and its Subsidiaries, in each case, in the ordinary course of KCMH and its Subsidiaries' capital markets business in compliance with Section 6.02(i); provided that no more than \$[\*\*] of the aggregate outstanding Commitments shall be utilized at any one time to make Investments in all Designated Entities and all KCMH

[\*\*] = *Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*



Group Entities that are not Subsidiaries of KCMH and through which KCMH and its Subsidiaries conduct its capital markets business in compliance with Section 6.02(i).

(k) Guarantee and Security Agreement. The Guarantee and Security Agreement is effective to create in favor of the Administrative Agent, for the benefit of the Secured Creditors, a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof (except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting creditors' rights generally and subject to general principles of equity). Subject to the Intercreditor Agreement, in the case of the Pledged Stock represented by certificates described in the Guarantee and Security Agreement, when any stock certificates representing such Pledged Stock are delivered to the Administrative Agent (or its designee), and in the case of the other Collateral described in the Guarantee and Security Agreement, when financing statements in appropriate form are duly completed and filed in the offices specified on Annex I to the Guarantee and Security Agreement and such other filings as are specified on Annex I to the Guarantee and Security Agreement have been completed, the Guarantee and Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the Obligors in such Collateral and the proceeds thereof, as security for the Obligations (as defined in the Guarantee and Security Agreement), in each case prior and superior in right to any other Person (other than with respect to Liens permitted by this Agreement), in each case to the extent security interests in such Collateral may be perfected by delivery of such certificates representing Pledged Stock or such filings.

(l) Ownership of Property. KCMH and each of its Subsidiaries has good record and marketable title to, or valid leasehold interests in, all property necessary in the ordinary conduct of its business, except for such defects in title as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(m) Taxes. Except as would not reasonably be expected to have a Material Adverse Effect, KCMH and each of its Subsidiaries have paid and discharged all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, other than those (i) not yet delinquent or (ii) contested in good faith as to which adequate reserves have been provided to the extent required by Law and in accordance with GAAP and which would not reasonably be expected to result in a Material Adverse Effect.

(n) ERISA Matters. (i) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan and (ii) neither KCMH nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan, which in either case of (i) or (ii) has not been fully satisfied or, with respect to clauses (i) and (ii), except as would not reasonably be expected to result in any Material Adverse Effect.

(o) Subsidiaries. Schedule II is a complete list of Subsidiaries of KCMH as of the Closing Date.

(p) Registered Broker-Dealer; Membership. Each of KCM U.S. and each other U.S. Broker-Dealer Subsidiary is duly registered with the SEC as a broker-dealer and is a member in good standing of FINRA, and each non-U.S. Broker-Dealer Subsidiary is duly

registered with, or licensed by, any Governmental Authority that requires registration or licensing and is a member in good standing of any local body similar to FINRA, including, but not limited to, the Financial Services Authority (in the case of KCM U.K.) and the Securities and Futures Commission (in the case of KCM Asia) to the extent that such membership is required by any Governmental Authority.

(q) SIPC Assessments. No U.S. Broker-Dealer Subsidiary is in arrears with respect to any assessment made upon it by the SIPC, and no non-U.S. Broker Dealer Subsidiary is in arrears with respect to any assessment made upon it by any local body which is similar to the SIPC.

## ARTICLE VI

### COVENANTS

SECTION 6.01. Affirmative Covenants. So long as any principal of or interest on any Loan or any other amount or obligation under the Loan Documents (other than contingent indemnity obligations not then due) shall remain unpaid or unsatisfied or any Lender shall have any Commitment or any Letter of Credit shall remain outstanding hereunder (unless such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender), KCMH covenants and agrees that, unless the Majority Lenders shall otherwise consent in writing:

(a) Reporting Requirements. KCMH will furnish to the Lenders:

(i) within 50 days after the end of each of the first three fiscal quarters, its unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows, in each case as of the end of and for such fiscal quarter, setting forth in each case in comparative form (if applicable) the figures for the corresponding period of the previous fiscal year, certified by a Financial Officer to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of KCMH and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to the absence of (or absence of a requirement to have) footnotes and to year-end adjustments;

(ii) within 100 days after the end of each fiscal year, KCMH's unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows as of the end of and for such fiscal year, setting forth in each case in comparative form (if applicable) the figures for the previous fiscal year, certified by a Financial Officer to the effect that such financial statements present fairly in all material respects the financial condition and results of operations of KCMH and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to the absence of (or absence of a requirement to have) footnotes;

(iii) concurrently with any delivery of financial statements under clauses (i) and (ii) above, a certificate of a Financial Officer (x) certifying that no Default has

occurred or, if a Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (y) identifying any Subsidiary that has become a Material Foreign Subsidiary during the most recently ended fiscal quarter and (z) setting forth calculations demonstrating in reasonable detail compliance with Section 6.03;

(8) concurrently with the delivery of financial statements under clause (ii) above, an operating income budget of KCMH in reasonable detail for the current fiscal year as customarily prepared by management of KCMH for their internal use, setting forth the principal assumptions upon which such budget is based;

(iv) as soon as available, but in any event within five Business Days of delivery to any Governmental Authority or Self Regulatory Organization, the audited annual financial statements of any Broker-Dealer Subsidiary required to be furnished to such Governmental Authority or Self Regulatory Organization;

(v) within 15 days after the end of each calendar month as to which there are any Loans or Letters of Credit outstanding on the last date of such calendar month, a schedule of Category II Borrowings, Category III Borrowings and Category IV Borrowings on the consolidated balance sheet of KCMH and its Subsidiaries, which schedule will provide the notional value of each and reflect management's good faith estimate of the value thereof as determined in a manner consistent with KCMH's internal valuation practices; and

(vi) promptly upon request by the Administrative Agent on behalf of the Majority Lenders, such other information regarding the business, operations and financial condition of any Obligor as such Lender may reasonably request (it being understood that the Administrative Agent shall use reasonable efforts to coordinate any such requests).

(b) Existence; Conduct of Business. It will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and, except to the extent that failure to do so would not reasonably be expected to result in a Material Adverse Effect, the rights, licenses, permits, privileges and franchises material to the conduct of its business (including, in the case of each Broker-Dealer Subsidiary, its registration, license or qualification as a broker-dealer with the SEC and/or such other applicable domestic or foreign Governmental Authority); provided that the foregoing shall not prohibit any transaction expressly permitted under Section 6.02(c).

(c) Compliance with Laws. It will, and will cause each of its Subsidiaries to, comply with all Laws and all orders, writs, injunctions and decrees of any Governmental Authority applicable to it, its business or its Property (including, in the case of each Broker-Dealer Subsidiary, such rules and regulations of the SEC, FINRA and/or such other applicable domestic or foreign Governmental Authority or Self Regulatory Organization) except, with respect to all matters other than noncompliance by any Broker-Dealer Subsidiary with

applicable minimum capital requirements, where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(d) Maintenance of Insurance. It will, and will cause each of its Subsidiaries to, maintain with financially sound and reputable insurance companies insurance on all its tangible Property in at least such amounts and against at least such risks as KCMH believes (in the good faith judgment of KCMH) are usually insured against in the same general area by companies of a similar size engaged in the same or a similar business and in a manner that is consistent with KCMH's and its Subsidiaries' past practices.

(e) Payment of Taxes. It will, and will cause each of its Subsidiaries to, pay and discharge, all material taxes, assessments and governmental charges or levies imposed upon it or upon its income or profits, or upon any properties belonging to it, prior to the date on which material penalties attach thereto, and all lawful material claims in respect of any Taxes imposed, assessed or levied that, if unpaid, could reasonably be expected to become a material Lien upon any Property of KCMH or any Subsidiary, provided that neither KCMH, nor any Subsidiary shall be required to pay any such tax, assessment, charge, levy or claim that is being contested in good faith and by proper proceedings if it has maintained adequate reserves (in the good faith judgment of management of KCMH) with respect thereto in accordance with GAAP and the failure to pay would not reasonably be expected to result in a Material Adverse Effect.

(f) Maintenance of Properties. It will, and will cause each of its Subsidiaries to, keep and maintain all Property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, except to the extent failure to do so would not reasonably be expected to result in a Material Adverse Effect.

(g) Books and Records; Visitation and Inspection Rights. It will, and will cause each Borrower as well as each of its Material Subsidiaries to, keep proper books of record and account in accordance with GAAP, and permit representatives designated by the Administrative Agent, upon reasonable prior notice, to visit and inspect its Properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants (it being agreed that KCMH shall be given the opportunity to participate in any such discussion with its independent accountants), all at the reasonable expense of KCMH and at such reasonable times during normal business hours, but in each case subject to and in accordance with all applicable laws of any Governmental Authority and such confidentiality measures relating thereto as KCMH may reasonably require; provided that, other than after the occurrence of and during the continuance of an Event of Default, (i) such visitations and inspections shall not be permitted on more than two instances in any calendar year and (ii) only one such visitation and inspection shall be at the expense of KCMH.

(h) Notices of Material Events. It will furnish to the Administrative Agent and each Lender prompt written notice of the following:

(i) the occurrence of any Default or Event of Default;

(ii) the filing or commencement of any action, suit or proceeding by or before any Governmental Authority against or affecting it or any of its Subsidiaries which would reasonably be expected to be adversely determined and, if so determined, would reasonably be expected to result in a Material Adverse Effect; and

(iii) any other event that has had, or would reasonably be expected to have, a Material Adverse Effect.

Each notice delivered under this subsection shall be accompanied by a statement of a Financial Officer setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

(i) Additional Guarantors and Grantors; Additional Borrowers.

(i) Subject to any applicable limitations set forth in the Guarantee and Security Agreement, KCMH will promptly cause each direct or indirect Wholly-Owned Domestic Subsidiary (other than any Domestic Subsidiary of a Foreign Subsidiary or a Domestic Subsidiary substantially all of whose assets consist of capital stock and/or indebtedness of one or more Foreign Subsidiaries) formed or otherwise purchased or acquired after the date hereof, to execute a supplement to the Guarantee and Security Agreement substantially in the form attached to the Guarantee and Security Agreement (or otherwise in a form reasonable satisfactory to the Administrative Agent) in order to become a Guarantor and a grantor thereunder and take all other action reasonably requested by the Administrative Agent to grant a perfected security interest in its assets to substantially the same extent as granted by the Obligor on the Closing Date; provided that in any event, no Broker-Dealer Subsidiary shall be required to enter into, provide a guarantee, or grant any security interests in its assets under the Guarantee and Security Agreement or any other Loan Document.

(ii) From time to time after the Closing Date, with fifteen Business Days' prior written notice to the Administrative Agent and subject to the satisfaction of the conditions set forth in this Section 6.01(i)(ii), KCHM may designate any Subsidiary as an Additional Borrower; provided that in no event shall a Subsidiary become an Additional Borrower if such Subsidiary either (A) is an entity that would not be required to be an additional Guarantor under Section 6.01(i)(i), or (B) is a direct or indirect Subsidiary of a Person that is not required to be an additional Guarantor under Section 6.01(i)(i); and provided further that:

(A) such Subsidiary is a Wholly-Owned Subsidiary of KCMH organized or incorporated in the United States or a jurisdiction otherwise approved by the Administrative Agent and the applicable Lenders; provided that, in the case of a jurisdiction in which no Borrower is organized or incorporated on the Closing Date, such designation shall be prohibited if the Administrative Agent or any applicable Lender shall not have the ability or authorization to lend into such jurisdiction;

(B) such Subsidiary is or becomes a Guarantor prior to or contemporaneously with becoming an Additional Borrower;

(C) no Default or Event of Default has occurred and is continuing or would result from such Subsidiary becoming an Additional Borrower;

(D) the Administrative Agent and the Lenders shall have received at least ten Business Days prior to the date such Subsidiary becomes an Additional Borrower such documentation and information as is reasonably requested in writing by the Administrative Agent or any applicable Lender to the extent required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the Patriot Act;

(E) the Administrative Agent shall have received a duly executed and delivered Additional Borrower Joinder Agreement and a duly executed and delivered pledge of the equity of such Subsidiary in accordance with the Guarantee and Security Agreement; and

(F) the Administrative Agent shall have received (i) a copy of the resolutions of the board of directors or other managers of such Subsidiary (or a duly authorized committee thereof) authorizing (a) the execution, delivery, and performance of the Additional Borrower Joinder Agreement and the other Loan Documents (and any agreements relating thereto) to which it is a party and (b) the extensions of credit contemplated hereunder, (ii) the certificate of incorporation and by-laws, certificate of formation and operating agreement or other comparable organizational documents, as applicable, of such Subsidiary, (iii) signature and incumbency certificates (or other comparable documents evidencing the same) of the authorized officers of such Subsidiary executing the Additional Borrower Joinder Agreement and the other Loan Documents to which it is a party, and (iiii) if requested by Administrative Agent, a customary legal opinion from outside counsel to the Borrower as to customary joinder matters.

(iii) Upon any Subsidiary becoming an Additional Borrower in accordance with Section 6.01(i), such Subsidiary shall be, jointly and severally, for all purposes, and with all rights and obligations of, a “Borrower” under this Agreement and the other Loan Documents.

(j) Pledge of Material Foreign Subsidiaries. Subject to any applicable limitations set forth in the Guarantee and Security Agreement, KCMH will promptly deliver to the Administrative Agent a local law pledge agreement under the jurisdiction of organization or formation of each Subsidiary that is directly owned by an Obligor and identified as a Material Foreign Subsidiary in accordance with Section 6.01(a)(iii)(y) in a customary form reasonably satisfactory to the Administrative Agent, together with (i) copies of such Material Foreign Subsidiary’s constitutive documents and documents evidencing that such Material Foreign Subsidiary has taken of all necessary action authorizing and approving the execution, delivery and performance of the Loan Documents to which it is a party, and (ii) a legal opinion in a form

reasonably satisfactory to the Administrative Agent from counsel to such Material Foreign Subsidiary.

(k) Pledge of Additional Stock and Evidence of Indebtedness. Subject to the Intercreditor Agreement and to any applicable limitations set forth in the Guarantee and Security Agreement or with respect to which, in the reasonable judgment of the Administrative Agent (confirmed in writing by notice to KCMH), the cost or other consequences (including any adverse tax consequences) of doing so shall be excessive in view of the benefits to be obtained by the Lenders therefrom, KCMH will cause (i) all certificates representing Equity Interests (if any) of any Subsidiary held directly by any Borrower or any Guarantor and (ii) all evidences of Indebtedness in excess of \$5,000,000 received by any Borrower or any of the Guarantors, in each case, promptly to be delivered along with applicable instruments of transfer duly executed in blank to the Administrative Agent (or its designee) as security for the obligations owed under the Loan Documents, under the Guarantee and Security Agreement.

(l) Further Assurances. Subject to the Intercreditor Agreement, it will, and will cause each of the Guarantors to, from time to time give, execute, deliver, file and/or record any financing statement, notice, instrument, document, agreement or other paper that is necessary to cause the Liens created by the Guarantee and Security Agreement to be valid first priority perfected Liens on the Property purported to be covered thereby (including after-acquired Property, it being understood that, except as set forth in paragraph (j) above, there shall be no requirement to enter into or deliver security agreements or pledge agreements governed by the laws of any non-U.S. jurisdiction or otherwise take steps to perfect any security interest or Lien securing the Obligations under the laws of any non-U.S. jurisdiction), subject to no equal or prior Lien except as otherwise permitted by the Loan Documents, and promptly from time to time obtain and maintain in full force and effect, and cause each of the Guarantors to obtain and maintain in full force and effect, all licenses, consents, authorizations and approvals of, and make all filings and registrations with, any Governmental Authority necessary under the Laws of the jurisdiction of organization of such Guarantor (or any other jurisdiction in which part of the Collateral owned by it or by any Guarantor may be situated) for the making and performance by it of the Loan Documents to which it is a party. Notwithstanding the foregoing or anything to the contrary in any Loan Document, it is hereby agreed and acknowledged that any requirement to take any action to establish perfection by control under any Loan Document is subject to the Intercreditor Agreement, and the establishment of such control by the Administrative Agent's designee or bailee set forth in the Intercreditor Agreement shall constitute compliance with any such requirement to establish such control by the Administrative Agent under the Loan Documents.

(m) Post Closing Actions. Notwithstanding anything to the contrary in any Loan Document, it will, within 60 days after the Closing Date (or such later date as the Administrative Agent shall reasonably agree) enter into an update to the existing control agreement, in a manner previously agreed between the Borrower and the Administrative Agent, with respect to the Pledged Deposit Account (as defined in the Guaranty and Security Agreement), in a form reasonably satisfactory to the Administrative Agent.

SECTION 6.02. Negative Covenants. So long as any principal of or interest on any Loan or any other amount or obligation under the Loan Documents (other than contingent

indemnity obligations not then due) shall remain unpaid or unsatisfied or any Lender shall have any Commitment or any Letter of Credit shall remain outstanding hereunder (unless such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender), KCMH covenants and agrees that, unless the Majority Lenders shall otherwise consent in writing:

(a) Indebtedness. It will not, and will not permit any of its Subsidiaries to, create, incur, assume or suffer to exist any Indebtedness, provided that KCMH and any Subsidiary may incur Indebtedness (and all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest with regard to such Indebtedness) if (x) immediately before and after such incurrence, no Default or Event of Default shall have occurred and be continuing and (y) the Debt to Equity Ratio is less than or equal to **[\*\*]** to 1.00 after giving pro forma effect thereto. The limitations set forth in the immediately preceding sentence shall not apply to any of the following items:

- (i) Indebtedness arising under the Loan Documents;
- (ii) Intercompany Indebtedness owed among the Borrowers and/or their Subsidiaries (including any Indebtedness used to finance any Financing Transaction);
- (iii) Permitted Subordinated Debt;
- (iv) Indebtedness in respect of Hedging Agreements;
- (v) Indebtedness in respect of overdraft facilities, netting services, automatic clearinghouse arrangements and other cash management and similar arrangements in the ordinary course of business;
- (vi) additional Indebtedness of KCMH and its Subsidiaries in an aggregate principal amount not to exceed \$**[\*\*]** at any time outstanding;
- (vii) Indebtedness arising under the 364-Day Credit Agreement (and the other Loan Documents (as defined therein)), and any refinancing, renewal or replacement thereof;
- (viii) Indebtedness arising under fronting and/or settlement facilities (“Fronting Facilities”); provided that, at least 10 Business Days prior to incurring any such Indebtedness (or such shorter period as MHC B shall reasonably agree, it being agreed MHC B shall use commercially reasonable efforts to provide a response to KCMH as soon as practicable after receipt of such notice), KCMH and/or the relevant Subsidiary shall have provided MHC B a bona fide opportunity (through a written notice to MHC B) to provide such Indebtedness, including an offer regarding the timing of establishing such indebtedness, and MHC B shall have either (1) declined (through a written notice from the Administrative Agent to KCMH and/or such Subsidiary) to accept such offer to provide such Indebtedness or (2) failed to respond in writing to such offer, in each case, within such 10 Business Day period; and

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(ix) all premiums (if any), interest (including post-petition interest), fees, expenses, charges and additional or contingent interest on obligations described in clauses (i) through (viii) above.

(b) Liens. It will not, nor will it permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any Property now owned or hereafter acquired by it, except Liens under the Guarantee and Security Agreement and other Liens in favor of the Administrative Agent as contemplated hereby and except:

(i) Liens arising under the Loan Documents;

(ii) Liens securing Finance Subsidiary Debt; provided that the terms of any Finance Subsidiary Debt (including any intercreditor arrangements entered into in connection therewith) shall provide that the Liens on the Collateral granted under the Guarantee and Security Agreement have at least second priority (to the extent the terms of such Finance Subsidiary Debt do not permit the obligations under the Loan Documents to be secured on a first priority basis pari passu with such Finance Subsidiary Debt) after giving effect to the incurrence of such Finance Subsidiary Debt; provided further that the assets securing any such Finance Subsidiary Debt shall be limited to (A) the assets of the Finance Subsidiary or Finance Subsidiaries incurring such Finance Subsidiary Debt and (B) the common equity interests of such Finance Subsidiary or Finance Subsidiaries;

(iii) Permitted Liens;

(iv) Liens securing Indebtedness or other obligations of a KCMH or any Subsidiary of KCMH in favor of KCMH or any Subsidiary of KCMH;

(v) Liens (A) of a collecting bank arising under Section 4-208 of the UCC on items in the course of collection, (B) attaching to commodity trading accounts or other commodities brokerage accounts incurred in the ordinary course of business; and (C) in favor of a banking institution arising as a matter of law encumbering deposits (including the right of set-off);

(vi) Liens encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business;

(vii) Liens that are contractual rights of set-off (A) relating to the establishment of depository relations with banks not given in connection with the issuance of Indebtedness, (B) relating to pooled deposit or sweep accounts of KCMH or any of its Subsidiaries to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of KCMH and its Subsidiaries or (C) relating to agreements entered into with customers of KCMH or any of its Subsidiaries in the ordinary course of business;

(viii) additional Liens so long as the aggregate principal amount of the obligations secured thereby at any time outstanding does not exceed \$[\*\*];

(ix) the modification, replacement, extension or renewal of any Lien permitted by this Section 6.02(b) upon or in the same assets theretofore subject to such Lien (or upon or in after-acquired property that is affixed or incorporated into the property covered by such Lien or any proceeds or products thereof) or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor except to the extent otherwise permitted hereunder) of the Indebtedness secured thereby;

(x) Liens securing obligations in respect of Indebtedness outstanding under Section 6.02(a)(vii), provided such Liens shall only extend to Collateral and shall be pari passu with the Liens securing the Obligations hereunder and subject to the Intercreditor Agreement, or junior to the Liens securing the Obligations and subject to an intercreditor agreement in form and substance reasonably satisfactory to the Administrative Agent and KCMH; and

(xi) Liens securing obligations in respect of Indebtedness outstanding under Section 6.02(a)(viii), provided such Liens only extend to the loans made pursuant to such Fronting Facility and other assets related thereto, and in each case, the proceeds thereof. It is agreed that upon the incurrence of a Lien permitted pursuant to this clause (xi), any Collateral subject to such Lien shall be automatically released from the Liens securing the Obligations (and the Administrative Agent shall take such actions as reasonably requested by KCMH to evidence such release (or absence) of such Lien, it being understood that the Lenders authorize the Administrative Agent to enter into any such documentation, with the Administrative Agent authorized to rely on a certificate from KCMH confirming the automatic release (or absence) of such Lien hereunder in delivering any such documentation).

(c) Mergers, Consolidations, Sales of Assets, Etc. It will not merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (in one transaction or in a series of transactions) all or substantially all of its Property (in each case, whether now owned or hereafter acquired), or liquidate or dissolve (provided, that, if at the time thereof and immediately after giving effect thereto no Default or Event of Default shall have occurred and be continuing, any Person may merge into KCMH in a transaction in which KCMH is the surviving entity) and it will not permit any of its Subsidiaries to merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with any Subsidiary, if a Default or Event of Default would result as a result from any such merger or consolidation and, if involving a Borrower or a Guarantor, unless such Borrower or Guarantor is the surviving entity or such successor entity is a Subsidiary of KCMH immediately following such merger or consolidation and expressly assumes the obligations of such Borrower or Guarantor, as applicable, under the Loan Documents; provided further that Subsidiaries of KCMH shall be permitted to liquidate or dissolve, except to the extent such liquidation or dissolution would reasonably be expected to result in a Material Adverse Effect and provided that upon or prior to the liquidation or

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dissolution of any Borrower no Borrowings of such Borrower or Letters of Credit issued for the account of such Borrower are outstanding.

(d) Investments. Without the prior written consent of the Majority Lenders (such consent not to be unreasonably withheld), it will not, and will not permit any of its Subsidiaries to, make any Investment in KKR or its Affiliates; provided, that so long as no Event of Default has occurred and is continuing, KCMH and its Subsidiaries may make Investments in the ordinary course of KCMH and its Subsidiaries' capital markets business and in compliance with Section 6.02(i) in (i) any KCM Group Entity, (ii) any portfolio company (or any entity controlled by a portfolio company) of any fund, separately managed account or partnership managed or controlled or sponsored by KKR and/or its Affiliates (any such fund, account or partnership, a "KKR Vehicle") and (iii) any KKR Vehicle with publicly traded securities or securities issued pursuant to Rule 144A of the Securities Act of 1933 or any foreign equivalent or with respect to which a registration statement or equivalent foreign document has been filed.

(e) Dividends. It will not, and will not permit any of its Subsidiaries to, declare or pay any dividends or make distributions (other than dividends or distributions payable solely in its Equity Interests (other than Disqualified Equity Interests)) or return any capital to its equity holders or make any other distribution, payment or delivery of property or cash to its equity holders as such, or redeem, retire, purchase or otherwise acquire, directly or indirectly, for consideration, any of its Equity Interests or Equity Interests of any direct or indirect parent thereof now or hereafter outstanding, or set aside any funds for any of the foregoing purposes, or permit any of its Subsidiaries to purchase or otherwise acquire for consideration any Equity Interests of KCMH, now or hereafter outstanding (all of the foregoing, "dividends"), provided that KCMH and any Subsidiary may pay dividends if (x) immediately before and after paying such dividend, no (1) Default or (2) Event of Default shall have occurred and be continuing and (y) the Debt to Equity Ratio is less than or equal to  $[**]$  to 1.00 after giving pro forma effect thereto. The limitations set forth in the immediately preceding sentence (other than subclause (x)(2) in the proviso thereto) shall not apply to any of the following items so long as KCMH is in compliance with Section 6.03 after giving pro forma effect thereto:

(i) it may (or may pay dividends to permit any direct or indirect parent thereof to) redeem in whole or in part any of its Equity Interests for another class of its (or such parent's) Equity Interests (other than Disqualified Equity Interests) or with proceeds from substantially concurrent equity contributions or issuances of new Equity Interests (other than Disqualified Equity Interests), provided that such new Equity Interests contain terms and provisions at least as advantageous to the Lenders in all respects material to their interests as those contained in the Equity Interests redeemed thereby;

(ii) it may pay dividends, the proceeds of which will be used to pay (or to pay dividends to allow any direct or indirect parent of KCMH to pay (including to the individual owners of any direct or indirect parent of KCMH)) the tax liability of such parent and the individual owners of any direct or indirect parent, determined at the highest rate combined federal, state and local income tax rate applicable to an individual resident in New York City, attributable to KCMH or its Subsidiaries determined as if KCMH and its Subsidiaries filed separately;

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(iii) it or any of its Subsidiaries may (i) pay cash in lieu of fractional Equity Interests in connection with any dividend, split or combination thereof and (ii) honor any conversion request by a holder of convertible Indebtedness and make cash payments in lieu of fractional shares in connection with any such conversion; and

(iv) any Subsidiary of KCMH may pay dividends to its direct parent; provided that if any such dividends are paid by a non-Wholly-Owned Subsidiary, such dividends shall be made ratably based on the equity holder's interests therein (or any other amount more favorable to KCMH), provided further that if the proceeds of any outstanding Loans or Letters of Credit have been used for an Investment in such non-Wholly-Owned Subsidiary, any cash dividends paid to such parent shall be applied to prepay such Loans or cash collateralize such Letters of Credit if no Loans are outstanding, at the option of the Administrative Agent, without application of Section 3.12 or at the end of the next Interest Period(s).

(f) Subordinated Debt Payments. It will not, and will not permit any of its Subsidiaries to, prepay, repurchase or redeem, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Subordinated Indebtedness; provided that KCMH and any Subsidiary may prepay, repurchase or redeem, defease or otherwise satisfy any Subordinated Indebtedness if (x) immediately before and after such payment, no Default or Event of Default shall have occurred and be continuing and (y) the Debt to Equity Ratio is less than or equal to **[\*\*]** to 1.00 after giving pro forma effect thereto. Notwithstanding the foregoing, nothing in this Section 6.02(f) shall prohibit the repayment or prepayment of intercompany Subordinated Indebtedness owed among KCMH and/or its Subsidiaries, in either case unless an Event of Default has occurred and is continuing and KCMH has received a notice from the Administrative Agent instructing it not to make or permit any such repayment or prepayment.

(g) Burdensome Agreements. It will not, and will not permit any of its Subsidiaries to, enter into or suffer to exist or become effective any agreement that prohibits or limits the ability (i) of any Obligor to create, incur, assume or suffer to exist any Lien upon any of its material Property or revenues, whether now owned or hereafter acquired, to secure the Obligations or, in the case of any Guarantor, its obligations under the Guarantee and Security Agreement, or (ii) of any Subsidiary to make Restricted Payments to any Borrower or any Guarantor or to otherwise transfer property to or invest in any Borrower or any Guarantor, other than (A) this Agreement and the other Loan Documents, (B) any agreements governing Finance Subsidiary Debt and, in the case of clause (i) above only, purchase money Liens (or any permitted refinancing in respect thereof) or Finance Lease Obligations otherwise permitted hereby (in which case, any prohibition or limitation shall only be effective against the assets financed thereby and in the case of any permitted refinancing of purchase money Indebtedness, no more restrictive than that in the relevant refinanced agreement), (C) any such agreement in effect at the time any Subsidiary becomes a Subsidiary of KCMH, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of KCMH, (D) any such agreement imposed or required by or otherwise entered into with any applicable Governmental Authority, (E) any agreement in respect of Indebtedness outstanding under Section 6.02(a)(vii) or (viii) and (F) any agreement in respect of Indebtedness permitted to be outstanding under this Agreement, provided such restrictions do not, in the good faith judgment

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of KCMH, impair in any material respect the ability of the Borrowers hereunder to comply with their payment obligations under the Loan Documents.

(h) Affiliate Transactions. It will not, and will not permit any of its Subsidiaries to, enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate (other than KCMH or any of its Subsidiaries) unless such transaction is (a) otherwise permitted under this Agreement, including the payment and receipt of any dividend permitted pursuant to Section 6.02(e), and (b) upon terms that, in the aggregate, are no less favorable to KCMH or such Subsidiary, as the case may be, than it would obtain in a comparable arm's length transaction with a Person that is not an Affiliate; provided that nothing in this Section 6.02(h) shall prohibit KCMH or any of its Subsidiaries from providing placement, advisory or other services in the ordinary course of business so long as such services do not include a funding obligation of KCMH or such Subsidiary.

(i) Line of Business. It will not, nor will it permit any of its Subsidiaries to, enter into any business, either directly or through any Subsidiary, except for those businesses in which KCMH and its Subsidiaries are engaged on the Closing Date or that are reasonably related thereto.

(j) Change in Fiscal Year. It will not make any change to its fiscal year; provided that KCMH may, upon written notice to the Administrative Agent, change its fiscal year end to any other fiscal year end reasonably acceptable to the Administrative Agent, in which case KCMH and the Administrative Agent will, and are hereby authorized by the other parties hereto to, make any adjustments to this Agreement that are necessary to effect such change.

SECTION 6.03. Financial Covenant. So long as any principal of or interest on any Loan or any other amount or obligation under the Loan Documents (other than contingent indemnity obligations not then due) shall remain unpaid or unsatisfied or any Lender shall have any Commitment or any Letter of Credit shall remain outstanding hereunder (unless such Letter of Credit has been cash collateralized or otherwise backstopped on terms reasonably satisfactory to the relevant Issuing Lender and the Administrative Agent), KCMH covenants and agree that, unless the Majority Lenders shall otherwise consent in writing, KCMH will not permit the Debt to Equity Ratio on the last day of any fiscal quarter of KCMH to exceed **[\*\*]** to 1.00.

## ARTICLE VII

### EVENTS OF DEFAULT

SECTION 7.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) any Borrower shall fail to pay when due any principal of any Loan;

(b) any Borrower shall fail for five Business Days or more to pay any interest, fee or L/C Reimbursement Obligation or any other amount (other than principal) payable by such Borrower under any Loan Document when and as the same shall become due and payable;

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(c) any representation or warranty made or deemed made by an Obligor in this Agreement, any other Loan Document or in any certificate furnished pursuant to this Agreement shall prove to have been untrue in any material respect when made or deemed made;

(d) any Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 6.01(b) (with respect to the legal existence of such Borrower), (h)(i), 6.02 (other than those contained in clause (j) of such Section) or 6.03;

(e) any Obligor shall fail to observe or perform any covenant, condition or agreement contained in this Agreement (other than those specified in clause (a), (b) or (d) of this Section) or in any other Loan Document, and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to KCMH;

(f) any Borrower or any Subsidiary (other than any Finance Subsidiary that is not a Borrower) shall fail to make any payment of principal of or interest on any Material Indebtedness when and as the same shall become due and payable (beyond any period of grace, if any); or any event or condition occurs that results in the acceleration (or, solely with respect to any Material Indebtedness incurred under Section 6.02(a)(iii), permits the holders of such Indebtedness (or a trustee or agent on behalf of such holders) to cause such acceleration) of such Material Indebtedness prior to its scheduled maturity;

(g) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, winding up, reorganization or other relief in respect of any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) or its debts, or of a substantial part of its Property, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) or for a substantial part of its Property, and, in any such case, such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(h) any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, winding up, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (g) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Material Subsidiary (other than any Finance Subsidiary) or for a substantial part of its Property, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v)

make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(i) any Borrower or any Material Subsidiary (other than any Finance Subsidiary that is not a Borrower) shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(j) one or more judgments for the payment of money in an aggregate amount in excess of \$[\*\*] shall be rendered against KCMH or any Subsidiary and the same shall remain undischarged for a period of 60 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any Property of KCMH or any Subsidiary to enforce any such judgment;

(k) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred for which liability has not been fully satisfied, would reasonably be expected to result in a Material Adverse Effect; or

(l) the Guarantee and Security Agreement shall cease to be valid and binding on, or enforceable against, (i) KCMH or (ii) any other Borrower or Guarantor which is a Material Subsidiary (other than pursuant to the terms hereof or thereof or as a result of acts or omissions of the Administrative Agent or any Lender), or KCMH or any such other Borrower or Guarantor shall so assert in writing; or

(m) a Change of Control shall occur;

then the Administrative Agent shall upon the request of the Majority Lenders, by notice to KCMH, take any or all of the following actions, at the same or different times: (i) terminate the Commitments and thereupon they shall terminate immediately, (ii) terminate any obligation of the Issuing Lender to issue Letters of Credit hereunder, and thereupon such obligations shall terminate, (iii) declare the Loans and all other amounts payable by the Obligors under the Loan Documents to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of each Borrower accrued and other amounts payable by the Obligors under the Loan Documents, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower, and/or (iv) require the Borrowers to jointly and severally provide cash collateral for L/C Reimbursement Obligations and the outstanding undrawn Letters of Credit in an aggregate amount equal to the then aggregate L/C Exposure and thereupon the Borrowers shall forthwith provide such cash collateral on terms and subject to documentation reasonably satisfactory to the relevant Issuing Lenders and the Administrative Agent; and in case of any event applicable to any Borrower described in clause (g) or (h) of this Section, the Commitments and such obligations of the Issuing Lender shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Obligors accrued under the Loan Documents, shall automatically become due and payable, and the Borrowers jointly and severally shall automatically be required to provide such cash

[\*\*] = *Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

collateral, all without presentment, demand, protest or other notice of any kind, all of which are hereby waived by each Borrower. Nothing herein shall terminate or otherwise modify the obligations of the Lenders under Section 2.02(d).

SECTION 7.02. Investors' Right to Cure.

(a) Notwithstanding anything to the contrary contained in Section 7.01(d), in the event that KCMH fails to comply with the requirements of the covenant set forth in Section 6.03, until the expiration of the tenth day after the date on which financial statements for the fiscal period in which the covenant set forth in such Section 6.03 is being measured are required to be delivered pursuant to Section 6.01(a), any Person shall have the right to make a direct or indirect equity investment in KCMH in cash (the "Cure Right"), and upon the receipt by such Person of net cash proceeds pursuant to the exercise of the Cure Right (including through the capital contribution of any such net cash proceeds to such Person), the covenant set forth in such Section 6.03 shall be recalculated, giving effect to a pro forma increase to Total Equity as of the relevant date of determination in an amount equal to such net cash proceeds.

(b) If, after the exercise of the Cure Right and the recalculations pursuant to clause (a) above, KCMH shall then be in compliance with the requirements of the covenant set forth in Section 6.03 for the relevant fiscal quarter, KCMH shall be deemed to have satisfied the requirements of such covenant as of the relevant date of determination with the same effect as though there had been no failure to comply therewith at such date, and the applicable Default or Event of Default under Section 7.01(d) that had occurred shall be deemed cured.

ARTICLE VIII

THE ADMINISTRATIVE AGENT

SECTION 8.01. Appointment and Authority. i) Each of the Lenders hereby irrevocably appoints MHCB to act on its behalf as the Administrative Agent under and in connection with the Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent and the Lenders and the Borrowers shall have no rights as a third party beneficiary of any of such provisions.

(a) Each Issuing Lender shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each such Issuing Lender shall have all of the benefits and immunities (i) provided to the Administrative Agent in this Article VIII with respect to any acts taken or omissions suffered by such Issuing Lender in connection with Letters of Credit issued by it or proposed to be issued by it and the applications and agreements for letters of credit pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in this Article VIII included such Issuing Lender with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such Issuing Lender.



(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders and the Issuing Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Obligor to secure any of the obligations of the Obligor under the Loan Documents, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 8.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Loan Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article VIII and Article IX as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.02. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any Obligor or any Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03. Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth in the Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated by the Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for in the Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law; and

(iii) shall not, except as expressly set forth in the Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Obligor or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Majority Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.01) or (ii) in the absence of its own gross negligence or willful misconduct. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by a Borrower or a Lender.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of any Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

SECTION 8.04. Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan or issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan or such issuance. The Administrative Agent may consult with legal counsel (who may be counsel for a Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers under any Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent and any Issuing Lender may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent and the Issuing Lender, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

SECTION 8.06. Resignation of Administrative Agent. The Administrative Agent may at any time give notice of its resignation to the Lenders and KCMH. Upon receipt of

any such notice of resignation, the Majority Lenders shall have the right, in consultation with KCMH, to appoint a successor, which shall be a nationally recognized bank with an office in New York, New York or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above, provided, that if the Administrative Agent shall notify KCMH and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (a) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in this subsection. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations under the Loan Documents (if not already discharged therefrom as provided above in this subsection). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between KCMH and such successor. After the retiring Administrative Agent's resignation, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

SECTION 8.07. Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon any Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 8.08. No Other Duties; Etc. Anything herein to the contrary notwithstanding, the Lead Arranger and any bookrunner listed on the cover page hereof shall not, in such capacities, have any powers, duties or responsibilities under any of the Loan Documents.

SECTION 8.09. Intercreditor Agreement Governs. The Administrative Agent, each Lender and each Obligor hereby agrees that it will be bound by and will take no actions contrary to the provisions of the Intercreditor Agreement and any other intercreditor agreement

entered into pursuant to the terms hereof. Each Lender hereby authorizes and instructs the Administrative Agent to enter into the Intercreditor Agreement and each other intercreditor agreement entered into pursuant to the terms hereof (including any amendments or other modifications thereof) and to subject the Liens securing the Obligations to the provisions thereof.

SECTION 8.10. Collateral Matters: Credit Bidding.

(a) Except with respect to the exercise of setoff rights in accordance with Section 9.03 or with respect to a Secured Creditor's right to file a proof of claim in an insolvency proceeding, no Secured Creditor shall have any right individually to realize upon any of the Collateral or to enforce any Guarantee of the Obligations, it being understood and agreed that all powers, rights and remedies under the Loan Documents may be exercised solely by the Administrative Agent on behalf of the Secured Creditors in accordance with the terms thereof.

(b) The Secured Creditors hereby irrevocably authorize the Administrative Agent, at the direction of the Majority Lenders, to credit bid all or any portion of the Obligations (including by accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of any bankruptcy laws, including under Sections 363, 1123 or 1129 of the United States Bankruptcy Code, or (b) at any other sale, foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law; *provided* that to the extent the Loans are paid in full in cash, the Commitments are terminated and the Letters of Credit cash collateralized in accordance with the terms hereof, the consent of Majority Lenders shall not be required in connection with any such credit bid. In connection with any such credit bid and purchase, the Obligations owed to the Secured Creditors shall be entitled to be, and shall be, credit bid by the Administrative Agent at the direction of the Majority Lenders and, except as set forth above, with the consent of the Majority Lenders, on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that shall vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) for the asset or assets so purchased (or for the equity interests or debt instruments of the acquisition vehicle or vehicles that are issued in connection with such purchase). In connection with any such bid, (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles and to assign any successful credit bid to such acquisition vehicle or vehicles, (ii) each of the Secured Creditors' ratable interests in the Obligations which were credit bid shall be deemed without any further action under this Agreement to be assigned to such vehicle or vehicles for the purpose of closing such sale, (iii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or equity interests thereof, shall be governed, directly or indirectly, by, and the governing documents shall provide for, control by the vote of the Majority Lenders or their permitted assignees under the terms of this Agreement or the governing documents of the applicable acquisition vehicle or vehicles, as the case may be, irrespective of the termination of

this Agreement and without giving effect to the limitations on actions by the Majority Lenders contained in Section 9.01 of this Agreement), (iv) the Administrative Agent on behalf of such acquisition vehicle or vehicles shall be authorized to issue to each of the Secured Creditors, ratably on account of the relevant Obligations which were credit bid, interests, whether as equity, partnership, limited partnership interests or membership interests, in any such acquisition vehicle and/or debt instruments issued by such acquisition vehicle, all without the need for any Secured Creditor or acquisition vehicle to take any further action, and (v) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of Obligations credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Secured Creditors pro rata with their original interest in such Obligations and the equity interests and/or debt instruments issued by any acquisition vehicle on account of such Obligations shall automatically be cancelled, without the need for any Secured Creditor or any acquisition vehicle to take any further action. Notwithstanding that the ratable portion of the Obligations of each Secured Creditor are deemed assigned to the acquisition vehicle or vehicles as set forth in clause (ii) above, each Secured Creditor shall execute such documents and provide such information regarding the Secured Creditor (and/or any designee of the Secured Creditor which will receive interests in or debt instruments issued by such acquisition vehicle) as the Administrative Agent may reasonably request in connection with the formation of any acquisition vehicle, the formulation or submission of any credit bid or the consummation of the transactions contemplated by such credit bid.

## ARTICLE IX

### MISCELLANEOUS

#### SECTION 9.01. Amendments, Etc.

(a) No amendment or waiver of any provision of this Agreement or any other Loan Document, nor consent to any departure by a Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Borrowers and the Majority Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, that no amendment, waiver or consent shall, unless in writing and signed by each Lender directly and adversely affected thereby, do any of the following: (i) subject such Lender to any additional obligations including, without limitation, any extension of the expiry date of the Commitment of such Lender or increase the Commitment of such Lender, (ii) reduce the principal of, or rate of interest on, any Loan, L/C Reimbursement Obligation or any fees or other amounts payable hereunder, (iii) postpone any date for payment of principal of, or interest on, any Loan, L/C Reimbursement Obligation or any fees or other amounts payable hereunder when due (other than fees or other amounts payable for the sole account of an Issuing Lender), or (iv) modify any of the provisions of the Loan Documents relating to pro rata payments; and provided further, that no amendment, waiver or consent shall, unless in writing and signed by all of the Lenders, change the percentage of the Commitments or of the aggregate unpaid principal amount of the Loans, or the number of Lenders, which shall be required for the Lenders or any of them to take any action hereunder, (A) amend Section 3.07(a)

or (b), or this Section 9.01, or (B) release all or substantially all of the Collateral or all or substantially all of the value of the Guarantees provided by the Guarantors; and provided further, that (x) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent and the Issuing Lenders in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent or, as the case may be, the Issuing Lenders under any Loan Document and (y) if the Administrative Agent and KCMH shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any provision of the Loan Documents, then the Administrative Agent and KCMH 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 Majority Lenders within five Business Days after notice thereof. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except that the Commitment of such Lender may not be increased or extended without the consent of such Lender (it being understood that any Commitments or Loans held or deemed held by any Defaulting Lender shall be excluded for a vote of the Lenders hereunder requiring any consent of the Lenders).

(b) This Agreement, the other Loan Documents and the other agreements provided for herein constitute the entire agreement of the parties hereto and thereto with respect to the subject matter hereof and thereof.

SECTION 9.02. Notices, KCMH as Administrative Borrower, Etc.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsections (b) and (c) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, in each case, as follows:

(i) if to any Borrower or any Guarantor:

c/o KKR Capital Markets Holdings L.P.  
~~9 West 57th Street~~ 30 Hudson Yards, Suite ~~4200~~ 7500  
New York, New York ~~10019~~ 10001  
Attention: [ ] – Financial Controller; [ ] – Counsel  
Telephone: [ ]  
Facsimile: [ ]  
Electronic Mail: [ ]

(ii) if to the Administrative Agent:

Mizuho Bank, Ltd.  
New York Branch  
1271 Avenue of the Americas  
New York, New York 10020

Attention: [ ]  
Telephone: [ ]  
Facsimile: [ ]  
Electronic Mail: [ ]

(iii) if to the Issuing Lender:

Mizuho Bank, Ltd.  
New York Branch  
1271 Avenue of the Americas  
New York, New York 10020  
Attention: [ ]  
Telephone: [ ]  
Facsimile: [ ]  
Electronic Mail: [ ]

(iv) if to a Lender, to it at its address (or telecopier number, electronic mail address or telephone number) set forth in its Administrative Questionnaire;

provided, that any party may change its address, telecopier number, electronic mail address or telephone number for notices and other communications hereunder by notice to the other parties. Except as provided in clause (d) below, notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient), except that notices and communications to the Administrative Agent pursuant to Article II or Article VII shall not be effective until received by the Administrative Agent. Notices delivered through electronic communications to the extent provided in clause (b) below, shall be effective as provided in said clause (b).

(b) Notices and other communications to any Lender 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 pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or any Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at

its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) Each Borrower further agrees that the Administrative Agent may make communications to Lenders available to the Lenders by posting the communications on Intralinks or a substantially similar electronic transmission system (the “Platform”). THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE”. THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE COMMUNICATIONS, OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS OR OMISSIONS IN THE COMMUNICATIONS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY THE AGENT PARTIES IN CONNECTION WITH THE COMMUNICATIONS OR THE PLATFORM. IN NO EVENT SHALL THE ADMINISTRATIVE AGENT OR ANY OF ITS AFFILIATES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, ADVISORS OR REPRESENTATIVES (COLLECTIVELY, THE “AGENT PARTIES”) HAVE ANY LIABILITY TO ANY OBLIGOR, ANY LENDER OR ANY OTHER PERSON OR ENTITY FOR DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DIRECT OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSSES OR EXPENSES (WHETHER IN TORT, CONTRACT OR OTHERWISE) ARISING OUT OF SUCH OBLIGOR’S OR THE ADMINISTRATIVE AGENT’S TRANSMISSION OF COMMUNICATIONS THROUGH THE INTERNET, EXCEPT TO THE EXTENT THE LIABILITY OF ANY AGENT PARTY IS FOUND IN A FINAL NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED PRIMARILY FROM SUCH AGENT PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

(d) The Administrative Agent agrees that the receipt of the communications by the Administrative Agent at its e-mail address set forth above shall constitute effective delivery of the communications to the Administrative Agent for purposes of the Loan Documents. Each Lender agrees that notice to it (as provided in the next sentence) specifying that the communications have been posted to the Platform shall constitute effective delivery of the communications to such Lender for purposes of the Loan Documents. Each Lender agrees (i) to provide to the Administrative Agent in writing (including by electronic communication), promptly after the date of this Agreement, one or more e-mail addresses to which the foregoing notice may be sent by electronic transmission and (ii) that the foregoing notice may be sent to such e-mail address or addresses.

(e) Nothing herein shall prejudice the right of the Administrative Agent or any Lender to give any notice or other communication pursuant to any Loan Document in any other manner specified in such Loan Document.

(f) The Borrowers each hereby irrevocably appoint KCMH as the administrative borrower with respect to this Agreement and the other Loan Documents, and all



notices, demands and interactions with KCMH are hereby authorized by the other Borrowers, and shall be conclusive and binding on the other Borrowers, who duly and irrevocably authorize KCMH to act on their behalf for all purposes under this Agreement and the other Loan Documents, and the Administrative Agent and the Lenders may conclusively rely on all notices, directions, and other interactions with KCMH without consulting in any manner with the other Borrowers.

SECTION 9.03. No Waiver; Remedies; Setoff.

(a) No failure on the part of any Lender or the Administrative Agent to exercise, and no delay in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, remedy, power or privilege preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(b) If an Event of Default shall have occurred and be continuing, each Lender is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender to or for the credit or the account of any Borrower against any and all of the obligations of such now or hereafter existing under this Agreement or any other Loan Document to such Lender irrespective of whether or not such Lender shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower may be contingent or unmatured or are owed to a branch or office of such Lender different from the branch or office holding such deposit or obligated on such indebtedness. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender may have. Each Lender agrees to notify KCMH 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 9.04. Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. The Borrowers jointly and severally shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent, the Lead Arranger and their respective Affiliates (including the reasonable fees, charges and disbursements of one counsel (together with one local counsel in each relevant jurisdiction)), in connection with the syndication of the facility contemplated hereby, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof, (ii) all out-of-pocket expenses incurred by the Administrative Agent and the Lenders (including the fees, charges and disbursements of one counsel (together with one local counsel in each relevant jurisdiction) and, after notice to KCMH, of more than one such counsel to the extent the Administrative Agent or any Lender reasonably determines that there is an actual conflict of interest requiring the employment of separate counsel) in connection with the enforcement (including all such

out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect thereof) or, during the continuance of an Event of Default, protection of its rights in connection with this Agreement and the other Loan Documents, including its rights under this Section and (iii) all reasonable and documented out-of-pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder.

(b) Indemnification by the Borrower. The Borrowers jointly and severally hereby indemnify the Administrative Agent, the Lead Arranger, each Lender and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of one counsel for the Indemnitees (together with one local counsel in each relevant jurisdiction) and, after notice to KCMH, of more than one such counsel to the extent any Indemnitee reasonably determines that there is an actual conflict of interest requiring the employment of separate counsel), incurred by any Indemnitee or asserted against any Indemnitee by any third party or by any Borrower or any other Obligor 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, or (iii) 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 any Borrower or any other Obligor and regardless of whether any Indemnitee is a party thereto, provided, that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a final and nonappealable judgment of a court of competent jurisdiction to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower against an Indemnitee for material breach of such Indemnitee’s obligations hereunder or under any other Loan Document, if such Borrower has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction.

(c) Reimbursement by Lenders. To the extent that the Borrowers for any reason fail to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent, the Issuing Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent, the Issuing Lender or such Related Party, as the case may be, such Lender’s Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount, provided, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Issuing Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent or the Issuing Lender in connection with such capacity.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, each party hereto agrees that it will not assert, and hereby waives, any claim

against any other party hereto, 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, any Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof or any Letter of Credit or the use of proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the bad faith, gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than 15 Business Days after demand therefor.

SECTION 9.05. Binding Effect, Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Borrowers, the Administrative Agent and each Lender and their respective successors and permitted assigns, except that no Borrower shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Administrative Agent and the Lenders.

SECTION 9.06. Assignments and Participations.

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of clause (b) of this Section, (ii) by way of participation in accordance with the provisions of clause (d) of this Section or (iii) by way of pledge or assignment of a security interest in accordance with clause (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans at the time owing to it); provided, that

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect

to a Lender, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$5,000,000 or an integral multiple of \$1,000,000 in excess thereof, unless each of the Administrative Agent and, unless an Event of Default has occurred and is continuing, KCMH otherwise consents (each such consent not to be unreasonably withheld or delayed);

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of \$3,500 and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire; and

(iv) no assignment shall be made to a natural person.

Subject to notice to KCMH and acceptance and recording thereof by the Administrative Agent pursuant to clause (c) of this Section, from and after the Assignment Date specified in each Assignment and Assumption (an "Assignment Date"), the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.09, 3.11, 3.12 and 9.04 with respect to facts and circumstances occurring prior to such Assignment Date. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers, shall maintain at its address specified in Section 9.02 a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary.

The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or any Borrower or any of any of KCMH's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided, that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided, that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso of Section 9.01 that affects such Participant. Subject to clause (e) of this Section, each Borrower agrees that each Participant shall be entitled to the benefits and obligations of Sections 3.09, 3.11, and 3.12 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 9.06. Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrowers, 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 to any Person (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) 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.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Sections 3.09, 3.11 and 3.12 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant.

(f) Certain Pledges. Any Lender, without the consent of any Borrower or the Administrative Agent may at any time grant security interest in all or any portion of its rights under this Agreement or any Note to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided, that no such pledge or assignment shall release such Lender from any of its obligations hereunder.

(g) Resignation as Issuing Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time MHC B assigns all of its Commitment and Loans pursuant to Section 9.06(b), MHC B may, upon 30 days' notice to KCMH and the Lenders, resign as Issuing Lender. In the event of any such resignation as Issuing Lender, KCMH shall be entitled to appoint, from among the Lenders, a successor Issuing Lender hereunder; provided, however, that no failure by KCMH to appoint any such successor shall affect the resignation of MHC B as Issuing Lender. If MHC B resigns as Issuing Lender, it shall retain all the rights, powers, privileges and duties of the Issuing Lender hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Issuing Lender and all L/C Exposure with respect thereto. Upon the appointment of a successor Issuing Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, and (b) the successor Issuing Lender shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to MHC B to effectively assume the obligations of MHC B with respect to such Letters of Credit.

SECTION 9.07. GOVERNING LAW; JURISDICTION; ETC.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF 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, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH BORROWER AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT OR ANY LENDER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS

AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE (B) ABOVE. EACH BORROWER IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT

(d) SERVICE OF PROCESS. EACH BORROWER AGREES THAT SERVICE OF PROCESS IN ANY SUCH ACTION OR PROCEEDING MAY BE EFFECTED BY MAILING A COPY THEREOF BY REGISTERED OR CERTIFIED MAIL (OR ANY SUBSTANTIALLY SIMILAR FORM OF MAIL), POSTAGE PREPAID, AT ITS ADDRESS SET FORTH IN SECTION 9.02, OR AT SUCH OTHER ADDRESS OF WHICH THE ADMINISTRATIVE AGENT SHALL HAVE BEEN NOTIFIED IN WRITING BY **KCMH**.

SECTION 9.08. Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.09. Counterparts; Effectiveness; 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. This Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) Electronic Execution of Loan Documents or any Assignments. The words "execution," "signed," "signature," and words of like import in this Agreement or any other Loan Documents or any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 9.10. Survival. The provisions of Sections 3.09, 3.11 and 3.12 and Article VIII and Section 9.04 shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans and the Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.11. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE

LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.12. Confidentiality. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, officers, employees, agents, advisors and other representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be subject to customary confidentiality obligations of professional practice or will agree (which agreement may be oral or pursuant to company policy) to be bound by the terms of this Section 9.12 (or language substantially similar to this Section 9.12)), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any Self Regulatory Organization), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement or any other Loan Document or any action or proceeding relating to the Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations, (g) with the consent of KCMH or (h) 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 or any of their respective Affiliates on a non-confidential basis from a source other than KCMH or its Subsidiary.

For purposes of this Section, "Information" means all information received from KCMH or any of its Subsidiaries relating to KCMH or any of its Subsidiaries or any of their respective businesses, other than any such information that is available to the Administrative Agent or any Lender on a non-confidential basis prior to disclosure by KCMH or any of its Subsidiaries. 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.

SECTION 9.13. No Fiduciary Relationship. In connection with all aspects of each transaction contemplated hereby, each Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (a) the credit facility provided for hereunder



and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's length commercial transaction between the Borrowers and their Affiliates, on the one hand, and the Administrative Agent and the Lead Arranger, on the other hand, and each Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification thereof); (b) in connection with the process leading to such transaction, the Administrative Agent and the Lead Arranger, each is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for any Borrower or any of its Affiliates, equity holders, creditors or employees or any other Person; (c) neither the Administrative Agent nor the Lead Arranger has assumed or will assume an advisory, agency or fiduciary responsibility in favor of any Borrower with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment waiver or other modification hereof or of any other Loan Document (irrespective of whether the Administrative Agent or the Lead Arranger has advised or is currently advising any Borrower or any of its Affiliates on other matters) and neither the Administrative Agent nor the Lead Arranger has any obligation to any Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (d) the Administrative Agent and the Lead Arranger and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrowers and their Affiliates, and neither the Administrative Agent nor the Lead Arranger has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) the Administrative Agent and the Lead Arranger have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and the Borrowers have consulted their own legal, accounting, regulator and tax advisors to the extent it has deemed appropriate. Each Borrower hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and the Lead Arranger with respect to any breach or alleged breach of agency or fiduciary duty.

SECTION 9.14. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.15. USA PATRIOT Act. Each Lender hereby notifies each Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify and record information that identifies such Borrower, which information includes the name and address of the Borrowers and other information that will allow such Lender to identify such Borrower in accordance with the Patriot Act.

SECTION 9.16. Judgment Currency. This is an international loan transaction in which the specification of Dollars or an Alternate Currency, as the case may be (the "Specified Currency"), and any payment in New York City or the country of the Specified Currency, as the case may be (the "Specified Place"), is of the essence, and the Specified

Currency shall be the currency of account in all events relating to amounts denominated in such Specified Currency. The payment obligations of the Borrowers under this Agreement and the other Loan Documents shall not be discharged by an amount paid in another currency or in another place, whether pursuant to a judgment or otherwise, to the extent that the amount so paid on conversion to the Specified Currency and transfer to the Specified Place under normal banking procedures does not yield the amount of the Specified Currency at the Specified Place due hereunder. If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Specified Currency into another currency (the "Second Currency"), the rate of exchange which shall be applied shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the Specified Currency with the Second Currency on the Business Day next preceding that on which such judgment is rendered. The obligation of the Borrowers in respect of any such sum due from it to the Administrative Agent or any Lender hereunder shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be due hereunder or under the Notes in the Second Currency to the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase and transfer to the Specified Place the Specified Currency with the amount of the Second Currency so adjudged to be due; and the Borrowers hereby, as a separate obligation and notwithstanding any such judgment, jointly and severally agree to indemnify the Administrative Agent or such Lender, as the case may be, against, and to pay the Administrative Agent or such Lender, as the case may be, on demand in the Specified Currency, any difference between the sum originally due to the Administrative Agent or such Lender, as the case may be, in the Specified Currency and the amount of the Specified Currency so purchased and transferred.

SECTION 9.17. European Monetary Union. ii) Definitions. In this Section 9.17 and in each other provision of this Agreement to which reference is made in this Section 9.17 (whether expressly or impliedly), the following terms have the following respective meanings:

"EMU" shall mean economic and monetary union as contemplated in the Treaty on European Union.

"EMU Legislation" shall mean legislative measures of the European Council for the introduction of, changeover to or operation of a single or unified European currency, being in part the implementation of the third stage of EMU.

"Euro" shall mean the single currency of Participating Member States of the European Union, which shall be a Currency under this Agreement.

"Euro Unit" shall mean a currency unit of the Euro.

"National Currency Unit" shall mean a unit of any Currency (other than a Euro Unit) of a Participating Member State.

"Participating Member State" shall mean each state so described in any EMU Legislation.

“Target Operating Day” shall mean any day that is not (a) a Saturday or Sunday, (b) Christmas Day or New Year’s Day or (c) any other day on which the Trans-European Real-time Gross Settlement Express Transfer system (or any successor settlement system) is not operating (as determined by the Administrative Agent).

“Treaty on European Union” shall mean the Treaty of Rome of March 25, 1957, as amended by the Single European Act 1986 and the Maastricht Treaty (which was signed at Maastricht on February 7, 1992, and came into force on November 1, 1993), as amended from time to time.

(a) Alternative Currencies. If and to the extent that any EMU Legislation provides that an amount denominated either in the Euro or in the National Currency Unit of a Participating Member State and payable within the Participating Member State by crediting an account of the creditor can be paid by the debtor either in the Euro Unit or in that National Currency Unit, any party to this Agreement shall be entitled to pay such amount either in the Euro Unit or in such National Currency Unit.

(b) Payments by the Administrative Agent Generally. With respect to the payment of any amount denominated in the Euro or in a National Currency Unit, the Administrative Agent shall not be liable to any Borrower or any of the Lenders in any way whatsoever for any delay, or the consequences of any delay, in the crediting to any account of any amount required by this Agreement to be paid by the Administrative Agent if the Administrative Agent shall have taken all relevant steps to achieve, on the date required by this Agreement, the payment of such amount in immediately available, freely transferable, cleared funds (in the Euro Unit or, as the case may be, in a National Currency Unit) to the account of any Borrower or any Lender, as the case may be, in the Principal Financial Center in the Participating Member State which the Borrower or, as the case may be, such Lender shall have specified for such purpose. In this paragraph (c), “all relevant steps” shall mean all such steps as may be prescribed from time to time by the regulations or operating procedures of such clearing or settlement system as the Administrative Agent may from time to time reasonably determine for the purpose of clearing or settling payments of the Euro.

(c) Determination of Eurocurrency Rate. For the purposes of determining the date on which the applicable rate for Eurocurrency Loans, as the case may be, is determined under this Agreement for any Loan denominated in the Euro (or any National Currency Unit) for any Interest Period therefor, references in this Agreement to London Banking Days shall be deemed to be references to Target Operating Days. In addition, if the Administrative Agent determines that there is no Eurocurrency Rate displayed on the Screen Page for deposits denominated in the National Currency Unit in which any Loans are denominated, the Eurocurrency Rate for such Loans shall be based upon the rate displayed on the applicable Screen Page for the offering of deposits denominated in Euro Units.

(d) Rounding. Without prejudice and in addition to any method of conversion or rounding prescribed by the EMU Legislation, each reference in this Agreement to a minimum amount (or a multiple thereof) in a National Currency Unit to be paid to or by the Administrative

Agent shall be replaced by a reference to such reasonably comparable and convenient amount (or a multiple thereof) in the Euro Unit as the Administrative Agent may from time to time specify.

(e) Other Consequential Changes. Without prejudice to the respective liabilities of the Borrowers to the Lenders and the Lenders to the Borrowers under or pursuant to this Agreement, except as expressly provided in this Section 9.17, each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be necessary or appropriate to reflect the introduction of or changeover to the Euro in Participating Member States.

SECTION 9.18. 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 the applicable Resolution Authority.

SECTION 9.19. Existing Letters of Credit and Existing Loans. The parties to this Agreement agree that, on the Closing Date, the terms and provisions of the Existing Credit Agreement shall be and hereby are amended, superseded and restated in their entirety by the terms and provisions of this Agreement. This Agreement is not intended to and shall not constitute a novation. Existing Loans, Existing Letters of Credit and Obligations incurred under the Existing Credit Agreement which are outstanding on the Closing Date shall continue as Loans, Letters of Credit and Obligations under (and shall be governed by the terms of) this Agreement and the other Loan Documents. Without limiting the foregoing, upon the effectiveness of the amendment and restatement contemplated hereby on the Closing Date, all references in the "Loan Documents" (as defined in the Existing Credit Agreement) to the

Administrative Agent”, the “Credit Agreement” and the “Loan Documents” shall be deemed to refer to the Administrative Agent, this Agreement and the Loan Documents.

[Signature Pages Follow]

CERTAIN INFORMATION, IDENTIFIED BY, AND REPLACED WITH, A MARK OF “[\*\*]” HAS BEEN EXCLUDED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) AND IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 21, 2018

among

COMMONWEALTH RE MIDCO LIMITED,  
as Holdings,

GLOBAL ATLANTIC (FIN) COMPANY,  
as Borrower,

THE GUARANTORS PARTY HERETO,  
as Guarantors,

ROYAL BANK OF CANADA,  
as Administrative Agent,

and

THE LENDERS PARTY HERETO

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RBC CAPITAL MARKETS,  
U.S. BANK NATIONAL ASSOCIATION  
and  
WELLS FARGO SECURITIES, LLC,  
as Joint Lead Arrangers and Joint Bookrunners

ROYAL BANK OF CANADA,  
U.S. BANK NATIONAL ASSOCIATION  
and  
WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Syndication Agents

THE BANK OF NOVA SCOTIA,  
BMO HARRIS BANK N.A.  
and  
KEYBANK NATIONAL ASSOCIATION,  
as Documentation Agents

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TABLE OF CONTENTS

Page

ARTICLE 1  
DEFINITIONS

Section 1.01.	Certain Defined Terms	1
Section 1.02.	Other Interpretive Provisions	36
Section 1.03.	Classification of Loans	37
Section 1.04.	Accounting Principles	37

ARTICLE 2  
THE CREDITS

Section 2.01.	Revolving Loans	38
Section 2.02.	Issuance of Letters of Credit	39
Section 2.03.	Pro Rata Shares	49
Section 2.04.	Conversion and Continuation of Revolving Loans	49
Section 2.05.	Notes; Loan Accounts	50
Section 2.06.	Prepayments	50
Section 2.07.	Interest	52
Section 2.08.	Fees	54
Section 2.09.	Computation of Fees and Interest	55
Section 2.10.	Payments Generally	55
Section 2.11.	Sharing of Payments by Lenders	57
Section 2.12.	Defaulting Lenders	57
Section 2.13.	Maturity Extensions of Revolving Loans	60
Section 2.14.	Provisions Relating to NAIC Approved Banks	63
Section 2.15.	Incremental Facilities	64

ARTICLE 3  
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01.	Taxes	65
Section 3.02.	Illegality	69
Section 3.03.	Increased Costs and Reduction of Return	69
Section 3.04.	Funding Losses	71
Section 3.05.	Inability to Determine Rates	71
Section 3.06.	Certificates of Lenders	72
Section 3.07.	Substitution of Lenders	72
Section 3.08.	Survival	73

ARTICLE 4  
CONDITIONS PRECEDENT

Section 4.01.	Conditions to Effectiveness	73
Section 4.02.	Conditions to All Borrowings and Letter of Credit Issuances	75

Section 4.03.	Determinations Under Section 4.01	76
---------------	-----------------------------------	----

ARTICLE 5  
REPRESENTATIONS AND WARRANTIES

Section 5.01.	Corporate Existence and Power	77
Section 5.02.	Corporate Authorization; No Contravention	77
Section 5.03.	Governmental Authorization; Other Consents	77
Section 5.04.	Binding Effect	78
Section 5.05.	Litigation	78
Section 5.06.	No Default	78
Section 5.07.	ERISA Compliance	78
Section 5.08.	Margin Regulations	79
Section 5.09.	Title to Properties	80
Section 5.10.	Taxes	80
Section 5.11.	Financial Condition	80
Section 5.12.	Environmental Matters	81
Section 5.13.	Investment Company Act of 1940	82
Section 5.14.	Subsidiaries	82
Section 5.15.	Insurance and Other Licenses	83
Section 5.16.	Full Disclosure	83
Section 5.17.	Solvency	83
Section 5.18.	Insurance	84
Section 5.19.	Anti-Corruption Laws; OFAC; Anti-Terrorism Laws; PATRIOT Act	84
Section 5.20.	Surplus Debenture Interest and Dividends	85
Section 5.21.	Use of Proceeds	85
Section 5.22.	EEA Financial Institution	85

ARTICLE 6  
AFFIRMATIVE COVENANTS

Section 6.01.	Financial Statements	85
Section 6.02.	Certificates; Other Information	87
Section 6.03.	Notices	89
Section 6.04.	Preservation of Corporate Existence, Etc	90
Section 6.05.	Insurance	91
Section 6.06.	Payment of Taxes and Claims	91
Section 6.07.	Compliance with Laws	91
Section 6.08.	Compliance with ERISA	91
Section 6.09.	Inspection of Property and Books and Records	91
Section 6.10.	Information Regarding Collateralized L/C Collateral	92
Section 6.11.	Use of Proceeds	92
Section 6.12.	Additional Guarantors	92
Section 6.13.	Further Assurances	92
Section 6.14.	Designation of Subsidiaries	93
Section 6.15.	Maintenance of Properties	93
Section 6.16.	Lender Meetings	93



Section 6.17.	Environmental	93
---------------	---------------	----

ARTICLE 7  
NEGATIVE COVENANTS

Section 7.01.	Limitation on Certain Indebtedness	95
Section 7.02.	Liens	95
Section 7.03.	Disposition of Assets	97
Section 7.04.	Sales and Lease Backs	99
Section 7.05.	Transactions with Affiliates	99
Section 7.06.	Change in Business	100
Section 7.07.	Fundamental Changes	100
Section 7.08.	Restricted Payments	101
Section 7.09.	Prepayment of Certain Indebtedness; Modifications of Certain Agreements; Synthetic Purchase Agreements	102
Section 7.10.	Debt to Total Capitalization Ratio	102
Section 7.11.	Holdings Net Worth	102
Section 7.12.	Non-Contravention of OFAC	102
Section 7.13.	Restrictive Agreements	103
Section 7.14.	Holding Company Activities	104
Section 7.15.	Changes in Accounting Policies; Fiscal Year	104

ARTICLE 8  
EVENTS OF DEFAULT

Section 8.01.	Events of Default	104
Section 8.02.	Remedies	107
Section 8.03.	Rights Not Exclusive	108

ARTICLE 9  
THE AGENTS

Section 9.01.	Appointment and Authority	108
Section 9.02.	Rights as a Lender	108
Section 9.03.	Exculpatory Provisions	108
Section 9.04.	Reliance by Administrative Agent	109
Section 9.05.	Delegation of Duties	109
Section 9.06.	Resignation of Administrative Agent	110
Section 9.07.	Non-Reliance on Administrative Agent and Other Lenders	110
Section 9.08.	No Other Duties; Other Agents; Etc	111
Section 9.09.	Administrative Agent May File Proofs of Claim	111
Section 9.10.	Collateral and Guarantee Matters	112
Section 9.11.	Indemnification of Agent-Related Persons	112
Section 9.12.	Withholding Tax	113
Section 9.13.	Certain ERISA Matters	113

ARTICLE 10  
MISCELLANEOUS

Section 10.01.	Amendments and Waivers	115
Section 10.02.	Notices	117
Section 10.03.	No Waiver; Cumulative Remedies	120
Section 10.04.	Costs and Expenses	120
Section 10.05.	Borrower Indemnification; Damage Waiver	120
Section 10.06.	Marshaling; Payments Set Aside	122
Section 10.07.	Assignments, Successors, Participations, Etc	122
Section 10.08.	Confidentiality	125
Section 10.09.	Set-off	126
Section 10.10.	Notification of Addresses, Lending Offices, Etc	127
Section 10.11.	Effectiveness; Counterparts	127
Section 10.12.	Survival of Representations and Warranties	127
Section 10.13.	Severability	127
Section 10.14.	Replacement of Defaulting Lenders and Non-Consenting Lenders	128
Section 10.15.	Governing Law; Jurisdiction; Consent to Service of Process	128
Section 10.16.	Waiver of Jury Trial	129
Section 10.17.	PATRIOT Act Notice	129
Section 10.18.	Entire Agreement	129
Section 10.19.	Independence of Covenants	130
Section 10.20.	Obligations Several; Independent Nature of Lenders Right	130
Section 10.21.	No Fiduciary Duty	130
Section 10.22.	Judgment Currency	131
Section 10.23.	Existing Credit Agreement Amended and Restated; Consents to Amendments to Existing Loan Documents; Restatement Effective Date Assignments	131
Section 10.24.	Acknowledgment and Consent to Bail-In of EEA Financial Institutions	132

**APPENDICES**

Appendix A	Revolving Commitments
Appendix B	Collateralized L/C Collateral Rates

**SCHEDULES**

Schedule 4.01(l)	Organizational Chart
Schedule 5.05	Litigation
Schedule 5.14(a)	Capital Stock
Schedule 5.14(b)	Subsidiaries
Schedule 7.02	Existing Liens
Schedule 7.13	Restrictive Agreements
Schedule 10.02	Addresses for Notices

## EXHIBITS

Exhibit A	Form of Compliance Certificate
Exhibit B	Form of Revolving Loan Note
Exhibit C-1	Form of Loan Notice
Exhibit C-2	Form of Issuance Notice
Exhibit C-3	Form of Continuation/Conversion Notice
Exhibit D	Form of Assignment and Assumption
Exhibit E-1	Form of Guarantee Agreement
Exhibit E-2	Form of Collateralized L/C Security and Control Agreement
Exhibit F-1	United States Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit F-2	United States Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit F-3	United States Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit F-4	United States Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit G-1	Form of Opinion of Sidley Austin LLP
Exhibit G-2	Form of Opinion of Appleby (Bermuda) Limited
Exhibit H	Form of Solvency Certificate
Exhibit I	Intercompany Subordination Provisions
Exhibit J	Form of Prepayment Notice
Exhibit K	Form of Collateralized L/C Collateral Certificate
Exhibit L	Form of Joinder Agreement

## SECOND AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT is entered into as of May 21, 2018 by and among COMMONWEALTH RE MIDCO LIMITED, a company incorporated and existing under the laws of Bermuda (“**CwA MidCo**”), GLOBAL ATLANTIC (FIN) COMPANY, a Delaware corporation and a wholly-owned subsidiary of Holdings (the “**Borrower**”), certain other subsidiaries of Holdings from time to time as Guarantors hereunder, the lenders from time to time party to this Agreement (collectively, the “**Lenders**”; individually, each, a “**Lender**”), ROYAL BANK OF CANADA, as administrative agent for the Lenders (the “**Administrative Agent**”) and the other agents and arrangers party hereto.

### RECITALS:

WHEREAS, CwA MidCo, the Borrower, the lenders party thereto (the “**Existing Credit Agreement Lenders**”) and the Administrative Agent are parties to the Amended and Restated Credit Agreement, dated as of December 7, 2016 (as in effect immediately prior to the effectiveness of this Agreement, the “**Existing Credit Agreement**”);

WHEREAS, the Credit Parties, the Lenders (including the Continuing Existing Credit Agreement Lenders) and the Administrative Agent desire to amend and restate the Existing Credit Agreement in its entirety to, among other things, (a) increase the aggregate amount of the revolving credit facility from \$650,000,000 to \$1,000,000,000, (b) extend the scheduled commitment termination date of the revolving credit facility and (c) make other amendments and other modifications to the Existing Credit Agreement;

WHEREAS, as of the Restatement Effective Date, (i) the aggregate outstanding principal amount of the Revolving Loans is \$405,000,000 and (ii) the aggregate Letter of Credit Usage in respect of all Letters of Credit is zero;

WHEREAS, the Borrower intends to use the proceeds of the revolving credit facility for working capital and general corporate purposes of Holdings and the Subsidiaries;

WHEREAS, the Guarantor party to this Agreement on the Restatement Effective Date is willing to continue to guarantee the obligations of the Borrower, as provided in the Guarantee Agreement; and

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.01. *Certain Defined Terms.* The following terms have the following meanings:

“**Administrative Agent**” has the meaning specified in the introduction to this Agreement, and includes its successors and permitted assigns in such capacity.

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

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners of the other Person or (b) to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, membership interests, by contract or otherwise.

“**Agents**” means the Administrative Agent, the Arrangers, the Bookrunners, the Syndication Agents and the Documentation Agents.

“**Agent-Related Persons**” means the initial Administrative Agent and any successor Administrative Agent, in each case together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

“**Agreement**” means this Second Amended and Restated Credit Agreement, as amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

“**A.M. Best**” means A.M. Best Company.

“**Annual Statement**” means the annual statutory financial statement of any Insurance Subsidiary required to be filed with the insurance commissioner (or similar authority) of its jurisdiction of incorporation, which statement shall be in the form required by such Insurance Subsidiary’s jurisdiction of incorporation or, if no specific form is so required, in the form of financial statements permitted by such insurance commissioner (or such similar authority) to be used for filing annual statutory financial statements and shall contain the type of information permitted or required by such insurance commissioner (or such similar authority) to be disclosed therein, together with all exhibits or schedules filed therewith.

“**Anti-Corruption Laws**” means any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties related to corruption or bribery and including the Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et seq.).

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

“**Applicable Margin**”, “**Applicable Revolving Commitment Fee Percentage**” and “**Applicable Non-Collateralized Letter of Credit Fee**” mean a percentage, per annum, determined by reference to the Debt Ratings in effect from time to time, as set forth in the table below:

Pricing Level	Debt Ratings S&P / Moody's / Fitch	Applicable Non-Collateralized Letter of Credit Fee	Applicable Margin for Base Rate Loans	Applicable Margin for Eurodollar Rate Loans	Applicable Revolving Commitment Fee Percentage
1	≥ A-/A3/A-	[**]%	[**]%	1.125%	0.15%
2	BBB+/Baa1/BBB+	[**]%	[**]%	[**]%	[**]%
3	BBB/Baa2/BBB	[**]%	[**]%	[**]%	[**]%
4	BBB-/Baa3/BBB-	[**]%	[**]%	[**]%	[**]%
5	≤ BB+/Ba1/BB+	[**]%	[**]%	2.00%	0.35%

Initially, the Applicable Margin, Applicable Revolving Commitment Fee Percentage and Applicable Non-Collateralized Letter of Credit Fee shall be set at Pricing Level 3. No change in the Applicable Margin, Applicable Revolving Commitment Fee Percentage or Applicable Non-Collateralized Letter of Credit Fee shall be effective until one (1) Business Day after the date of the public announcement of a change in any of the Debt Ratings. Within one (1) Business Day of the date of the public announcement of a change in any of the Debt Ratings, the Administrative Agent shall give the Borrower and each Lender notice of the Applicable Margin, the Applicable Revolving Commitment Fee Percentage and the Applicable Non-Collateralized Letter of Credit Fee in effect from such date.

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

“**Approved Electronic Communications**” means any notice, demand, communication, information, document or other material that any of Holdings or any of its Subsidiaries provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, which is distributed to the Administrative Agent or Lenders by means of electronic communications pursuant to Section 10.02(b).

[\*\*] = Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.

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

“**Arrangers**” means, collectively, RBCCM, US Bank and WFS.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee substantially in the form of Exhibit D or in another form reasonably acceptable to the Administrative Agent.

“**Attorney Costs**” means and includes all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

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

“**Bail-In Legislation**” means, 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 for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“**Bank of Nova Scotia**” means The Bank of Nova Scotia.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Base Rate**” means for any day a fluctuating rate *per annum* equal to the highest of (a) the Federal Funds Rate *plus* 1/2 of 1%, (b) the rate of interest *per annum* determined by the Administrative Agent from time to time as its prime commercial lending rate for Dollar loans in the United States for such day, and (c) the Eurodollar Rate for an Interest Period of one month beginning on such day (or if such day is not a Business Day, the Business Day immediately preceding such day) *plus* 1.00% *per annum*; *provided* that, if such rate *per annum* is less than zero, the Base Rate will be deemed to be zero for purposes of this Agreement.

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

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

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

“**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”.

“**BMO**” means BMO Harris Bank N.A.

“**Bookrunners**” means, collectively, RBCCM, US Bank and WFS.

“**Borrower**” has the meaning specified in the introduction to this Agreement.

“**Borrower Materials**” has the meaning specified in [Section 6.02](#).

“**Borrowing Date**” means the date of a Credit Extension (other than a conversion or continuation of a Loan).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located or New York City and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Capital Adequacy Regulation**” means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of any bank or of any corporation controlling a bank.

“**Capital and Surplus**” means, as to any Insurance Subsidiary, as of any date, the total amount shown on (i) line 38, page 3, column 1 and (ii) line 24.1, page 3 (or such other line on which the equivalent information is provided on any other such Annual Statement) of the Annual Statement of such Insurance Subsidiary as of such date, or an amount determined in a consistent manner for any date other than one as of which an Annual Statement is prepared.

“**Capital Stock**” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase any of the foregoing; *provided* that, for the avoidance of doubt, Capital Stock shall not be deemed to include debt convertible or exchangeable for any of the foregoing.

“**Capitalized Lease Liabilities**” means, with respect to any Person, all monetary obligations of such Person under any leasing or similar arrangement that, in accordance with GAAP, would be classified as a capitalized lease, *provided* that, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of this definition, whenever in this Agreement it is necessary to determine whether a lease is a capital lease or an operating lease, such determination shall be made on the basis of GAAP as in effect on January 1, 2015.

“**Cash**” means Dollars and any overnight or other investment money market funds of the Custodian with which a Collateralized L/C Collateral Account is maintained (or an Affiliate of such Custodian).



“**Cash Collateralize**” means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance satisfactory to the Administrative Agent (and “**Cash Collateralization**” and “**Cash Collateralized**” have corresponding meanings). “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Equivalents**” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of twelve months or less from the date of acquisition issued by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$500,000,000 and a short-term deposit rating of at least A-1 by S&P and P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally; (c) commercial paper of an issuer rated at least A-2 by S&P and P-2 by Moody’s at the time of acquisition thereof, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within nine months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P and A2 by Moody’s; (f) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) of this definition; or (g) shares of money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

“**Cash Management Obligations**” means obligations owed in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds or in respect of any credit card or similar services.

“**CBOs**” means notes or other instruments (other than CMOs) secured by collateral consisting primarily of debt securities and/or other types of debt obligations, including loans.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“**Change of Control**” means (a) any acquisition, directly or indirectly, by any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) of beneficial ownership (within the meaning of Rule 13d-3 of the SEC under the Exchange Act) of 35% or

more on a fully diluted basis of the outstanding shares of Voting Stock of (i) prior to the IPO, CwA MidCo (other than the direct beneficial ownership of GAFL of additional Voting Stock of CwA MidCo), or (ii) from and after the IPO, the IPO Entity; (b) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall obtain, directly or indirectly, the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of (i) prior to the IPO, CwA MidCo (other than additional direct power of GAFL to elect a majority of the members of the board of directors (or similar governing body) of CwA MidCo), or (ii) from and after the IPO, the IPO Entity (other than additional direct power of GAFL to elect a majority of the members of the board of directors (or similar governing body) of CwA MidCo); (c)(i) prior to the IPO, Parent or GAFL shall cease to beneficially own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the outstanding shares of Voting Stock of CwA MidCo or (ii) Holdings shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the outstanding shares of Voting Stock of the Borrower; or (d) the occurrence of a “change of control” (howsoever defined) in any instrument governing any Indebtedness of Holdings or its Restricted Subsidiaries with an aggregate outstanding amount in excess of \$75,000,000 that constitutes an “event of default” under such other debt instrument or would constitute an “event of default” after notice or passage of time under such other debt instrument. Subject to the foregoing, the IPO will not constitute a Change of Control.

“**Class**” means (i) with respect to Lenders, Lenders having Revolving Exposure, and (ii) with respect to Loans, Revolving Loans. Until the consummation of an Extension pursuant to Section 2.13, there will be only one Class hereunder.

“**CMOs**” means notes or other instruments secured by collateral consisting primarily of mortgages, mortgage-backed securities and/or other types of mortgage-related obligations.

“**Code**” means the Internal Revenue Code of 1986, and regulations promulgated thereunder.

“**Collateralized L/C Aggregate Collateral Amount**” means, subject to the immediately succeeding paragraph, the sum of the Collateralized L/C Collateral Amounts of all Cash and Eligible Securities that are held in Collateralized L/C Collateral Accounts and subject to a first priority perfected security interest in favor of the Administrative Agent securing the Obligations with respect to Collateralized Letters of Credit.

Notwithstanding the foregoing, (a) if the aggregate fair market value of Eligible Securities of any single corporate issuer (or any Affiliate thereof) that are held in Collateralized L/C Collateral Accounts represents more than 10% of the aggregate fair market value of all Cash and Eligible Securities that are held in Collateralized L/C Collateral Accounts, the excess over 10% will be excluded from the Collateralized L/C Aggregate Collateral Amount, (b) the weighted average rating of all Agency Securities (as described in Appendix B) constituting Eligible Securities and held in Collateralized L/C Collateral Accounts must at all times be at least (i) AA+ from S&P or (ii) Aa1 from Moody’s, (c) if the aggregate fair market value of Asset-Backed Securities (as described in Appendix B) (including CMBS) held in Collateralized L/C Collateral Accounts represents more than 20% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 20% will be

excluded from the Collateralized L/C Aggregate Collateral Amount, (d) if the aggregate fair value of Asset-Backed Securities constituting CMBS held in Collateralized L/C Collateral Accounts represents more than 10% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 10% will be excluded from the Collateralized L/C Aggregate Collateral Amount, (e) if the aggregate value of OECD Government Securities (as described in Appendix B) held in Collateralized L/C Collateral Accounts represents more than 20% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 20% will be excluded from the Collateralized L/C Aggregate Collateral Amount, and (f) if the aggregate value of Supranational Securities (as described in Appendix B) held in Collateralized L/C Collateral Accounts represents more than 20% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 20% will be excluded from the Collateralized L/C Aggregate Collateral Amount. For the avoidance of doubt, (x) any Cash or Eligible Securities that are not held in Collateralized L/C Collateral Accounts or subject to a first priority perfected security interest in favor of the Administrative Agent securing the Obligations with respect to Collateralized Letters of Credit or (y) any Eligible Securities for which an ISIN has not been issued, in each case, will not be included in the Collateralized L/C Aggregate Collateral Amount.

“**Collateralized L/C Collateral**” means, collectively, all property of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Collateralized L/C Security Document.

“**Collateralized L/C Collateral Account**” means any deposit account or securities account maintained by the Borrower with a Custodian in respect of which a Collateralized L/C Security and Control Agreement is in effect.

“**Collateralized L/C Collateral Amount**” means, at any time, with respect to Cash or any category of Eligible Securities, the product of (a)(i) the amount of such Cash or (ii) the fair market value of such Eligible Securities, in each case, that is held in a Collateralized L/C Collateral Account at such time and subject to a first priority perfected security interest in favor of the Administrative Agent securing the Obligations with respect to Collateralized Letters of Credit, *multiplied by* (b) the Collateralized L/C Collateral Rate therefor, in each case, determined as of the close of business on the immediately preceding Business Day. The fair market value of Eligible Securities will be determined by reference to a generally recognized source selected by the applicable Custodian (or the most recent bid quotation from such source). With respect to any Eligible Securities having a fair market value denominated in a currency other than Dollars, the Dollar equivalent thereof (using a method selected by the applicable Custodian) will be used for purposes of determining the value of such Eligible Securities.

“**Collateralized L/C Collateral Certificate**” means a certificate substantially in the form of Exhibit K executed by a Responsible Officer of the Borrower.

“**Collateralized L/C Collateral Deficiency**” has the meaning specified in Section 2.02(1)(vi).

“**Collateralized L/C Collateral Deficiency Correction Date**” has the meaning specified in Section 2.02(l)(vi).

“**Collateralized L/C Collateral Rate**” means, for Cash or any category of obligation or investment specified in Appendix B in the column entitled “Cash and Eligible Securities” (other than Cash, the “**Eligible Securities**”), the percentage set forth opposite such category of Cash or Eligible Securities in Appendix B in the column entitled “Collateralized L/C Collateral Rate” and, in each case, subject to the term to maturity criteria set forth therein.

“**Collateralized L/C Collateral Requirement**” means the requirement that:

(a) the Administrative Agent shall have received a counterpart to a Collateralized L/C Security and Control Agreement with respect to each Collateralized L/C Collateral Account, duly executed and delivered by the Borrower and the Custodian with which such Collateralized L/C Collateral Account is maintained;

(b) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create the Liens intended to be created by the Collateralized L/C Security Documents and perfect or record such Liens to the extent, and with the priority, required by the Collateralized L/C Security Documents, shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording;

(c) the Borrower shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of all Collateralized L/C Security Documents to which it is a party, the performance of its obligations thereunder and the granting of the Liens granted by it thereunder; and

(d) the Borrower shall have taken all other action required under the Collateralized L/C Security Documents to perfect, register and/or record the Liens granted by it thereunder.

“**Collateralized L/C Disbursement**” means a payment made by a Lender pursuant to a Collateralized Letter of Credit.

“**Collateralized L/C Liens**” means the Liens granted or to be granted by the Borrower under the Collateralized L/C Security Documents.

“**Collateralized L/C Security and Control Agreement**” means, with respect to any Collateralized L/C Collateral Account, a Security and Control Agreement substantially in the form of Exhibit E-2 and duly executed and delivered by the Administrative Agent, the Borrower and the Custodian with which such Collateralized L/C Collateral Account is maintained.

“**Collateralized L/C Security Documents**” means the Collateralized L/C Security and Control Agreements and each other security agreement, instrument or document executed and delivered pursuant thereto or pursuant to Section 2.02(l) or Section 6.13, to secure any of the Secured Obligations (as defined in the Collateralized L/C Security and Control Agreements).

“**Collateralized L/C Security Invalidity**” means, at any time, (a) any provision of any Collateralized L/C Security Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations, shall cease to be in full force and effect or (b) any Lien purported to be created under any Collateralized L/C Security Document that is required to be in effect at such time (in accordance with the Collateralized L/C Collateral Requirement) shall cease to be, or shall be asserted by any Credit Party or any Restricted Subsidiary of Holdings not to be, a valid and perfected Lien on any Collateralized L/C Collateral covered thereby, with the priority required by the applicable Collateralized L/C Security Document (except as a result of the Administrative Agent’s failure to maintain possession of any stock certificates, promissory notes or other documents or possessory collateral delivered to it under any Collateralized L/C Security Document).

“**Collateralized L/C True-Up Amount**” means, as of any date of determination, with respect to each Letter of Credit that is a Collateralized Letter of Credit, an amount equal to the difference between (a) the total letter of credit fees referred to in Section 2.08(a)(ii) that would have accrued in respect of such Letter of Credit (if such Letter of Credit was a Non-Collateralized Letter of Credit) from the date of issuance thereof to such date and (b) the total letter of credit fees referred to in Section 2.08(a)(iii) that have accrued in respect of such Letter of Credit from the date of issuance thereof to such date.

“**Collateralized Letter of Credit**” means a Letter of Credit the Obligations with respect to which are secured by a first priority perfected security interest in favor of the Administrative Agent in all Cash and Eligible Securities that are held in the Collateralized L/C Collateral Accounts.

“**Collateralized Letter of Credit Fee**” means **[\*\*]**% *per annum*.

“**Collateralized Letter of Credit Usage**” means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Collateralized Letters of Credit then outstanding *plus* (ii) the aggregate amount of all Collateralized L/C Disbursements made by the Lenders and not theretofore reimbursed by or on behalf of the Borrower.

“**Commitment Termination Date**” means the earliest to occur of (i) the fifth anniversary of the Restatement Effective Date, (ii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.06, and (iii) the date of the termination of the Revolving Commitments pursuant to Section 8.02.

“**Compensation Period**” has the meaning specified in Section 2.10(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit A executed by a Responsible Officer of Holdings.

“**Confirming Bank**” means, as provided in Section 2.14 with respect to any Non-NAIC Approved Bank, any Person (including any Lender) that is an NAIC Approved Bank and that has agreed in a written agreement to confirm Letters of Credit with respect to which such Non-NAIC Approved Bank is an issuer, which agreement shall be in form and substance reasonably

*[\*\*] = Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

satisfactory to the Administrative Agent (such an agreement, a “**Confirming Bank Agreement**”).

“**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 Total Assets**” means, with respect to any Person, the total assets which would appear on a consolidated balance sheet of such Person and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“**Contingent Obligation**” means, without duplication, any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the debt, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection or indemnities or other similar obligations under contracts entered into in the ordinary course of business and not in respect of Indebtedness or the issuance of Capital Stock), or guarantees the payment of dividends or other distributions upon the shares of any other Person; *provided* that the obligations of any Person under or in connection with insurance policies, under or in connection with Reinsurance Agreements, or in connection with Investments of Insurance Subsidiaries or Subsidiaries of Insurance Subsidiaries permitted by the applicable Department shall not be deemed Contingent Obligations of such Person. The amount of any Contingent Obligation of any Person shall (subject to any limitation set forth therein) be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

“**Continuing Existing Credit Agreement Lender**” means an Existing Credit Agreement Lender that has elected to continue as a Lender under this Agreement. Each of the Existing Credit Agreement Lenders immediately prior to the effectiveness of this Agreement is a Continuing Existing Credit Agreement Lender.

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

“**Conversion/Continuation Notice**” means a notice of conversion or continuation of a Revolving Loan substantially in the form of Exhibit C-3.

“**Credit Extension**” means (a) the making, conversion or continuation of a Loan or (b) the issuance, renewal or extension of a Letter of Credit.

“**Credit Parties**” means the Borrower and the Guarantors.

“**Custodian**” means (a) US Bank and (b) any other bank or financial institution that is (i)(A) with respect to any deposit account, a “bank” within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code, and (B) with respect to any securities account, a “securities intermediary” within the meaning of Section 8-102(a)(14) of the Uniform Commercial Code, (ii) located in the United States of America and (iii) satisfactory to the Administrative Agent.

“**CwA**” means Commonwealth Annuity and Life Insurance Company, a Massachusetts life insurance company.

“**CwA MidCo**” has the meaning specified in the introduction to this Agreement.

“**Debt Ratings**” means, as of any date of determination, the public long-term issuer credit ratings as determined by at least two of S&P, Moody’s and Fitch of any Credit Party; *provided* that (a) if more than one Credit Party has Debt Ratings, then the Debt Ratings of the Credit Party with the highest Debt Rating shall apply, (b) if the respective Debt Ratings of the applicable Credit Party issued by the foregoing rating agencies differ by one level, then the Pricing Level for the higher of such Debt Ratings shall apply (with the Debt Ratings for Pricing Level 1 being the highest and the Debt Ratings for Pricing Level 5 being the lowest), (c) if there is a split in Debt Ratings of the applicable Credit Party of more than one level, then the Pricing Level that is one Pricing Level higher than the Pricing Level of the lower Debt Rating shall apply.

“**Debt to Total Capitalization Ratio**” means, as of any date of determination, without duplication, the ratio of (a) the principal amount of, and accrued but unpaid interest on, all consolidated Indebtedness (other than Operating Indebtedness, Indebtedness in respect of undrawn letters of credit, Non-Recourse Insurance Subsidiary Indebtedness or Intercompany Indebtedness) of any Person and its Restricted Subsidiaries outstanding on such date to (b) Total Capitalization of such Person and its Restricted Subsidiaries on such date.

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

“**Default**” means any event or circumstance that constitutes an Event of Default or that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

“**Defaulting Lender**” means, subject to Section 2.12(b), any Lender that (a) has failed to (i) fund all or any portion of its Revolving Loans within two (2) Business Days of the date such Revolving 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 (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply

with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lenders' 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 the applicable default, if any, 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 or 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), (d) the Administrative Agent has received notification that such Lender is, or has a direct or indirect parent company that is (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (ii) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment, (e) ceases to be a NAIC Approved Bank and has failed to comply with its obligations under Section 2.14, or (f) is subject of any Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

**"Department"** means, with respect to any Insurance Subsidiary, the Governmental Authority of such Insurance Subsidiary's state or other jurisdiction of domicile with which such Insurance Subsidiary is required to file its Annual Statement.

**"Designated Subsidiary"** means (a) the Borrower, (b) each Restricted Subsidiary of Holdings that directly or indirectly owns any Capital Stock of the Borrower and (c) each Restricted Subsidiary of Holdings (other than an Insurance Subsidiary) that directly or indirectly owns any Capital Stock of any Insurance Subsidiary (including any such Restricted Subsidiary of Holdings that is itself owned by an Insurance Subsidiary) that (i) as of the Restatement Effective Date, has incurred, created, assumed, suffered to exist, guaranteed or at any time become directly or indirectly liable with respect to, any Indebtedness in an aggregate principal amount exceeding \$25,000,000 (other than Intercompany Indebtedness), or (ii) after the Restatement Effective Date, incurs, creates, assumes, suffers to exist, guaranties or at any time becomes directly or indirectly liable with respect to, any Indebtedness in an aggregate principal amount exceeding \$25,000,000 (other than Intercompany Indebtedness). Nothing contained in this definition shall be deemed to limit the ability of any Guarantor (other than Holdings) to merge, consolidate, amalgamate or sell all or substantially all of its assets in accordance with Section 7.07.

**"Disposition"** means the sale, assignment, leasing, transfer, contribution, conveyance, or other disposal of, any of a Person's assets (other than cash) (including a sale and leaseback



transaction and, in the case of any Restricted Subsidiary, the issuance or sale of its Capital Stock). The terms “**Dispose of**” and “**Disposed of**” shall have correlative meaning.

“**Disqualified Lender**” means (i) certain insurance companies that have been identified in writing by CwA MidCo to the Arrangers on or prior to May 21, 2018 and (ii) certain additional insurance companies or insurance company holding companies that have become competitors or clients of the Borrower or any Guarantor or any of their Subsidiaries after May 21, 2018 identified in writing by Holdings to the Arrangers and the Administrative Agent, *provided* that any Person (x) that is a Lender or that enters into a binding agreement to assume rights and obligations under this Agreement or (y) that is a Participant or that enters into a binding agreement to purchase a participation in all or a portion of a Lender’s rights and/or obligations under this Agreement and, in the case of either clause (x) or (y), subsequently becomes a Disqualified Lender (but was not a Disqualified Lender on the Restatement Effective Date or at the time it became a Lender or a Participant or entered into an agreement of such type, as applicable) shall be deemed to not be a Disqualified Lender hereunder. The list of Disqualified Lenders shall be made available to all Lenders by posting such list to IntraLinks or another similar electronic system.

“**Documentation Agents**” means, collectively, Bank of Nova Scotia, BMO and Wells Fargo and their respective successors and assigns in such capacity.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Economic Sanctions Laws**” means any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties relating to economic sanctions and terrorism financing, including any applicable provisions of each of the Trading with the Enemy Act (50 U.S.C. App. §§ 5(b) and 16, as amended), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706, as amended) and Executive Order 13224 (effective September 24, 2001), as amended.

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

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

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

“**Eligible Assignee**” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a Natural Person) approved by (i) the Administrative Agent and (ii) unless an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed);

provided that (x) notwithstanding the foregoing, “Eligible Assignee” shall not include Holdings, the Borrower or any of its Affiliates (other than Goldman Sachs & Co. and any lending affiliates thereof, but excluding Holdings and its Subsidiaries) or any Disqualified Lender, (y) each Eligible Assignee must be a NAIC Approved Bank and (z) the Borrower shall be deemed to have approved an assignee unless it shall object thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof.

“**Eligible Securities**” has the meaning set forth in the definition of “Collateralized L/C Collateral Rate”.

“**Embargoed Person**” means any Person that (i) is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the United States Treasury’s Office of Foreign Assets Control (“**OFAC**”), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority, or is located, resides, is organized or chartered or has a place of business in a country, region or territory subject to sanctions administered or enforced from time to time by the U.S. government, including those administered by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant sanctions authority or (ii) is publicly identified as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act or any other Requirement of Law.

“**Engagement Letter**” means that certain engagement letter, dated as of April 17, 2018, by and among the Borrower, RBC, RBCCM, Wells Fargo, WFS and US Bank, as amended, restated, supplemented or otherwise modified from time to time.

“**Entitled Person**” has the meaning set forth in [Section 10.22\(b\)](#).

“**Environment**” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Claims**” means all written claims, complaints or notices, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the Environment or threat to public health, personal injury (including sickness, disease or death), property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief or other type of relief, resulting from or based upon the presence, placement, or Release (including intentional or unintentional, negligent or non-negligent, sudden or non-sudden or accidental or non-accidental placement, spills, leaks, discharges, emissions or releases) of any Hazardous Material at, in, under or from property, whether or not owned by Holdings or any of its Restricted Subsidiaries, excluding, in any case, liabilities or claims arising under any insurance contract or policy, reinsurance agreement or retrocession agreement relating to any of the foregoing where Holdings or any of its Restricted Subsidiaries is the insurer.

“**Environmental Laws**” means all Requirements of Law relating to pollution or protection of the Environment, health and safety.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of remediation, fines, penalties or indemnities), of Holdings, any other Credit Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

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

“**ERISA Event**” means (a) a Reportable Event with respect to a Single Employer Pension Plan; (b) with respect to any Single Employer Pension Plan, the failure to satisfy the minimum funding standard under Sections 412 or 430 of the Code and Sections 302 or 303 of ERISA, whether or not waived, the failure to make by its due date a required installment under Section 430(j) of the Code or Section 303 of ERISA with respect to any Single Employer Pension Plan or the failure to make a required contribution to a Multiemployer Plan; (c) a withdrawal by Holdings, any of its Subsidiaries or any ERISA Affiliate from a Single Employer Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (d) a complete or partial withdrawal by Holdings, any of its Subsidiaries or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Single Employer Pension Plan or Multiemployer Plan; (f) an event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Pension Plan or Multiemployer Plan; (g) the imposition of any liability under Title IV of ERISA, other than required plan contributions and PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Holdings, any of its Subsidiaries or any ERISA Affiliate; (h) the engagement by Holdings, any of its Subsidiaries or any ERISA Affiliate in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; (i) a Multiemployer Plan is determined to be in “critical” or “endangered” status under Section 432 of the Code or Section 305 of ERISA, or, with respect to any Single Employer Pension Plan, a determination that it is “at risk” under Section 430 of the Code or Section 303 of ERISA; or (j) the imposition of a Lien under Section 430(k) of the Code or Section 303(k) or 4068 of ERISA.

“**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.

“**Eurodollar Rate**” means for any Interest Period with respect to a Eurodollar Rate Loan: the rate *per annum* obtained by dividing (i) (a) the rate *per annum* equal to the rate determined by the Administrative Agent to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other person which takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars displayed on page LIBOR01 of the Reuters Screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) is not available, the rate *per annum* determined by the Administrative Agent as the rate of interest equal to the offered quotation rate to major banks in the offshore Dollar market at their request by the Administrative Agent’s London Branch for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day funds comparable to the principal amount of the Revolving Loan, for which the Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one *minus* (b) the Applicable Reserve Requirement; *provided* that, if such rate *per annum* is less than zero, the Eurodollar Rate will be deemed to be zero for purposes of this Agreement.

“**Eurodollar Rate Loan**” means a Revolving Loan that bears interest at a rate based on the Eurodollar Rate.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

“**Excluded Taxes**” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Credit Party under any Loan Document, (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 (other than an assignee pursuant to a request by the Borrower under Section 3.07 or 10.14) (i) any United States federal withholding Tax that is imposed on amounts payable to such Lender under any laws in effect at the time such Lender becomes a party hereto (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 3.01(a) or (ii) any Tax that is attributable to such Lender’s failure to comply with Section 3.01(e) and (c) any United States federal withholding Tax that is imposed pursuant to FATCA.

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

“**Existing Credit Agreement Lenders**” has the meaning specified in the recitals.

“**Existing Credit Agreement Revolving Commitment**” means a Revolving Commitment (as defined in the Existing Credit Agreement). The amount of the aggregate Existing Credit Agreement Revolving Commitments of all Continuing Existing Credit Agreement Lenders immediately prior to the effectiveness of this Agreement is \$650,000,000.

“**Existing Revolving Commitments**” has the meaning specified in [Section 2.13\(c\)\(ii\)](#).

“**Existing Revolving Loans**” has the meaning specified in [Section 2.13\(c\)\(ii\)](#).

“**Extended Revolving Commitments**” has the meaning specified in [Section 2.13\(c\)\(ii\)](#).

“**Extended Revolving Loans**” has the meaning specified in [Section 2.13\(c\)\(ii\)](#).

“**Extended Termination Date**” has the meaning specified in [Section 2.13\(a\)](#).

“**Extension**” has the meaning specified in [Section 2.13\(a\)](#).

“**Extension Amendment**” has the meaning specified in [Section 2.13\(f\)](#).

“**Extension Offer**” has the meaning specified in [Section 2.13\(a\)](#).

“**Facility**” means, collectively, the Revolving Loans and Revolving Commitments therefor.

“**FATCA**” means current Sections 1471 through 1474 of the Code and any amended or successor version that is substantively comparable and not materially more onerous to comply with (including any United States Treasury Regulations or other official administrative guidance promulgated thereunder), any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or official practices adopted pursuant to any published intergovernmental agreement entered into in connection with the implementation of such sections of the Code.

“**Federal Funds Rate**” means, for any day, the greater of (i) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (ii) 0%; *provided that* (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means any fee letter agreement entered into pursuant to [Section 2.08\(d\)](#).

“**Fiscal Quarter**” means any fiscal quarter of a Fiscal Year.

“**Fiscal Year**” means any period of twelve consecutive calendar months ending on December 31.

“**Fitch**” means Fitch Ratings Limited, together with any Person succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, including substantially all of its business of rating securities.

“**Foreign Lender**” means any Lender that is not a “United States Person” within the meaning of Section 7701(a)(30) of the Code.

“**Foreign Subsidiary**” means a Subsidiary (which may be a corporation, limited liability company, partnership or other legal entity) organized under the laws of a jurisdiction outside the United States.

“**FRB**” means the Board of Governors of the Federal Reserve System and any Governmental Authority succeeding to any of its principal functions.

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

“**GA Bermuda**” means Global Atlantic Re Limited, a Bermuda exempted company registered under the Bermuda Insurance Act 1978 as a Class 3A and long-term Class C insurer.

“**GAAP**” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), that are applicable to the circumstances as of the date of determination.

“**GAFL**” means Global Atlantic Financial Life Limited, a company incorporated and existing under the laws of Bermuda.

“**Governmental Act**” means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial or regulatory functions of or pertaining to government, including any board of insurance, insurance department or insurance commissioner.

“**Guarantee**” has the meaning specified in the Guarantee Agreement.

**“Guarantee Agreement”** means the Amended and Restated Guarantee Agreement, dated as of the Restatement Effective Date, among the Guarantors and the Administrative Agent, substantially in the form of Exhibit E-1.

**“Guarantee Requirement”** means the requirement that the Administrative Agent shall have received from Holdings, the Borrower and each other Designated Subsidiary either (a) a counterpart to this Agreement and the Guarantee Agreement, duly executed and delivered on behalf of such Person, or (b) in the case of any Person that becomes a Designated Subsidiary after the Restatement Effective Date, a supplement to this Agreement and the Guarantee Agreement, in the form specified in the Guarantee Agreement or otherwise reasonably acceptable to the Administrative Agent, duly executed and delivered on behalf of such Designated Subsidiary.

**“Guaranteed Obligations”** has the meaning specified in the Guarantee Agreement.

**“Guaranteed Parties”** has the meaning specified in the Guarantee Agreement.

**“Guaranteed Swap Contract”** means any Swap Contract entered into by a Credit Party with any Person that, at the time such Swap Contract is entered into, is the Administrative Agent, any Arranger, any Bookrunner or any Lender (or an Affiliate of the Administrative Agent, any Arranger, any Bookrunner or any Lender) to hedge interest rate risk of such Credit Party with respect to the Facility.

**“Guarantors”** means each of Holdings and each other Designated Subsidiary that is a party to the Guarantee Agreement. Nothing contained in this definition shall be deemed to limit the ability of any Guarantor (other than Holdings) to merge, consolidate, amalgamate or sell all or substantially all of its assets in accordance with Section 7.07.

**“Hazardous Material”** means: (a) any “hazardous substance,” as defined by CERCLA; (b) any “hazardous waste,” as defined by the Resource Conservation and Recovery Act; (c) petroleum and any petroleum product; or (d) any other pollutant, contaminant, chemical, material, waste or substance in any form that is subject to regulation or, as to which, liability or standards of conduct can be imposed under any Environmental Law.

**“Historical Financial Statements”** means, as of the Restatement Effective Date, the audited consolidated balance sheets and the related consolidated statements of income, stockholders’ equity and cash flows of Holdings for the Fiscal Years ended December 31, 2016 and December 31, 2017.

**“Historical Statutory Statements”** has the meaning specified in Section 5.11(b).

**“Holdings”** means (a) prior to the IPO, CwA MidCo, and (b) upon and after the IPO, the IPO Entity.

**“Hybrid Securities”** means, at any time, trust preferred securities, deferrable interest subordinated debt securities, mandatory convertible debt or other hybrid securities issued by the Borrower or any Restricted Subsidiary that is accorded at least some equity treatment by S&P or Moody’s at the time of issuance thereof.

“**Increase Amount**” means, at any time, the amount equal to (a) \$150,000,000 less (b) the aggregate amount of all New Revolving Commitments effected at or prior to such time. On the Restatement Effective Date, the Increase Amount is \$150,000,000.

“**Increased Amount Date**” has the meaning specified in Section 2.15(a).

“**Increasing Lender**” means (a) a Continuing Existing Credit Agreement Lender (i) whose Existing Credit Agreement Revolving Commitment immediately prior to the effectiveness of this Agreement (as a percentage of the aggregate Existing Credit Agreement Revolving Commitments of all Continuing Existing Credit Agreement Lenders immediately prior to the effectiveness of this Agreement), was less than (ii) its Revolving Commitment upon the effectiveness of this Agreement (as a percentage of the aggregate Revolving Commitments of all Lenders upon the effectiveness of this Agreement) and (b) each New Revolving Lender.

“**Indebtedness**” means, with respect to any Person, without duplication: (a) all indebtedness of such Person for borrowed money or in respect of loans or advances; (b) all indebtedness of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all indebtedness in respect of letters of credit, whether or not drawn, and bankers’ acceptances and letters of guaranty issued for the account or upon the application or request of such Person; (d) all Capitalized Lease Liabilities of such Person; (e) the liabilities (if any) of such Person in respect of Swap Contracts as determined by reference to the Swap Termination Value thereof; (f) all obligations of such Person to pay the deferred purchase price of property or services that are included as liabilities in accordance with GAAP (other than accrued expenses incurred and trade accounts payable in each case in the ordinary course of business) and all obligations secured by a Lien on property owned or being purchased by such Person, but only to the extent of the lesser of the obligations secured or the value of the property to which such Lien is attached (including obligations arising under conditional sales or other title retention agreements); (g) any obligations of a partnership of the kind referred to in clauses (a) through (f) above or clause (h) or (i) below in which such Person is a general partner; (h) solely for purposes of Section 7.10, all obligations in respect of Hybrid Securities (other than Hybrid Securities (or the greatest portion thereof) that are treated as equity by S&P or Moody’s) of such Person; and (i) all Contingent Obligations of such Person in connection with Indebtedness or obligations of others of the kinds referred to in clauses (a) through (h) above; *provided*, that obligations under the Tax Benefit Payment Agreement shall not constitute Indebtedness.

“**Indemnified Liabilities**” has the meaning specified in Section 10.05(a).

“**Indemnified Persons**” has the meaning specified in Section 10.05(a).

“**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) of this definition, Other Taxes.

“**Insolvency Proceeding**” means, with respect to any Person, (a) any case, action or proceeding with respect to such Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, conservation, rehabilitation,



receivership, dissolution, winding-up or relief of debtors or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in any case, undertaken under U.S. Federal, state or foreign law, including Title 11 of the United States Code.

“**Insurance Investments**” means Investments by an Insurance Subsidiary or any Subsidiary of an Insurance Subsidiary for its investment portfolio (other than such Person’s Investments in its Restricted Subsidiaries engaged in insurance lines of business) in the ordinary course of business consistent with the policies and procedures approved by the board of directors or the investment committee (or other applicable committee) of such Insurance Subsidiary or any Subsidiary of an Insurance Subsidiary.

“**Insurance Subsidiary**” means any Subsidiary of Holdings that is or is required to be licensed as an insurer or reinsurer.

“**Intercompany Indebtedness**” means Indebtedness owed by Holdings or a Restricted Subsidiary to Holdings or a Restricted Subsidiary; *provided* that all such Indebtedness of any Credit Party owed to any Restricted Subsidiary that is not a Credit Party is unsecured and subject to the Intercompany Subordination Provisions.

“**Intercompany Subordination Provisions**” means the terms and conditions set forth on Exhibit I.

“**Interest Payment Date**” means (a) with respect to any Base Rate Loan, the last Business Day of each calendar quarter and (b) with respect to any Eurodollar Rate Loan, the last day of each Interest Period applicable to the Credit Extension of which such Revolving Loan is a part; *provided* that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the date that falls three months after the beginning of such Interest Period and after each Interest Payment Date thereafter is also an Interest Payment Date (but in each case, subject to the definition of “Interest Period”).

“**Interest Period**” means, with respect to any Eurodollar Rate Loan, the period beginning on the date of the applicable Credit Extension and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; *provided* that:

(a) if any Interest Period would otherwise end on a day that is not a Business Day, that Interest Period shall be extended to the following Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) of this definition, end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period with respect to any portion of any Class of Revolving Loans shall extend beyond such Class’s Commitment Termination Date.

For purposes hereof, the date of a Credit Extension initially shall be the date on which such Credit Extension is made and thereafter shall be the effective date of the most recent continuation of such Credit Extension.

“**Interest Rate Determination Date**” means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

“**Interest Type**” means, when used with respect to any Revolving Loan, whether the rate of interest on such Revolving Loan is determined by reference to the Eurodollar Rate or the Base Rate.

“**Investment**” means any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase (including purchases financed with equity) of any Capital Stock, bonds, notes, obligations, debentures or other debt securities of, or any other investment in, any Person.

“**IPO**” means the consummation of the initial public offering of common Capital Stock in (a) CwA MidCo or (b) any Person (i) that is a Wholly-Owned Subsidiary of CwA MidCo immediately prior to the IPO and (ii) of which (A) the Borrower, (B) CwA, (C) GA Bermuda, (D) each Person that is an Insurance Subsidiary of CwA MidCo immediately prior to the IPO and (E) each Person that, immediately prior to the IPO, is a Subsidiary of CwA MidCo that directly or indirectly owns any Capital Stock of any Insurance Subsidiary of CwA MidCo (including each such Subsidiary that is itself owned by an Insurance Subsidiary of CwA MidCo), in the case of each of clauses (A) through (E), is a Wholly-Owned Subsidiary (CwA MidCo or such Person, as the case may be, the “**IPO Entity**”), in each case pursuant to an effective registration statement filed with the SEC pursuant to the Securities Act.

“**IRS**” means the Internal Revenue Service or any Governmental Authority succeeding to any of its principal functions under the Code.

“**Issuance Notice**” means a notice substantially in the form of Exhibit C-2.

“**Joinder Agreement**” means an agreement substantially in the form of Exhibit L.

“**Judgment Currency**” has the meaning set forth in Section 10.22(b).

“**KeyBank**” means KeyBank National Association.

“**Knowledge**” means with respect to any Person the actual knowledge of the facts, circumstances or condition by a Responsible Officer, including the chief financial officer, president, chief executive officer, treasurer, senior vice president or vice president involved in negotiating the Transactions of such Person.

“**Latest Maturity Date**” means, at any date of determination, the latest maturity or expiration date applicable to any Revolving Loan or Revolving Commitment hereunder at such time, including the latest maturity or expiration date of any Extended Revolving Commitments or Extended Revolving Loans, in each case as extended in accordance with this Agreement from time to time.

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

“**L/C Exposure**” means at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time and (b) the aggregate amount of all payments or disbursements made by the Lenders pursuant to a Letter of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The L/C Exposure of any Revolving Lender at any time shall equal its Pro Rata Share of the aggregate L/C Exposure at such time.

“**Lenders**” has the meaning specified in the introduction to this Agreement and includes any other Person that shall have become a party hereto pursuant to an Assignment and Assumption in accordance with Section 10.07, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. As the context requires, the term “Lenders” includes each Limited Fronting Lender and each Participating Lender.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender specified as its “Lending Office” or “Domestic Lending Office” or “Eurodollar Lending Office,” as the case may be, in its administrative questionnaire delivered to the Administrative Agent, or such other office or offices or office of a third party or sub-agent, as appropriate, as such Lender may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means a standby letter of credit issued or to be issued by the Lenders pursuant to this Agreement. Each Letter of Credit will be a Syndicated Letter of Credit.

“**Letter of Credit Sublimit**” means \$500,000,000.

“**Letter of Credit Usage**” means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding *plus* (ii) the aggregate amount of all L/C Disbursements made by the Lenders and not theretofore reimbursed by or on behalf of the Borrower.

“**License**” means any license, certificate of authority, permit or other authorization that is required to be obtained from any Governmental Authority in connection with the operation, ownership or transaction of insurance business.

“**Lien**” means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease or any financing lease having substantially the same economic effect as any of the foregoing) and any contingent or other agreement to provide any of the foregoing, but not including the interest of a lessor under an operating lease or a licensor under a license that does not otherwise secure an obligation.

“**Limited Fronting Lender**” means, with respect to any Participating Lender, any Lender that is an NAIC Approved Bank and that has agreed in a written agreement to act as a fronting bank on behalf of such Participating Lender in accordance with Section 2.02(m), which

agreement shall be in form and substance reasonably satisfactory to the Administrative Agent (such an agreement, a “**Limited Fronting Lender Agreement**”).

“**Limited Fronting Percentage**” means, with respect to any Limited Fronting Lender and any Participating Lender, the percentage (not to exceed 100%) of such Participating Lender’s Pro Rata Share of the aggregate undrawn amount of Letters of Credit in respect of which such Limited Fronting Lender has agreed to act as a fronting bank, as set forth in the Limited Fronting Lender Agreement between such Limited Fronting Lender and such Participating Lender.

“**Loan**” means either a Base Rate Loan or a Eurodollar Rate Loan, as the context may require.

“**Loan Documents**” means this Agreement and amendments of and joinders to this Agreement that are deemed pursuant to their terms to be Loan Documents for purposes hereof, all Revolving Loan Notes, the Guarantee Agreement, the Collateralized L/C Security Documents, the Fee Letters and all Extension Amendments.

“**Loan Notice**” means a notice of Credit Extension substantially in the form of Exhibit C-1.

“**Margin Stock**” means “margin stock” as such term is defined in Regulation U or X of the FRB.

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the business, properties, results of operations or condition (financial or otherwise) of Holdings and its Restricted Subsidiaries taken as a whole; (b) a material impairment of the ability of any Credit Party to perform under any Loan Document to which it is a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party; or (d) a material adverse change in the rights, remedies and benefits available to, or conferred upon, the Administrative Agent and any Lender under any Loan Document.

“**Material Indebtedness**” means Indebtedness having an aggregate outstanding principal amount, individually or in the aggregate, with all other Indebtedness of the Credit Parties and their respective Restricted Subsidiaries (excluding the Senior Notes, Intercompany Indebtedness, Indebtedness under the Loan Documents and Operating Indebtedness which is recourse only to a Subsidiary of the Borrower which is a special purpose life insurance captive vehicle) of not less than \$75,000,000.

“**Minimum Cash Collateral Amount**” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the L/C Exposure of the Lenders with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent in its reasonable discretion.

“**Minimum Collateralized L/C Aggregate Collateral Amount**” means, as at any date of determination, 103% of the Collateralized Letter of Credit Usage.

“**MNPI**” means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Holdings, the Borrower or their respective affiliates or securities.

“**Moody’s**” means Moody’s Investors Service, Inc., together with any Person succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, including substantially all of its business of rating securities.

“**Multiemployer Plan**” means a “multiemployer plan,” within the meaning of Section 4001(a)(3) of ERISA, to which Holdings, any of its Subsidiaries or any ERISA Affiliate makes, is making or is obligated to make contributions or, during the preceding six calendar years, has made, or been obligated to make, contributions.

“**NAIC**” means the National Association of Insurance Commissioners or any successor thereto, or in the absence of the National Association of Insurance Commissioners or such successor, any other association, agency or other organization performing advisory, coordination or other like functions among insurance departments, insurance commissioners and similar Governmental Authorities of the various states of the United States toward the promotion of uniformity in the practices of such Governmental Authorities.

“**NAIC Approved Bank**” means any Lender that is a bank listed on the most current “Qualified U.S. Financial Institutions List (“QUFSI”)” of banks approved by the NAIC.

“**Natural Person**” means a natural person or any company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

“**Net Income**” means, for any Person for any period, the net income (or loss) of such Person for such period as determined, unless otherwise indicated, in accordance with GAAP.

“**Net Worth**” means the total common and preferred shareholders’ equity of any Person as determined in accordance with GAAP (calculated excluding (i) accumulated other comprehensive income (loss), (ii) any charges taken to write off any goodwill included on such Person’s balance sheet on the Restatement Effective Date to the extent such charges are required by FASB ASC 320 (Investments—Debt and Equity Securities) and ASC 350 (Intangibles—Goodwill and Others) and (iii) all noncontrolling interests (as determined in accordance with FASB ASC 160 (Noncontrolling Interests in Consolidated Financial Statements))).

“**New Revolving Commitment**” has the meaning set forth in [Section 2.15\(a\)](#).

“**New Revolving Lender**” means a Revolving Lender as of the Restatement Effective Date that was not an Existing Credit Agreement Lender immediately prior to the effectiveness of this Agreement. The New Revolving Lender is Citibank, N.A..

“**New Revolving Loan**” has the meaning set forth in [Section 2.15\(b\)](#).

“**New Revolving Loan Lender**” has the meaning set forth in [Section 2.15\(a\)](#).

“**Non-Collateralized Letter of Credit**” means a Letter of Credit that is not a Collateralized Letter of Credit.

“**Non-Consenting Lender**” means a Lender that does not consent to an amendment or waiver pursuant to Section 10.01 that requires the consent of all or all affected Lenders in order to become effective and as to which Lenders holding more than 50% of the Revolving Loans and Revolving Commitments have consented.

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

“**Non-NAIC Approved Bank**” means any Person that is not an NAIC Approved Bank.

“**Non-Recourse Insurance Subsidiary Indebtedness**” means non-recourse Indebtedness of Insurance Subsidiaries and Subsidiaries thereof incurred in the ordinary course of business resulting from the sale or securitization of non-admitted assets, policy loans, CBOs and CMOs or other similar instruments and structures.

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

“**OFAC**” has the meaning set forth in the definition of “Embargoed Person”.

“**Operating Indebtedness**” of any Person means, at any date, without duplication, any Indebtedness of such Person (a) in respect of AXXX, XXX and other similar life or annuity reserve requirements, (b) incurred in connection with repurchase agreements and securities lending, (c) to the extent the proceeds of which are used directly or indirectly (including for the purpose of funding portfolios that are used to fund trusts in order) to support AXXX, XXX and other similar life or annuity reserves, (d) to the extent the proceeds of which are used to fund discrete assets or pools of assets (and any related hedge instruments and capital) that are segregated from other assets of such Person and in the judgment of such Person have sufficient cash flow to pay principal and interest thereof, with insignificant risk of other assets of such Person being called upon to make such principal and interest payments, (e) in respect of undrawn letters of credit or drawn letters of credit that are reimbursed, issued on behalf of any Insurance Subsidiary or any Subsidiary of an Insurance Subsidiary in the ordinary course of its business for insurance regulatory or reinsurance purposes, (f) that is owed to a Federal Home Loan Bank or

(g) that is excluded entirely from financial leverage by either S&P or Moody's in its evaluation of Holdings.

**“Organization Documents”** means (i) with respect to any corporation, the certificate or articles of incorporation, the bylaws, any certificate of designation or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, or in the case of clauses (i), (ii) and (iii), the equivalent or comparable constituent documents with respect to any Foreign Subsidiary.

**“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 the Revolving Loans, Revolving Commitments or Loan Documents).

**“Other Taxes”** means any present or future recording, stamp, court or documentary Taxes or any other excise, sales or property Taxes, charges or similar levies that arise from any payment made under this Agreement or any other Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Connection Income Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.07 or 10.14).

**“Parent”** means Global Atlantic Financial Group Limited, a company incorporated and existing under the laws of Bermuda.

**“Participant”** has the meaning specified in Section 10.07(d).

**“Participant Register”** has the meaning specified in Section 10.07(d).

**“Participating Lender”** means any Lender that is (a) a Non-NAIC Approved Bank or (b) unable to issue Letters of Credit for the benefit of the Borrower and its Subsidiaries due to regulatory restrictions, legal impediments or any other internal or external restrictions, in each case, on behalf of which a Limited Fronting Lender has agreed to act as a fronting bank in accordance with the definition of the term “Limited Fronting Lender” and Section 2.02(m).

**“PATRIOT Act”** has the meaning specified in Section 10.17.

**“PBGC”** means the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to any of its principal functions under ERISA.

“**Pension Plan**” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA that Holdings, any of its Subsidiaries or any ERISA Affiliate sponsors or maintains, or to which it makes, is making or is obligated to make contributions, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five (5) plan years.

“**Permitted Swap Obligations**” means all obligations (contingent or otherwise) of any Insurance Subsidiary existing or arising under Swap Contracts; *provided* that (x) each of the following criteria is satisfied: (a) such obligations are (or were) entered into by such Person in the ordinary course of business and consistent with past practices of such Person for the purpose of managing risks associated with liabilities, commitments or assets held by such Person, or changes in the value of securities issued by such Person in conjunction with a securities repurchase program not otherwise prohibited hereunder, and not for purposes of speculation or taking a “market view” and (b) such Swap Contracts do not contain any provision (a “walk-away” provision) exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party or (y) such obligations are entered into by such Person in the ordinary course of business and consistent with past practices of such Person to transfer risk that might otherwise be transferred by insurance or reinsurance transactions (and is an established line of business for such Person) and not for purposes of speculation or taking a “market view”.

“**Person**” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority or other entity of whatever nature.

“**Plan**” means an employee benefit plan (as defined in Section 3(3) of ERISA) that Holdings or any of its Subsidiaries sponsors or maintains or to which Holdings or any of its Subsidiaries makes, is making or is obligated to make, contributions and includes any Pension Plan.

“**Platform**” has the meaning specified in [Section 6.02](#).

“**Portfolio Interest Exemption**” has the meaning specified in [Section 3.01\(e\)\(B\)\(iii\)](#).

“**Post-IPO Offerings**” means any offering, whether public or private, of capital stock of the IPO Entity after the IPO.

“**Prepayment Notice**” means a written notice made pursuant to [Section 2.06\(e\)](#) substantially in the form of [Exhibit J](#).

“**Pricing Level**” means any of Pricing Level 1, Pricing Level 2, Pricing Level 3, Pricing Level 4 or Pricing Level 5 set forth in the table in the definition of “Applicable Margin”, “Applicable Revolving Commitment Fee Percentage” and “Applicable Non-Collateralized Letter of Credit Fee”.

“**Pro Rata Share**” means, with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender or any Letters of



Credit issued by any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender by (b) the aggregate Revolving Exposure of all Lenders.

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

“**Public Lender**” has the meaning specified in [Section 6.02](#).

“**Purchase Money Debt**” means Indebtedness incurred by a Person in connection with the purchase of fixed or capital assets by such Person, in which assets the seller or financier thereof has taken or retained a Lien; *provided* that (x) any such Lien attaches to such assets concurrently with or within 120 days after the purchase thereof by such Person and (y) at the time of incurrence of such Indebtedness, the aggregate principal amount of such Indebtedness shall not exceed the costs of the assets so purchased plus fees and expenses reasonably related thereto.

“**Quarterly Statement**” means the quarterly statutory financial statement of any Insurance Subsidiary required to be filed with the insurance commissioner (or similar authority) of its jurisdiction of incorporation or, if no specific form is so required, in the form of financial statements permitted by such insurance commissioner (or such similar authority) to be used for filing quarterly statutory financial statements and shall contain the type of financial information permitted by such insurance commissioner (or such similar authority) to be disclosed therein, together with all exhibits or schedules filed therewith.

“**RBC**” means Royal Bank of Canada.

“**RBCCM**” means RBC Capital Markets, a brand name for the capital markets businesses of RBC and its Affiliates.

“**Reducing Lender**” means a Continuing Existing Credit Agreement Lender (a) whose Existing Credit Agreement Revolving Commitment immediately prior to the effectiveness of this Agreement (as a percentage of the aggregate Existing Credit Agreement Revolving Commitments of all Continuing Existing Credit Agreement Lenders immediately prior to the effectiveness of this Agreement), was greater than (b) its Revolving Commitment upon the effectiveness of this Agreement (as a percentage of the aggregate Revolving Commitments of all Lenders upon the effectiveness of this Agreement).

“**Register**” has the meaning specified in [Section 10.07\(c\)](#).

“**Reimbursement Date**” has the meaning specified in [Section 2.02\(h\)](#).

“**Reinsurance Agreements**” means any agreement, contract, treaty, certificate or other arrangement by which any Insurance Subsidiary agrees to transfer or cede to another insurer all or part of the liability assumed or assets held by it under one or more insurance, annuity, reinsurance or retrocession policies, agreements, contracts, treaties, certificates or similar arrangements. Reinsurance Agreements shall include, but not be limited to, any agreement, contract, treaty, certificate or other arrangement that is treated as such by the applicable Department.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners (to the extent such Person is a partnership), directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“**Release**” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection, migration or leaching into or through the Environment.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“**Required Lenders**” means, as of any date of determination, one or more Lenders having or holding Revolving Exposure and unused Revolving Commitments representing more than 50% of the aggregate Revolving Exposure and unused Revolving Commitments of all Revolving Lenders; *provided* that the aggregate amount of Revolving Exposure and unused Revolving Commitments shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure and unused Revolving Commitments of such Defaulting Lender.

“**Requirement of Law**” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in each case applicable to or legally binding upon the Person or any of its property or to which the Person or any of its property is subject.

“**Responsible Officer**” means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer, or other officer of similar stature or responsibility, of a Credit Party. Any document delivered under any Loan Document that is signed by a Responsible Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party. Unless otherwise specified, “Responsible Officer” means a Responsible Officer of Holdings.

“**Restatement Effective Date**” means May 21, 2018, or, if later, the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

“**Restricted Payments**” has the meaning set forth in Section 7.08.

“**Restricted Subsidiary**” means any Subsidiary other than an Unrestricted Subsidiary; *provided* that upon the occurrence of any Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of “Restricted Subsidiary”.

“**Revolving Commitment**” means the commitment of a Lender to make or otherwise fund any Revolving Loan and to issue Letters of Credit hereunder (or, in the case of a Participating Lender, to acquire participations in Letters of Credit hereunder pursuant to Section 2.02(m)), and “**Revolving Commitments**” means such commitments of all Lenders in the aggregate. The amount of each Lender’s Revolving Commitment, if any, is set forth on

Appendix A or in the applicable Assignment and Assumption or Joinder Agreement, as applicable, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Restatement Effective Date is \$1,000,000,000.

“**Revolving Commitment Period**” means the period from the Restatement Effective Date to but excluding the Commitment Termination Date.

“**Revolving Exposure**” means, with respect to any Lender as of any date of determination, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender and (b) the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender.

“**Revolving Lender**” means a Lender having a Revolving Commitment.

“**Revolving Loan**” means a Loan made by a Lender to the Borrower pursuant to Section 2.01(a).

“**Revolving Loan Note**” means a promissory note in the form of Exhibit B, as it may be amended, restated, supplemented or otherwise modified from time to time.

“**S&P**” means Standard & Poor’s Ratings Services, a Standard & Poor’s Financial Services LLC business, together with any Person succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, including substantially all of its business of rating securities.

“**SAP**” means, with respect to any Insurance Subsidiary, the statutory accounting practices prescribed or permitted by the insurance commissioner (or other similar authority) in the jurisdiction of such Insurance Subsidiary for the preparation of annual statements and other financial reports by insurance companies of the same type as such Insurance Subsidiary that are applicable to the circumstances as of the date of filing of such statement or report.

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

“**Secured Parties**” has the meaning specified in the Collateralized L/C Security and Control Agreement.

“**Securities Act**” means the Securities Act of 1933 and the regulations promulgated thereunder.

“**Security and Control Agreement**” means the Second Amended and Restated Security and Control Agreement, dated as of the Restatement Effective Date, among the Borrower, the Administrative Agent and the Custodian.

“**Senior Notes**” means the \$150,000,000 8.625% Senior Notes due 2021 issued by Forethought Financial Group, Inc., a Delaware corporation (which merged with and into the Borrower, with the Borrower as the surviving entity).

“**Single Employer Pension Plan**” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, other than a Multiemployer Plan, that Holdings, any of its Subsidiaries or any ERISA Affiliate sponsors or maintains, or to which Holdings, any of its Subsidiaries or any ERISA Affiliate makes or is obligated to make contributions or could reasonably be expected to have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“**Specified Currency**” has the meaning set forth in [Section 10.22\(a\)](#).

“**Specified Place**” has the meaning set forth in [Section 10.22\(a\)](#).

“**Subordinated Indebtedness**” means any Indebtedness of Holdings or any Restricted Subsidiary that is subordinated in right of payment to the Obligations.

“**Subsidiary**” of a Person means any corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, association or other unincorporated organization of which or in which such Person and such Person’s Subsidiaries own directly or indirectly more than 50% of (a) the combined voting power of all classes of stock having general voting power under ordinary circumstances to elect a majority of the board of directors, if it is a corporation, (b) the voting or managing interests (which shall mean the general partner in the case of a partnership), if it is a partnership, joint venture or similar entity, (c) the beneficial interest, if it is a trust, association or other unincorporated organization or (d) the voting or managing membership interests, if it is a limited liability company. Unless otherwise specified, “**Subsidiary**” means a Subsidiary of Holdings.

“**Successor Entity**” has the meaning specified in [Section 7.07\(c\)](#).

“**Surplus Debentures or Notes**” means, as to any Insurance Subsidiary, debt securities or notes of such Insurance Subsidiary issued to Holdings or any of its Subsidiaries the proceeds of which are permitted to be included, in whole or in part, as Capital and Surplus of such Insurance Subsidiary as approved and permitted by the applicable Department and are of a type generally described in the insurance industry as a “surplus note”.

“**Swap Contract**” means any agreement relating to any transaction (whether or not arising under a master agreement) that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, futures contract, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option, credit derivative transaction or any other similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and any master agreement relating to or governing any or all of the foregoing.

“**Swap Termination Value**” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts and all rights to set off against collateral posted in respect of such Swap Contract, (a) for any date on or after the date such Swap Contracts have been closed out and termination

value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined by Holdings based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include any Lender).

“**Syndicated Letter of Credit**” means a single multi-bank letter of credit issued by all of the Lenders (acting through the Administrative Agent in accordance with the provisions hereof) in which each Lender, as an issuing bank thereunder, has a several (but not joint) obligation in respect of a specified portion of the amount of such Letter of Credit.

“**Syndication Agents**” means, collectively, RBC, US Bank and Wells Fargo and their respective successors and assigns in such capacity.

“**Synthetic Purchase Agreement**” means any agreement pursuant to which Holdings or any of its Subsidiaries is or may become obligated to make (a) any payment in connection with the purchase by any third party from a Person other than Holdings or any of its Subsidiaries (other than any Subsidiary that is a Subsidiary of an Insurance Subsidiary but is not itself an Insurance Subsidiary) of any Capital Stock or Subordinated Indebtedness of Holdings or any of its Subsidiaries (other than any Subsidiary that is a Subsidiary of an Insurance Subsidiary but is not itself an Insurance Subsidiary) or (b) any payment the amount of which is determined by reference to the price or value at any time of any such Capital Stock or Subordinated Indebtedness; *provided* that (i) no phantom stock or similar plan providing for payments only to current or former directors, officers or employees of Holdings or any of its Subsidiaries (or to their heirs or estates) and (ii) no such agreement in respect of any Disposition of any Capital Stock of a Subsidiary of Holdings that is permitted by Section 7.03 shall in either case be deemed to be a Synthetic Purchase Agreement.

“**Tax Benefit Payment Agreement**” means the Tax Benefit Payment Agreement, dated as of April 30, 2013, among the Borrower, as Payor, GAFL, as Intermediate Guarantor, Parent, as Parent Guarantor and The Goldman Sachs Group, Inc., as Payee.

“**Tax Status Certificate**” has the meaning specified in Section 3.01(e)(B)(iii).

“**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.

“**Total Capitalization**” means, without duplication, (a) the amount described in clause (a) of the definition of “Debt to Total Capitalization Ratio” *plus* (b) the Net Worth of the applicable Person.

“**Total Utilization of Revolving Commitments**” means, as at any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans *plus* (ii) the Letter of Credit Usage.

“**Transactions**” means the (i) execution, delivery and performance by each Credit Party of the Loan Documents to which it is to be a party, (ii) borrowing of Loans, use of the proceeds

thereof and issuance of Letters of Credit hereunder and (iii) payment of fees and expenses incurred in connection with the foregoing.

“**Transaction Parties**” has the meaning specified in Section 5.07(d).

“**Unfunded Pension Liability**” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 430 of the Code for the applicable plan year.

“**Uniform Commercial Code**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any Collateralized L/C Lien on any Collateralized L/C Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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

“**Unrestricted Subsidiary**” means any Subsidiary designated by the board of directors (or similar governing body) of (a) Holdings or (b) if such Subsidiary is a Subsidiary of the Borrower, the Borrower, as an Unrestricted Subsidiary pursuant to Section 6.14 subsequent to the date hereof. Holdings or the Borrower may designate any subsidiary (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its subsidiaries owns any Capital Stock or Indebtedness of, or owns or holds any Lien on any property of, Holdings or any Subsidiary (other than any subsidiary of the subsidiary to be so designated); *provided* that (i) each of (A) the subsidiary to be so designated and (B) its subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of Holdings or any Restricted Subsidiary, (ii) neither Holdings nor the Borrower may designate (A) the Borrower, (B) any Insurance Subsidiary or (C) any Subsidiary of Holdings or the Borrower that directly or indirectly owns any Capital Stock of any Insurance Subsidiary (including any such Subsidiary of Holdings or the Borrower that is itself owned by an Insurance Subsidiary) to be an Unrestricted Subsidiary and (iii) for the avoidance of doubt, there shall be no Unrestricted Subsidiaries on the Restatement Effective Date.

“**US Bank**” means U.S. Bank National Association.

“**Voting Stock**” of any Person means Capital Stock of such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock or other relevant equity interest has voting power by reason of any contingency) to vote in the election of the board of directors or similar governing body of such Person.

“**Weighted Average Life to Maturity**” means, when applied to any Indebtedness at any date, the number of years obtained by dividing: (a) the sum of the products obtained by multiplying (i) the amount of each then remaining installment, sinking fund, serial maturity or

other required payments of principal, including payment at final maturity, in respect thereof, by (ii) the number of years (calculated to the nearest one-twelfth) that will elapse between such date and the making of such payment; by (b) the then outstanding principal amount of such Indebtedness.

“**Wells Fargo**” means Wells Fargo Bank, National Association.

“**WFS**” means Wells Fargo Securities, LLC.

“**Wholly-Owned Subsidiary**” means any Person in which all of the Capital Stock (other than directors’ and national citizen qualifying shares or similar *de minimis* holdings by another Person, in each case, as required by law) is owned, beneficially and of record, by Holdings, or by one or more of the other Wholly-Owned Subsidiaries, or both.

“**Write-Down and Conversion Powers**” means, 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.

Section 1.02. *Other Interpretive Provisions.*

(a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(b) The words “**hereof**,” “**herein**,” “**hereunder**” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, Section, Article, Schedule and Exhibit references are to this Agreement unless otherwise specified.

(c) (i) The term “**documents**” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.

(ii) The term “**including**” is not limiting and means “including without limitation”.

(iii) 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”.

(iv) The term “**will**” shall be construed to have the same meaning and effect as the word “**shall**”.

(d) Unless otherwise expressly provided herein or the context requires otherwise, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing or

interpreting the statute or regulation, (iii) any reference herein to a Person shall be construed to include such Person's permitted successors and assigns and (iv) the word "**property**" shall be construed to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(g) This Agreement and the other Loan Documents are the result of negotiations among, and have been reviewed by counsel to, the Administrative Agent, the Borrower and the other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Administrative Agent merely because of the Administrative Agent's or Lenders' involvement in their preparation.

Section 1.03. *Classification of Loans.* For purposes of this Agreement, Loans may be classified and referred to by Interest Type (e.g., a "Eurodollar Rate Loan").

Section 1.04. *Accounting Principles.*

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP as in effect from time to time, consistently applied. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Holdings and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) References herein to particular columns, lines or sections of any Person's Annual Statement shall be deemed, where appropriate, to be references to the corresponding column, line or section of such Person's Quarterly Statement, or if no such corresponding column, line or section exists or if any report form changes, then to the corresponding item referenced thereby. In the event the columns, lines or sections of the Annual Statement or Quarterly Statement referenced herein are changed or renumbered from the columns, lines and sections applicable to the 2017 Annual Statement, or the September 30, 2017 Quarterly Statement, all such references shall be deemed references to such column, line or section as so renumbered or changed.

(i) If, at any time after the date of this Agreement, any material change is made to GAAP or Holdings' accounting practices that would affect in any material respect the determination of compliance with the covenants set forth in this Agreement, Holdings shall notify the Administrative Agent of the change and Holdings and the Administrative Agent shall negotiate in good faith to amend such covenant, subject to the approval of the Required Lenders, to restore Holdings and the Lenders to the position they occupied before the implementation of such material change in GAAP or accounting



practices; *provided* that if Holdings and the Administrative Agent are unable to reach agreement within sixty (60) days following the implementation of such material change, the Administrative Agent shall be permitted, acting in good faith, to make such amendments, in each case subject to the approval of the Required Lenders, to the covenants set forth in this Agreement as it reasonably determines are necessary to restore Holdings and the Lenders to the position they occupied prior to the implementation thereof.

ARTICLE 2  
THE CREDITS

Section 2.01. *Revolving Loans.*

(a) Revolving Commitments. During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender with a Revolving Commitment severally agrees to make Revolving Loans in Dollars to the Borrower; *provided* that, after giving effect to the making of any Revolving Loans, in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.01(a) may be repaid and reborrowed during the Revolving Commitment Period. Each Revolving Commitment shall expire on the Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(b) Borrowing Mechanics for Revolving Loans.

(i) Except pursuant to Section 2.02(h) or 2.02(l)(vi), Revolving Loans shall be made in an aggregate minimum amount of \$2,500,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) Whenever the Borrower desires that Lenders make Revolving Loans, the Borrower shall deliver to the Administrative Agent a fully executed and delivered Loan Notice no later than 10:00 a.m. (New York City time) (A) in the case of a Eurodollar Rate Loan, at least three (3) Business Days in advance of the proposed Borrowing Date, (B) in the case of one or more Base Rate Loans in an aggregate principal amount greater than \$100,000,000, at least one (1) Business Day in advance of the proposed Borrowing Date, and (C) in the case of one or more Base Rate Loans in an aggregate principal amount equal to or less than \$100,000,000, on the proposed Borrowing Date; *provided* that, if such Borrowing Date is the Restatement Effective Date, such Loan Notice may be delivered within such period shorter than three (3) Business Days as may be agreed by the Administrative Agent with respect to Eurodollar Rate Loans. Except as otherwise provided herein, a Loan Notice for a Revolving Loan that is a Eurodollar Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date.

(iii) Notice of receipt of each Loan Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by facsimile or other electronic communication with reasonable

promptness, but (*provided* that the Administrative Agent shall have received such notice by 10:00 a.m. (New York City time)) not later than 3:00 p.m. (New York City time) (or, in the case of a Loan Notice delivered pursuant to Section 2.01(b)(ii)(C), 12:00 noon (New York City time)) on the same day as the Administrative Agent's receipt of such Loan Notice from the Borrower.

(iv) Each Lender shall make the amount of its Revolving Loan available to the Administrative Agent not later than 12:00 noon (New York City time) (or, in the case of Base Rate Loans with respect to which a Loan Notice is delivered pursuant to Section 2.01(b)(ii)(C), 2:00 p.m. (New York City time)) on the applicable Borrowing Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Revolving Loans available to the Borrower on the applicable Borrowing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by the Administrative Agent from Lenders to be credited to the account of the Borrower at the Administrative Agent's Office or to such other account or accounts as may be designated in writing to the Administrative Agent by the Borrower.

Section 2.02. *Issuance of Letters of Credit.*

(a) Letters of Credit. During the Revolving Commitment Period, subject to the terms and conditions hereof (including Section 2.02(m)), the Lenders shall issue Letters of Credit in respect of which the Borrower is the applicant (or, so long as the Borrower is a joint and several co-applicant in respect thereof, any Subsidiary is the applicant; provided that, with respect to any such Subsidiary, the Borrower shall have designated such Subsidiary to the Administrative Agent in writing as an applicant of Letters of Credit at least seven (7) Business Days prior to the delivery by the Borrower of the Issuance Notice with respect to the first Letter of Credit in respect of which such Subsidiary is the applicant, and any Lender shall have been provided with documentation and other information it reasonably determines are required by bank regulatory authorities under applicable "know-your-customer" and Anti-Money Laundering Laws, including the PATRIOT Act, at least five (5) Business Days prior to the delivery of such Issuance Notice as has been reasonably requested in writing at least six (6) Business Days prior to the delivery of such Issuance Notice) for the support of obligations of Holdings and/or its Subsidiaries in an aggregate amount up to but not exceeding the Letter of Credit Sublimit; *provided*, (i) each Letter of Credit shall be a standby letter of credit denominated in Dollars; (ii) the stated amount of each Letter of Credit shall not be less than \$500,000 or such lesser amount as is acceptable to the Administrative Agent; (iii) after giving effect to such issuance, in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit; (v) after giving effect to the issuance of any Collateralized Letter of Credit, in no event shall the Collateralized L/C Aggregate Collateral Amount be less than the Minimum Collateralized L/C Aggregate Collateral Amount; (vi) in no event shall any Letter of Credit have an expiration date later than the earlier of (A) five (5) days prior to the Commitment Termination Date (unless such Letter of Credit shall on the date of issuance have been Cash Collateralized in the Minimum Cash Collateral Amount which Letter of Credit, for the avoidance of doubt, shall not have an expiration date later than twelve

(12) months (or, if required by the applicable Department, thirteen (13) months) after the Commitment Termination Date) and (B) the date which is one (1) year from the date of issuance of such Letter of Credit (or, if required by the applicable Department, thirteen (13) months from the date of issuance of such Letter of Credit); (vii) in no event shall any Letter of Credit be issued if such issuance would violate any Requirement of Law; (viii) in no event shall any Letter of Credit be issued if such Letter of Credit is otherwise unacceptable to the Administrative Agent in its reasonable discretion; and (ix) each Letter of Credit shall be substantially in the form of the Administrative Agent's customary form; *provided, further*, that, without the prior consent of each Lender, no Letter of Credit may be issued that would vary the several and not joint nature of the obligations of the Lenders thereunder and, subject to Section 2.02(m), each Letter of Credit shall be issued by all of the Lenders having Revolving Commitments at the time of issuance as a single multi-bank letter of credit, but the obligation of each Lender thereunder shall be several and not joint, based upon its Pro Rata Share of the aggregate undrawn amount of such Letter of Credit (subject to Section 2.02(m)). Subject to the foregoing, the Administrative Agent may agree that a Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each, unless the Administrative Agent elects not to extend for any such additional period; *provided*, that the Administrative Agent shall not extend any such Letter of Credit if (i) it has received written notice from a Lender or the Borrower that an Event of Default has occurred and is continuing at least two (2) Business Days prior to the time the Administrative Agent must elect to allow such extension; *provided, further*, if a Letter of Credit will not be renewed, the Administrative Agent shall notify the Borrower and the beneficiary of such Letter of Credit of such non-renewal or (ii) such renewal would occur later than five (5) days prior to the Commitment Termination Date (unless such Letter of Credit shall on the date of renewal have been Cash Collateralized in the Minimum Cash Collateral Amount which Letter of Credit, for the avoidance of doubt, shall not have an expiration date later than twelve (12) months (or, if required by the applicable Department, thirteen (13) months) after the Commitment Termination Date).

(b) Notice of Issuance, Amendment, Renewal or Extension. Whenever the Borrower desires the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), it shall deliver to the Administrative Agent an Issuance Notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying (i) the date of issuance, amendment, renewal or extension, as the case may be (which shall be a Business Day), (ii) the date on which such Letter of Credit is to expire (which shall comply with Section 2.02(a)), (iii) the amount of such Letter of Credit, (iv) the name and address of the beneficiary thereof, (v) in the case of the issuance of a Letter of Credit, whether such Letter of Credit will be a Non-Collateralized Letter of Credit or a Collateralized Letter of Credit and (vi) the other terms and conditions of (and such other information as shall be necessary to prepare, amend, renew or extend, as the case may be) such Letter of Credit no later than 11:00 a.m. (New York City time) at least ten (10) Business Days, or such shorter period as may be agreed to by the Administrative Agent in any particular instance, in advance of the proposed date of issuance, amendment, renewal or extension, as the case may be. Upon receipt by the Administrative Agent of an Issuance Notice, the Administrative Agent shall deliver to each Lender with a Revolving Commitment a copy of such Issuance Notice; *provided* that any failure to deliver or delay in delivering a copy of such Issuance Notice shall not relieve any Lender of its obligations under this Section 2.02. In connection with any request for a Collateralized Letter of Credit, the Borrower shall deliver to the Administrative Agent a

Collateralized L/C Collateral Certificate no later than 11:00 a.m. (New York City time) on the Business Day immediately preceding the date of issuance of such Collateralized Letter of Credit, confirming that the Collateralized L/C Aggregate Collateral Amount after giving effect to such issuance shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount. If requested by the Administrative Agent, the Borrower also shall submit a letter of credit application on the Administrative Agent's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with the Administrative Agent relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Upon the issuance, renewal or extension of any Letter of Credit or amendment or modification to a Letter of Credit, the Administrative Agent shall notify each Lender with a Revolving Commitment of such issuance and the amount of such Lender's respective L/C Exposure in such Letter of Credit and deliver to such Lender a copy of such Letter of Credit; *provided* that any failure to give or delay in giving such notice or any failure to deliver or delay in delivering a copy of such Letter of Credit shall not relieve any Lender of its obligations under this Section 2.02.

(c) Obligation of Lenders. With respect to any Letter of Credit, the obligation of any Lender under such Letter of Credit shall be several and not joint and shall at any time be in an amount equal to such Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit (subject to Section 2.02(m)), and each Letter of Credit shall expressly so provide.

(d) Adjustment of Pro Rata Shares. Upon (i) each addition of a new Lender hereunder, (ii) each change in the Revolving Commitment of a Lender pursuant to this Agreement and (iii) each change in status of a Lender as a Participating Lender, then in the case of each outstanding Letter of Credit, without the consent of the beneficiary thereunder unless required under such Letter of Credit or applicable law (including, if applicable, the Uniform Customs and Practices for Documentary Credits governing such Letter of Credit), the Administrative Agent shall promptly amend such Letter of Credit to specify the Lenders that are parties thereto, after giving effect to such event, and such Lenders' respective Pro Rata Shares as of the effective date of such amendment (subject to Section 2.02(m)). However, it is acknowledged by the Administrative Agent and the Lenders that amendments of outstanding Letters of Credit may not be immediately effected and may be subject to the consent of the beneficiaries of such Letters of Credit. Accordingly, whether or not Letters of Credit are amended as contemplated hereby, the Lenders agree that they shall purchase and sell participations or otherwise make or effect such payments among themselves (but through the Administrative Agent) so that payments by the Lenders of drawings under Letters of Credit and payments by the Borrower of L/C Disbursements made by the Lenders and interest thereon are, except as otherwise expressly set forth herein (including with respect to Limited Fronting Lenders and Defaulting Lenders), in each case shared by the Lenders in accordance with the Revolving Commitments of the Lenders from time to time in effect.

(e) Issuance and Administration of Letters of Credit. With respect to each Letter of Credit, such Letter of Credit shall be executed and delivered by the Administrative Agent in the name and on behalf of, and as attorney-in-fact for, the Lenders party to such Letter of Credit, and the Administrative Agent shall act as the agent of each such Lender to (i) receive drafts, other

demands for payment and other documents presented by the beneficiary under such Letter of Credit, (ii) determine whether such drafts, demands and documents are in compliance with the terms and conditions of such Letter of Credit and (iii) notify such Lender and the Borrower that a valid drawing has been made and the date that the related disbursement is to be made; *provided* that the Administrative Agent shall have no obligation or liability for any disbursement under such Letter of Credit, and each Letter of Credit shall expressly so provide. Each Lender hereby irrevocably appoints and designates the Administrative Agent as its attorney-in-fact, acting through any duly authorized officer of the Person that is serving as the Administrative Agent, to execute and deliver in the name and on behalf of such Lender each Letter of Credit (together with any amendment, extension or renewal thereof) to be issued by the Lenders hereunder. Promptly upon the request of the Administrative Agent, each Lender will furnish to the Administrative Agent such powers of attorney or other evidence as any beneficiary of any such Letter of Credit may reasonably request in order to demonstrate that the Administrative Agent has the power to act as attorney-in-fact for such Lender to execute and deliver each Letter of Credit (together with any amendment, extension or renewal thereof).

(f) Responsibility of Administrative Agent With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the Administrative Agent shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in substantial compliance with the terms and conditions of such Letter of Credit. As between the Borrower and the Administrative Agent, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the Administrative Agent by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Administrative Agent shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit or any document presented by a beneficiary in connection with a drawing under any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Administrative Agent, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, any of the Administrative Agent's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by the Administrative Agent under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith (as defined under Article 5 of the Uniform Commercial Code as adopted by the State of New York), shall not give rise to any liability on the part of the Administrative Agent to the Borrower. Notwithstanding anything to

the contrary contained in this Section 2.02(f), the Borrower shall retain any and all rights it may have against the Administrative Agent for any direct damages (as opposed to special, indirect, consequential or punitive damages, which claims are hereby waived by the Borrower to the extent permitted under applicable law) suffered by the Borrower arising solely out of the gross negligence or willful misconduct of the Administrative Agent in determining whether documents delivered under any Letter of Credit substantially comply with the terms thereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(g) Disbursement Procedures. The Administrative Agent shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under any Letter of Credit. The Administrative Agent shall promptly after such examination notify each of the Lenders by telephone (confirmed by telecopy or electronic mail) of such demand for payment. With respect to any drawing properly made under any such Letter of Credit, as determined by the Administrative Agent, subject to Section 2.02(m), each Lender will make an L/C Disbursement in respect of such Letter of Credit in accordance with its liability under such Letter of Credit and this Agreement, such L/C Disbursement to be made in Dollars to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make any such L/C Disbursement available to the beneficiary of such Letter of Credit by promptly crediting the amounts so received, in like funds in Dollars, to the account identified by such beneficiary in connection with such demand for payment. Promptly following any L/C Disbursement by any Lender in respect of any such Letter of Credit, the Administrative Agent will notify the Borrower of such L/C Disbursement; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lenders with respect to any such L/C Disbursement.

(h) Reimbursement by the Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event the Borrower has received a notice of any L/C Disbursement made pursuant to Section 2.02(g), the Borrower shall reimburse each Lender in respect of any such L/C Disbursement by paying to the Administrative Agent on or before the Business Day immediately following the date of such L/C Disbursement, but in no event later than the third (3rd) Business Day immediately following the date of such L/C Disbursement (the “**Reimbursement Date**”) in an amount in Dollars and in same day funds equal to the amount of such L/C Disbursement; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Administrative Agent and the Lenders once such notice is delivered; *provided, further*, that anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent prior to 10:00 a.m. (New York City time) on the date of such L/C Disbursement that the Borrower intends to reimburse the Administrative Agent for the amount of such L/C Disbursement with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Loan Notice to the Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to such L/C Disbursement, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Lenders with Revolving Commitments shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such L/C Disbursement, the proceeds of which shall be applied directly by the Administrative Agent to reimburse each Lender for its Pro Rata Share of such L/C Disbursement; *provided, further*, if for any reason

(including, without limitation, by reason of exceeding the Revolving Commitments) proceeds of Revolving Loans are not received by the Administrative Agent on the Reimbursement Date in an amount equal to the amount of such L/C Disbursement, then the Borrower shall reimburse the Administrative Agent, on demand, in an amount in same day funds equal to the excess of the amount of such L/C Disbursement over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.02(h) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.02(h).

(i) Obligations Absolute. The obligation of the Borrower to reimburse the Administrative Agent, on behalf of the Lenders, for L/C Disbursements and to repay any Revolving Loans made by Lenders pursuant to Section 2.02(h) shall be absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Administrative Agent, Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any 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; (iv) payment by the Administrative Agent under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings or any of its Subsidiaries; (vi) any breach hereof or of any other Loan Document by any party hereto or thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing.

(j) Indemnification. Without duplication of any obligation of the Borrower under Section 10.04 or 10.05, in addition to amounts payable as provided herein, the Borrower hereby agrees to protect, indemnify, pay and save harmless Administrative Agent from and against any and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of one outside counsel) which the Administrative Agent may incur or be subject to as a consequence, direct or indirect, of (i) the issuance or wrongful dishonor of any Letter of Credit by the Administrative Agent, other than as a result of the gross negligence or willful misconduct of the Administrative Agent as determined by a final, non-appealable judgment of a court of competent jurisdiction or (ii) the failure of the Administrative Agent to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(k) Cash Collateralization. If (i) any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the

Required Lenders (or, if the Loans have been accelerated pursuant to Section 8.02, Lenders with L/C Exposure representing greater than 50% of the total L/C Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, or (ii) at any time, the Letter of Credit Usage exceeds the Letter of Credit Sublimit, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to 103% of the L/C Exposure (less the Collateralized Letter of Credit Usage) as of such date in Dollars plus any accrued and unpaid interest thereon (or, in the case of clause (ii), an amount in cash equal to 103% of such excess); *provided* that the obligation to deposit such Cash Collateral shall become effective upon notice from the Administrative Agent to the Borrower, *provided, further*, that the obligation to deposit such Cash Collateral shall become effective immediately and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in clause (f) or (g) of Section 8.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations with respect to the Non-Collateralized Letters of Credit. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Lenders for any drawing under a Letter of Credit for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Exposure at such time or, if the Loans have been accelerated pursuant to Section 8.02 (but subject to the consent of Lenders with L/C Exposure representing greater than 50% of the total L/C Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

(l) Collateralized Letters of Credit.

(i) Pursuant to Section 2.02(b), and subject to Section 2.02(a), the Borrower may decide, prior to the issuance thereof, whether a Letter of Credit will be a Non-Collateralized Letter of Credit or a Collateralized Letter of Credit.

(ii) Cash and Eligible Securities provided and pledged to secure a Collateralized Letter of Credit must be held in one or more Collateralized L/C Collateral Accounts, and such Cash and Eligible Securities will be held in such Collateralized L/C Collateral Accounts as collateral for the payment and performance of the Secured Obligations (as defined in the Collateralized L/C Security and Control Agreements). The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateralized L/C Collateral Accounts as provided in the Collateralized L/C Security and Control Agreements. Interest or profits, if any, on Cash and Eligible Securities held in a Collateralized L/C Collateral Account will accumulate in such Collateralized L/C Collateral Account. Cash and the proceeds of Eligible Securities held in Collateralized L/C Collateral Accounts shall be applied by the Administrative



Agent to reimburse the Lenders for any drawing under a Collateralized Letter of Credit for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Collateralized Letter of Credit Usage at such time.

(iii) If, on the last Business Day of any calendar month, the Collateralized L/C Aggregate Collateral Amount exceeds the Minimum Collateralized L/C Aggregate Collateral Amount, then the Borrower may, within two (2) Business Days after such day, submit a written request to the Administrative Agent for the return of Cash and/or Eligible Securities held in Collateralized L/C Collateral Accounts having Collateral Amounts, in the aggregate, equal to or less than such excess and identified by the Borrower in such written request (in the manner required by the applicable Collateralized L/C Security and Control Agreement). The Administrative Agent shall, within two (2) Business Days after the date on which the Administrative Agent receives such written request from the Borrower, instruct the applicable Custodian(s) to transfer such Cash and/or Eligible Securities to the Borrower; *provided* that, after giving effect to any such transfer, the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount. The Borrower shall have no right to request the return of, and the Administrative Agent shall have no obligation to instruct any Custodian to transfer, Cash and/or Eligible Securities having Collateral Amounts, in the aggregate, of less than \$100,000.

(iv) So long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may submit a written request to the Administrative Agent for the substitution of Cash and/or Eligible Securities held in a Collateralized L/C Collateral Account and identified by the Borrower in such written request with Cash and/or Eligible Securities to be held in such Collateralized L/C Collateral Account and identified by the Borrower in such written request (in the manner required by the applicable Collateralized L/C Security and Control Agreement). The Administrative Agent shall, within two (2) Business Days after the date on which the Administrative Agent receives such written request from the Borrower, instruct the applicable Custodian to (i) receive from the Borrower for deposit to a Collateralized L/C Collateral Account Cash and/or Eligible Securities identified by the Borrower in such written request and (ii) transfer Cash and/or Eligible Securities identified by the Borrower in such written request to the Borrower; *provided* that, after giving effect to any such substitution, the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount. The Borrower shall have no right to request the substitution of, and the Administrative Agent shall have no obligation to instruct any Custodian to substitute, Cash and/or Eligible Securities having Collateral Amounts, in the aggregate, of less than \$100,000.

(v) So long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may submit a written request to the Administrative Agent for the investment of cash held in a Collateralized L/C Collateral Account in Cash and/or Eligible Securities to be held in Collateralized L/C Collateral Accounts and identified by the Borrower in such written request (in the manner required by the applicable Collateralized L/C Security and Control Agreement). The Administrative Agent shall,

within two (2) Business Days after the date on which the Administrative Agent receives such written request from the Borrower, instruct the applicable Custodian to invest such cash in Cash and/or Eligible Securities identified by the Borrower in such written request; *provided* that, after giving effect to any such investment, the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount. The Borrower shall have no right to request the investment of, and the Administrative Agent shall have no obligation to instruct any Custodian to invest, cash having a Collateral Amount of less than \$100,000.

(vi) The Borrower shall at all times cause the Collateralized L/C Aggregate Collateral Amount to equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount at such time. If on any date the Minimum Collateralized L/C Aggregate Collateral Amount exceeds the Collateralized L/C Aggregate Collateral Amount (such excess, a “**Collateralized L/C Collateral Deficiency**”) (including as a result of any Collateralized L/C Security Invalidation), the Borrower shall, in no event later than the fifth (5th) Business Day immediately following the date on which the Administrative Agent notifies the Borrower of such Collateralized L/C Collateral Deficiency (the “**Collateralized L/C Collateral Deficiency Correction Date**”), transfer to one or more Collateralized L/C Collateral Accounts Cash and/or Eligible Securities so that the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount; *provided* that anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent prior to 10:00 a.m. (New York City time) on the Business Day immediately preceding the Collateralized L/C Collateral Deficiency Correction Date that the Borrower intends to transfer to one or more Collateralized L/C Collateral Accounts Cash and/or Eligible Securities so that the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount, the Borrower shall be deemed to have given a timely Loan Notice to the Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Collateralized L/C Collateral Deficiency Correction Date in an amount in Dollars equal to such Collateralized L/C Collateral Deficiency, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Lenders with Revolving Commitments shall, on the Collateralized L/C Collateral Deficiency Correction Date, make Revolving Loans that are Base Rate Loans in the amount of such Collateralized L/C Collateral Deficiency, the proceeds of which shall be transferred directly by the Administrative Agent to a Collateralized L/C Collateral Account; *provided, further*, if for any reason (including, without limitation, by reason of exceeding the Revolving Commitments) proceeds of Revolving Loans are not received by the Administrative Agent on the Collateralized L/C Collateral Deficiency Correction Date in an amount equal to the amount of such Collateralized L/C Collateral Deficiency, then the Borrower shall, on the Collateralized L/C Collateral Deficiency Correction Date, pay to the Administrative Agent an amount in Dollars and in same day funds equal to the Collateralized L/C True-Up Amount with respect to all Letters of Credit that are Collateralized Letters of Credit on such date. Upon receipt by the Administrative Agent of an amount in Dollars and in same day funds equal to the Collateralized L/C True-Up Amount with respect to all Letters of Credit that are Collateralized Letters of Credit on such date, each Letter of Credit that is a Collateralized

Letter of Credit on such date shall cease to be a Collateralized Letter of Credit for purposes of this Agreement and the Collateralized L/C Security Documents and shall be a Non-Collateralized Letter of Credit as of such date. Nothing in this Section 2.02(1)(vi) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.02(1)(vi).

(m) Limited Fronting Lenders and Participating Lenders. In the event that, and for so long as, any Lender acts as a Limited Fronting Lender on behalf of any Participating Lender:

(i) such Limited Fronting Lender, in reliance upon the obligations of such Participating Lender contained in this Section 2.02(m), with respect to each Letter of Credit issued hereunder, (A) shall be an issuing bank under such Letter of Credit in place of such Participating Lender and (B) shall have a several (but not joint) obligation in respect of an amount of such Letter of Credit equal to the sum of (1) such Limited Fronting Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit, *plus* (2) the product of the applicable Limited Fronting Percentage and such Participating Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit;

(ii) by the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of such Limited Fronting Lender or such Participating Lender, such Limited Fronting Lender hereby grants to such Participating Lender, and such Participating Lender hereby acquires from such Limited Fronting Lender, a participation in such Letter of Credit equal to the product of the applicable Limited Fronting Percentage and such Participating Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit. In consideration and in furtherance of the foregoing, such Participating Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Limited Fronting Lender, the product of the applicable Limited Fronting Percentage and such Participating Lender's Pro Rata Share of each L/C Disbursement made by such Limited Fronting Lender under such Letter of Credit and not reimbursed by the Borrower on the Reimbursement Date, or of any reimbursement payment required to be refunded to the Borrower for any reason. Such Participating Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.02(m)(ii) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or any reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. To the extent that such Participating Lender has made payments pursuant to this Section 2.02(m)(ii) to reimburse such Limited Fronting Lender in respect of any participation interests purchased hereunder in respect of any Letter of Credit, promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.02(h) in respect of such Letter of Credit, the Administrative Agent shall distribute such payment to such Limited Fronting Lender and such Participating

Lender, in each case as their interests may appear. Any payment made by such Participating Lender in respect of its participation pursuant to this paragraph to reimburse such Limited Fronting Lender for any payment made in any respect of any drawing under a Letter of Credit shall not relieve the Borrower of its obligation to reimburse the amount of such drawing pursuant to the terms of this Agreement;

(iii) such Limited Fronting Lender shall not issue any Letter of Credit hereunder if such Participating Lender is a Defaulting Lender unless such Limited Fronting Lender has entered into arrangements satisfactory to it with the Borrower and/or such Participating Lender to eliminate such Limited Fronting Lender's risk with respect to such Participating Lender in respect of each Letter of Credit hereunder; and

(iv) any reference in this Agreement or any other Loan Document to the issuance by such Participating Lender of a letter of credit pursuant to this Agreement shall be deemed to refer to the issuance by such Limited Fronting Lender of such letter of credit in place of such Participating Lender pursuant to this Section 2.02(m).

Section 2.03. *Pro Rata Shares.* All Revolving Loans shall be made, and all Letters of Credit issued, by Lenders simultaneously and proportionately to their respective Pro Rata Shares (subject to Section 2.02(m)), it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Revolving Loan or issue a Letter of Credit requested hereunder nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Revolving Loan or issue a Letter of Credit requested hereunder, except, in each case, as provided in Section 2.02(d).

Section 2.04. *Conversion and Continuation of Revolving Loans.*

(a) Each conversion of Revolving Loans from one Interest Type to the other, and each continuation of Eurodollar Rate Loans, shall be made upon the Borrower's irrevocable written notice to the Administrative Agent in the form of a Conversion/Continuation Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each such Conversion/Continuation Notice must be received by the Administrative Agent not later than 12:00 noon (New York City time) three (3) Business Days prior to the requested date of any conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans. Except as otherwise provided herein, a Eurodollar Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. The Administrative Agent shall determine the interest rate that shall apply to any converted or continued Eurodollar Rate Loans pursuant to Section 2.07(c).

(b) Each Conversion/Continuation Notice shall specify (i) whether the Borrower is requesting a conversion of Revolving Loans from one Interest Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be converted or continued, (iv) the Interest Type of Revolving Loans to which existing Revolving Loans are to be converted, and (v) if applicable, the duration of the Interest Period

with respect thereto (each such Interest Period shall comply with the provisions of the definition of “Interest Period”).

(c) Notwithstanding any contrary provision hereof, if (i) an Event of Default of the type described in Section 8.01(a), (f) or (g) has occurred and is continuing, unless the Required Lenders otherwise consent or (ii) any other Event of Default has occurred and is continuing and the Required Lenders have so requested, each Revolving Loan will be converted into a Base Rate Loan at the end of the Interest Period applicable thereto.

Section 2.05. *Notes; Loan Accounts.*

(a) Each Revolving Loan made by each Lender shall be evidenced by one or more loan accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The loan accounts or records maintained by the Administrative Agent and each Lender shall be conclusive evidence of the amount of the Revolving Loans made by the Lenders to the Borrower and the interest and payments thereon absent manifest error. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligations of the Borrower hereunder to pay any amount owing with respect to the Revolving Loans made to the Borrower. 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.

(b) Upon the request of any Lender made through the Administrative Agent, instead of or in addition to loan accounts, the Revolving Loans made by each Lender may be evidenced by one or more Revolving Loan Notes. Each Lender shall endorse on the schedules annexed to its Revolving Loan Note the date, amount and maturity of each Revolving Loan deemed made by it and the amount of each payment of principal made by the Borrower with respect thereto. Each such Lender is irrevocably authorized by the Borrower to endorse its Revolving Loan Note and each Lender’s record shall be conclusive absent manifest error; *provided* that the failure of a Lender to make, or an error in making, a notation thereon with respect to the Revolving Loan shall not limit or otherwise affect the obligations of the Borrower hereunder or under any such Revolving Loan Note to such Lender.

Section 2.06. *Prepayments.*

(a) Optional Prepayments. The Borrower will have the right at any time to prepay any Loan in whole or in part, in minimum amounts of \$2,500,000 or any multiple of \$1,000,000 in excess thereof, subject to the provisions of this Section 2.06.

(b) Voluntary Commitment Reductions.

(i) The Borrower may, upon not less than three (3) Business Days’ prior written or telephonic notice to the Administrative Agent (or such shorter period of time as may be agreed to by the Administrative Agent), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments in an amount up to the amount by which the Revolving Commitments exceed the Total Utilization of Revolving Commitments at the time of

such proposed termination or reduction; *provided* that any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) The Borrower's notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and shall reduce the Revolving Commitment of each Lender proportionately to its Pro Rata Share thereof.

(c) Mandatory Prepayments. The Borrower shall from time to time prepay the Revolving Loans and/or Cash Collateralize the Letters of Credit to the extent necessary so that the Total Utilization of Revolving Commitments shall not at any time exceed the Revolving Commitments then in effect.

(d) Application of Prepayments.

(i) Any prepayment of the Revolving Loan pursuant to Section 2.06(a) shall be applied to repay outstanding Revolving Loans owing by the Borrower making such prepayment to the full extent thereof.

(ii) Any prepayment of Revolving Loans pursuant to Section 2.06(c) shall be applied as follows:

(1) *first*, to prepay the Revolving Loans to the full extent thereof without any permanent reduction of the Revolving Commitments;  
and

(2) *second*, to prepay outstanding reimbursement obligations with respect to Letters of Credit without any permanent reduction of the Revolving Commitments;

(3) *third*, to Cash Collateralize Letters of Credit making such prepayment without any permanent reduction of the Revolving Commitments; and

(4) *fourth*, to the Borrower.

(e) Notice of Prepayments. The Borrower shall notify the Administrative Agent in the form of a Prepayment Notice of any prepayment of any Loan hereunder not later than 12:00 noon (New York City time) one (1) Business Day before the date of prepayment. Each such Prepayment Notice shall be irrevocable (other than to the extent provided in connection with refinancing the Obligations) and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid.

(f) Application of Prepayments of Revolving Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Class of Revolving Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by the Borrower pursuant to Section 3.04.

Section 2.07. *Interest.*

(a) Except as otherwise set forth herein, each Class of Revolving Loans shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

- (i) if a Base Rate Loan, at the Base Rate *plus* the Applicable Margin; or
- (ii) if a Eurodollar Rate Loan, at the Eurodollar Rate *plus* the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Revolving Loan, and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by the Borrower and notified to the Administrative Agent and Lenders pursuant to the applicable Loan Notice or Conversion/Continuation Notice, as the case may be; *provided* that the Borrower may not select the Eurodollar Rate for any Credit Extension if the aggregate amount of such Credit Extension is less than \$1,000,000.

(c) In connection with Eurodollar Rate Loans there shall be no more than eight (8) Interest Periods outstanding at any time. In the event the Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Loan Notice or Conversion/Continuation Notice, such Revolving Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Revolving Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event the Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Loan Notice or Conversion/Continuation Notice (or fails to deliver a Conversion/Continuation Notice within the time limits provided in Section 2.04(a)), the Borrower shall be deemed to have selected an Interest Period of one (1) month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime commercial lending rate used in determining the Base Rate promptly following the public announcement of such change.

(d) The Borrower agrees to pay to each Lender, with respect to any L/C Disbursement on behalf of the Borrower, interest on the amount paid by such Lender in respect of each such L/C Disbursement from the date of such L/C Disbursement to but excluding the date such amount is reimbursed by or on behalf of the Borrower at a rate equal to (i) for the period from the date of such L/C Disbursement to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2.00% *per annum* in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(e) Interest payable pursuant to Section 2.07(d) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed in the period during which it accrues, and shall be payable in Dollars on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by the Administrative Agent of any payment of interest pursuant to Section 2.07(d), the Administrative Agent shall distribute to each Lender with respect to such L/C Disbursement such Lender's Pro Rata Share of any interest received by the Administrative Agent in respect of such Lender's Pro Rata Share of such L/C Disbursement for the period from the date on which such L/C Disbursement was made by Lenders to but excluding the date on which such L/C Disbursement is reimbursed by the Borrower.

(f) Notwithstanding the foregoing, if any principal of or interest on any Revolving Loan or any fee or other amount payable by the Borrower pursuant to any Loan Document is not paid when due, whether upon acceleration or otherwise, such overdue amount shall, without further notice, bear interest, after as well as before judgment to the extent permitted by law, at a rate *per annum* equal to (i) in the case of overdue principal of any Revolving Loan, 2.00% plus the rate otherwise applicable to such Revolving Loan as provided in the preceding subsections of this Section 2.07 and (ii) in the case of any other amount, 2.00% *plus* the rate otherwise applicable to Base Rate Loans as provided in the preceding subsections of this Section 2.07.

(g) Interest on each Revolving Loan shall be paid in arrears by the Borrower on each Interest Payment Date for such Revolving Loan; *provided* that (i) interest accrued pursuant to Section 2.07(f) shall be payable on demand of the Administrative Agent, (ii) upon any repayment or prepayment of any Revolving Loan, interest accrued on the principal amount repaid shall be payable on the date of such repayment and (iii) upon any conversion of a Eurodollar Rate Loan before the end of the current Interest Period therefor, interest accrued on such Revolving Loan shall be payable on the effective date of such conversion.

(h) Anything herein to the contrary notwithstanding, the obligations of the Borrower to any Lender hereunder shall be subject to the limitation that payments of interest shall not be required for any period for which interest is computed hereunder to the extent (but only to the extent) that contracting for or receiving such payment by such Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest that may be lawfully contracted for, charged or received by such Lender, and in such event the Borrower shall pay such Lender interest at the highest rate permitted by applicable law until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Revolving Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the highest rate of interest that may be lawfully contracted for, charged or received had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the highest rate of interest that



may be lawfully contracted for, charged or received by such Lender, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Revolving Loans made hereunder or be refunded to the Borrower.

Section 2.08. *Fees.*

(a) The Borrower agrees to pay to Lenders:

(i) commitment fees equal to (1) the average of the daily difference between (A) the Revolving Commitments and (B) the aggregate principal amount of (x) all outstanding Revolving Loans *plus* (y) the Letter of Credit Usage, *multiplied by* (2) the Applicable Revolving Commitment Fee Percentage;

(ii) letter of credit fees equal to (1) the Applicable Non-Collateralized Letter of Credit Fee, *multiplied by* (2) the average aggregate daily maximum amount available to be drawn under all Non-Collateralized Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination, but in any event expressly including all Non-Collateralized Letters of Credit which may have been drawn, to the extent not yet reimbursed pursuant to Section 2.02(h)); and

(iii) letter of credit fees equal to (1) the Collateralized Letter of Credit Fee, *multiplied by* (2) the average aggregate daily maximum amount available to be drawn under all Collateralized Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination, but in any event expressly including all Collateralized Letters of Credit which may have been drawn, to the extent not yet reimbursed pursuant to Section 2.02(h)). All fees referred to in this Section 2.08(a) shall be paid in Dollars to the Administrative Agent at the Administrative Agent's Office and upon receipt, the Administrative Agent shall promptly distribute to each Lender (including each Participating Lender) its Pro Rata Share thereof.

(b) The Borrower agrees to pay directly to the Administrative Agent, for its own account, the following fees:

(i) a letter of credit issuance fee of \$[\*\*] per Letter of Credit issued; and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with the Administrative Agent's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(c) All fees referred to in Section 2.08(a) and 2.08(b) shall be calculated pursuant to the second sentence of Section 2.09(a). The commitment fee referred to in Section 2.08(a)(i) shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year during the Revolving Commitment Period, commencing on the first such date to occur after the Restatement Effective Date, and on the Commitment Termination Date. The fees referred to in Sections 2.08(a)(ii), 2.08(a)(iii) and 2.08(b) shall be payable quarterly in

[\*\*] = *Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

arrear on the last Business Day of March, June, September and December of each year during the period from the Restatement Effective Date to but excluding the later of the Commitment Termination Date and the date on which there ceases to be any Letter of Credit Usage, commencing on the first such date to occur after the Restatement Effective Date, and on the later of the Commitment Termination Date and the date on which there ceases to be any Letter of Credit Usage; *provided* that any such fees accruing after such later date shall be payable on demand.

(d) In addition to the foregoing, the Borrower shall pay to the Administrative Agent for its own account, fees payable in the amounts and at the times separately agreed upon by the Borrower and the Administrative Agent. Such fees shall be fully earned when paid and shall not be refundable under any circumstances.

Section 2.09. *Computation of Fees and Interest.*

(a) All computations of interest for Base Rate Loans when the Base Rate is determined by the Administrative Agent's prime commercial lending 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 shall be made on the basis of a 360-day year and actual days elapsed. Interest and fees shall accrue during each period in which such interest or fees are computed from the first day thereof to the last day thereof.

(b) Each determination of an interest rate by the Administrative Agent shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent will, at the request of the Borrower or any Lender, deliver to the Borrower or such Lender, as the case may be, a statement showing the quotations used by the Administrative Agent in determining any interest rate and the resulting interest rate.

Section 2.10. *Payments Generally.*

(a) All payments to be made by the Borrower under the Loan Documents shall be made without condition or deduction for any defense, set-off, recoupment or counterclaim. Except as otherwise expressly provided in any Loan Document, all payments to be made by the Borrower under any Loan Document shall be made to the Administrative Agent for the account of the Lenders at the Administrative Agent's Office, and shall be made in dollars and in immediately available funds, no later than 2:00 p.m. (New York City time) on the date specified in such Loan Document. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as expressly provided herein) of such payment in like funds as received. Any payment received by the Administrative Agent later than 2:00 p.m. (New York City time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

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

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

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at the customary rate set by the Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Base Rate. If such Lender pays such amount to the Administrative Agent, then such amount (other than the interest thereon) shall constitute such Lender's Revolving Loan included in the applicable Credit Extension. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate *per annum* equal to the applicable rate for Base Rate Loans to the applicable Credit Extension. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Revolving Commitments or to prejudice any rights that the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

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

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

(e) The obligations of the Lenders hereunder to make Revolving Loans are several and not joint. The failure of any Lender to make any Revolving Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such

date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loans.

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

Section 2.11. *Sharing of Payments by Lenders.*

(a) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment (i) on account of any Obligations due and payable hereunder and under the other Loan Documents at such time resulting in such Lender receiving payment in excess of its ratable share (calculated according to the proportion of (A) the amount of such Obligations due and payable to such Lender at such time to (B) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (ii) of or on account of any of Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (calculated according to the proportion of (A) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (B) the aggregate amount of Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time, then, in each case, such Lender shall (x) notify the Administrative Agent of such fact, and (y) purchase (for cash at face value) participations in the Obligations of the other Lenders due and payable or owing, as the case may be, or make such other adjustments as shall be equitable, so that the benefit of such excess payments shall be shared by all such Lenders; *provided* that:

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

(ii) the provisions of this Section 2.11 shall not be construed to apply to (1) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans to any assignee or participant.

(b) Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of set-off and counterclaim (subject to Section 10.09) with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 2.12. *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) 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 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.09 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*, as the Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Revolving Loan or L/C Disbursement on a pro rata basis 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; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving Loans and L/C Disbursements on a pro rata basis under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Event of Default shall have occurred and be continuing, 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 *sixth*, 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 Revolving Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Revolving Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of, and reimbursement obligations with respect to Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or reimbursement obligations with respect to Letters of Credit owed to, such Defaulting Lender until such time as all Revolving Loans and funded and unfunded Letters of Credit are held by the Lenders pro rata in accordance with the applicable Revolving Commitments without giving effect to Section 2.12(a)(iii). 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) Certain Fees.

(1) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.08(a) for any period during which that Lender is a Defaulting Lender

(and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(2) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (1) 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 Pro Rata Share of Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iii) below and (y) not be required to pay the remaining amount of any such fee.

(iii) Reallocation of Letters of Credit. With respect to any Letter of Credit outstanding at the time such Lender becomes a Defaulting Lender, with the consent of the beneficiary thereunder to the extent required under applicable law (including, if applicable, the Uniform Customs and Practices for Documentary Credits governing such Letter of Credit), but only if there has not occurred and shall not be continuing any Default or Event of Default unless all Non-Defaulting Lenders shall otherwise agree, (A) all or any part of such Defaulting Lender's Pro Rata Share of the outstanding Obligations with respect to Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (1) the sum of all Non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Revolving Exposure does not exceed the total of all Non-Defaulting Lenders' Commitments and (2) the sum of each Non-Defaulting Lender's Revolving Exposure plus the amount of such Defaulting Lender's Revolving Exposure reallocated to such Non-Defaulting Lender does not exceed such Non-Defaulting Lender's Commitment and (B) each such Letter of Credit shall be amended by the Administrative Agent to specify the Lenders that are parties to such Letter of Credit (excluding, for avoidance of doubt, such Lender), after giving effect to such event, and such Lenders' respective Pro Rata Shares as of the effective date of such amendment. Subject to Section 10.24, no reallocation pursuant to this Section 2.12(a)(iii) shall constitute a waiver or release of any claim by any party hereto against such Defaulting Lender arising from such Lender becoming a Defaulting Lender.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent 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), such Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans and Letters of Credit of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded Letters of Credit to be held pro rata by the Lenders in accordance with the applicable Revolving Commitments (without giving effect to Section 2.12(a)(iii)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender

to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, the Pro Rata Shares of the Lenders in respect of any newly issued Letter of Credit shall be allocated among Non-Defaulting Lenders in a manner consistent with Section 2.12(a)(iii) above (and such Defaulting Lender shall have no obligation under each such Letter of Credit to the extent such Pro Rata Shares in respect thereof are so reallocated).

(d) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall not be a contractual counterparty with respect to any Guaranteed Swap Contract entered into while such Lender was a Defaulting Lender.

Section 2.13. *Maturity Extensions of Revolving Loans.*

(a) The Borrower may from time to time, pursuant to the provisions of this Section 2.13, agree with one or more Lenders holding Revolving Loans and Revolving Commitments of any Class to extend the maturity date of such Class of Loans and to provide for other terms consistent with this Section 2.13 (each such modification, an “**Extension**”) pursuant to one or more written offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders under any Class that is proposed to be extended under this Section 2.13, in each case on a pro rata basis (based on the relative principal amounts of the outstanding Revolving Commitments of each Lender in such Class) and on the same terms to each such Lender. In connection with each Extension, the Borrower will provide notification to the Administrative Agent (for distribution to the Lenders of the applicable Class), no later than thirty (30) days prior to the maturity of the applicable Class or Classes to be extended of the requested new termination date for the extended Revolving Loans and Revolving Commitments of each such Class (each, an “**Extended Termination Date**”) and the due date for Lender responses, which due date shall be no sooner than ten (10) Business Days after delivery of such notice by the Borrower. In connection with any Extension, each Lender of the applicable Class wishing to participate in such Extension shall, prior to such due date, provide the Administrative Agent with a written notice thereof in a form reasonably satisfactory to the Administrative Agent. Any Lender that does not respond to an Extension Offer by the applicable due date shall be deemed to have rejected such Extension. In connection with any Extension, the Borrower shall agree to such procedures, if any, as may be reasonably established by, or acceptable to, the Administrative Agent to accomplish the purposes of this Section 2.13.

(b) After giving effect to any Extension, the Revolving Commitments so extended shall cease to be a part of the Class of which they were a part immediately prior to the Extension and shall be a new Class hereunder; *provided* that at no time shall there be more than four (4) different Classes of Revolving Commitments; *provided, further*, that, (i) all Credit Extensions and all prepayments of Revolving Loans shall continue to be made on a ratable basis among all Lenders, based on the relative amounts of their Revolving Commitments, until the repayment of the Revolving Loans attributable to the non-extended Revolving Commitments on the applicable Commitment Termination Date, (ii) the allocation of the outstanding Obligations with respect to any then-existing or subsequently issued or made Letter of Credit as between the Revolving Commitments of such new “Class” and the remaining Revolving Commitments shall be made on

a ratable basis in accordance with the relative amounts thereof until the applicable Commitment Termination Date has occurred, (iii) no termination of Extended Revolving Commitments and no repayment of Extended Revolving Loans accompanied by a corresponding permanent reduction in Extended Revolving Commitments shall be permitted unless such termination or repayment (and corresponding reduction) is accompanied by at least a pro rata termination or permanent repayment (and corresponding pro rata permanent reduction), as applicable, of the Existing Revolving Loans and Existing Revolving Commitments (or all Existing Revolving Commitments of such Class and related Existing Revolving Loans shall have otherwise been terminated and repaid in full) and (iv) with respect to Letters of Credit, the Commitment Termination Date with respect to the Revolving Commitments may not be extended without the prior written consent of the Administrative Agent. If the Total Utilization of Revolving Commitments exceeds the Revolving Commitments as a result of the occurrence of the Commitment Termination Date (or the applicable Extended Termination Date with respect to any Class of Revolving Loans or Class of Revolving Commitments extended pursuant to this Section 2.13) while an extended Class of Revolving Commitments remains outstanding, the Borrower shall make such payments as are necessary in order to eliminate such excess on such date.

(c) The consummation and effectiveness of each Extension shall be subject to the following:

(i) no Default or Event of Default shall have occurred and be continuing at the time any Extension Offer is delivered to the Lenders or at the time of such Extension (after giving effect to such Extension);

(ii) the Revolving Loans or Revolving Commitments, as applicable, of any Lender extended pursuant to any Extension (as applicable, “**Extended Revolving Loans**” or “**Extended Revolving Commitments**”) shall have the same terms as the Class of Revolving Loans or Revolving Commitments, as applicable, subject to the related Extension Amendment (as applicable, “**Existing Revolving Loans**” or “**Existing Revolving Commitments**”); except (A) the final maturity date of any Extended Revolving Commitments of a Class to be extended pursuant to an Extension may be later than the Latest Maturity Date at the time of such Extension, and the Weighted Average Life to Maturity of any Extended Revolving Commitments of a Class to be extended pursuant to an Extension shall be no shorter than the Weighted Average Life to Maturity of the Class of Existing Revolving Commitments, as applicable, subject to the Latest Maturity Date at the time of such Extension; (B) the all-in pricing (including, without limitation, margins, fees and premiums) with respect to the Extended Revolving Loans or Extended Revolving Commitments, as applicable, may be higher or lower than the all-in pricing (including, without limitation, margins, fees and premiums) for the Existing Revolving Loans or Existing Revolving Commitments, as applicable; (C) the revolving credit commitment fee rate with respect to the Extended Revolving Commitments may be higher or lower than the revolving credit commitment fee rate for Existing Revolving Commitments, in each case, to the extent provided in the applicable Extension Amendment; (D) no repayment of any Extended Revolving Loans or Extended Revolving Commitments, as applicable, shall be permitted unless such repayment is accompanied by an at least pro rata repayment of all earlier maturing Loans (including



previously extended Loans) (or all earlier maturing Loans (including previously extended Loans) shall otherwise be or have been terminated and repaid in full); (E) the Extended Revolving Loans and/or Extended Revolving Commitments may contain a “most favored nation” provision for the benefit of Lenders holding Extended Revolving Commitments; and (F) the other terms and conditions applicable to Extended Revolving Loans and/or Extended Revolving Commitments may be terms different than those with respect to the Existing Revolving Loans or Existing Revolving Commitments, as applicable, so long as such terms and conditions only apply after the Latest Maturity Date; *provided, further*, that each Extension Amendment may, without the consent of any Lender other than the applicable extending Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to give effect to the provisions of this Section 2.13, including any amendments necessary to treat the applicable Loans and/or Revolving Commitments of the extending Lenders as a new “Class” of loans and/or commitments hereunder; *provided, however*, that no Extension Amendment may provide for any Class of Extended Revolving Commitments to be secured by any assets of any Restricted Subsidiary that do not also secure the Existing Revolving Commitments;

(iii) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by the Borrower generally directed to the applicable Lenders under the applicable Class in connection therewith shall be in form and substance consistent with the foregoing and otherwise reasonably satisfactory to the Administrative Agent;

(iv) a minimum amount in respect of such Extension (to be determined in the Borrower’s discretion and specified in the relevant Extension Offer, but in no event less than \$50,000,000, unless another amount is agreed to by the Administrative Agent in its reasonable discretion) shall be satisfied; and

(v) no Extension shall become effective unless, on the proposed effective date of such Extension, the conditions precedent set forth in Section 4.02(a), (b) and (c) shall be satisfied (with all references in such Section to the making of a Loan being deemed to be references to the Extension on the applicable date of such Extension), and the Administrative Agent shall have received a certificate to that effect dated the applicable date of such Extension and executed by a Responsible Officer of the Borrower.

(d) For the avoidance of doubt, it is understood and agreed that the provisions of Section 2.08 and Section 10.04 will not apply to any payment of interest or fees in respect of any Extended Revolving Commitments that have been extended pursuant to an Extension at a rate or rates different from those paid or payable in respect of Revolving Loans of any other Class, in each case as is set forth in the relevant Extension Offer made pursuant to and in accordance with the provisions of this Section 2.13 with respect to such Extensions of Revolving Commitments.

(e) No Lender who rejects any request for an Extension shall be deemed a Non-Consenting Lender for purposes of Section 10.14.

(f) The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments (collectively, “**Extension Amendments**”) to this Agreement and the other Loan Documents as may be necessary in order to establish new Classes of Revolving Commitments created pursuant to an Extension, in each case on terms consistent with this Section 2.13, so long as the Lenders shall have received at least five (5) Business Days’ prior written notice of any Extension Amendment and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such Extension Amendment; *provided*, that all such Extension Amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding on the Lenders. Without limiting the foregoing, in connection with any Extension, (i) the Borrower and the appropriate Guarantors and Subsidiaries shall (at their expense) amend (and the Administrative Agent is hereby directed to amend) any Loan Document that the Administrative Agent reasonably requests to be amended to reflect the then latest Extended Termination Date and (ii) the Borrower and the appropriate Guarantors and Subsidiaries shall deliver such board resolutions, secretary’s certificates, officer’s certificates and other documents as shall reasonably be requested by the Administrative Agent in connection therewith and, if requested by the Administrative Agent, a legal opinion of counsel in form and substance reasonably acceptable to the Administrative Agent.

(g) Promptly following the consummation and effectiveness of any Extension, the Borrower will furnish to the Administrative Agent (who shall promptly furnish to each Lender) written notice setting forth the Extended Termination Date and material economic terms of the Extension and the aggregate principal amount of each Class of Revolving Loans and Revolving Commitments after giving effect to the Extension and attaching a copy of the fully executed Extension Amendment.

Section 2.14. *Provisions Relating to NAIC Approved Banks.* If, at any time from and after the Restatement Effective Date, any Lender is not or ceases to be a NAIC Approved Bank, such Lender shall promptly notify the Borrower and the Administrative Agent thereof. Each Lender agrees to use commercially reasonable efforts, at all times from and after the Restatement Effective Date, (a) to be a NAIC Approved Bank or (b) if such Lender is not or ceases to be a NAIC Approved Bank, (i) to maintain in effect a Confirming Bank Agreement with a Confirming Bank (which Confirming Bank (if not a Lender), prior to entering into such Confirming Bank Agreement, shall be subject to the prior written consent of the Borrower and the Administrative Agent (such consent, in each case, not to be unreasonably withheld)) upon such terms and conditions as such parties may agree or (ii) to maintain in effect a Limited Fronting Lender Agreement with a Limited Fronting Lender upon such terms and conditions as such parties may agree. In the event that any Person (including any other Lender) agrees to act as a Confirming Bank or a Limited Fronting Lender for any Lender which is a Non-NAIC Approved Bank, such other Person shall receive such compensation therefor as such Non-NAIC Approved Bank and such Person may agree. If any Lender shall enter into a Confirming Bank Agreement or a Limited Fronting Lender Agreement hereunder at any time, it shall promptly furnish a copy thereof to the Borrower and the Administrative Agent and, thereafter, promptly notify the Borrower and the Administrative Agent of the termination or expiration of such Confirming Bank Agreement or Limited Fronting Lender Agreement, as the case may be. Notwithstanding anything herein to the contrary, no Lender shall have any obligation to agree to act hereunder as a Confirming Bank or a Limited Fronting Lender for any other Lender.

(a) The Borrower may, by written notice to the Administrative Agent, elect to request prior to the Commitment Termination Date, an increase to the then-existing Revolving Commitments (any such increase, “**New Revolving Commitments**”), by an amount not in excess of the Increase Amount at such time and not less than \$10,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent or such lesser amount that shall equal the Increase Amount at such time), and integral multiples of \$1,000,000 in excess of that amount. Each such notice shall specify (A) the date (each, an “**Increased Amount Date**”) on which the Borrower proposes that the New Revolving Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent and (B) the identity of each Lender or other Person that is an Eligible Assignee (each, a “**New Revolving Loan Lender**”) to whom the Borrower proposes any portion of such New Revolving Commitments be allocated and the amounts of such allocations; *provided* that the Administrative Agent may elect or decline to arrange such New Revolving Commitments in its sole discretion and any Lender approached to provide all or a portion of the New Revolving Commitments may elect or decline, in its sole discretion, to provide a New Revolving Commitment. Such New Revolving Commitments shall become effective as of such Increased Amount Date; *provided* that (1) no Default or Event of Default shall exist on such Increased Amount Date before or after giving effect to such New Revolving Commitments; (2) all of the representations and warranties contained herein or in any Loan Document (other than the representations and warranties contained in Sections 5.05 and 5.11(d)) shall be true and correct in all material respects on and as of such Increased Amount Date to the same extent as though made on and as of such Increased Amount Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof, (3) Holdings and its Subsidiaries shall be in pro forma compliance with Sections 7.10 and 7.11 as of the last day of the most recently ended Fiscal Quarter after giving effect to such New Revolving Commitments; (4) all New Revolving Commitments shall be effected pursuant to one or more Joinder Agreements executed and delivered by the Borrower, the New Revolving Loan Lender and the Administrative Agent, each of which shall be recorded in the Register and each New Revolving Loan Lender shall be subject to the requirements set forth in Section 3.01(e); (5) Holdings shall make any payments required pursuant to Section 3.04 in connection with the New Revolving Commitments; and (6) the Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(b) On any Increased Amount Date on which New Revolving Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) (x) each of the Revolving Lenders shall assign to each of the New Revolving Loan Lenders, and each of the New Revolving Loan Lenders shall purchase from each of the Revolving Lenders, at the principal amount thereof, such interests in the Revolving Loans outstanding on such Increased Amount Date and (y) each outstanding Letter of Credit shall be amended in accordance with the procedures set forth in Section 2.02(d), in each case as shall be necessary in order that, after giving effect to all such assignments and purchases, the Revolving Exposure will be held by

then-existing Revolving Lenders and New Revolving Loan Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such New Revolving Commitments to the Revolving Commitments, (ii) each New Revolving Commitment shall be deemed for all purposes a Revolving Commitment and each Loan made thereunder (a “**New Revolving Loan**”) shall be deemed, for all purposes, a Revolving Loan and (iii) each New Revolving Loan Lender shall become a Lender with respect to the New Revolving Commitment and all matters relating thereto. For the avoidance of doubt, the terms and provisions of the New Revolving Loans and New Revolving Commitments shall be documented solely as an increase, and shall be identical, to the then-existing Revolving Commitments.

The Administrative Agent shall notify Lenders promptly upon receipt of the Borrower’s notice of each Increased Amount Date and in respect thereof (x) the New Revolving Commitments and the New Revolving Loan Lenders, and (y) the respective interests in such Lender’s Revolving Loans, in each case subject to the assignments contemplated by this Section 2.15.

ARTICLE 3  
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01. *Taxes.*

(a) Payments Free of Indemnified Taxes and Other Taxes. Any and all payments by or on account of any obligation of any Credit Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, *provided* that if any applicable withholding agent shall be required by applicable law to deduct or withhold any Taxes from such payments, then (i) the applicable withholding agent shall make such deductions or withholdings, (ii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, the sum payable by the applicable Credit Party shall be increased as necessary so that after all required deductions or withholdings have been made (including deductions applicable to additional sums payable under this Section 3.01) the Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. Without duplication of the provisions of subsection (a) above, the Borrower shall indemnify the Administrative Agent and each Lender, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes in respect of payments under any Loan Document (including Indemnified Taxes imposed on or attributable to amounts payable under this Section 3.01) that are imposed on or payable by the Administrative Agent or such Lender, as the case may be, and reasonable expenses arising therefrom, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided*, that the Borrower shall not be required to indemnify the Administrative Agent or a Lender pursuant to this Section 3.01 for any Indemnified Taxes to the extent that such recipient fails to notify the Borrower

within 270 days after the date on which such Person has made payment of such Indemnified Taxes; *provided, further*, that, if the Indemnified Taxes imposed or asserted giving rise to such claims are retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof. A certificate setting forth the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Credit Party to a Governmental Authority, 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 or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Each Lender shall deliver to the Borrower and to the Administrative Agent, whenever reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable laws and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, (A) to determine whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) to determine, if applicable, the required rate of withholding or deduction and (C) to establish such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of any payments to be made to such Lender pursuant to any Loan Document or otherwise to establish such Lender's status for withholding tax purposes in an applicable jurisdiction. If any form, certification or other documentation provided by a Lender pursuant to this Section 3.01(e) (including any of the specific documentation described below) expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly notify the Borrower and the Administrative Agent in writing and shall promptly update or otherwise correct the affected documentation or promptly notify the Borrower and the Administrative Agent in writing that such Lender is not legally eligible to do so.

Without limiting the generality of the foregoing,

(A) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent duly completed and executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable laws or reasonably requested by the Borrower or the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon request of the Borrower or the Administrative Agent) as will enable the Borrower or the Administrative Agent, as the case may be, to determine that such Lender is not subject to U.S. federal backup withholding or information reporting requirements;

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of U.S. federal withholding tax with respect to any payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or

prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent), duly completed and executed copies of whichever of the following is applicable:

- (i) IRS Form W-8BEN or W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party,
- (ii) IRS Form W-8ECI (or any successor thereto) claiming that specified payments (as applicable) under this Agreement or any other Loan Documents (as applicable) constitute income that is effectively connected with such Foreign Lender's conduct of a trade or business in the United States,
- (iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code (the "**Portfolio Interest Exemption**"), (x) a certificate (a "**Tax Status Certificate**"), substantially in the form of Exhibit F-1, to the effect that such Foreign Lender is not (1) a "bank" within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower, within the meaning of Section 881(c)(3)(B) of the Code or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code, and that no interest to be received is effectively connected with a U.S. trade or business and (y) IRS Form W-8BEN or W-8BEN-E,
- (iv) where such Lender is a partnership (for U.S. federal income tax purposes) or otherwise not a beneficial owner (e.g., where such Lender has sold a participation), IRS Form W-8IMY (or any successor thereto), a Tax Status Certificate substantially in the form of Exhibit F-2 or Exhibit F-4 and all required supporting documentation (including, where one or more of the underlying beneficial owner(s) is claiming the benefits of the Portfolio Interest Exemption, a Tax Status Certificate of such beneficial owner(s); *provided* that, if the Foreign Lender is a partnership and not a participating Lender, a Tax Status Certificate substantially in the form of Exhibit F-3 from the beneficial owner(s) shall be provided by the Foreign Lender on behalf of the beneficial owner(s)), or
- (v) any other form prescribed by applicable laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(C) each Lender shall deliver to the Borrower and the Administrative Agent (in such number of duly completed and executed copies as shall be requested by the recipient), at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent (1) to comply with the Borrower's and/or Administrative Agent's obligations under FATCA, (2) to determine that such Lender has complied with such Lender's obligations under FATCA and/or (3) to determine the amount to deduct and withhold from any payment under this Agreement or the other Loan Documents pursuant to FATCA. Solely for

purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding anything to the contrary in this Section 3.01(e), no Lender shall be required to deliver any documentation that it is not legally eligible to provide.

(f) Status of Administrative Agent. The Administrative Agent shall deliver the following to the Borrower on or before the date on which it becomes the Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower): (1) if the Administrative Agent is not acting through a U.S. office, (x) executed copies of IRS Form W-8BEN-E with respect to any amounts payable to the Administrative Agent for its own account and (y) executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, and/or other certification documents from each beneficial owner, as applicable with respect to any amounts payable to the Administrative Agent for the account of others; provided, however, that no additional amounts for non-U.S. Taxes and non-U.S. Other Taxes shall be payable by the Borrower under Section 3.01 or Section 3.03(a) if such additional amounts or Other Taxes would not have been payable had the Administrative Agent acted through a U.S. office; provided, further, that such additional amounts for Taxes and Other Taxes shall be payable in accordance with Section 3.01 and Section 3.03(a) to the extent that such Taxes that are payable as a result of a change in law that occurred after the date hereof; and (2) if the Administrative Agent is acting through a U.S. office, (x) executed copies of IRS Form W-8ECI with respect to any amounts payable to the Administrative Agent for its own account and (y) executed copies of IRS Form W-8IMY with respect to any amounts payable to the Administrative Agent for the account of others, certifying that it is a "U.S. branch," that the payments its receives for the account of others are not effectively connected with the conduct of its trade or business within the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. person with respect to such payments (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a U.S. person with respect to such payments as contemplated by Section 1.1441-1(b)(2)(iv) of the United States Treasury Regulations).

(g) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its good faith discretion, that it has received a refund in cash of any Indemnified Taxes as to which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this Section 3.01, it shall promptly pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Credit Party under this Section 3.01 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes), as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority (other than any penalties arising from the gross negligence or willful misconduct of the Administrative Agent or the Lender as determined in a final, non-appealable judgment by a court of competent jurisdiction)) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Such Lender or Administrative

Agent, as the case may be, shall, at the Borrower's reasonable request, provide the Borrower with a copy of any notice of assessment or other evidence reasonably satisfactory to the Borrower of the requirement to repay such refund received from the relevant taxing authority. This subsection shall not be construed to require the Administrative Agent, or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02. *Illegality.*

(a) If any Lender reasonably and in good faith determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, after the Restatement Effective Date, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make Eurodollar Rate Loans, then, on notice thereof by the Lender to the Borrower through the Administrative Agent, any obligation of that Lender to make Eurodollar Rate Loans shall be suspended until the Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist.

(b) If a Lender reasonably and in good faith determines that it is unlawful for such Lender to maintain any Eurodollar Rate Loan after the Restatement Effective Date, on notice thereof by the Lender to the Borrower through the Administrative Agent, such Eurodollar Rate Loans of that Lender then outstanding, either on the last day of the Interest Period thereof, if the Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such Eurodollar Rate Loan, shall convert to a Base Rate Loan on such applicable date and within three (3) Business Days after the Borrower's receipt of such notice the Borrower shall pay to the applicable Lender accrued interest on such Eurodollar Rate Loan along with all amounts required under Section 3.04.

(c) If the obligation of any Lender to make or maintain Eurodollar Rate Loans has been so terminated or suspended, the Borrower may elect, by giving notice to the Lenders through the Administrative Agent, that all Revolving Loans which would otherwise be made or maintained by the Lenders as Eurodollar Rate Loans shall instead be Base Rate Loans.

(d) If any Lender gives a notice pursuant to this Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Eurodollar Rate 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 the need for the notice pursuant to this Section 3.02, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

Section 3.03. *Increased Costs and Reduction of Return.*



(a) If any Lender reasonably and in good faith determines that, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance by that Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) after the later of (x) the Restatement Effective Date and (y) the date such Lender becomes a party to this Agreement, there shall be any increase in the cost (including Taxes, other than (i) Taxes described in clauses (b) and (c) of the definition of “Excluded Taxes”, (ii) Connection Income Taxes and (iii) Indemnified Taxes) to such Lender of agreeing to make or making, funding or maintaining any Loans or participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligations to participate in or issue any Letter of Credit), or any reduction in the amount of any sum received or receivable by such Lender, then the Borrower shall be liable for, and shall from time to time, promptly upon written demand (with a copy of such demand to be sent to the Administrative Agent), pay to the Administrative Agent for the account of such Lender, additional amounts as are sufficient to compensate such Lender for such increased costs or reduction suffered, to the extent such Lender is imposing such costs on borrowers that are similarly situated to the Borrower with respect to whom such Lender has similar rights of compensation.

(b) If any Lender reasonably and in good faith shall have determined that (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by the Lender (or its Lending Office) or any corporation controlling the Lender with any Capital Adequacy Regulation, in each case after the later of (x) the Restatement Effective Date and (y) the date such Lender becomes a party to this Agreement, affects or would affect the amount of capital or liquidity required or expected to be maintained by the Lender or any corporation controlling the Lender and (taking into consideration such Lender’s or such corporation’s policies with respect to capital adequacy or liquidity and such Lender’s desired return on capital) determines that the amount of such capital or liquidity is increased as a consequence of its Revolving Commitment, loans, credits or obligations under this Agreement, then, thirty (30) days after written demand by such Lender to the Borrower through the Administrative Agent, the Borrower shall pay to the Lender, from time to time as specified by the Lender, additional amounts sufficient to compensate the Lender for such increase, to the extent such Lender is employing such increase with respect to borrowers that are similarly situated to the Borrower with respect to whom such Lender has similar rights of compensation.

(c) Notwithstanding anything herein to the contrary, for all purposes of the Loan Documents, all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any United States regulatory authority (i) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), in each case pursuant to Basel III, regardless of the date adopted, issued, promulgated or implemented are deemed to have been adopted and to have taken effect after the date hereof and after the date any Lender becomes a party to this Agreement.

(d) The Borrower shall not be required to compensate any Lender pursuant to this Section 3.03 for any increased costs or reduced returns to the extent such Lender makes written demand on the Borrower for compensation later than 270 days after the date any such increased cost or reduced return is incurred; *provided* that, if the change in law giving rise to any such increased cost or reduced return is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof. A certificate setting forth the amount of such increased costs or reduced returns 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.

Section 3.04. *Funding Losses.* The Borrower shall reimburse each Lender and hold each Lender harmless from any loss (other than loss of profits or the Applicable Margin), expense or liability which the Lender may sustain or incur as a consequence of:

- (a) the failure of the Borrower to make on a timely basis any payment of principal of any Eurodollar Rate Loan;
- (b) the failure of the Borrower to continue a Eurodollar Rate Loan after the Borrower has given (or is deemed to have given) a Conversion/Continuation Notice thereof;
- (c) the failure of the Borrower to make any prepayment of a Eurodollar Rate Loan in accordance with any notice of prepayment given by the Borrower;
- (d) the prepayment (including pursuant to Section 2.06) or other payment (including after acceleration thereof) of a Eurodollar Rate Loan on a day that is not the last day of the relevant Interest Period;
- (e) a Credit Extension of any Eurodollar Rate Loan does not occur on a date specified therefor in a Loan Notice delivered by or on behalf of the Borrower, or a conversion to or continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice delivered by or on behalf of the Borrower; or
- (f) any conversion of any of its Eurodollar Rate Loans occurring on a date prior to the last day of an Interest Period applicable to the Revolving Loan;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its Eurodollar Rate Loans or from fees payable to terminate the deposits from which such funds were obtained, but excluding any administrative fee or other amount chargeable by such Lender for the calculation of such loss.

Section 3.05. *Inability to Determine Rates.* (a) If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Revolving Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes

such notice in writing. Upon receipt of such notice, the Borrower may revoke any notice of continuation then submitted by it pursuant to Section 2.04. If the Borrower does not revoke such notice of continuation, the Lenders shall make, convert or continue the Revolving Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Revolving Loans shall be made, converted or continued as Base Rate Loans instead of Eurodollar Rate Loans.

(b) Notwithstanding the foregoing, if the Administrative Agent (i) determines in its reasonable judgment that the circumstances described in clause (a) of this Section 3.05 have arisen and such circumstances are unlikely to be temporary or (ii) determines in its reasonable judgment that the circumstances described in clause (a) of this Section 3.05 have not arisen but the supervisor for the administrator of the Eurodollar Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Eurodollar Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and the Administrative Agent and the Borrower shall enter into an amendment to this Agreement in form and substance satisfactory to each of them to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable, *provided* that to the extent that the Administrative Agent determines that adoption of any portion of such market convention is not administratively feasible or that no market convention for the administration of such alternate rate of interest exists, the Administrative Agent shall administer such alternate rate of interest in a manner determined by the Administrative Agent with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed). Notwithstanding anything to the contrary in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. If a notice of an alternate rate of interest has been given and no such alternate rate of interest has been determined, and (x) the circumstances under clause (i) above exist or (y) the specific date referred to in clause (ii) has occurred (as applicable), the Base Rate shall apply without regard to clause (c) of the definition thereof. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 3.06. *Certificates of Lenders.* Any Lender claiming reimbursement or compensation under this Article 3 shall deliver to the Borrower (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to the Lender hereunder and such certificate shall be conclusive and binding on the Borrower in the absence of demonstrable error. Such certificate shall set forth in reasonable detail the methodology used in determining the amount payable to the Lender.

Section 3.07. *Substitution of Lenders.* If the Borrower receives from any Lender notice of a claim for compensation under Section 3.01 or 3.03 or notice of illegality under Section 3.02, the Borrower may, upon notice to such Lender and the Administrative Agent, replace such Lender by causing such Lender to assign its Revolving Loans and Revolving Commitment (with

the assignment fee to be paid by the Borrower in such instance) pursuant to Section 10.07(b) to one or more other Lenders or Eligible Assignees procured by the Borrower; *provided* that (x) the Borrower shall be obligated to replace all Lenders that have made similar requests and (y) each such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans, accrued interest thereon, accrued fees and all other amounts payable to it under the Loan Documents from the applicable assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts). The Borrower shall release such Lender from its obligations under the Loan Documents. Any Lender being replaced shall execute and deliver an Assignment and Assumption with respect to such Lender's outstanding Revolving Loans.

Section 3.08. *Survival*. The agreements and obligations of the Borrower in Section 3.01, Section 3.03 and Section 3.04 and the agreements and obligations of the Lenders in Section 3.06 shall survive the termination of this Agreement and the payment of all other Obligations.

ARTICLE 4  
CONDITIONS PRECEDENT

Section 4.01. *Conditions to Effectiveness*. This Agreement (and the amendment and restatement of the Existing Credit Agreement effected hereby) shall become effective on the date that each of the following conditions precedent are satisfied or waived:

(a) The Administrative Agent shall have received each of the following, each of which shall be originals or facsimiles or Adobe PDFs delivered by electronic mail (followed promptly by originals) unless otherwise specified:

(i) from each party hereto (including each Continuing Existing Credit Agreement Lender), a counterpart of this Agreement executed by such party; and

(ii) a Revolving Loan Note executed by the Borrower in favor of each Lender that has requested a Revolving Loan Note at least two (2) Business Days prior to the Restatement Effective Date.

(b) The Guarantee Requirement shall have been satisfied.

(c) The Collateralized L/C Collateral Requirement shall have been satisfied.

(d) The Administrative Agent shall have received:

(i) copies of the resolutions of the board of directors, authorized subcommittee thereof, or other equivalent body of each Credit Party authorizing the Transactions to which such Credit Party is a party, certified as of the Restatement Effective Date by the Secretary or an Assistant Secretary of such Credit Party;

(ii) a certificate of the Secretary or Assistant Secretary of each Credit Party certifying the names and true signatures of the officers of such Credit Party authorized to execute, deliver and perform, as applicable, this Agreement and all other Loan Documents to be delivered by such Credit Party hereunder;

(iii) the articles or certificate of incorporation or equivalent document of each Credit Party as in effect on the Restatement Effective Date, certified by the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or organization as of a recent date;

(iv) the bylaws or equivalent document of each Credit Party as in effect on the Restatement Effective Date, certified by the Secretary or Assistant Secretary of such Credit Party as of the Restatement Effective Date;

(v) a certificate of good standing or equivalent document for each Credit Party from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or organization as of a recent date; and

(vi) certified copies of Uniform Commercial Code, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Credit Party as debtor and that are filed in those state and county jurisdictions in which any Credit Party is organized or maintains its principal place of business and such other searches that the Administrative Agent reasonably deems necessary and requested at least five (5) days prior to the Restatement Effective Date.

(e) The Administrative Agent shall have received a written opinion, reasonably acceptable to the Administrative Agent in form and substance (addressed to the Administrative Agent and the Lenders and dated the Restatement Effective Date), from each of (i) Sidley Austin LLP, counsel for the Credit Parties, substantially in the form of Exhibit G-1 and (ii) Appleby (Bermuda) Limited, Bermuda counsel for the Credit Parties, substantially in the form of Exhibit G-2.

(f) The Administrative Agent shall have been paid (i) all costs, fees and expenses (including, without limitation, Attorney Costs of the Administrative Agent, the Arrangers, the Bookrunners and recording taxes and fees) to the extent then due and payable to the Administrative Agent, the Arrangers or the Bookrunners and (ii) all other compensation contemplated by the Engagement Letter and each Fee Letter payable to the Administrative Agent, the Arrangers, the Bookrunners or the Lenders on or before the Restatement Effective Date, in each case to the extent invoiced at least two (2) Business Days prior to the Restatement Effective Date.

(g) All accrued and unpaid interest and fees under the Existing Credit Agreement shall have been paid in full.

(h) The Administrative Agent shall have received (i) a certificate signed by a Responsible Officer of Holdings on behalf of the Borrower, dated as of the Restatement Effective Date, (A) confirming that Holdings and its Restricted Subsidiaries have received all required approvals of the Transactions from each applicable Governmental Authority except applicable regulatory approvals of Governmental Authorities required under applicable law in connection with the enforcement of any Collateralized L/C Security Document and (B) certifying that the conditions precedent specified in this Section 4.01(h), (i), (k), (l) and (n) have been

satisfied and (ii) a solvency certificate executed by an authorized representative of Holdings, substantially in the form of Exhibit H.

(i) All governmental and regulatory authorizations necessary in connection with the financing contemplated hereby shall have been obtained and be in full force and effect.

(j) Each Credit Party shall have provided the documentation and other information to the Administrative Agent as the Lenders reasonably determine are required by bank regulatory authorities under applicable “know-your-customer” and Anti-Money Laundering Laws, including the PATRIOT Act, at least two (2) Business Days prior to the Restatement Effective Date as has been reasonably requested in writing at least four (4) Business Days prior to the Restatement Effective Date by the Lenders. The Borrower shall have delivered a Beneficial Ownership Certification to the Administrative Agent and each Lender requesting one.

(k) There will not exist (after giving effect to the financing hereunder) any “event of default” under (i) any Material Indebtedness of Holdings or its Subsidiaries or (ii) the Senior Notes.

(l) The organizational structure of Holdings and its Subsidiaries will be as set forth on Schedule 4.01(l).

(m) The Administrative Agent and the Lenders shall have received at least five (5) calendar days prior to the Restatement Effective Date (i) the Historical Financial Statements and (ii) the most recent Annual Statements and Quarterly Statements (for those periods ending after delivery of the most recent Annual Statements for each Insurance Subsidiary) of each Insurance Subsidiary as filed with the insurance regulator of such Insurance Subsidiary’s jurisdiction of domicile on or prior to such date, in each case, to the extent such reports and statements have been prepared by such Insurance Subsidiaries.

(n) All of the representations and warranties contained herein or in any Loan Document shall be true and correct in all material respects on and as of the Restatement Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

Section 4.02. *Conditions to All Borrowings and Letter of Credit Issuances.* The obligation of any Lender to make any Loans or to issue, renew or extend any Letter of Credit, on any Borrowing Date (including on the Restatement Effective Date) is subject to satisfaction of the following conditions precedent:

(a) All of the representations and warranties contained herein or in any Loan Document by any Credit Party (other than the representations and warranties contained in Sections 5.05 and 5.11(d)), shall be true and correct in all material respects on and as of such Borrowing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such

representations and warranties shall have been true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

(b) No Default or Event of Default shall have occurred and be continuing on such date or immediately after giving effect to the proposed Credit Extension.

(c) The Administrative Agent shall have received a Loan Notice or Issuance Notice in accordance with the requirements hereof, along with a Collateralized L/C Collateral Certificate, if applicable.

(d) After making the Credit Extension requested on such Borrowing Date, (i) the Total Utilization of Revolving Commitments shall not exceed the Revolving Commitments then in effect, (ii) the Letter of Credit Usage shall not exceed the Letter of Credit Sublimit and (iii) in the case of any Credit Extension consisting of the issuance, renewal or extension of a Collateralized Letter of Credit, the Collateralized L/C Aggregate Collateral Amount shall not be less than the Minimum Collateralized L/C Aggregate Collateral Amount.

(e) On or before the date of issuance of any Letter of Credit, the Administrative Agent shall have received all other information required by the applicable Issuance Notice, and such other documents or information as the Administrative Agent may reasonably require in connection with the issuance of such Letter of Credit.

Each Loan Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied (or waived) on and as of the date of the applicable Credit Extension.

Section 4.03. *Determinations Under Section 4.01.* For purposes of determining compliance with the conditions specified in Section 4.01, (i) each of the Lenders shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by, or acceptable or satisfactory to, the Lenders unless an officer of the Administrative Agent responsible for the Transactions shall have received notice from such Lender prior to the Restatement Effective Date specifying its objection thereto and, in the case of any Lender, such Lender shall not have made available to the Administrative Agent on the Restatement Effective Date such Lender's Pro Rata Share of the borrowing to be made on such date and (ii) transactions occurring (or to occur) on the Restatement Effective Date in accordance with, and as expressly set forth in, the funds flow memorandum delivered to (and approved by) the Administrative Agent shall be deemed to occur and have occurred substantially simultaneously with the effectiveness hereof on the Restatement Effective Date.

ARTICLE 5  
REPRESENTATIONS AND WARRANTIES

Each Credit Party represents and warrants to the Administrative Agent and the Lenders on behalf of itself and its Restricted Subsidiaries that on the Restatement Effective Date and, to the extent provided in Section 4.02(a), on the date of the making of each Revolving Loan or

issuance, renewal or extension of a Letter of Credit hereunder the following statements are true and correct:

Section 5.01. *Corporate Existence and Power.* Such Credit Party and each of its Restricted Subsidiaries:

- (a) is duly organized, validly existing and in good standing (but, with respect to any Credit Party or Restricted Subsidiary that is not incorporated, organized or formed under the laws of the United States of America, any State thereof or the District of Columbia, only to the extent such concept is applicable to such Credit Party or Restricted Subsidiary) under the laws of the jurisdiction of its incorporation, organization or formation;
- (b) has the corporate (or other organizational) power and authority (i) to own its assets and carry on its business and (ii) in the case of a Credit Party, to perform its obligations, if any, under the Loan Documents to which it is a party;
- (c) is duly qualified as a foreign entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of its property or the conduct of its business requires such qualification; and
- (d) is in compliance with all Requirements of Law;

except, in each case referred to in clauses (c) and (d), to the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.02. *Corporate Authorization; No Contravention.* The Transactions to be entered into by such Credit Party are within such Credit Party's corporate or other organizational powers. The Transactions (including the execution, delivery and performance by such Credit Party of each Loan Document to which it is a party) have been duly authorized by all necessary corporate or other organizational action of such Credit Party and do not and will not:

- (a) contravene the terms of any of such Credit Party's Organization Documents;
- (b) result in any breach, violation or contravention of, or result in or require the creation of any Lien (other than the Collateralized L/C Liens) under, any document evidencing the Senior Notes or any Material Indebtedness to which such Credit Party or any of its Restricted Subsidiaries is a party; or
- (c) violate any Requirement of Law or any order, injunction, writ or decree of any Governmental Authority to which such Credit Party or any of its Restricted Subsidiaries or its property is subject, except to the extent that such violations, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.03. *Governmental Authorization; Other Consents.* No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the Transactions (including the execution, delivery or performance by, or enforcement against, such Credit Party



of each Loan Document to which it is a party), except (a) such as have been obtained and are in full force and effect (including, without limitation, the approval of the applicable Department of each Insurance Subsidiary, if required) and (b) filings necessary to perfect the Collateralized L/C Liens or, if required under applicable law in connection with the enforcement of any Collateralized L/C Liens, to enforce the Collateralized L/C Liens.

Section 5.04. *Binding Effect.* This Agreement has been duly executed and delivered by such Credit Party and constitutes, and each other Loan Document to which such Credit Party is to be a party, when executed and delivered by such Credit Party, will constitute, a legal, valid and binding obligation of such Credit Party, in each case enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

Section 5.05. *Litigation.* Except as set forth on Schedule 5.05, there are no actions, suits or proceedings pending, or to the Knowledge of such Credit Party, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against such Credit Party or any of its Restricted Subsidiaries or any of their respective properties that: (a) purport to affect or pertain to this Agreement, any other Loan Document, or any of the transactions (including the Transactions) contemplated hereby or thereby or (b) individually or in the aggregate could reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary restraining order or any order of any nature has been issued by any court or other Governmental Authority against such Credit Party or any of its Restricted Subsidiaries purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document by such Credit Party or directing that the Transactions not be consummated as herein or therein provided.

Section 5.06. *No Default.* No Default or Event of Default has occurred and is continuing. Neither such Credit Party nor any of its Restricted Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

Section 5.07. *ERISA Compliance.*

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state law except to the extent that such non-compliance could not reasonably be expected to have a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS and to the Knowledge of such Credit Party, nothing has occurred which would reasonably be expected to cause the loss of such qualification, except where such non-qualification could not reasonably be expected to have a Material Adverse Effect. Such Credit Party, its Restricted Subsidiaries and each ERISA Affiliate have made all required contributions to any Pension Plan, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Pension Plan, except where such lack

of contribution or application for funding waiver could not reasonably be expected to have a Material Adverse Effect.

(b) There are no pending or, to the Knowledge of such Credit Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan or Pension Plan that could reasonably be expected to have a Material Adverse Effect. To the Knowledge of such Credit Party, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan or Pension Plan that could reasonably be expected to have a Material Adverse Effect.

(c) Except for occurrences or circumstances that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect: (i) no ERISA Event has occurred or is reasonably expected to occur and (ii) no Single Employer Pension Plan has any Unfunded Pension Liability.

(d) To the extent the assets of the Borrower are deemed to be “plan assets” within the meaning of Section 3(42) of ERISA, or otherwise, (i) on each day that an extension of credit pursuant to a Credit Extension is in effect, such extension of credit will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code as a result of the applicability of Prohibited Transaction Class Exemption 95-60, and (ii) at any time when regulation 29 C.F.R. Section 2510.3-21, as modified in 2016, is applicable, the fiduciary making the decision on behalf of the Borrower with respect to the Credit Extension will be deemed to represent and warrant that it (v) is a bank, insurance company, registered investment adviser, broker-dealer or other person with financial expertise, in each case as described in 29 C.F.R. Section 2510.3-21(c)(1)(i); (w) is an independent plan fiduciary within the meaning of 29 C.F.R. Section 2510.3-21; (x) is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies; (y) is responsible for exercising independent judgment in evaluating the transaction and (z) it is not paying any fee or other compensation to the Lenders or the Agents (the “**Transaction Parties**”) for investment advice (as opposed to other services) in connection with the transaction. In addition, such fiduciary will be deemed to acknowledge and agree that it (1) has been informed (and it is hereby expressly confirmed) that none of the Transaction Parties, or other persons that provide marketing services, nor any of their affiliates, has provided, and none of them will provide, impartial investment advice and they are not giving any advice in a fiduciary capacity, in connection with the Credit Extensions and (2) has received information concerning, and understands the existence and nature of, the financial interests of the Transaction Parties in the Credit Extensions.

Section 5.08. *Margin Regulations.* Neither such Credit Party nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of purchasing or carrying Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. Margin Stock does not constitute more than 25% of the value of the consolidated assets of such Credit Party and its Restricted Subsidiaries. None of the proceeds of the Revolving Loans will be used to acquire Margin Stock. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Revolving Loans) will violate or result in a violation of Regulation U or X of the FRB.

Section 5.09. *Title to Properties.* Each of such Credit Party and its Restricted Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid license rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of their respective properties and assets necessary in the ordinary conduct of their respective businesses, except for any failure of any of the foregoing as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

Section 5.10. *Taxes.*

(a) Such Credit Party and each of its Restricted Subsidiaries have timely filed all U.S. federal income Tax, other income Tax and other Tax returns and reports required to be filed, and have paid all federal income Tax, other income Tax and other Taxes levied or imposed upon it or its properties, income or assets that have become due and payable (including in its capacity as a withholding agent) when due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with SAP or GAAP, as applicable (*provided* that such contest effectively suspends collection of the same and enforcement of any Lien securing the same) or those the failure to so file or pay could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. There is no current or proposed Tax audit, assessment, deficiency or other claim or proceeding against such Credit Party or any of its Restricted Subsidiaries that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(b) Except as could not be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect (i) such Credit Party and each of its Restricted Subsidiaries have made adequate provision in accordance with SAP or GAAP (as applicable) for all Taxes not yet due and payable and (ii) neither such Credit Party nor any Restricted Subsidiary has ever participated in a “listed transaction” within the meaning of United States Treasury Regulation Section 1.6011-4.

Section 5.11. *Financial Condition.*

(a) Each of the Historical Financial Statements:

(i) was prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, subject, in the case of such unaudited financial statements, to ordinary, good faith year-end and audit adjustments and the absence of footnote disclosure;

(ii) fairly presents in all material respects the financial condition, results of operations, cash flows and changes in shareholders’ equity of GAFL or Holdings, as the case may be, and its respective Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(iii) in the case of the Historical Financial Statements, shows all material Indebtedness and other material Contingent Obligations, of Holdings and its consolidated Subsidiaries as of the date thereof.

(b) Each of (i) the December 31, 2017 Annual Statement of each Insurance Subsidiary, (ii) the September 30, 2017 Quarterly Statement of each Insurance Subsidiary and (iii) the June 30, 2017 Quarterly Statement of each Insurance Subsidiary (collectively, the “**Historical Statutory Statements**”):

(i) was prepared in accordance with SAP, except as may be reflected in the notes thereto and subject, with respect to the Quarterly Statements, to the absence of notes required by SAP and to normal year-end adjustments; and

(ii) was in all material respects in compliance with applicable Requirements of Law when filed and present fairly in all material respects the financial condition of the respective Insurance Subsidiaries covered thereby as of the respective dates thereof and changes in Capital and Surplus of the respective Insurance Subsidiaries covered thereby for the respective periods then ended.

Except for liabilities and obligations disclosed or provided for in the Historical Statutory Statements (including, without limitation, reserves, policy and contract claims and statutory liabilities), no Insurance Subsidiary had, as of the date of its respective Historical Statutory Statements, any material liabilities or obligations of any nature whatsoever (whether absolute, contingent or otherwise and whether or not due) that, in accordance with SAP, would have been required to have been disclosed or provided for in such Historical Statutory Statement.

(c) On and as of the Restatement Effective Date, the financial projections set forth in the lenders’ presentation dated as of April 18, 2018 have been prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections were furnished to the Lenders, it being understood and agreed that financial projections are not a guarantee of financial performance and actual results may differ from financial projections and such differences may be material.

(d) Since December 31, 2017, no event, circumstance or change has occurred that has caused or evidences, or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect.

Section 5.12. *Environmental Matters.*

(a) All real properties owned or leased by such Credit Party or any of its Restricted Subsidiaries have been, and continue to be, owned or operated by such Credit Party and its Restricted Subsidiaries in compliance with all Environmental Laws, except where failure to so comply could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(b) There have been no past, and there are no pending or, to the Knowledge of such Credit Party, threatened, Environmental Claims against such Credit Party or any of its Restricted

Subsidiaries, except for such Environmental Claims that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) There has been no Release of Hazardous Materials at, on, under or from any real property now or, to the Knowledge of such Credit Party, previously owned or leased by such Credit Party or any of its Restricted Subsidiaries that, individually or in the aggregate, have had, or could reasonably be expected to have, a Material Adverse Effect.

(d) Such Credit Party and each of its Restricted Subsidiaries have been issued and are in compliance with all permits, certificates, approvals, licenses and other authorizations required under any Environmental Law to own and operate their real property or to conduct their businesses except where failure to obtain or comply with the foregoing could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(e) There are no underground or above-ground storage tanks, active or abandoned, including petroleum storage tanks, on or under any real property now owned or leased by such Credit Party or any of its Restricted Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) To the Knowledge of such Credit Party, neither such Credit Party nor any of its Restricted Subsidiaries has directly transported or directly arranged for the transportation of any Hazardous Material to any location that could reasonably be expected to result in liability of such Credit Party or any of its Restricted Subsidiaries under any Environmental Law, except any such liability which could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(g) To the Knowledge of such Credit Party, there are no polychlorinated biphenyls or friable asbestos present at any real property now owned or leased by such Credit Party or any of its Restricted Subsidiaries that, individually or in the aggregate, could be reasonably expected to have a Material Adverse Effect.

Section 5.13. *Investment Company Act of 1940.* Neither such Credit Party, nor any of its Restricted Subsidiaries, is required to register as an investment company under the Investment Company Act of 1940.

Section 5.14. *Subsidiaries.*

(a) The Capital Stock of each of such Credit Party and its Restricted Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 5.14(a), as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which such Credit Party or any of its Restricted Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of such Credit Party or any of its Restricted Subsidiaries outstanding which upon conversion or exchange would require, the issuance by such Credit Party or any of its Restricted Subsidiaries of any additional membership interests or other Capital Stock of such Credit Party or any of its Restricted Subsidiaries or other securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of such Credit Party or any of its Restricted Subsidiaries.

(b) Schedule 5.14(b) sets forth the name of, and the ownership interest of Holdings (or the applicable Subsidiary) in, each of its Subsidiaries and identifies each Subsidiary that is a Foreign Subsidiary and/or an Insurance Subsidiary, in each case as of the Restatement Effective Date. All Holdings' Subsidiaries are, and will at all times be, fully consolidated in its consolidated financial statements.

Section 5.15. *Insurance and Other Licenses.*

(a) To such Credit Party's Knowledge, no License that is required to be obtained in order to be an insurer or a reinsurer of any Insurance Subsidiary, the loss of which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, is the subject of a proceeding for suspension or revocation. To such Credit Party's Knowledge, there is no sustainable basis for such suspension or revocation, and no such suspension or revocation has been threatened by any Governmental Authority.

(b) Such Credit Party and each of its Restricted Subsidiaries has all governmental licenses, authorizations, consent, and approvals (i) to own, lease or operate its assets and to conduct its business and (ii) in the case of a Credit Party, to perform its obligations, if any, under the Loan Documents to which it is a party; except, in each case referred to in this clause (b), to the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.16. *Full Disclosure.*

(a) All written or formally presented information (other than financial projections) provided by such Credit Party to the Lenders in connection with the Transactions is, when taken as a whole with all other information so provided, complete and correct in all material respects and when taken as a whole, did not and will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not materially misleading. There are no facts known to such Credit Party (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the Transactions.

(b) As of the Restatement Effective Date, the information included in the Beneficial Ownership Certification delivered pursuant to Section 4.01(j) is true and correct in all respects.

Section 5.17. *Solvency.* Immediately after the Transactions to occur on the Restatement Effective Date are consummated, and, upon the incurrence of any Obligation by such Credit Party on any date on which this representation and warranty is made:

(a) the fair value of the assets of Holdings and its Restricted Subsidiaries, on a consolidated basis, exceeds the fair value of their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis;

(b) the present fair saleable value of the property of Holdings and its Restricted Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the

probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured;

(c) Holdings and its Restricted Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured;

(d) Holdings and its Restricted Subsidiaries, on a consolidated basis, do not intend to incur, nor believe that they will incur on or immediately following the Restatement Effective Date, debts, including current obligations, beyond their ability to pay such debts as they become absolute and matured; and

(e) Holdings and its Restricted Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

Section 5.18. *Insurance.* Other than as could not reasonably be expected to have a Material Adverse Effect, the insurance maintained by or reserved on the books of such Credit Party and its Restricted Subsidiaries is sufficient to protect such Credit Party and its Restricted Subsidiaries and their respective directors and officers against such risks as are usually insured against in accordance with industry practice by companies in the same or similar business.

Section 5.19. *Anti-Corruption Laws; OFAC; Anti-Terrorism Laws; PATRIOT Act.*

(a) Such Credit Party and each of its Subsidiaries and, to the Knowledge of such Credit Party, each of such Credit Party's and its Subsidiaries' officers, directors and employees has conducted its business activities in material compliance with Anti-Corruption Laws. Each Insurance Subsidiary has instituted and maintains and will continue to maintain policies and procedures designed to promote and achieve compliance with applicable Anti-Corruption Laws.

(b) Neither such Credit Party nor any of its Subsidiaries or, to the Knowledge of such Credit Party, none of such Credit Party's or any of its Subsidiaries' officers, directors or employees has violated or is in violation of any applicable Anti-Money Laundering Law in any material respect.

(c) Neither such Credit Party nor any of its Subsidiaries or, to the Knowledge of such Credit Party, none of such Credit Party's or any of its Subsidiaries' officers, directors or employees is acting or benefiting in any capacity in connection with the Revolving Loans or the Letters of Credit (i) is an Embargoed Person or (ii) except as otherwise authorized by OFAC or any other relevant sanctions authority, otherwise permitted for U.S. persons by a U.S. Governmental Authority or by any rule, regulation or order of a U.S. Governmental Authority, will use any proceeds of the Revolving Loans, or lend, contribute or otherwise make available such proceeds to any Person (A) for the purpose of financing the activities of or with any Person or in any country or territory that, at the time of funding or facilitation, is an Embargoed Person or (B) in any other manner that would result in a violation of Economic Sanctions Laws or Anti-Corruption Laws.

(d) Except as otherwise authorized by OFAC or any other relevant sanctions authority, neither such Credit Party nor any of its Subsidiaries or, to the Knowledge of such Credit Party, none of such Credit Party's or any of its Subsidiaries' officers, directors or employees acting or benefiting in any capacity in connection with the Revolving Loans or the Letters of Credit (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any applicable Economic Sanctions Laws or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the applicable prohibitions set forth in any applicable Economic Sanctions Laws.

Section 5.20. *Surplus Debenture Interest and Dividends.* Neither such Credit Party nor any of its Restricted Subsidiaries has received any notice from the NAIC, any other Governmental Authority or any other insurance regulatory authority that its Insurance Subsidiaries will not be permitted to pay dividends or interest, as applicable, on any Surplus Debentures or Notes.

Section 5.21. *Use of Proceeds.* Such Credit Party will use the proceeds of the Revolving Loans (i) only in compliance (and not in contravention of) applicable laws and each Loan Document, and (ii) for working capital and general corporate purposes of Holdings and its Subsidiaries.

Section 5.22. *EEA Financial Institution.* No Credit Party is an EEA Financial Institution.

## ARTICLE 6 AFFIRMATIVE COVENANTS

Until all principal of and interest on each Revolving Loan and all fees and other amounts payable hereunder have been paid in full (other than unmatured, surviving contingent indemnification obligations not yet due and payable), all Revolving Commitments have been terminated and all Letters of Credit have been cancelled or have expired (or Cash Collateralized at the Minimum Cash Collateral Amount), each Credit Party, as applicable, covenants and agrees with the Lenders that:

Section 6.01. *Financial Statements.* Holdings and/or the Borrower shall deliver to the Administrative Agent and each Lender:

(a) as soon as available, and in any event within one hundred thirty-five (135) days after the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2018, (i) the consolidated balance sheets of Holdings and its Restricted Subsidiaries as at the end of such Fiscal Year (including, any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from the consolidated financial statements) and the related consolidated statements of income, stockholders' equity and cash flows of Holdings and its Restricted Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year (to the extent corresponding figures for the previous Fiscal Year were prepared), all in reasonable detail and



(ii) with respect to such consolidated financial statements a report thereon of PricewaterhouseCoopers LLP or other independent certified public accountants of recognized national standing selected by Holdings and reasonably satisfactory to the Administrative Agent (which report and/or the accompanying financial statements shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Restricted Subsidiaries, in each case, as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(b) as soon as available, and in any event within sixty (60) days after the end of (x) in the case of clause (i), each of the first three Fiscal Quarters of each Fiscal Year, or (y) in the case of clause (ii), each Fiscal Quarter of each Fiscal Year, in each case, commencing with the Fiscal Quarter ended March 31, 2018, (i) the consolidated balance sheets of Holdings and its Restricted Subsidiaries, as at the end of such Fiscal Quarter and the related consolidated statements of income and stockholders' equity of Holdings and its Restricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year (to the extent corresponding figures for the corresponding periods of the previous Fiscal Year were prepared), all in reasonable detail and certified by a Responsible Officer of Holdings or the Borrower as fairly presenting in all material respects, in accordance with GAAP (subject to the absence of footnotes and year-end audit adjustments), the financial position, the results of operations of Holdings and its Restricted Subsidiaries, and (ii) consolidated balance sheets of the Borrower and its Restricted Subsidiaries, as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity of the Borrower and its Restricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year (to the extent corresponding figures for the corresponding periods of the previous Fiscal Year were prepared), all in reasonable detail and certified by a Responsible Officer of the Holdings or the Borrower as fairly presenting in all material respects, in accordance with GAAP (subject to the absence of footnotes and year-end audit adjustments), the financial position and the results of operations of the Borrower and its Restricted Subsidiaries, *provided* that, in lieu of the information required by this Section 6.01(b)(ii) for the fourth Fiscal Quarter of a Fiscal Year, the Borrower may, upon prior written notice to the Administrative Agent and within one hundred thirty-five (135) days after the end of such Fiscal Year, provide financial statements of the Borrower for such Fiscal Year that comply with the requirements of Section 6.01(a) and *provided, further*, that, no separate financial information of the Borrower shall be required to be delivered under this Section 6.01(b)(ii) if the financial statements of Holdings provided pursuant to Section 6.01(a) and Section 6.01(b)(i) include information regarding the Borrower that complies with Section 3-10 of Regulation S-X;

(c) within two (2) Business Days after delivery to the applicable Department, and in any event not later than one hundred twenty-five (125) days after the close of each Fiscal Year of each Insurance Subsidiary, copies of the unaudited Annual Statement of such Insurance

Subsidiary on a stand-alone basis in each case, to the extent such Annual Statement is required to be delivered to the applicable Department, the stand-alone Annual Statement to be certified by a Responsible Officer of such Insurance Subsidiary, all such statements to be prepared in accordance with SAP consistently applied throughout the periods reflected therein and, if required by the applicable Governmental Authority, audited and certified by independent certified public accountants of recognized national standing (such audited Annual Statement to be delivered as soon as available but not later than June 15 of each Fiscal Year of such Insurance Subsidiary); *provided* that, no certification by any independent certified public accountants will be required with respect to SAP prescribed or permitted by the insurance commissioner (or other similar authority) in Bermuda;

(d) within two (2) Business Days after delivery to the applicable Department, and in any event not later than fifty (50) days after the close of each of the first three Fiscal Quarters of each Fiscal Year of each Insurance Subsidiary, copies of the Quarterly Statement of such Insurance Subsidiary, in each case, to the extent such Quarterly Statement is required to be delivered to the applicable Department, on a stand-alone basis, the stand-alone Quarterly Statement to be certified by a Responsible Officer of such Insurance Subsidiary, all such statements to be prepared in accordance with SAP consistently applied through the period reflected therein;

(e) promptly following the delivery to or receipt by Holdings or any of its Restricted Subsidiaries of any regular or periodic final Triennial Examination Reports, final risk adjusted capital reports or final results of any market conduct examination or examination by any Department or the NAIC of the financial condition and operations of, or any final notice of any assertion as to violation of any Requirement of Law by, any Insurance Subsidiary, or any final report with respect to any Insurance Subsidiary (including any summary report from the NAIC with respect to the performance of such Insurance Subsidiary as measured against the ratios and other financial measurements developed by the NAIC under its Insurance Regulatory Information System as in effect from time to time) that could reasonably be expected to result in a Material Adverse Effect; and

(f) within ninety-five (95) days after the close of each Fiscal Year of each Insurance Subsidiary, a copy of the “Statement of Actuarial Opinion” and “Management Discussion and Analysis” for each such Insurance Subsidiary that is provided to the applicable Department (or equivalent information should such Department no longer require such a statement), to the extent required by the applicable Department, as to the adequacy of reserves of such Insurance Subsidiary, such opinion to be in the format prescribed by the insurance code of the state of domicile of such Insurance Subsidiary.

Section 6.02. *Certificates; Other Information.* The Borrower shall furnish to the Administrative Agent, for further distribution to each Lender:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a) and Section 6.01(b)(i), a Compliance Certificate;

(b) (i) on the Business Day immediately preceding the proposed date of issuance of any Collateralized Letter of Credit, (ii) if Collateralized Letters of Credit are outstanding during

any calendar month, within ten (10) Business Days after the end of each such calendar month, (iii) as of the Commitment Termination Date, (iv) at and as of such other times as the Administrative Agent may reasonably request and (v) at such other times as the Borrower may desire, a Collateralized L/C Collateral Certificate;

(c) promptly upon receipt thereof, copies of all final reports submitted to Holdings or any of its Restricted Subsidiaries by independent public accountants in connection with each annual, interim or special audit of the financial statements of Holdings or any of its Restricted Subsidiaries made by such accountants;

(d) promptly, copies of all Forms 10-K and 10-Q that Holdings or the Borrower may file with the SEC, copies of all registration statements and prospectuses that Holdings or the Borrower may file with the SEC and copies of all other financial statements, proxy statements and regular, periodic or special reports (including Form 8-K) that Holdings or the Borrower may make to, or file with, the SEC, unless such copies have been publicly filed with the SEC and are available on the SEC's website or have been posted to Holdings' or the Borrower's website (and notification of any such posting has been provided to the Administrative Agent);

(e) (i) promptly and in any event within three (3) Business Days after learning thereof, notification of any changes after the date hereof in any rating given by S&P, Moody's, Fitch or A.M. Best in respect of Holdings, any of its Restricted Subsidiaries or any of their Indebtedness or securities and (ii) promptly upon receipt thereof by Holdings or any Restricted Subsidiary, as applicable, a copy of any written communication from S&P, Moody's or Fitch addressed to any Credit Party that could reasonably be expected to have an adverse effect on the then current Debt Rating; and

(f) promptly, (i) such additional information regarding the business, financial or corporate affairs of Holdings or any Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent, for itself or at the request of any Lender, may from time to time reasonably request and (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know-your-customer" and Anti-Money Laundering Laws, including the PATRIOT Act.

Documents required to be delivered pursuant to Section 6.01, this Section 6.02 or Section 6.03 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents or provides a link thereto on Holdings' website on the Internet; (ii) on which such documents are posted on Holdings' behalf on IntraLinks/IntraAgency or another relevant 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); or (iii) on which such documents are made publicly available at [www.sec.gov](http://www.sec.gov); *provided* that, with respect to clauses (ii) and (iii) of this paragraph, Holdings shall notify the Administrative Agent of the posting of any such documents and, solely with respect to clause (ii), provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Except for 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, Holdings or its Restricted Subsidiaries 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.

Each of the Credit Parties hereby acknowledges that (a) the Administrative Agent will make available information and projections (collectively, “**Borrower Materials**”) to the Lenders by posting the Borrower Materials on IntraLinks or another similar secure electronic system (the “**Platform**”) and (b) certain of the Lenders may be “public side” Lenders that do not wish to receive MNPI (each, a “**Public Lender**”). Each of Holdings and the Borrower shall clearly designate as such all Borrower Materials provided to the Administrative Agent by or on behalf of Holdings or the Borrower which is suitable to make available to Public Lenders. If Holdings or the Borrower has not indicated whether Borrower Materials cannot be distributed to Public Lenders, the Administrative Agent reserves the right to post such Borrower Materials solely on that portion of the Platform designated for non-Public Lenders.

Section 6.03. *Notices.* The Borrower shall promptly notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of any matter that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect, including any of the following that could reasonably be expected to have a Material Adverse Effect: (i) any material breach or non-performance of, or any default under, a material Contractual Obligation of Holdings or any Restricted Subsidiary; (ii) the commencement of, or any material development in, any litigation (including any governmental proceeding or arbitration proceeding), tax audit or investigative proceeding, claim, lawsuit, and/or investigation against or involving Holdings or any of its Restricted Subsidiaries or any of its or their businesses or operations; (iii) the expiration without renewal, revocation, suspension or restriction of, or the institution of any proceedings to revoke, suspend or restrict, any License now or hereafter held by any Insurance Subsidiary that is required to conduct insurance business in compliance with all applicable laws and regulations; (iv) the institution of any disciplinary proceedings against or in respect of any Insurance Subsidiary, or the issuance of any order, the taking of any action or any request for an extraordinary audit for cause by any Governmental Authority; or (v) the issuance or adoption of any judicial or administrative order limiting or controlling the insurance business of any Insurance Subsidiary (and not the insurance industry generally);

(c) of the filing or commencement of, or the occurrence of any development in, any litigation or proceeding against any Credit Party that seeks to enjoin, prohibit, discontinue or otherwise impacts (i) the validity or enforceability of this Agreement or any of the other Loan Documents or (ii) the transactions contemplated hereby or thereby and, in the case of this subclause (ii), that could reasonably be expected to have a Material Adverse Effect;

(d) of the occurrence of any of the following events affecting Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate (but in no event more than ten (10) days after such event) and deliver to the Administrative Agent and each Lender a copy of any notice with respect to such event that is filed with a Governmental Authority and any notice delivered by a Governmental Authority to Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate with respect to such event:

- (i) an ERISA Event;
- (ii) the incurrence of any Unfunded Pension Liabilities of any Pension Plan;
- (iii) the adoption of or the commencement of contributions to any Pension Plan by Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate; or
- (iv) the adoption of any amendment to a Single Employer Pension Plan, if such amendment results in a material increase in contributions or results in Unfunded Pension Liability;

*provided* that no such notice will be required under this Section 6.03(d) with respect to the occurrence of any such event if such occurrence does not result in, and is not reasonably expected to result in, any liability to Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate of more than \$75,000,000 in the aggregate;

- (e) of any material change in accounting policies or financial reporting practices by any Credit Party; and
- (f) (i) of the consummation of the IPO and (ii) of the identity of the IPO Entity, in each case, promptly after the occurrence of the IPO.

Each notice under this Section 6.03 shall be accompanied by a written statement by a Responsible Officer setting forth details of the occurrence referred to therein, and stating what action Holdings or any affected Restricted Subsidiary proposes to take with respect thereto and at what time. Each notice under Section 6.03(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

Section 6.04. *Preservation of Corporate Existence, Etc.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to (except as permitted by Section 7.03 or Section 7.07):

- (a) preserve and maintain in full force and effect its existence and good standing (but, with respect to such Credit Party or Restricted Subsidiary that is not incorporated, organized or formed under the laws of the United States of America, any State thereof or the District of Columbia, only to the extent such concept is applicable to such Credit Party or Restricted Subsidiary) under the laws of the jurisdiction of its incorporation, organization or formation, as applicable; *provided* no Restricted Subsidiary (other than the Credit Parties) shall be required to preserve any such existence or good standing if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders; and
- (b) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business, except, in the case of this clause (b), where such failure to preserve and maintain could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.05. *Insurance.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to, maintain with financially sound and reputable independent insurers insurance against losses or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as Holdings and its Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons and at commercially reasonable rates, except where such failure to maintain such insurance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.06. *Payment of Taxes and Claims.* Such Credit Party will, and will cause each of its Restricted Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, except (i) to the extent a failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) as is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with SAP and GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateralized L/C Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateralized L/C Collateral to satisfy such Tax or claim. Such Credit Party will not, nor will it permit any of its Restricted Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries).

Section 6.07. *Compliance with Laws.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to, comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act, the PATRIOT Act and all applicable Environmental Laws), except (i) for such non-compliance that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) as may be contested in good faith and by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP.

Section 6.08. *Compliance with ERISA.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries and ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (b) cause each Pension Plan to maintain such qualification; and (c) make all required contributions to any Pension Plan, except where such failure to maintain as set forth in clause (a) or (b) or to make contributions as set forth in clause (c) could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 6.09. *Inspection of Property and Books and Records.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to, (i) maintain proper books of record and account, in which full, true and correct entries in all material respects in conformity with GAAP or SAP, as applicable, consistently applied (except as stated therein) shall be made of all

financial transactions and matters involving the assets and business of such Credit Party and such Restricted Subsidiary and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Credit Party or such Restricted Subsidiary, as the case may be. Such Credit Party shall permit, and shall cause each of its Restricted Subsidiaries to permit, representatives and independent contractors (subject to, in the case of representatives or independent contractors, such representatives or independent contractors executing confidentiality agreements in form reasonably satisfactory to Holdings) of the Administrative Agent or its designees, at the Borrower's expense, to visit and inspect any of their respective properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, all at such reasonable times during normal business hours, upon reasonable advance notice to the Borrower; *provided* that members of senior management will be notified and permitted to be present during any such meetings; and *provided, further*, that when an Event of Default exists the Administrative Agent or any Lender (through coordination with the Administrative Agent) may do any of the foregoing at any time during normal business hours and without advance notice; *provided, further*, that the Borrower shall not be required to reimburse the costs of the Administrative Agent and the Lenders collectively for more than one visit per Fiscal Year unless an Event of Default has occurred and is continuing.

Section 6.10. *Information Regarding Collateralized L/C Collateral.* The Credit Parties will furnish to the Administrative Agent prompt written notice of any change in (i) any Credit Party's legal name or any Credit Party's location (determined as provided in Section 9-307 of the Uniform Commercial Code), (ii) any Credit Party's identity or corporate structure or (iii) any Credit Party's Federal Taxpayer Identification Number of organizational identification number. The Credit Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateralized L/C Collateral as contemplated in the Collateralized L/C Security Documents.

Section 6.11. *Use of Proceeds.* The proceeds of the Revolving Loans shall be used for working capital and general corporate purposes of Holdings and its Subsidiaries.

Section 6.12. *Additional Guarantors.* If any Person becomes a Designated Subsidiary after the Restatement Effective Date, the Borrower will promptly, and in any event not later than ten (10) Business Days after such Person becomes a Designated Subsidiary, notify the Administrative Agent thereof and cause the Guarantee Requirement to be satisfied with respect to such Person, whereupon such Person will become a "Credit Party" and a "Guarantor" for purposes of the Loan Documents.

Section 6.13. *Further Assurances.* Each Credit Party will, and will cause each other Credit Party to, at the request of the Administrative Agent, execute and deliver any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents, if applicable), that may be required under any applicable law to cause the Guarantee Requirement

and the Collateralized L/C Collateral Requirement to be and remain satisfied, all at the Borrower's expense. The Borrower will provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Collateralized L/C Security Documents.

Section 6.14. *Designation of Subsidiaries.* The board of directors (or similar governing body) of Holdings may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, Holdings and its Subsidiaries shall be in compliance with Sections 7.10 and 7.11, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for the purpose of the Senior Notes, (iv) no Restricted Subsidiary may be designated as an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary, (v) the Borrower shall deliver to the Administrative Agent at least five (5) Business Days prior to such designation a certificate of a Responsible Officer of Holdings, together with all relevant financial information reasonably requested by the Administrative Agent, demonstrating compliance with the foregoing clauses (i) through (iv) of this Section 6.14 and, if applicable, certifying that such subsidiary meets the requirements of an Unrestricted Subsidiary and (vi) at least ten (10) days prior to the designation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Lenders shall have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and Anti-Money Laundering Laws, including the PATRIOT Act, with respect to such subsidiary. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

Section 6.15. *Maintenance of Properties.* Such Credit Party will, and will cause each of its Restricted Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Holdings and its Restricted Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except to the extent a failure to do so could not, individually or in the aggregate, have a Material Adverse Effect.

Section 6.16. *Lender Meetings.* Holdings and the Borrower will, upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and Lenders once during each Fiscal Year to be held at the Borrower's corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent) at such time during normal business hours as may be agreed to by Holdings and the Administrative Agent.

Section 6.17. *Environmental.*

(a) Environmental Disclosure. Holdings will deliver to the Administrative Agent and Lenders:



(i) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release of Hazardous Materials, which has a reasonable possibility of resulting in one or more Environmental Claims or otherwise having, individually or in the aggregate, a Material Adverse Effect and (2) any remedial action taken by Holdings or any other Person in response to (A) any past, current, or threatened event or occurrence involving any Hazardous Materials, and any corrective action or response action with respect to any such event or occurrence, the existence of which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(ii) as soon as practicable following the sending or receipt thereof by Holdings or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (2) any Release of Hazardous Materials, which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect and (3) any occurrence or condition on any real property adjoining, or in the vicinity of, any real property which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect;

(iii) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Holdings or any of its Subsidiaries that could reasonably be expected to (A) result in Environmental Claims the existence of which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of Holdings or any of its Subsidiaries to maintain in full force and effect all material governmental authorizations required under any Environmental Laws for their respective operations, except as could otherwise not reasonably be expected to have a Material Adverse Effect and (2) any proposed action to be taken by Holdings or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Holdings or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws, the existence of which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect; and

(iv) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this [Section 6.17\(a\)](#).

(b) Hazardous Materials Activities, Etc. Such Credit Party shall promptly take, and shall cause each of its Restricted Subsidiaries promptly to take, any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Credit Party or its Restricted Subsidiaries that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (ii) make an appropriate response to any Environmental Claim against such Credit Party or any of its Restricted Subsidiaries and discharge any obligations it

may have to any Person thereunder where failure to do so could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

ARTICLE 7  
NEGATIVE COVENANTS

Until all principal of and interest on each Revolving Loan and all fees and other amounts payable hereunder have been paid in full (other than unmatured, surviving contingent indemnification obligations not yet due and payable), all Revolving Commitments have been terminated and all Letters of Credit have been cancelled or have expired (or Cash Collateralized at the Minimum Cash Collateral Amount), each Credit Party, as applicable, covenants and agrees with the Lenders that:

Section 7.01. *Limitation on Certain Indebtedness.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, incur, create, assume, suffer to exist any Indebtedness owed to Holdings, any Restricted Subsidiary or any other Affiliate of Holdings (other than Goldman Sachs & Co. and any Affiliates thereof, but excluding Holdings and its Subsidiaries), except (a) Intercompany Indebtedness and (b) Indebtedness owed by Holdings or a Restricted Subsidiary to any Affiliate of Holdings (other than Intercompany Indebtedness) that is unsecured and subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent.

Section 7.02. *Liens.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, create, assume, incur or suffer to exist any Lien on any property now owned or hereafter acquired by it, except for the following:

- (a) Liens granted or to be granted by the Borrower under the Loan Documents;
- (b) Liens on assets of Insurance Subsidiaries and Subsidiaries thereof securing (x) Operating Indebtedness, (y) obligations under transactions entered into in connection with Insurance Investments and (z) statutory Liens on assets of Insurance Subsidiaries and Subsidiaries thereof;
- (c) collateral (x) securing Permitted Swap Obligations or (y) securing captive financing arrangements entered into by an Insurance Subsidiary;
- (d) Liens for Taxes not yet due or for Taxes being contested in good faith and by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;
- (e) Liens existing on the date hereof and listed on Schedule 7.02; *provided* that (i) such Lien shall not apply to any additional property (other than after acquired title in or on such property and proceeds of the existing collateral in accordance with the document creating such Lien) and (ii) the Indebtedness secured thereby is not increased;
- (f) Liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits or to secure performance of tenders, statutory obligations, leases and contracts (other than for

borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;

(g) Liens of mechanics, carriers, and materialmen and other like Liens imposed by law and arising in the ordinary course of business in respect of obligations that in the case of this clause (g) are not overdue for more than sixty (60) days or that are being contested in good faith and by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;

(h) Liens incurred in connection with the collection or disposition of delinquent accounts receivable in the ordinary course of business;

(i) Liens securing Capitalized Lease Liabilities or Purchase Money Debt in an aggregate principal amount not to exceed \$75,000,000 at any time outstanding; *provided* that such Liens are limited to the assets financed thereby;

(j) easements, rights-of-way, zoning restrictions, restrictions and other similar encumbrances incurred in the ordinary course of business that do not secure any monetary obligation and which do not materially interfere with the ordinary course of business of the Credit Parties and their Restricted Subsidiaries;

(k) Liens on property of the Credit Parties and their Restricted Subsidiaries in favor of licensees and landlords securing licenses, subleases or leases of property not otherwise prohibited hereunder;

(l) licenses, leases or subleases not otherwise prohibited hereunder granted to others not materially interfering in any material respect in the business of the Credit Parties and their Restricted Subsidiaries;

(m) attachment or judgment Liens not constituting an Event of Default under Section 8.01(i);

(n) Liens arising from precautionary Uniform Commercial Code financing statement filings with respect to operating leases or consignment arrangements entered into by Holdings and its Restricted Subsidiaries in the ordinary course of business;

(o) Liens incurred to secure Cash Management Obligations incurred in the ordinary course of business and in an aggregate amount not to exceed \$20,000,000 at any time outstanding and customary set-off rights in favor of depository banks;

(p) Liens attaching solely to cash earnest money deposits required to be made under the terms of any letter of intent or purchase agreement for the acquisition of stock, assets or property;

(q) Liens arising out of deposits by Holdings or any Restricted Subsidiary of cash, securities or other property (other than any Capital Stock of any Restricted Subsidiary) securing obligations of such Person in respect of (i) trust arrangements formed in the ordinary course of business for the benefit of cedents to secure insurance and reinsurance recoverables owed to

them by any Insurance Subsidiary, or (ii) other security arrangements in connection with reinsurance agreements in the ordinary course of business; and

(r) other Liens on property (other than the Collateralized L/C Collateral) securing obligations with respect to Indebtedness not otherwise covered by any of clauses (a) through (q) of this Section 7.02; *provided* that the aggregate amount of all Indebtedness secured by Liens in reliance on this clause (r) shall not exceed the greater of (x) \$325,000,000 and (y) 10% of the Net Worth of Holdings and its consolidated Restricted Subsidiaries at any time outstanding.

Notwithstanding the foregoing, none of the Credit Parties or Restricted Subsidiaries may directly or indirectly, create, assume, incur or suffer to exist any Lien on any Capital Stock of an Insurance Subsidiary now owned or hereafter acquired by it.

Section 7.03. *Disposition of Assets.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, Dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable with or without recourse and Capital Stock of any of its Restricted Subsidiaries whether newly issued or otherwise), except:

(a) (i) Dispositions of inventory and equipment in the ordinary course of business and (ii) Dispositions of Cash Equivalents in the ordinary course of business;

(b) the sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment or the proceeds of such sale are reasonably promptly applied to the purchase price of such replacement equipment;

(c) Dispositions of Insurance Investments by any Insurance Subsidiary (or any Subsidiary of an Insurance Subsidiary) (i) in the ordinary course of business in compliance with the policies and procedures approved by the board of directors or the investment committee (or other applicable committee) of such Insurance Subsidiary (or such Subsidiary of an Insurance Subsidiary), or which were otherwise approved by such board of directors or committee, or (ii) to a special purpose entity in exchange for investments therein (*provided* that such special purpose entity shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender to such special purpose entity has recourse to any of the assets of Holdings or any Restricted Subsidiary (other than the assets of such special purpose entity));

(d) Dispositions by a Credit Party to a Credit Party or any of its Restricted Subsidiaries or by any Restricted Subsidiary to a Credit Party or any of its Restricted Subsidiaries; *provided* that the aggregate fair value of all property Disposed of in reliance on this clause (d) by Credit Parties to Restricted Subsidiaries that are not Credit Parties shall not exceed \$800,000,000;

(e) (i) any Dispositions pursuant to a Reinsurance Agreement entered into in the ordinary course of business and (ii) any other Dispositions pursuant to a Reinsurance Agreement so long as the aggregate statutory profit and/or gains on insurance policy sales or other portfolio transfers resulting from all Dispositions described in this subclause (ii) consummated after the Restatement Effective Date do not exceed \$800,000,000 in the aggregate during the term of this Agreement;

- (f) obsolete, surplus or worn out property disposed of by a Credit Party or any of its Restricted Subsidiaries in the ordinary course of business of such Person;
- (g) transfers resulting from any casualty or condemnation of property or assets;
- (h) licenses or sublicenses of intellectual property and general intangibles and licenses, leases or subleases of other property in the ordinary course of business of the Credit Parties and their Restricted Subsidiaries and which do not materially interfere with the business of the Credit Parties and their Restricted Subsidiaries;
- (i) Dispositions of shares of Capital Stock in order to qualify members of the board of directors or equivalent governing body of a Credit Party or Restricted Subsidiary or such other nominal shares required to be held other than by such Credit Party or Restricted Subsidiary, as required by applicable law;
- (j) the sale, discount, forgiveness or other compromise of notes or other accounts in the ordinary course of business or in connection with collection thereof;
- (k) issuances of Capital Stock (i) by a directly or indirectly Wholly-Owned Subsidiary of Holdings to Holdings or to one or more Wholly-Owned Subsidiaries of Holdings (*provided* that except in compliance with Section 6.12 or Section 7.03(i), any direct Wholly-Owned Subsidiary of a Credit Party shall only issue Capital Stock to such Credit Party), (ii) by a non-Wholly-Owned Subsidiary of Holdings to the respective equity holders of such non-Wholly-Owned Subsidiary, on a pro rata basis or (iii) by the IPO Entity pursuant to the IPO and any Post-IPO Offerings (so long as no Event of Default shall have occurred and be continuing or would result therefrom); and
- (l) Dispositions not otherwise permitted hereunder (other than pursuant to Reinsurance Agreements, which shall be subject to the limitations in clause (e) above); *provided* that (i) the aggregate fair value of all property Disposed of in any Disposition made in reliance on this clause (l), together with the aggregate fair value of all other property Disposed of in reliance on this clause (l), shall not exceed 20% of the Consolidated Total Assets of Holdings and its Restricted Subsidiaries at the time of such Disposition, (ii) each Disposition made in reliance on this clause (l) shall be for fair market value and at least 75% of the consideration therefor shall be in the form of cash or Cash Equivalents and (iii) after giving effect to each Disposition made in reliance on this clause (l), Holdings and its Restricted Subsidiaries shall be in compliance with Sections 7.10 and 7.11.

Except as otherwise permitted in Section 7.07, notwithstanding the foregoing no Credit Party or Restricted Subsidiary shall Dispose of (whether in one or a series of transactions) or otherwise cease to hold any Capital Stock of (a)(i) any Subsidiary of Holdings that directly or indirectly owns any Capital Stock of any Insurance Subsidiary or (ii) any Insurance Subsidiary, in each case, whether newly issued or otherwise, other than in accordance with clause (i), (k) or (l) above or (b) GA Bermuda or CwA.

Upon consummation of a sale, transfer or other Disposition permitted under this Section 7.03, (i) Liens created under the Collateralized L/C Security Documents in respect of the assets Disposed of shall be automatically released and the Administrative Agent shall (to the

extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as necessary to evidence the release of the Administrative Agent's security interests, if any, in the assets being Disposed of, including amendments or terminations of Uniform Commercial Code financing statements and (ii) in the case of a sale, transfer or other Disposition permitted under this Section 7.03 of all of the Capital Stock of any Subsidiary that is a Guarantor to any Person other than Holdings or a Subsidiary of Holdings, the Guarantee of such Subsidiary shall be automatically released and the Administrative Agent shall (to the extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as necessary to evidence the release of the Guarantee of such Subsidiary; *provided* that the Borrower shall have provided to the Administrative Agent such certificates evidencing compliance with the Loan Documents as the Administrative Agent shall reasonably request. Notwithstanding anything to the contrary contained in this Section 7.03, (x) none of the Liens created under the Collateralized L/C Security Documents shall be released upon the IPO and (y) none of the Guarantees shall be released upon the IPO (other than the Guarantee of CwA MidCo, if and only if, (1) the IPO Entity is not CwA MidCo, (2) prior to or substantially simultaneously with such release, the Guarantee Requirement has been satisfied with respect to the IPO Entity and (3) CwA MidCo is not an obligor (including as a guarantor) in respect of the Senior Notes).

Section 7.04. *Sales and Lease Backs.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party or Restricted Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than Holdings or any of its Restricted Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party or Restricted Subsidiary to any Person (other than Holdings or any of its Restricted Subsidiaries) in connection with such lease.

Section 7.05. *Transactions with Affiliates.* Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, enter into any transaction with any Affiliate of Holdings, other than (a) transactions no less favorable to such Credit Party or Restricted Subsidiary than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of Holdings, (b) insurance transactions, intercompany pooling and other reinsurance transactions entered into in the ordinary course of business and consistent with past practice, (c) transactions between or among Holdings and its Restricted Subsidiaries and between or among Restricted Subsidiaries, (d) any Restricted Payment permitted by Section 7.08, (e) arrangements for indemnification payments for directors and officers of Holdings and its Restricted Subsidiaries, (f) intercompany transactions between or among the Parent, GAFL, Holdings and its Restricted Subsidiaries and between or among Restricted Subsidiaries, relating to any or all of the (i) provision of management services and other corporate overhead services, (ii) provision of personnel to other locations within Holdings' consolidated group on a temporary basis, and (iii) provision, purchase or lease of services, operational support, assets, equipment, data, information and technology, that, in the case of any such intercompany transaction referred to in this clause (f), are subject to reasonable reimbursement or cost-sharing arrangements (as determined in good faith by Holdings), which reimbursement or cost-sharing arrangements may be effected through transfers of cash or other assets or through book-entry credits or debits made

on the ledgers of each involved Subsidiary; *provided* that any such intercompany transaction is either (1) entered into in the ordinary course of business or (2) otherwise entered into pursuant to the reasonable requirements of the business of Holdings and the Restricted Subsidiaries, (g) transactions entered into in connection with the IPO or any Post-IPO Offerings (including various shareholder agreements), (h) ordinary-course business transactions (other than transactions of the type described in clause (c) or (f) above) that (A) do not involve the sale, transfer or other Disposition of operations or assets and (B) do not materially adversely affect the Lenders and (i) loans, Investments and guarantees among Holdings and the Restricted Subsidiaries to the extent not prohibited under this Article 7.

Section 7.06. *Change in Business.* Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, engage in any business other than the businesses conducted by the Credit Parties and their Restricted Subsidiaries on the date of this Agreement or any business reasonably related, incidental or complementary thereto as reasonably determined by the board of directors of Holdings or such Person.

Section 7.07. *Fundamental Changes.* Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, merge, consolidate, amalgamate or sell all or substantially all of the assets of any Credit Party or any of its Restricted Subsidiaries, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), except if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing, (a) any Restricted Subsidiary that is not a Credit Party may merge, consolidate, amalgamate or sell all or substantially all of its assets to another Restricted Subsidiary that is not a Credit Party; *provided* that, if either such Restricted Subsidiary is a direct Subsidiary of a Credit Party, the surviving entity or the transferee entity, as applicable, shall be a direct Subsidiary of a Credit Party; (b) any Restricted Subsidiary that is a Credit Party (other than the Borrower) may merge, consolidate, amalgamate or sell all or substantially all of its assets to another Restricted Subsidiary that is a Credit Party (including the Borrower); *provided* that the surviving entity or the transferee entity, as applicable, shall be a Credit Party; *provided, further*, that, in the event that any of the foregoing involves the Borrower, the surviving entity or the transferee entity, as applicable, shall be the Borrower; (c) the Borrower may merge, consolidate, amalgamate or sell all or substantially all of its assets to a Restricted Subsidiary owned directly by Holdings or the Borrower immediately prior to such transactions; *provided* that (i) the surviving entity of a merger with the Borrower or the transferee entity that receives all or substantially all of the Borrower's assets, as applicable (the "**Successor Entity**"), shall be a corporation or limited liability company organized and existing under the laws of the United States, any State thereof or the District of Columbia and shall expressly assume all of the obligations of the Borrower under the Loan Documents pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, (ii) immediately after giving effect to such merger, consolidation, amalgamation or sale, as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (iii) except as the Administrative Agent may otherwise agree, each Guarantor, unless it is the other party to such merger, consolidation, amalgamation or sale, as applicable, shall execute and deliver a reaffirmation agreement with respect to its obligations under the other Loan Documents in form and substance reasonably satisfactory to the Administrative Agent, (iv) the Successor Entity shall provide the documentation and other information to the Administrative Agent as the Administrative Agent and the Lenders reasonably determine are required by bank regulatory

authorities under applicable “know-your-customer” and Anti-Money Laundering Laws, including the PATRIOT Act; *provided* that, the Borrower shall have notified the Administrative Agent in writing at least seven (7) Business Days prior to such merger, consolidation, amalgamation or sale, as applicable, and each Lender shall have been provided with documentation and other information it reasonably determines are required by bank regulatory authorities under applicable “know-your-customer” and Anti-Money Laundering Laws, including the PATRIOT Act, at least five (5) Business Days prior to the consummation of such merger, consolidation, amalgamation or sale, as applicable, as has been reasonably requested in writing at least six (6) Business Days prior to such merger, consolidation, amalgamation or sale, as applicable, and (v) the Successor Entity shall deliver an officer’s certificate to the Administrative Agent to the effect that after giving effect to such merger, consolidation, amalgamation or sale, as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom (it being understood and agreed that, if the foregoing conditions under clauses (i) through (v) are satisfied, the Successor Entity will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents); and (d) any of its Restricted Subsidiaries that is not a Credit Party may liquidate, wind up or dissolve so long as the assets of such Restricted Subsidiary are distributed to a Guarantor; *provided* that, no such action pursuant to clause (a), (b), (c) or (d) above is permitted if such action could reasonably be expected, in the judgment of Holdings, to (i) have a material adverse effect on the Lenders, (ii) be disproportionately beneficial to the holders of the Senior Notes or any Material Indebtedness of Holdings or its Restricted Subsidiaries as compared to the Lenders or (iii) be disproportionately adverse to the Lenders as compared to such other holders.

Section 7.08. *Restricted Payments.* Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, declare or pay any dividend on (or make any payment to a related trust for the purpose of paying a dividend), or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of a Credit Party or such Restricted Subsidiary (or any related trust), whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of a Credit Party or such Restricted Subsidiary (collectively, “**Restricted Payments**”), except that:

(a) any of its Restricted Subsidiaries may declare or pay dividends with respect to its Capital Stock to Holdings and to any Wholly-Owned Subsidiary (and in the case of a non-Wholly-Owned Subsidiary, to Holdings and any of its Restricted Subsidiaries and to each other owner of Capital Stock or other equity interests of such Restricted Subsidiary on a pro rata basis based on their relative ownership interests);

(b) Holdings may pay dividends solely in the form of shares of its Capital Stock;

(c) Holdings may make Restricted Payments so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(d) Holdings may make cash payments in lieu of fractional shares in connection with the exercise of warrants, options or other securities, convertible or exchangeable for Capital Stock; and



(e) Holdings may pay any dividend within sixty (60) days after the date of declaration thereof; *provided* that on the date of declaration such payment shall comply with one of the exceptions to this Section 7.08 listed in clauses (b) through (d) hereof.

Section 7.09. *Prepayment of Certain Indebtedness; Modifications of Certain Agreements; Synthetic Purchase Agreements.*

(a) Such Credit Party shall not, nor shall it suffer or permit any of its Restricted Subsidiaries to, pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property, and including optional prepayments and open market purchases) of or in respect of principal of or interest on any Subordinated Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, defeasance or termination of any Subordinated Indebtedness, other than (i) payment of regularly scheduled principal and interest payments as and when due in respect thereof, other than any payment prohibited by the subordination provisions thereof, (ii) to the extent the consideration thereof consists of Capital Stock of Holdings or (iii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom.

(b) Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, amend, modify, waive or otherwise change, or consent to any amendment, modification, waiver or other change to, the subordination provisions within documents or instruments governing or evidencing any Subordinated Indebtedness in any manner adverse in any material respect to the Lenders.

(c) Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, amend or modify its respective Organization Documents, other than any amendments or modifications which are not adverse in any material respect to the interests of the Lenders.

(d) Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into or be party to, or make any payment under, any Synthetic Purchase Agreement.

Section 7.10. *Debt to Total Capitalization Ratio.* Holdings shall not permit the Debt to Total Capitalization Ratio of Holdings as at the end of any Fiscal Quarter to be more than 35% for Holdings and its consolidated Restricted Subsidiaries.

Section 7.11. *Holdings Net Worth.* Holdings shall not permit the GAAP Net Worth of Holdings and its consolidated Restricted Subsidiaries, at all times when such calculations are available and, in any event, at the end of any calendar month, to be less than the sum of 70% of the Net Worth of CwA MidCo and its consolidated Restricted Subsidiaries as of the last day of the Fiscal Quarter most recently ended prior to the Restatement Effective Date, *plus* 50% of the aggregate Net Income since the last day of the Fiscal Quarter most recently ended prior to the Restatement Effective Date for Holdings and its consolidated Restricted Subsidiaries (to the extent positive).

Section 7.12. *Non-Contravention of OFAC.*

(a) Such Credit Party shall not, and shall not permit any of its Restricted Subsidiaries or, to the Knowledge of such Credit Party, any of such Credit Party's or any of its Subsidiaries' officers, directors or employees to (i) become an Embargoed Person or (ii) except as otherwise authorized by OFAC or any other relevant sanctions authority, otherwise permitted for U.S. persons by a U.S. Governmental Authority or by any rule, regulation or order of a U.S. Governmental Authority, use any proceeds of the Revolving Loans, or lend, contribute or otherwise make available such proceeds to any Person for the purpose of financing the activities of or with any Person or in any country or territory that is an Embargoed Person.

(b) Except as otherwise authorized by OFAC or any other relevant sanctions authority, such Credit Party shall not and shall not permit any of its Restricted Subsidiaries or, to the Knowledge of Holdings or the Borrower, any of such Credit Party's or any of its Subsidiaries' officers, directors or employees to (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deal in, or otherwise engage in any transaction related to, any property or interests in property blocked pursuant to any applicable Economic Sanctions Laws or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the applicable prohibitions set forth in any Economic Sanctions Laws.

Section 7.13. *Restrictive Agreements.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition on (a) the ability of Holdings or any of its Restricted Subsidiaries to create or permit to exist any Lien on any of its property to secure the Obligations or (b) the ability of any of its Restricted Subsidiaries to pay dividends or other distributions with respect to any shares of its Capital Stock (other than dividends or distributions on the Capital Stock of Holdings or the Borrower) or to make, repay or prepay intercompany loans or advances to Holdings or any other Restricted Subsidiary or to Dispose of assets to Holdings or any other Restricted Subsidiary; *provided* that (i) the foregoing shall not apply to restrictions and conditions imposed by applicable law (including pursuant to regulatory restrictions), (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof and under any document evidencing the Senior Notes or identified on Schedule 7.13 (but shall apply to any amendment or modification, or any extension or renewal, of any such restriction or condition that has the effect of making such restriction or condition materially more restrictive), (iii) the foregoing shall not apply to restrictions that are not more restrictive than those contained in this Agreement contained in any documents governing any Indebtedness not prohibited by this Agreement, (iv) clause (a) of this Section 7.13 shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness or other obligations permitted to be secured hereunder (including Capitalized Lease Liabilities and Purchase Money Debt) not prohibited by this Agreement if such restrictions or conditions apply only to the collateral securing such Indebtedness or such other obligations permitted to be secured hereunder, (v) clause (a) of this Section 7.13 shall not apply to customary provisions in leases or licenses or other contracts and agreements restricting the assignment, subletting or sublicensing thereof and (vi) this Section 7.13 shall not apply to (A) any of its Restricted Subsidiaries that is not a Wholly-Owned Subsidiary with respect to restrictions and conditions imposed by such Restricted Subsidiary's Organization Documents or any related joint venture or similar agreement so long as any such restriction or condition applies only to such Subsidiary

and to any Capital Stock in such Restricted Subsidiary, (B) restrictions and conditions imposed on any of its Restricted Subsidiaries in existence at the time such Restricted Subsidiary became a Subsidiary (but shall apply to any amendment or modification expanding the scope of any such restriction or condition which makes such restrictions and conditions, taken as a whole, materially more restrictive); *provided* that such restrictions and conditions (x) apply only to such Restricted Subsidiary and (y) were not imposed in anticipation of the Facility, (C) customary provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, including with respect to intellectual property and other agreements, in each case entered into in the ordinary course of business; *provided* that such provisions apply only to the assets that are the subject of such lease, sub-lease, license, sub-license or other agreement and shall not apply to any other assets of Holdings or any of its Restricted Subsidiaries and (D) restrictions on pledging joint venture interests included in customary provisions in joint venture agreements or arrangements and other similar agreements applicable to joint ventures.

Section 7.14. *Holding Company Activities.* Notwithstanding anything herein to the contrary, each of Holdings and the Borrower shall not (a) incur, directly or indirectly, any Indebtedness other than the Indebtedness not prohibited to be incurred by them under this Agreement; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired, leased or licensed by it other than the Liens (x) created under the Collateralized L/C Security Documents to which it is a party and (y) permitted pursuant to Section 7.02; (c) engage in any business other than as permitted by this Agreement; (d) merge, consolidate or amalgamate with, or sell all or substantially all of its assets to, any other Person except as permitted by Section 7.07; (e) sell or otherwise dispose of any Capital Stock of any of its Subsidiaries other than as permitted to be disposed by them under this Agreement; or (f) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

Section 7.15. *Changes in Accounting Policies; Fiscal Year.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, (a) make any change to its accounting policies or reporting practices, except as required or permitted by GAAP or SAP or applicable securities laws or (b) change the last day of its fiscal year from December 31 of each year.

ARTICLE 8  
EVENTS OF DEFAULT

Section 8.01. *Events of Default.* Each of the following shall constitute an “**Event of Default**”:

(a) Non-Payment. The Borrower fails to pay (i) when and as required to be paid herein, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise, any amount of principal of any Revolving Loans, or (ii) within five (5) Business Days after the same becomes due, any interest, fee or any other amount payable hereunder (including pursuant to Sections 2.02(h) or 2.02(l)(vi)) or under any other Loan Document; or

(b) Representation or Warranty. Any representation or warranty by any Credit Party made or deemed made herein or in any other Loan Document (other than any Collateralized L/C Security Document) or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or contained in any certificate, document or financial or other written statement by a

Credit Party, any Restricted Subsidiary or any Responsible Officer, furnished at any time in connection with this Agreement or in any other Loan Document (other than any Collateralized L/C Security Document) or any written amendment or modification hereof or thereof or waiver hereunder or thereunder, is incorrect in any material respect on or as of the date made or deemed made; or

(c) Specific Defaults. Any Credit Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a), Section 6.04(a) (with respect to corporate existence), or Article 7 on its part to be performed; or

(d) Other Defaults. Any Credit Party or any of their Restricted Subsidiaries fails to perform or observe any other term or covenant contained in this Agreement (other than Section 2.02(1)(vi)) or any other Loan Document (other than any Collateralized L/C Security Document) on its part to be performed, and such default shall continue unremedied for a period of thirty (30) days after the date upon which written notice thereof is given to the Borrower by the Administrative Agent or the Required Lenders; or

(e) Cross-Default. (i) Any Credit Party or any of their Restricted Subsidiaries (A) fails to make any payment in respect of the Senior Notes or any Material Indebtedness (other than in respect of Swap Contracts), when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) beyond the applicable grace or cure period thereunder or (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness beyond the applicable grace or cure period thereunder if the effect of such failure, event or condition is to cause, or to permit (or, with the giving of notice or lapse of time or both, would permit) the holder or holders of the Senior Notes or any Material Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, the Senior Notes or any Material Indebtedness to be declared to be due and payable prior to its stated maturity; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (x) any event of default under such Swap Contract as to which a Credit Party or any Restricted Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (y) any Termination Event (as so defined) as to which any Credit Party or any of their Restricted Subsidiaries is an Affected Party (as so defined), and, in either event, the Swap Termination Value owed by a Credit Party or such Restricted Subsidiary as a result thereof is greater than \$75,000,000 (in the aggregate for all such Swap Contracts) beyond the applicable grace or cure period thereunder (and, in the case of clause (y), a Credit Party or such Restricted Subsidiary fails to pay such Swap Termination Value when due beyond the applicable grace or cure period thereunder); *provided, however*, that no Default or Event of Default shall be deemed to occur under clause (i)(B) of this Section 8.01(e) in respect of the failure to perform or observe any such condition or covenant, or the occurrence of any such event or existence of any such condition, under any agreement or instrument relating to any Material Indebtedness owing to the Federal Home Loan Bank of Boston that is cured, remedied or otherwise resolved within five (5) Business Days of the occurrence thereof and prior to such Material Indebtedness being declared to be due and payable prior to its stated maturity; or

(f) Insolvency; Voluntary Proceedings. Any Credit Party or any Restricted Subsidiary of Holdings (i) generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; (iv) applies for or consents to the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor) or other similar Person for itself or for a substantial part of its assets; or (v) takes any corporate action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against any Credit Party or any Restricted Subsidiary of Holdings, or any writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of any Credit Party's or any Restricted Subsidiary's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any Credit Party or any Restricted Subsidiary of Holdings admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; (iii) any Credit Party or any Restricted Subsidiary of Holdings acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor) or other similar Person for itself or a substantial portion of its property or business; or (iv) any Credit Party or any Restricted Subsidiary of Holdings shall become subject to any conservation, rehabilitation or liquidation order, directive or mandate issued by any Governmental Authority; or

(h) Pension Plans and Welfare Plans. With respect to any Single Employer Pension Plan or Multiemployer Plan, any ERISA Event has occurred that could reasonably be expected to result in the incurrence of liability by Holdings, or any of its Restricted Subsidiaries, or steps are taken to terminate any Multiemployer Plan and such termination could reasonably be expected to result in any liability of Holdings, or any of its Restricted Subsidiaries, where in any event, individually or in the aggregate, the liability incurred by Holdings and its Restricted Subsidiaries could have a Material Adverse Effect; or

(i) Material Judgments. One or more monetary judgments or decrees shall be entered against any Credit Party or any of its Restricted Subsidiaries involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has not denied coverage) of \$75,000,000 or more, and all such judgments or decrees shall not have been paid, vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof, or any action shall be taken by a judgment creditor to attach or levy upon any asset of any Credit Party or any of their Restricted Subsidiaries to enforce any such judgment or decree; or

(j) Material Regulatory Matters. (i) Any Insurance Subsidiary shall not make a scheduled payment of interest or principal on any surplus note or similar form of indebtedness (due to actions (as opposed to any inaction) of any Governmental Authority), (ii) any Insurance Subsidiary's ability to pay fees to its Affiliates under existing agreements (or extensions of existing agreements) shall be restricted (due to actions (as opposed to any inaction) of any

Governmental Authority) or (iii) in any Fiscal Year, an Insurance Subsidiary's ability to pay dividends to its stockholders is restricted in any manner (due to actions (as opposed to any inaction) of any Governmental Authority), other than by restrictions relating to dividends that apply generally to other insurance companies domiciled in the Insurance Subsidiary's state of domicile under the insurance law of the state, and (1) in the cases of subclauses (i) through (iii) above, such event or condition, together with all other such events or conditions, could reasonably be expected to have a Material Adverse Effect and (2) in each case, such event or condition was not in effect as of the date hereof; or

(k) Change of Control. There occurs any Change of Control; or

(l) Invalidity of Loan Documents. Any provision of any Loan Document (other than any Collateralized L/C Security Document), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations, ceases to be in full force and effect; or any Credit Party contests in writing the validity or enforceability of any provision of any Loan Document (other than any Collateralized L/C Security Document); or any Credit Party denies in writing that it has any further liability or obligation under any provision of any Loan Document (other than any Collateralized L/C Security Document), or purports to revoke, terminate or rescind any provision of any Loan Document (other than any Collateralized L/C Security Document).

Section 8.02. *Remedies*. If any Event of Default shall have occurred and be continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders:

(a) declare the obligation of each Lender to make extensions of the Revolving Loans or issuances, extensions or renewals of Letters of Credit to be terminated;

(b) declare the unpaid principal amount of all outstanding Revolving Loans, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, whereupon such outstanding principal amount of the Revolving Loans, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder or under any other Loan Document shall become immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

(d) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under the Collateralized L/C Security Documents or applicable law;

*provided* that upon the occurrence of any event specified in Section 8.01(f) or Section 8.01(g) (upon the expiration of the 60-day period mentioned therein, if applicable), the obligation of each Lender to make Revolving Loans or issue, extend or renew Letters of Credit shall automatically terminate and the unpaid principal amount of all outstanding Revolving Loans and all interest and other amounts as aforesaid shall automatically become due and payable without

presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower.

Section 8.03. *Rights Not Exclusive.* The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE 9  
THE AGENTS

Section 9.01. *Appointment and Authority.* Each of the Lenders hereby irrevocably appoints RBC to act on its behalf as the Administrative Agent hereunder and the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 9 are solely for the benefit of the Administrative Agent, the Arrangers, the Bookrunners, the Syndication Agents, the Documentation Agents and the Lenders, and neither the Borrower nor any other Credit Party shall have rights as a third-party beneficiary of any of such provisions (other than Sections 9.06 and 9.10).

Section 9.02. *Rights as a Lender.* The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower, any Credit Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03. *Exculpatory Provisions.* No Agent-Related Person shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent-Related Person:

(a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that it is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that no Agent-Related Person shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent-Related Person to liability or that is contrary to any Loan Document or applicable law; and

(c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, or shall be liable for the failure to disclose, any information relating to Holdings or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, any Agent-Related Person or any of their respective Affiliates in any capacity.

No Agent-Related Person shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Person shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 10.01) or (ii) in the absence of such Agent-Related Person's own gross negligence or willful misconduct. No Agent-Related Person shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent-Related Person by the Borrower or a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent-Related Person.

Section 9.04. *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Revolving Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Revolving Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05. *Delegation of Duties.* The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by it. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article 9 shall apply to any such sub-agent selected by the Administrative Agent with reasonable care and to the Related



Parties of the Administrative Agent, and shall apply to their respective activities in connection with the syndication of the Facility as well as activities as Administrative Agent.

Section 9.06. *Resignation of Administrative Agent.* The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent, with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article 9 and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

Section 9.07. *Non-Reliance on Administrative Agent and Other Lenders.* Each Lender acknowledges that it has, independently and without reliance upon any Agent-Related Person, any Arranger, any Bookrunner, any Syndication Agent, any Documentation Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent-Related Person, any Arranger, any Bookrunner, any Syndication Agent, any Documentation Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in

taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

Section 9.08. *No Other Duties; Other Agents; Etc.* Each of RBC, US Bank and Wells Fargo are hereby appointed Syndication Agents hereunder, and each Lender hereby authorizes RBC, US Bank and Wells Fargo to act as Syndication Agents in accordance with the terms hereof and the other Loan Documents. Each of Bank of Nova Scotia, BMO and KeyBank are hereby appointed Documentation Agents hereunder, and each Lender hereby authorizes Bank of Nova Scotia, BMO and KeyBank to act as Documentation Agents in accordance with the terms hereof and the other Loan Documents. The Syndication Agents, Documentation Agents and any other Agent may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and the Borrower. Anything herein to the contrary notwithstanding, none of the Arrangers, Bookrunners, Syndication Agents or Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

Section 9.09. *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 any Credit Party, the Administrative Agent (irrespective of whether the principal of the Revolving Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Revolving Loans 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 2.02, 2.08, 10.04 and 10.05) 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;

(c) 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 2.02, 2.08, 10.04 and 10.05.

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.

Section 9.10. *Collateral and Guarantee Matters.* The Lenders irrevocably authorize the Administrative Agent to:

(a) release (x) any Guarantor from the Guarantee or (y) any Lien on any property granted to or held by the Administrative Agent under any Loan Document, (i) upon payment in full of all Obligations (other than unmatured, surviving contingent indemnification obligations) and the termination of all Revolving Commitments and the cancellation or expiration of all Letters of Credit (or Cash Collateralization of outstanding Letters of Credit at the Minimum Cash Collateral Amount), (ii) as expressly permitted under the Loan Documents, (iii) in connection with a merger, consolidation, amalgamation or sale of all or substantially all of the assets of a Restricted Subsidiary that is a Guarantor with or to the Borrower in accordance with Section 7.07(b) or (iv) in the case of clause (y), subject to Section 10.01, if approved, authorized or ratified in writing by Lenders having or holding Revolving Exposure and unused Revolving Commitments representing more than 66-2/3% of the aggregate Revolving Exposure and unused Revolving Commitments of all Revolving Lenders (*provided* that the aggregate amount of Revolving Exposure shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure of such Defaulting Lender); and

(b) subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02(j).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the authority of the Administrative Agent to release or subordinate its interest in particular types or items of property, pursuant to this Section 9.10.

Section 9.11. *Indemnification of Agent-Related Persons.* Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective portions of the total Revolving Loans and unused Revolving Commitments held on the date on which indemnification is sought, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; and *provided, further*, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.11. Without limitation of the foregoing, each Lender shall reimburse each Agent-Related Person upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent-Related Person in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document or any document

contemplated by or referred to herein, to the extent that such Agent-Related Person is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this [Section 9.11](#) shall survive the payment of all other Obligations and the resignation of the Administrative Agent or any Agent-Related Person.

Section 9.12. *Withholding Tax.* To the extent required by any applicable law, the Administrative Agent shall withhold from any payment to any Lender an amount equal to any applicable withholding Tax. If the IRS or any Governmental Authority asserts a claim that the Administrative Agent did not properly withhold Tax from any amount paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties, additions to Tax or interest thereon, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was 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 this Agreement or any other Loan Document against any amount due to the Administrative Agent under this [Article 9](#). The agreements in this [Article 9](#) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Loans and the repayment, satisfaction or discharge of all obligations under this Agreement. Unless required by applicable laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender any refund of Taxes withheld or deducted from funds paid for the account of such Lender.

Section 9.13. *Certain ERISA Matters.*

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, 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 Revolving Loans, the Letters of Credit or the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving 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 Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that:

(i) none of the Administrative Agent, or the 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 Revolving Loans, the Letters of Credit, the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Revolving Loans, the Letters of Credit, the Revolving 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, the Arrangers or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Revolving Loans, the Letters of Credit, the Revolving Commitments or this Agreement.

(c) The Administrative Agent and each of the Arrangers hereby informs 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 Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (ii) may recognize a gain if it extended the Revolving Loans, the Letters of Credit or the Revolving Commitments for an amount less than the amount being paid for an interest in the Revolving Loans, the Letters of Credit or the Revolving 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.

ARTICLE 10  
MISCELLANEOUS

Section 10.01. *Amendments and Waivers.* No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Credit Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Credit Party, as the case may be, and acknowledged by the Administrative Agent, and each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any other Loan Document to cure any ambiguity, omission, defect or inconsistency (as reasonably determined by the Administrative Agent), so long as such

amendment, modification or supplement does not adversely affect the rights of any Lender or the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such amendment, modification or supplement; *provided, further*, that no such amendment, waiver or consent shall:

(a) extend or increase the Revolving Commitment of any Lender (or reinstate any Revolving Commitment terminated pursuant to Section 8.02) without the written consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default prior to the termination of the Revolving Commitments pursuant to Section 8.02 shall constitute an increase in any Revolving Commitment of any Lender;

(b) postpone or delay the maturity of the Revolving Loans or any reimbursement obligation in respect of any Letter of Credit or any date for the payment of any interest, premium or fees due to the Lenders (or any of them) hereunder or under any other Loan Document, or reduce the amount of, or rate, as applicable, waive or excuse any such payment, without the written consent of each Lender directly and adversely affected thereby (other than as a result of waiving (i) an Event of Default in accordance with the terms hereof, (ii) default interest hereunder to the extent a waiver of the underlying default giving rise to such default interest does not require a vote of all Lenders or (iii) a mandatory prepayment to be made hereunder); *provided* that, for the avoidance of doubt, the provisions of Section 3.05(b) shall not be deemed to be a reduction of the amount of, or rate of, interest payable on any Revolving Loan;

(c) amend the definition of "Required Lenders" or "Pro Rata Share" without the consent of each Lender; *provided* that with the consent of Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of "Required Lenders" or "Pro Rata Share" on substantially the same basis as the Revolving Commitments and the Revolving Loans are included on the Restatement Effective Date without the written consent of each Lender;

(d) amend the definition of "Interest Period" to permit Interest Periods with a duration of longer than six months without the written consent of each Lender;

(e) release all or substantially all of the Collateralized L/C Collateral from the Collateralized L/C Liens or any Guarantor from the Guarantee except as expressly permitted under the Loan Documents (including Section 9.10(a)) and except in connection with a "credit bid" undertaken by the Administrative Agent at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateralized L/C Collateral, as applicable, permitted pursuant to the applicable Loan Documents (in which case only the consent of the Required Lenders will be needed for such release), without the written consent of each Lender;

(f) extend the stated expiration date of any Letter of Credit beyond the Commitment Termination Date without the written consent of each Lender and the Administrative Agent,

unless all such Letters of Credit are Cash Collateralized at the Minimum Cash Collateral Amount in accordance with Section 2.02(a)(vi);

(g) amend this Section 10.01, or any other provision of this Agreement that by its express terms requires the consent of all or all affected Lenders, without the written consent of each Lender or each affected Lender, as applicable;

(h) subject to Section 2.12, change Section 2.11 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(i) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Loan Document without the written consent of each Lender;

(j) amend, modify or waive this Agreement or the Guarantee Agreement so as to alter the ratable treatment of Obligations arising under the Loan Documents and Guaranteed Obligations arising under the Guaranteed Swap Contracts or the definition of "Guaranteed Swap Contract", "Obligations" or "Guaranteed Obligations" in each case in a manner adverse to any contractual counterparty to any such Guaranteed Swap Contract with Guaranteed Obligations then outstanding without the written consent of any such contractual counterparty;

(k) modify (i) the Collateralized L/C Aggregate Collateral Amount or any component thereof with the effect of increasing the Collateralized L/C Aggregate Collateral Amount or (ii) the Minimum Collateralized L/C Aggregate Collateral Amount or any component thereof with the effect of decreasing the Minimum Collateralized L/C Aggregate Collateral Amount, in each case, without the written consent of each Lender; or

(l) amend, modify, terminate or waive any provision of the Loan Documents as the same applies to the Administrative Agent, or any other provision hereof as the same applies to the rights or obligations of the Administrative Agent, in each case without the consent of the Administrative Agent;

*provided, further*, that (i) no such agreement shall, unless in writing and signed by the Administrative Agent, in addition to the Required Lenders or all the Lenders, as the case may be, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document (except with respect to the removal of the Administrative Agent) and (ii) any fee agreement referred to in Section 2.08 may be amended, or rights or privileges thereunder waived, in a writing executed by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except for any amendment, waiver or consent pursuant to Section 10.01(a), (b) or (c).

Section 10.02. *Notices.*

(a) Unless otherwise expressly provided herein, all notices and other communications *provided* for hereunder shall be in writing (including by facsimile or electronic transmission). All such written notices shall be mailed, emailed, faxed or delivered to the applicable address, facsimile number (*provided* that any matter transmitted by the Borrower by facsimile (1) shall be immediately confirmed by a telephone call to the recipient at the number specified on



Schedule 10.02, and (2) shall be followed promptly by delivery of a hard copy original thereof) or (subject to clause (c) below) electronic mail address, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, any other Credit Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its administrative questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower and the Administrative Agent.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile or electronic mail, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of clause (c) below), when delivered; *provided* that notices and other communications to the Administrative Agent pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voicemail message be effective as a notice, communication or confirmation hereunder.

(b) Electronic Communications:

(1) Notices and other communications to the Administrative Agent, and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to the Administrative Agent or any Lender pursuant to Article 2 if such Person 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. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business

Day for the recipient and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing subclause (i) of notification that such notice or communication is available and identifying the website address therefor.

(2) Holdings and each of its Subsidiaries understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent that such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of the Administrative Agent.

(3) The Platform and any Approved Electronic Communications are provided “as is” and “as available”. None of the Agent-Related Persons warrant the accuracy, adequacy or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications, except for such losses, costs, expenses or liabilities as are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Person. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects is made by the Agent-Related Persons in connection with the Platform or the Approved Electronic Communications.

(4) Holdings, each of its Subsidiaries and each Lender agrees that the Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent’s customary document retention procedures and policies.

(c) The Agent-Related Persons and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, out-of-pocket expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower; *provided* that such indemnity shall not, as to any such Person, be available to the extent that such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Person. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03. *No Waiver; Cumulative Remedies.* No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.04. *Costs and Expenses.* The Borrower agrees to pay or reimburse (a) the Administrative Agent, each Arranger, each Bookrunner and each Syndication Agent, in each case together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates, for all reasonable costs and out-of-pocket expenses incurred in connection with the development, preparation, negotiation and execution of this Agreement and the other Loan Documents, including all Attorney Costs, which Attorney Costs shall be limited to the reasonable fees and reasonable disbursements of Milbank, Tweed, Hadley & McCloy LLP and, if reasonably necessary (in the sole discretion of the Administrative Agent), a single local counsel in each appropriate jurisdiction and a single insurance regulatory counsel, collectively, for each of the foregoing Persons, (b) each Agent-Related Person for all reasonable costs and out-of-pocket expenses incurred in connection with any amendment, waiver, consent or other modification of the provisions hereof and thereof and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, which Attorney Costs shall be limited to the reasonable fees and reasonable disbursements of a single primary counsel and, if reasonably necessary (in the sole discretion of the Administrative Agent), a single local counsel in each appropriate jurisdiction and a single insurance regulatory counsel, collectively, for each Agent-Related Person, and (c) each Agent-Related Person and each Lender for all costs and expenses incurred in connection with the enforcement, attempted enforcement or preservation of any rights or remedies under this Agreement (including this Section 10.04) or the other Loan Documents (including all such costs and expenses incurred during any “workout” or restructuring in respect of the Obligations and during any legal proceeding, including in any Insolvency Proceeding or appellate proceeding), including all reasonable fees, expenses and disbursements of any law firm or other external legal counsel. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto and other out-of-pocket expenses incurred by each Agent-Related Person and the cost of independent public accountants and other outside experts (subject to the limitations above) retained by such Agent-Related Person or any Lender, as applicable. All amounts due under this Section 10.04 shall be payable within ten (10) Business Days after written demand therefor. The agreements in this Section 10.04 shall survive the repayment of the Revolving Loans and the other Obligations.

Section 10.05. *Borrower Indemnification; Damage Waiver.*

(a) Whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify and hold harmless the Administrative Agent, each Arranger, each Bookrunner, each Syndication Agent, each Documentation Agent, each Lender and their respective Affiliates, and the directors, officers, employees, agents and partners (to the extent such Person is a partnership) of such Persons and Affiliates involved with the Transactions (collectively, the “**Indemnified Persons**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, charges and costs, expenses and disbursements (including reasonable Attorney Costs) of any kind or nature

whatsoever (including those arising from or relating to any environmental matters) that may at any time be imposed on, incurred by or asserted against any such Indemnified Person by any third party or by the Borrower or any other Credit Party (x) that directly or indirectly owns the equity interests of the Borrower or (y) whose equity interests are owned directly or indirectly by the Borrower, in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Revolving Commitment, Revolving Loan or Letter of Credit or the use or proposed use of the proceeds therefrom, (iii) any Environmental Liability related to Holdings or any of its Subsidiaries or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnified Person is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnified Person; *provided* that such indemnity shall not, as to any Indemnified Person, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (including Attorney Costs) (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person in connection with or as a result of the transactions hereunder or (B) arise out of or are in connection with any claim, litigation, loss or proceeding not involving an act or omission of Holdings or any of its Subsidiaries (other than an Indemnified Person) and that is brought by an Indemnified Person against another Indemnified Person (other than against the Administrative Agent, any Arranger, any Bookrunner, any Syndication Agent or any Documentation Agent in their capacities as such or any other Indemnified Person in performing the services that are the subject of the Loan Documents). No Indemnified Person shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement other than for any direct damages (and specifically excluding indirect, consequential, special or punitive damages) determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person. Neither any Credit Party nor any Indemnified Person will have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Credit Party’s or such Indemnified Person’s activities related to the transactions hereunder; *provided* that, that nothing contained in this sentence shall limit the Credit Parties’ indemnification obligations hereunder to the extent such indirect, consequential, special or punitive damages are included in any third-party claim whereby any Indemnified Person is entitled to indemnification hereunder. All amounts due under this Section 10.05 shall be payable within thirty (30) days after written demand therefor together with, if requested by the Borrower, backup documentation supporting such indemnification request. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender and the repayment, satisfaction or discharge of all the other Obligations.

(b) No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through

telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for any direct damages (and specifically excluding indirect, consequential, special or punitive damages) determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person.

Section 10.06. *Marshaling; Payments Set Aside.* Neither of the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment to the Administrative Agent or the Lenders (or to the Administrative Agent on behalf of the Lenders), or the Administrative Agent or any Lender enforces any security interests or exercises any right of set-off, and such payment or the proceeds of such enforcement or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its pro rata share of any amount so recovered from or repaid by the Administrative Agent.

Section 10.07. *Assignments, Successors, Participations, Etc.*

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Credit Party may assign or otherwise transfer any of its rights or obligations hereunder (except as expressly permitted in Section 7.07) without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.07(b) or (ii) by way of participation in accordance with the provisions of Section 10.07(d) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (as defined below) to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and Revolving Loans at the time owing to it (*provided, however*, that each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Revolving Loan and any related Revolving Commitments)); *provided* that:

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Loans or Revolving Commitment at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Revolving Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing under Section 8.01(a), (f) or (g), the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided* that the Borrower shall be deemed to have consented unless it shall object thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Revolving Loans or the Revolving Commitments assigned under the Facility;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption; such Assignment and Assumption to be (A) electronically executed and delivered to the Administrative Agent via an electronic settlement system then acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually) and (B) delivered together with a processing and recordation fee of \$[\*\*], unless waived or reduced by the Administrative Agent in its sole discretion; *provided* that, no processing and recordation fee shall be payable in connection with an assignments by or to any Arranger or its Affiliates; and

(iv) if the Eligible Assignee shall not be a Lender, (A) the relevant assignor, at the time that it notifies the Administrative Agent of such proposed assignment, shall deliver to the Administrative Agent a duly executed Form W-9 of the proposed Eligible Assignee and (B) such Eligible Assignee shall deliver to the Administrative Agent an administrative questionnaire, in the form prescribed by the Administrative Agent.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(c), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, (*provided* that, with respect to circumstances in effect on the effective date of such Assignment and Assumption, an Eligible Assignee shall not be entitled to receive any greater payment under Section 3.01 than the applicable Lender would have been entitled to receive had the assignment not taken place) and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.03,

[\*\*] = *Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

3.04, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at their expense) shall execute and deliver a Revolving Loan Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 10.07(d).

(c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal and interest amounts of the Revolving Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and each Lender (with respect to its own interests in the Facility only) at any reasonable time and from time to time upon reasonable prior notice. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a Natural Person or the Borrower, Holdings or any Affiliate or Subsidiary of the Borrower or Holdings (other than Goldman Sachs & Co. and any lending affiliates thereof, but excluding Holdings and its Subsidiaries) or any Disqualified Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitment and/or the owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that directly affects such Participant. Except to the extent limited by Section 10.07(e), the Borrower agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.03 and 3.04 (subject to the limitations and requirements of such Sections (including Section 3.01(e) and Section 3.01(f)) and Section 3.07, as if such Participant were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 10.07(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.09 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11 as though it were a Lender.

Each Lender that sells a participation pursuant to this Section 10.07(d) shall, acting solely for U.S. federal income tax purposes as a non-fiduciary agent of the Borrower, maintain a register on which it records the name and address of each participant and the principal amounts of each participant's participation interest with respect to the Revolving Loans or other obligations under the Loan Documents (each, a "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Revolving Commitments, Revolving Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Revolving Commitment, Revolving Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b)(1) of the proposed 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.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant; *provided* that this Section 10.07(e) shall not apply if the sale of the participation to such Participant is made with the Borrower's prior written consent.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Revolving Loan Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank of similar function having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.08. Confidentiality. The Administrative Agent, each Arranger, each Bookrunner, each Syndication Agent, each Documentation Agent and each Lender shall maintain the confidentiality of all information provided to it by or on behalf of Holdings or any Subsidiary, or by the Administrative Agent on Holdings' or such Subsidiary's behalf, under this Agreement or any other Loan Document, it being understood and agreed by the Credit Parties that, in any event, the Administrative Agent may disclose such information to the Lenders and the Administrative Agent, each Arranger, each Bookrunner, each Syndication Agent, each



Documentation Agent and each Lender may make disclosures thereof to the extent such information (i) was or becomes generally available to the public other than as a result of disclosure by such Person on breach of the provisions of this Section 10.08, or (ii) was or becomes available on a non-confidential basis from a source other than Holdings or its Subsidiaries; *provided* that such source is not bound by a confidentiality agreement with Holdings or any of its Subsidiaries known to such Person; *provided, further*, that the Administrative Agent, any Arranger, any Bookrunner, any Syndication Agent, any Documentation Agent or any Lender may disclose such information (a) at the request or pursuant to any requirement of any Governmental Authority or representative thereof to which such Person is subject (including the NAIC) or in connection with an examination of such Person by any such authority; (b) pursuant to subpoena or other court process; (c) when required to do so in accordance with the provisions of any applicable Requirement of Law; (d) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (e) to such Person's independent auditors and other professional advisors on a confidential basis; (f) to any Participant, Lender or Eligible Assignee, actual or potential; *provided* that such Person agrees to be bound by the terms of this Section 10.08 (or language substantially similar to this Section 10.08) which agreement may be pursuant to customary syndication practice; (g) as to any Lender or its Affiliate, as expressly permitted under the terms of any other document or agreement regarding confidentiality to which Holdings or any Subsidiary is party with such Lender or such Affiliate; (h) to its Affiliates and to their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts or agents who need to know such information and who have been informed of the confidential nature thereof (and to other Persons authorized by a Lender or the Administrative Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.08); (i) to any other party to this Agreement; (j) to any pledgee referred to in Section 10.07(f) or any direct or indirect contractual counterparty or prospective counterparty (or such counterparty's or prospective counterparty's professional advisor) to any swap or derivative transaction relating to the Revolving Loans who have been informed of the confidential nature of the information; (k) to Moody's and S&P and other rating agencies in connection with the ratings contemplated by the Loan Documents; (l) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Loans and (m) with the consent of the Borrower. In addition, the Administrative Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, and on a need to know and confidential basis, similar services providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. In the case of confidential information received from Holdings or any Subsidiary after the date hereof, such information shall be clearly identified at the time of delivery as confidential. In the case of clauses (b) and (c), the disclosing party shall give notice of such disclosure to the Borrower (other than any disclosure in connection with routine bank examinations), to the extent not otherwise prohibited by any Requirement of Law.

Section 10.09. *Set-off*. In addition to any rights and remedies of the Lenders provided by law, if an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower, to the fullest extent permitted by law, to set off

and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or Affiliate to or for the credit or the account of the Borrower against any and all Obligations owing to such Lender, now or hereafter existing, irrespective of whether or not the Administrative Agent or such Lender shall have made demand under this Agreement or any Loan Document and although such Obligations may be contingent or unmatured; *provided* that neither any Lender nor any of its Affiliates shall be entitled to exercise any such set off with respect to any trust, tax reserve, employee benefit or payroll account. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such set-off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such set-off and application.

Section 10.10. *Notification of Addresses, Lending Offices, Etc.* Each Lender shall notify the Administrative Agent in writing of any changes in the address to which notices to the Lender should be directed, of addresses of any Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent shall reasonably request.

Section 10.11. *Effectiveness; Counterparts.* This Agreement (and the amendment and restatement of the Existing Credit Agreement effected hereby) shall become effective upon (i) the execution of a counterpart hereof by each of the parties hereto (including each Continuing Existing Credit Agreement Lender), (ii) the receipt by the Borrower and the Administrative Agent of written notification of such execution and authorization of delivery thereof and (iii) the satisfaction or waiver of the conditions precedent set forth in Section 4.01. This Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument. Delivery of an executed counterpart of this Agreement by facsimile transmission or other electronic transmission (*e.g.*, “.pdf” or “.tif”) shall be effective as delivery of a manually executed counterpart hereof.

Section 10.12. *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf, and shall continue in full force and effect as long as the Revolving Loans or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.13. *Severability.* If any provision of any Loan Document is invalid, illegal or unenforceable in any jurisdiction then, to the fullest extent permitted by law, (i) such provision shall, as to such jurisdiction, be ineffective to the extent (but only to the extent) of such invalidity, illegality or unenforceability, (ii) the other provisions of the Loan Documents shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Lenders in order to carry out the intentions of the parties thereto as nearly as may be possible and (iii) the invalidity, illegality or unenforceability of any such provision in any jurisdiction shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

Section 10.14. *Replacement of Defaulting Lenders and Non-Consenting Lenders.* 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 10.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that:

(a) the Administrative Agent shall have received the assignment fee specified in Section 10.07(b) from the Borrower; and

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Sections 2.06(c), 3.01, 3.03 and 3.04) 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).

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.

No action by or consent of a Defaulting Lender or a Non-Consenting Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment the Borrower, the Administrative Agent, such Defaulting Lender or such Non-Consenting Lender and the replacement Lender shall otherwise comply with this Section 10.14; *provided* that if such Defaulting Lender or such Non-Consenting Lender does not comply with this Section 10.14 within one (1) Business Day after the Borrower's request, compliance with this Section 10.14 shall not be required to effect such assignment.

Section 10.15. *Governing Law; Jurisdiction; Consent to Service of Process.*

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any relevant appellate court, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each party hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Credit Party that is organized under the laws of a jurisdiction outside the United States hereby appoints the Borrower, and the Borrower

hereby accepts such appointment, as agent for service of process of each such Credit Party in any matter related to this Agreement or the other Loan Documents. Nothing in any Loan Document shall affect any right that any Lender or the Administrative Agent may otherwise have to bring any action or proceeding relating to any Loan Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in clause (b) of this Section 10.15. Each party hereto irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such suit, action or proceeding in any such court.

(d) To the extent permitted by applicable law, each party hereto irrevocably consents to service of process in the manner provided for notices in Section 10.02. Nothing in any Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.16. *Waiver of Jury Trial.* EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.16 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO OR OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 10.17. *PATRIOT Act Notice.* Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**PATRIOT Act**"), it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Credit Party in accordance with the PATRIOT Act.

Section 10.18. *Entire Agreement.* This Agreement, together with the other Loan Documents and any separate agreements with respect to fees payable to the Administrative Agent, the Arrangers and the Bookrunners, embodies the entire agreement and understanding

among the Credit Parties, the Lenders and the Administrative Agent and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

Notwithstanding the foregoing, other than the provisions of the Fee Letters and those provisions of the Engagement Letter which by the terms of the Engagement Letter remain in full force and effect after execution and delivery of the Loan Documents, on the Restatement Effective Date, all of the obligations of the Arrangers, Bookrunners and engagement parties under the Engagement Letter shall terminate and be superseded by the Loan Documents and the Arrangers, Bookrunners and engagement parties under the Engagement Letter shall be released from all liability in connection therewith, including any claim for injury or damages, whether consequential, special, direct, indirect, punitive or otherwise.

Section 10.19. *Independence of Covenants.* All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 10.20. *Obligations Several; Independent Nature of Lenders Right.* The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Revolving Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 10.21. *No Fiduciary Duty.* The Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the "Lenders"), may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates. Each Credit Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. The Credit Parties acknowledge and agree that (a) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm's-length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (b) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its stockholders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and

financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

Section 10.22. *Judgment Currency.*

(a) This is an international loan transaction in which the specification of a particular currency (the “**Specified Currency**”) and place of payment (the “**Specified Place**”) is of the essence, and the obligation of each Credit Party under this Agreement to make payment to or for account of a Guaranteed Party in the Specified Currency shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed or converted into any other currency or in another place except to the extent that such tender or recovery results in the effective receipt by such Guaranteed Party in the Specified Place of the full amount of the Specified Currency payable to such Guaranteed Party under this Agreement.

(b) If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Specified Currency into another currency (the “**Judgment Currency**”), the rate of exchange that shall be applied shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase such Specified Currency at the principal office of the Administrative Agent in the Specified Place with the Judgment Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of each Credit Party in respect of any such sum due from it to the Administrative Agent or any Guaranteed Party (the “**Entitled Person**”) shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following receipt by such Entitled Person of any sum adjudged to be due hereunder in the Judgment Currency such Entitled Person may in accordance with normal banking procedures purchase and transfer of the Specified Currency to the Specified Place with the amount of the Judgment Currency so adjudged to be due; and each Credit Party hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person against, and to pay such Entitled Person on demand, in the Specified Currency, the amount (if any) by which the sum originally due to such Entitled Person in the Specified Currency hereunder exceeds the amount of the Specified Currency so purchased and transferred.

Section 10.23. *Existing Credit Agreement Amended and Restated; Consents to Amendments to Existing Loan Documents; Restatement Effective Date Assignments.*

(a) Upon satisfaction of the conditions precedent to the effectiveness of this Agreement on the Restatement Effective Date, (i) this Agreement shall amend and restate the Existing Credit Agreement in its entirety, (ii) the rights and obligations of the parties under the Existing Credit Agreement shall be subsumed within and be governed by this Agreement; provided, however, that (A) each of the “Revolving Loans” (as such term is defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement on the Restatement Effective Date shall remain outstanding hereunder (with the existing Interest Periods therefor) and shall constitute Revolving Loans hereunder; (B) each “Letter of Credit” (as defined in the Existing Credit Agreement) issued under the Existing Credit Agreement and outstanding on the

Restatement Effective Date shall constitute a Letter of Credit hereunder, and (C) all Obligations (as defined in the Existing Credit Agreement) of the Credit Parties (as defined in this Agreement) shall constitute continuing Obligations hereunder, and neither this Agreement nor any other Loan Document shall be deemed to evidence or result in a novation or repayment and reborrowing of such Obligations, and (iii) all references to the Existing Credit Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Agreement.

(b) Each Credit Party, the Administrative Agent, each Lender (including each Continuing Existing Credit Agreement Lender) hereby consents to (i) the amendment and restatement of the Existing Guarantee Agreement (as defined in the Guarantee Agreement) effected by the Guarantee Agreement and (ii) the amendment and restatement of the Existing Security and Control Agreement (as defined in the Collateralized L/C Security and Control Agreement) effected by the Collateralized L/C Security and Control Agreement.

(c) Certain of the Revolving Lenders party hereto on the Restatement Effective Date are New Revolving Lenders. Certain Continuing Existing Credit Agreement Lenders are Increasing Lenders, and certain Continuing Existing Credit Agreement Lenders are Reducing Lenders. On the Restatement Effective Date, (i) each of the Reducing Lenders shall assign to each of the Increasing Lenders, and each of the Increasing Lenders shall purchase from each of the Reducing Lenders, at the principal amount thereof, such interests in the Revolving Loans outstanding on the Restatement Effective Date and (ii) each outstanding Letter of Credit shall be amended in accordance with the procedures set forth in Section 2.02(d), in each case as shall be necessary in order that, after giving effect to all such assignments and purchases, the Revolving Exposure will be held by the Revolving Lenders ratably in accordance with their Revolving Commitments.

Section 10.24. *Acknowledgment and Consent to Bail-In of EEA 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 an EEA 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 an EEA 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 an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(ii) a reduction in full or in part or cancellation of any such liability;

(iii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA 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

(iv) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

*[SIGNATURE PAGES FOLLOW]*



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

**COMMONWEALTH RE MIDCO LIMITED**, as  
Holdings and a Guarantor

By: /s/ Hanben Kim Lee

Name: Hanben Kim Lee

Title: Chief Financial Officer

**GLOBAL ATLANTIC (FIN) COMPANY**, as  
Borrower

By: /s/ John Giamalis

Name: John Giamalis

Title: Treasurer

**ROYAL BANK OF CANADA**,  
as Administrative Agent

By: /s/ Ann Hurley

Name: Ann Hurley

Title: Manager, Agency

**ROYAL BANK OF CANADA**,  
as Lender

By: /s/ Brij Grewal

Name: Brij Grewal

Title: Authorized Signatory

[Signature Page to Second Amended and Restated Credit Agreement]

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**U.S. BANK NATIONAL ASSOCIATION,**  
as Lender

By: /s/ Tenzin Subhar

Name: Tenzin Subhar

Title: Vice President

**WELLS FARGO BANK,  
NATIONAL ASSOCIATION,**  
as Lender

By: /s/ William R. Goley

Name: William R. Goley

Title: Managing Director

**THE BANK OF NOVA SCOTIA,**  
as Lender

By: /s/ Kevin Chan

Name: Kevin Chan

Title: Director

**BMO HARRIS BANK N.A.,**  
as Lender

By: /s/ Joan Murphy

Name: Joan Murphy

Title: Managing Director

**KEYBANK NATIONAL ASSOCIATION,**  
as Lender

By: /s/ James Cribbet

Name: James Cribbet

Title: SVP

**BARCLAYS BANK PLC,**  
as Lender

By: /s/ Craig Malloy

Name: Craig Malloy

Title: Director

[Signature Page to Second Amended and Restated Credit Agreement]

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**COMMERZBANK AG, NEW YORK BRANCH,**  
as Lender

By: /s/ Barry Feigenbaum

Name: Barry Feigenbaum

Title: Managing Director

By: /s/ Patrizia Lloyd

Name: Patrizia Lloyd

Title: Director

**CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,**  
as Lender

By: /s/ Doreen Barr

Name: Doreen Barr

Title: Authorized Signatory

By: /s/ Sophie Bulliard

Name: Sophie Bulliard

Title: Authorized Signatory

**GOLDMAN SACHS LENDING PARTNERS LLC,**  
as Lender

By: /s/ Ryan Durkin

Name: Ryan Durkin

Title: Authorized Signatory

**JP MORGAN CHASE BANK, N.A.,**  
as Lender

By: /s/ Karole Dill Barkley

Name: Karole Dill Barkley

Title: Vice President

[Signature Page to Second Amended and Restated Credit Agreement]

---

**MORGAN STANLEY BANK, N.A.,**  
as Lender

By: /s/ Michael King  
Name: Michael King  
Title: Authorized Signatory

**CITIBANK, N.A.,**  
as Lender

By: /s/ Robert Chesley  
Name: Robert Chesley  
Title: Vice President & Managing Director

**ASSOCIATED BANK, NATIONAL ASSOCIATION,**  
as Lender

By: /s/ Lilian Huerta Correa  
Name: Lilian Huerta Correa  
Title: Vice President

**BANK OF AMERICA, N.A.,**  
as Lender

By: /s/ Herma Kishnani  
Name: Herma Kishnani  
Title: Vice President

[Signature Page to Second Amended and Restated Credit Agreement]

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EXECUTION VERSION

CERTAIN INFORMATION, IDENTIFIED BY, AND REPLACED WITH, A MARK OF “[\*\*]” HAS BEEN EXCLUDED FROM THIS DOCUMENT BECAUSE IT IS BOTH (I) NOT MATERIAL AND (II) IS THE TYPE THAT THE REGISTRANT TREATS AS PRIVATE OR CONFIDENTIAL.

AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT

AMENDMENT TO SECOND AMENDED AND RESTATED CREDIT AGREEMENT (this “**Amendment**”) is entered into as of November 6, 2020 by and among GLOBAL ATLANTIC FINANCIAL LIMITED (F/K/A COMMONWEALTH RE MIDCO LIMITED), a company incorporated and existing under the laws of Bermuda (“**Holdings**”), GLOBAL ATLANTIC (FIN) COMPANY, a Delaware corporation and a wholly-owned subsidiary of Holdings (the “**Borrower**”), the Lenders party to this Amendment and ROYAL BANK OF CANADA, as administrative agent for the Lenders (the “**Administrative Agent**”).

RECITALS:

A. Holdings, the Borrower, certain other subsidiaries of Holdings party thereto as Guarantors (collectively with Holdings, the “**Guarantors**”), the Lenders party thereto, the Administrative Agent and the other agents and arrangers party thereto are parties to that certain Second Amended and Restated Credit Agreement, dated as of May 21, 2018 (as amended, supplemented, modified and waived and as may be further amended, supplemented, modified or waived from time to time, the “**Credit Agreement**”). Each capitalized term used but not defined herein has the meaning assigned to such term in the Credit Agreement.

B. Holdings and the Borrower have requested that the Required Lenders agree to, among other things, amend the definition of “Change of Control” contained in the Credit Agreement as provided for herein.

C. Subject to certain conditions, the Required Lenders are willing to agree to such amendments and certain other amendments relating to the Credit Agreement.

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

SECTION 1. **Amendments to Credit Agreement.** Effective as of the Amendment Effective Date (as defined below), the Credit Agreement (excluding the Schedules and Exhibits thereto) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the blackline attached as Exhibit A hereto.

SECTION 2. **Representations and Warranties.** Each Credit Party represents and warrants to the Administrative Agent and the Lenders on behalf of itself and its Subsidiaries that after giving effect to this Amendment, on the Amendment Effective Date the following statements are true and correct:

(a) the execution, delivery and performance by such Credit Party of this Amendment, and the consummation of the transactions contemplated hereby, (a) are within such Credit Party’s corporate or other organizational powers, (b) have been duly authorized by all necessary corporate or other organizational action on the part of such Credit Party, (c) require no consent or approval of or action by or in respect of, or registration or filing with, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (d) do not

contravene the Organization Documents of such Credit Party, (e) do not result in any breach, violation or contravention of, or result in or require the creation of any Lien under, any Material Indebtedness to which such Credit Party or any of its Subsidiaries is a party; or (f) violate any Requirement of Law or any order, injunction, writ or decree of any Governmental Authority to which such Credit Party or any of its Subsidiaries or its property is subject, except to the extent that such violations, in the aggregate, could not reasonably be expected to have a Material Adverse Effect;

(b) this Amendment has been duly executed and delivered by such Credit Party and is the legal, valid and binding obligation of such Credit Party, enforceable against such Credit Party in accordance with its terms, except as enforceability hereof may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principals relating to enforceability;

(c) all of the representations and warranties contained in the Credit Agreement (other the representations and warranties contained in Sections 5.05 and 5.11 of the Credit Agreement) or in any Loan Document are true and correct in all material respects on and as of the Amendment Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties were true and correct in all material respects on and as of such earlier date; provided that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof; and

(d) no Default or Event of Default has occurred and is continuing on the Amendment Effective Date.

SECTION 3. ***Conditions to Effectiveness of this Amendment.*** This Amendment shall become effective on the date that the Administrative Agent shall have received counterparts of this Amendment executed by Holdings, the Borrower, the Lenders party to the Credit Agreement constituting the Required Lenders and the Administrative Agent (such date, the "**Amendment Effective Date**").

SECTION 4. ***Acknowledgment and Consent.*** Each Credit Party hereby acknowledges that it has reviewed the terms and provisions of this Amendment and consents to the amendments set forth herein. Each Credit Party hereby confirms that each Loan Document to which it is a party will continue to guarantee to the fullest extent possible in accordance with the Loan Documents the payment and performance of all Obligations under each of the Loan Documents to which it is a party. Each Credit Party acknowledges and agrees that each of the Loan Documents to which it is a party shall continue in full force and effect and that all of its obligations thereunder shall be valid and enforceable and shall not be impaired or limited by the execution or effectiveness of this Amendment.

SECTION 5. ***Miscellaneous.***

(a) On and after the Amendment Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import referring to the Credit Agreement, and each reference in the other Loan Documents to the “Credit Agreement”, “thereunder”, “thereof” or words of like import referring to the Credit Agreement shall mean and be a reference to the Credit Agreement after giving effect to this Amendment. This Amendment shall be deemed to be a Loan Document for all purposes.

(b) Except as specifically amended by this Amendment, the Credit Agreement and the other Loan Documents shall remain unchanged and in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and performance of this Amendment shall not constitute a waiver of any provision of, or operate as a waiver of any right, power or remedy of the Administrative Agent or any Lender under, the Credit Agreement or any of the other Loan Documents, except as specifically provided herein.

(d) The provisions of this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted by the Credit Agreement.

(e) This Amendment may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument.

(f) Delivery of an executed counterpart of a signature page of this Amendment by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Amendment. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Amendment and any other document to be signed in connection with this Amendment and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent, provided that, the Administrative Agent hereby agrees to accept, and hereby consents to the use of, electronic signatures to this Amendment from all parties hereto.

(g) If any provision of this Amendment is invalid, illegal or unenforceable in any jurisdiction then, to the fullest extent permitted by law, (i) such provision shall, as to such jurisdiction, be ineffective to the extent (but only to the extent) of such invalidity, illegality or unenforceability, (ii) the other provisions of this Amendment shall remain in full force and effect in such jurisdiction and (iii) the invalidity, illegality or unenforceability of any such provision in

any jurisdiction shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

(h) This Amendment shall be construed in accordance with and governed by the law of the State of New York.

(i) This Amendment, together with the Credit Agreement and the other Loan Documents, embodies the entire agreement and understanding among the parties with respect to the subject matter hereof and thereof and supersedes all other prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

(j) The provisions of Section 1.02 (Other Interpretative Provisions) of the Credit Agreement are incorporated herein mutatis mutandis.

*[Signature Pages Follow.]*



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

**GLOBAL ATLANTIC FINANCIAL LIMITED  
(F/K/A COMMONWEALTH RE MIDCO  
LIMITED)**, as Holdings and a Guarantor

By: /s/ John Giamalis

Name: John Giamalis

Title: Treasurer

**GLOBAL ATLANTIC (FIN) COMPANY**, as  
Borrower

By: /s/ John Giamalis

Name: John Giamalis

Title: Treasurer

**ROYAL BANK OF CANADA**,  
as Administrative Agent

By: \_\_\_\_\_

Name:

Title:

**ROYAL BANK OF CANADA**,  
as a Lender

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Amendment to Second Amended and Restated Credit Agreemen]

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

**GLOBAL ATLANTIC FINANCIAL LIMITED  
(F/K/A COMMONWEALTH RE MIDCO  
LIMITED)**, as Holdings and a Guarantor

By: \_\_\_\_\_

Name:

Title:

**GLOBAL ATLANTIC (FIN) COMPANY**, as  
Borrower

By: \_\_\_\_\_

Name:

Title:

**ROYAL BANK OF CANADA**,  
as Administrative Agent

By: /s/ Rodica Dutka \_\_\_\_\_

Name: Rodica Dutka

Title: Manager, Agency

**ROYAL BANK OF CANADA**,  
as a Lender

By: \_\_\_\_\_

Name:

Title:

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**ROYAL BANK OF CANADA,**  
as a Lender

By: /s/ Sergey Skripnichenko  
Name: Sergey Skripnichenko  
Title: Authorized Signatory

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Signature Page to Amendment to Second Amended and Restated Credit Agreement

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**Associated Bank,**  
as a Lender

By:

/s/ Daniel Raynor

Name: Daniel Raynor

Title: Senior Vice President

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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Bank of America, N.A.,  
as a Lender

By: /s/ Brad Hindman

Name: Brad Hindman

Title: Vice President

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

---

**THE BANK OF NOVA SCOTIA,**  
as a Lender

By: /s/ Sunny Yang  
Name: Sunny Yang  
Title: Director

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**BARCLAYS BANK PLC,**  
as a Lender

By: /s/ Evan Moriarty  
Name: Evan Moriarty  
Title: Vice President

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**BMO HARRIS BANK N.A.,**  
as a Lender

By: /s/ Brijendra Grewal

Name: Brijendra Grewal

Title: Managing Director

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**CITIBANK, N.A.,**  
as a Lender

By: /s/ Justine O'Connor  
Name: Justine O'Connor  
Title: Director

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**COMMERZBANK AG, NY BRANCH**  
as a Lender

By: /s/ Michael McCarthy

Name: Michael McCarthy

Title: Managing Director

By: /s/ Toan B. Chu

Name: Toan B. Chu

Title: Vice President

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

---

**CREDIT SUISSE AG, CAYMAN ISLANDS BRANCH,**  
as a Lender

By: /s/ Doreen Barr

Name: Doreen Barr

Title: Authorized Signatory

By: /s/ Andrew Griffin

Name: Andrew Griffin

Title: Authorized Signatory

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

---

**Goldman Sachs Lending Partners LLC,**  
as a Lender

By: /s/ Mahesh Mohan

Name: Mahesh Mohan

Title: Authorized Signatory

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**J P MORGAN CHASE BANK, NA**  
as a Lender

By: /s/ Karole Dill Barkley  
Name: Karole Dill Barkley  
Title: Vice President

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**KEYBANK NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Jason A. Nichols

Name: Jason A. Nichols

Title: Vice President

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

---

**Morgan Stanley Bank, N.A.,**  
as a Lender

By: /s/ David White

Name: David White

Title: Authorized Signatory

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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**U.S. BANK NATIONAL ASSOCIATION,**  
as a Lender

By: /s/ Andre Liu

Name: Andre Liu

Title: Vice President

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

---



**Wells Fargo Bank, N.A.,**  
as a Lender

By: /s/ Will Goley

Name: Will Goley

Title: Managing Director

---

[Signature Page to Amendment to Second Amended and Restated Credit Agreement]

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EXHIBIT A  
AMENDMENTS REFLECTING FIRST AMENDMENT  
ADDED TEXT SHOWN UNDERSCORED, DELETED TEXT SHOWN AS  
STRIKETHROUGH

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 21, 2018

among

GLOBAL ATLANTIC FINANCIAL LIMITED  
(F/K/A COMMONWEALTH RE MIDCO LIMITED),  
as Holdings,

GLOBAL ATLANTIC (FIN) COMPANY,  
as Borrower,

THE GUARANTORS PARTY HERETO,  
as Guarantors,

ROYAL BANK OF CANADA,  
as Administrative Agent,

and

THE LENDERS PARTY HERETO

---

RBC CAPITAL MARKETS,  
U.S. BANK NATIONAL ASSOCIATION  
and  
WELLS FARGO SECURITIES, LLC,  
as Joint Lead Arrangers and Joint Bookrunners

ROYAL BANK OF CANADA,  
U.S. BANK NATIONAL ASSOCIATION  
and  
WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Syndication Agents

THE BANK OF NOVA SCOTIA,  
BMO HARRIS BANK N.A.  
and

KEYBANK NATIONAL ASSOCIATION,  
as Documentation Agents

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TABLE OF CONTENTS

Page

ARTICLE 1  
DEFINITIONS

Section 1.01	Certain Defined Terms	<del>21</del> <u>21</u>
Section 1.02	Other Interpretive Provisions	<del>36</del> <u>39</u>
Section 1.03	Classification of Loans	<del>37</del> <u>40</u>
Section 1.04	Accounting Principles	<del>37</del> <u>40</u>
<u>Section 1.05</u>	<u>Divisions</u>	<u>41</u>

ARTICLE 2  
THE CREDITS

Section 2.01	Revolving Loans	<del>38</del> <u>41</u>
Section 2.02	Issuance of Letters of Credit	<del>39</del> <u>42</u>
Section 2.03	Pro Rata Shares	<del>49</del> <u>52</u>
Section 2.04	Conversion and Continuation of Revolving Loans	<del>49</del> <u>52</u>
Section 2.05	Notes; Loan Accounts	<del>50</del> <u>53</u>
Section 2.06	Prepayments	<del>51</del> <u>53</u>
Section 2.07	Interest	<del>52</del> <u>55</u>
Section 2.08	Fees	<del>54</del> <u>57</u>
Section 2.09	Computation of Fees and Interest	<del>55</del> <u>58</u>
Section 2.10	Payments Generally	<del>55</del> <u>58</u>
Section 2.11	Sharing of Payments by Lenders	<del>57</del> <u>60</u>
Section 2.12	Defaulting Lenders	<del>58</del> <u>61</u>
Section 2.13	Maturity Extensions of Revolving Loans	<del>60</del> <u>63</u>
Section 2.14	Provisions Relating to NAIC Approved Banks	<del>63</del> <u>66</u>
Section 2.15	Incremental Facilities	<del>64</del> <u>67</u>

ARTICLE 3  
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01	Taxes	<del>65</del> <u>68</u>
Section 3.02	Illegality	<del>69</del> <u>72</u>
Section 3.03	Increased Costs and Reduction of Return	73
Section 3.04	Funding Losses	<del>71</del> <u>74</u>
Section 3.05	Inability to Determine Rates	75
Section 3.06	Certificates of Lenders	76
Section 3.07	Substitution of Lenders	76
Section 3.08	Survival	<del>73</del> <u>76</u>

ARTICLE 4  
CONDITIONS PRECEDENT

Section 4.01	Conditions to Effectiveness	<del>73</del> <u>76</u>
--------------	-----------------------------	-------------------------

Section 4.02	Conditions to All Borrowings and Letter of Credit Issuances	79
Section 4.03	Determinations Under Section 4.01	<del>76</del> <u>80</u>
ARTICLE 5		
REPRESENTATIONS AND WARRANTIES		
Section 5.01	Corporate Existence and Power	80
Section 5.02	Corporate Authorization; No Contravention	<del>77</del> <u>81</u>
Section 5.03	Governmental Authorization; Other Consents	81
Section 5.04	Binding Effect	<del>78</del> <u>81</u>
Section 5.05	Litigation	<del>78</del> <u>81</u>
Section 5.06	No Default	<del>78</del> <u>82</u>
Section 5.07	ERISA Compliance	82
Section 5.08	Margin Regulations	83
Section 5.09	Title to Properties	83
Section 5.10	Taxes	<del>80</del> <u>83</u>
Section 5.11	Financial Condition	84
Section 5.12	Environmental Matters	85
Section 5.13	Investment Company Act of 1940	<del>82</del> <u>86</u>
Section 5.14	Subsidiaries	86
Section 5.15	Insurance and Other Licenses	<del>83</del> <u>86</u>
Section 5.16	Full Disclosure	<del>83</del> <u>87</u>
Section 5.17	Solvency	87
Section 5.18	Insurance	<del>84</del> <u>87</u>
Section 5.19	Anti-Corruption Laws; OFAC; Anti-Terrorism Laws; PATRIOT Act	<del>84</del> <u>88</u>
Section 5.20	Surplus Debenture Interest and Dividends	<del>85</del> <u>88</u>
Section 5.21	Use of Proceeds	<del>85</del> <u>88</u>
Section 5.22	<del>EEA</del> <u>Affected</u> Financial Institution	<del>85</del> <u>89</u>
ARTICLE 6		
AFFIRMATIVE COVENANTS		
Section 6.01	Financial Statements	<del>85</del> <u>89</u>
Section 6.02	Certificates; Other Information	91
Section 6.03	Notices	<del>89</del> <u>92</u>
Section 6.04	Preservation of Corporate Existence, Etc	<del>90</del> <u>94</u>
Section 6.05	Insurance	94
Section 6.06	Payment of Taxes and Claims	94
Section 6.07	Compliance with Laws	<del>91</del> <u>95</u>
Section 6.08	Compliance with ERISA	<del>91</del> <u>95</u>
Section 6.09	Inspection of Property and Books and Records	95
Section 6.10	Information Regarding Collateralized L/C Collateral	<del>92</del> <u>96</u>
Section 6.11	Use of Proceeds	<del>92</del> <u>96</u>
Section 6.12	Additional Guarantors	<del>92</del> <u>96</u>
Section 6.13	Further Assurances	96
Section 6.14	Designation of Subsidiaries	96
Section 6.15	Maintenance of Properties	<del>93</del> <u>97</u>

Section 6.16	Lender Meetings	<del>93</del> <u>97</u>
Section 6.17	Environmental	<del>93</del> <u>97</u>
ARTICLE 7 NEGATIVE COVENANTS		
Section 7.01	Limitation on Certain Indebtedness	98
Section 7.02	Liens	<del>95</del> <u>99</u>
Section 7.03	Disposition of Assets	100
Section 7.04	Sales and Lease Backs	<del>99</del> <u>103</u>
Section 7.05	Transactions with Affiliates	<del>99</del> <u>103</u>
Section 7.06	Change in Business	104
Section 7.07	Fundamental Changes	<del>+00</del> <u>104</u>
Section 7.08	Restricted Payments	<del>+01</del> <u>105</u>
Section 7.09	Prepayment of Certain Indebtedness; Modifications of Certain Agreements; Synthetic Purchase Agreements	105
Section 7.10	Debt to Total Capitalization Ratio	<del>+02</del> <u>106</u>
Section 7.11	Holdings Net Worth	<del>+02</del> <u>106</u>
Section 7.12	Non-Contravention of OFAC	<del>+02</del> <u>106</u>
Section 7.13	Restrictive Agreements	<del>+03</del> <u>107</u>
Section 7.14	Holding Company Activities	108
Section 7.15	Changes in Accounting Policies; Fiscal Year	<del>+04</del> <u>108</u>
ARTICLE 8 EVENTS OF DEFAULT		
Section 8.01	Events of Default	<del>+04</del> <u>108</u>
Section 8.02	Remedies	111
Section 8.03	Rights Not Exclusive	<del>+07</del> <u>111</u>
ARTICLE 9 THE AGENTS		
Section 9.01	Appointment and Authority	112
Section 9.02	Rights as a Lender	112
Section 9.03	Exculpatory Provisions	<del>+08</del> <u>112</u>
Section 9.04	Reliance by Administrative Agent	113
Section 9.05	Delegation of Duties	<del>+09</del> <u>113</u>
Section 9.06	Resignation of Administrative Agent	<del>+09</del> <u>113</u>
Section 9.07	Non-Reliance on Administrative Agent and Other Lenders	<del>+10</del> <u>114</u>
Section 9.08	No Other Duties; Other Agents; Etc	<del>+10</del> <u>114</u>
Section 9.09	Administrative Agent May File Proofs of Claim	115
Section 9.10	Collateral and Guarantee Matters	<del>+11</del> <u>115</u>
Section 9.11	Indemnification of Agent-Related Persons	116
Section 9.12	Withholding Tax	<del>+12</del> <u>116</u>
Section 9.13	Certain ERISA Matters	<del>+13</del> <u>117</u>

ARTICLE 10  
MISCELLANEOUS

Section 10.01	Amendments and Waivers	<del>+15</del> <u>119</u>
Section 10.02	Notices	<del>+17</del> <u>121</u>
Section 10.03	No Waiver; Cumulative Remedies	<del>+19</del> <u>123</u>
Section 10.04	Costs and Expenses	124
Section 10.05	Borrower Indemnification; Damage Waiver	<del>+20</del> <u>124</u>
Section 10.06	Marshaling; Payments Set Aside	126
Section 10.07	Assignments, Successors, Participations, Etc	126
Section 10.08	Confidentiality	129
Section 10.09	Set-off	130
Section 10.10	Notification of Addresses, Lending Offices, Etc	131
Section 10.11	Effectiveness; Counterparts	131
Section 10.12	Survival of Representations and Warranties	<del>+27</del> <u>132</u>
Section 10.13	Severability	<del>+27</del> <u>132</u>
Section 10.14	Replacement of Defaulting Lenders and Non-Consenting Lenders	<del>+27</del> <u>132</u>
Section 10.15	Governing Law; Jurisdiction; Consent to Service of Process	<del>+28</del> <u>133</u>
Section 10.16	Waiver of Jury Trial	134
Section 10.17	PATRIOT Act Notice	<del>+29</del> <u>134</u>
Section 10.18	Entire Agreement	<del>+29</del> <u>134</u>
Section 10.19	Independence of Covenants	134
Section 10.20	Obligations Several; Independent Nature of Lenders Right	135
Section 10.21	No Fiduciary Duty	<del>+30</del> <u>135</u>
Section 10.22	Judgment Currency	<del>+30</del> <u>135</u>
Section 10.23	Existing Credit Agreement Amended and Restated; Consents to Amendments to Existing Loan Documents; Restatement Effective Date Assignments	<del>+31</del> <u>136</u>
Section 10.24	Acknowledgment and Consent to Bail-In of <del>EEA</del> <u>Affected</u> Financial Institutions	<del>+32</del> <u>137</u>
<u>Section 10.25</u>	<u>Acknowledgement Regarding Any Supported QFCs</u>	137

**APPENDICES**

Appendix A	Revolving Commitments
Appendix B	Collateralized L/C Collateral Rates

**SCHEDULES**

Schedule 4.01(l)	Organizational Chart
Schedule 5.05	Litigation
Schedule 5.14(a)	Capital Stock
Schedule 5.14(b)	Subsidiaries
Schedule 7.02	Existing Liens
Schedule 7.13	Restrictive Agreements

**EXHIBITS**

Exhibit A	Form of Compliance Certificate
Exhibit B	Form of Revolving Loan Note
Exhibit C-1	Form of Loan Notice
Exhibit C-2	Form of Issuance Notice
Exhibit C-3	Form of Continuation/Conversion Notice
Exhibit D	Form of Assignment and Assumption
Exhibit E-1	Form of Guarantee Agreement
Exhibit E-2	Form of Collateralized L/C Security and Control Agreement
Exhibit F-1	United States Tax Compliance Certificate (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit F-2	United States Tax Compliance Certificate (For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit F-3	United States Tax Compliance Certificate (For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)
Exhibit F-4	United States Tax Compliance Certificate (For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)
Exhibit G-1	Form of Opinion of Sidley Austin LLP
Exhibit G-2	Form of Opinion of Appleby (Bermuda) Limited
Exhibit H	Form of Solvency Certificate
Exhibit I	Intercompany Subordination Provisions
Exhibit J	Form of Prepayment Notice
Exhibit K	Form of Collateralized L/C Collateral Certificate
Exhibit L	Form of Joinder Agreement

## SECOND AMENDED AND RESTATED CREDIT AGREEMENT

This SECOND AMENDED AND RESTATED CREDIT AGREEMENT is entered into as of May 21, 2018 by and among GLOBAL ATLANTIC FINANCIAL LIMITED (F/K/A COMMONWEALTH RE MIDCO LIMITED), a company incorporated and existing under the laws of Bermuda ("~~CwA MidCo~~GAFL"), GLOBAL ATLANTIC (FIN) COMPANY, a Delaware corporation and a wholly-owned subsidiary of Holdings (the "**Borrower**"), certain other subsidiaries of Holdings from time to time as Guarantors hereunder, the lenders from time to time party to this Agreement (collectively, the "**Lenders**"; individually, each, a "**Lender**"), ROYAL BANK OF CANADA, as administrative agent for the Lenders (the "**Administrative Agent**") and the other agents and arrangers party hereto.

### RECITALS:

WHEREAS, ~~CwA MidCo~~GAFL, the Borrower, the lenders party thereto (the "**Existing Credit Agreement Lenders**") and the Administrative Agent are parties to the Amended and Restated Credit Agreement, dated as of December 7, 2016 (as in effect immediately prior to the effectiveness of this Agreement, the "**Existing Credit Agreement**");

WHEREAS, the Credit Parties, the Lenders (including the Continuing Existing Credit Agreement Lenders) and the Administrative Agent desire to amend and restate the Existing Credit Agreement in its entirety to, among other things, (a) increase the aggregate amount of the revolving credit facility from \$650,000,000 to \$1,000,000,000, (b) extend the scheduled commitment termination date of the revolving credit facility and (c) make other amendments and other modifications to the Existing Credit Agreement;

WHEREAS, as of the Restatement Effective Date, (i) the aggregate outstanding principal amount of the Revolving Loans is \$405,000,000 and (ii) the aggregate Letter of Credit Usage in respect of all Letters of Credit is zero;

WHEREAS, the Borrower intends to use the proceeds of the revolving credit facility for working capital and general corporate purposes of Holdings and the Subsidiaries;

WHEREAS, the Guarantor party to this Agreement on the Restatement Effective Date is willing to continue to guarantee the obligations of the Borrower, as provided in the Guarantee Agreement; and

NOW, THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.01 *Certain Defined Terms.* The following terms have the following meanings:



“**Administrative Agent**” has the meaning specified in the introduction to this Agreement, and includes its successors and permitted assigns in such capacity.

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

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

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

“**Affiliate**” means, as to any Person, any other Person that, directly or indirectly, is in control of, is controlled by or is under common control with, such Person. A Person shall be deemed to control another Person if the controlling Person possesses, directly or indirectly, the power (a) to vote 10% or more of the securities (on a fully diluted basis) having ordinary voting power for the election of directors or managing general partners of the other Person or (b) to direct or cause the direction of the management and policies of the other Person, whether through the ownership of voting securities, membership interests, by contract or otherwise.

~~“**Agents**” means the Administrative Agent, the Arrangers, the Bookrunners, the Syndication Agents and the Documentation Agents.~~

“**Agent-Related Persons**” means the initial Administrative Agent and any successor Administrative Agent, in each case together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates.

~~“**Agents**” means the Administrative Agent, the Arrangers, the Bookrunners, the Syndication Agents and the Documentation Agents.~~

“**Agents**” means the Administrative Agent, the Arrangers, the Bookrunners, the Syndication Agents and the Documentation Agents.

“**Agreement**” means this Second Amended and Restated Credit Agreement, as amended, restated, modified or supplemented from time to time in accordance with the terms hereof.

“**A.M. Best**” means A.M. Best Company.

“**Annual Statement**” means the annual statutory financial statement of any Insurance Subsidiary required to be filed with the insurance commissioner (or similar authority) of its jurisdiction of incorporation, which statement shall be in the form required by such Insurance Subsidiary’s jurisdiction of incorporation or, if no specific form is so required, in the form of financial statements permitted by such insurance commissioner (or such similar authority) to be used for filing annual statutory financial statements and shall contain the type of information permitted or required by such insurance commissioner (or such similar authority) to be disclosed therein, together with all exhibits or schedules filed therewith.

“**Anti-Corruption Laws**” means any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties related to corruption or bribery and including the Foreign Corrupt Practices Act (15 U.S.C. §§ 78dd-1, et seq.).

“**Anti-Money Laundering Laws**” means any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties related to terrorism

financing or money laundering including any applicable provision of the PATRIOT Act (as defined below) and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act”, 31 U.S.C. §§ 5311-5330 and 12 U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“**Applicable Margin**”, “**Applicable Revolving Commitment Fee Percentage**” and “**Applicable Non-Collateralized Letter of Credit Fee**” mean a percentage, per annum, determined by reference to the Debt Ratings in effect from time to time, as set forth in the table below:

<u>Pricing Level</u>	<u>Debt Ratings S&amp;P / Moody's / Fitch</u>	<u>Applicable Non- Collateralized Letter of Credit Fee</u>	<u>Applicable Margin for Base Rate Loans</u>	<u>Applicable Margin for Eurodollar Rate Loans</u>	<u>Applicable Revolving Commitment Fee Percentage</u>
1	≥ A-/A3/A-	[**]%	[**]%	1.125%	0.15%
2	BBB+/Baa1/BBB+	[**]%	[**]%	[**]%	[**]%
3	BBB/Baa2/BBB	[**]%	[**]%	[**]%	[**]%
4	BBB-/Baa3/BBB-	[**]%	[**]%	[**]%	[**]%
5	≤ BB+/Ba1/BB+	[**]%	[**]%	2.00%	0.35%

Initially, the Applicable Margin, Applicable Revolving Commitment Fee Percentage and Applicable Non-Collateralized Letter of Credit Fee shall be set at Pricing Level 3. No change in the Applicable Margin, Applicable Revolving Commitment Fee Percentage or Applicable Non-Collateralized Letter of Credit Fee shall be effective until one (1) Business Day after the date of the public announcement of a change in any of the Debt Ratings. Within one (1) Business Day of the date of the public announcement of a change in any of the Debt Ratings, the Administrative Agent shall give the Borrower and each Lender notice of the Applicable Margin, the Applicable Revolving Commitment Fee Percentage and the Applicable Non-Collateralized Letter of Credit Fee in effect from such date.

“**Applicable Reserve Requirement**” means, at any time, for any determination of the Eurodollar Rate, the maximum rate, expressed as a decimal, at which reserves (including any basic marginal, special, supplemental, emergency or other reserves) are required to be maintained with respect thereto against “Eurocurrency liabilities” (as such term is defined in Regulation D of the FRB) under regulations issued from time to time by the FRB or other applicable banking regulator. Without limiting the effect of the foregoing, the Applicable Reserve Requirement shall reflect any other reserves required to be maintained by such member banks with respect to (i) any category of liabilities which includes deposits by reference to which the applicable Eurodollar Rate is to be determined, or (ii) any category of extensions of credit or other assets which include Eurodollar Rate Loans. A Loan bearing interest at an interest rate based on the Eurodollar Rate shall be deemed to constitute Eurocurrency liabilities and as such shall be deemed subject to reserve requirements without benefits of credit for proration,

[\*\*] = *Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

exceptions or offsets that may be available from time to time to the applicable Lender. The rate of interest on a Loan bearing interest at an interest rate based on the Eurodollar Rate shall be adjusted automatically on and as of the effective date of any change in the Applicable Reserve Requirement.

“**Approved Electronic Communications**” means any notice, demand, communication, information, document or other material that any of Holdings or any of its Subsidiaries provides to the Administrative Agent pursuant to any Loan Document or the transactions contemplated therein, which is distributed to the Administrative Agent or Lenders by means of electronic communications pursuant to [Section 10.02\(b\)](#).

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

“**Arrangers**” means, collectively, RBCCM, US Bank and WFS.

“**Assignment and Assumption**” means an assignment and assumption entered into by a Lender and an Eligible Assignee substantially in the form of [Exhibit D](#) or in another form reasonably acceptable to the Administrative Agent.

“**Attorney Costs**” means and includes all reasonable fees, expenses and disbursements of any law firm or other external legal counsel.

“**Bail-In Action**” means the exercise of any Write-Down and Conversion Powers by the applicable ~~EEA~~ Resolution Authority in respect of any liability of an ~~EEA~~[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 \(other than through liquidation, administration or other insolvency proceedings\).](#)

“**Bank of Nova Scotia**” means The Bank of Nova Scotia.

“**Bankruptcy Code**” means Title 11 of the United States Code entitled “Bankruptcy,” as now and hereafter in effect, or any successor statute.

“**Base Rate**” means for any day a fluctuating rate *per annum* equal to the highest of (a) the Federal Funds Rate *plus* 1/2 of 1%, (b) the rate of interest *per annum* determined by the Administrative Agent from time to time as its prime commercial lending rate for Dollar loans in the United States for such day, and (c) the Eurodollar Rate for an Interest Period of one month beginning on such day (or if such day is not a Business Day, the Business Day immediately

preceding such day) *plus 1.00% per annum*; *provided* that, if such rate *per annum* is less than zero, the Base Rate will be deemed to be zero for purposes of this Agreement.

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

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

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

“**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”.

“**BMO**” means BMO Harris Bank N.A.

“**Bookrunners**” means, collectively, RBCCM, US Bank and WFS.

“**Borrower**” has the meaning specified in the introduction to this Agreement.

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

“**Borrowing Date**” means the date of a Credit Extension (other than a conversion or continuation of a Loan).

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located or New York City and, if such day relates to any Eurodollar Rate Loan, means any such day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“**Capital Adequacy Regulation**” means any guideline, request or directive of any central bank or other Governmental Authority, or any other law, rule or regulation, whether or not having the force of law, in each case, regarding capital adequacy or liquidity of any bank or of any corporation controlling a bank.

“**Capital and Surplus**” means, as to any Insurance Subsidiary, as of any date, the total amount shown on (i) line 38, page 3, column 1 and (ii) line 24.1, page 3 (or such other line on which the equivalent information is provided on any other such Annual Statement) of the Annual Statement of such Insurance Subsidiary as of such date, or an amount determined in a consistent manner for any date other than one as of which an Annual Statement is prepared.

“**Capital Stock**” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests and membership interests, and any and all warrants, rights or options to purchase any of the foregoing; *provided* that, for the

avoidance of doubt, Capital Stock shall not be deemed to include debt convertible or exchangeable for any of the foregoing.

“**Capitalized Lease Liabilities**” means, with respect to any Person, all monetary obligations of such Person under any leasing or similar arrangement that, in accordance with GAAP, would be classified as a capitalized lease, *provided* that, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty. For purposes of this definition, whenever in this Agreement it is necessary to determine whether a lease is a capital lease or an operating lease, such determination shall be made on the basis of GAAP as in effect on January 1, 2015.

“**Cash**” means Dollars and any overnight or other investment money market funds of the Custodian with which a Collateralized L/C Collateral Account is maintained (or an Affiliate of such Custodian).

“**Cash Collateralize**” means, in respect of an Obligation, to provide and pledge (as a first priority perfected security interest) cash collateral in Dollars, at a location and pursuant to documentation in form and substance satisfactory to the Administrative Agent (and “**Cash Collateralization**” and “**Cash Collateralized**” have corresponding meanings). “**Cash Collateral**” shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

“**Cash Equivalents**” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States government or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within one year from the date of acquisition; (b) certificates of deposit, time deposits, eurodollar time deposits or overnight bank deposits having maturities of twelve months or less from the date of acquisition issued by any commercial bank organized under the laws of the United States or any state thereof having combined capital and surplus of not less than \$500,000,000 and a short-term deposit rating of at least A-1 by S&P and P-1 by Moody’s, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally; (c) commercial paper of an issuer rated at least A-2 by S&P and P-2 by Moody’s at the time of acquisition thereof, or carrying an equivalent rating by a nationally recognized rating agency, if both of the two named rating agencies cease publishing ratings of commercial paper issuers generally, and maturing within nine months from the date of acquisition; (d) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) of this definition, having a term of not more than thirty (30) days, with respect to securities issued or fully guaranteed or insured by the United States government; (e) securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least A by S&P and A2 by Moody’s; (f) securities with maturities of one year or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the

requirements of clause (b) of this definition; or (g) shares of money market mutual or similar funds that invest exclusively in assets satisfying the requirements of clauses (a) through (f) of this definition.

“**Cash Management Obligations**” means obligations owed in respect of any overdraft and related liabilities arising from treasury, depository and cash management services or any automated clearing house transfers of funds or in respect of any credit card or similar services.

“**CBOs**” means notes or other instruments (other than CMOs) secured by collateral consisting primarily of debt securities and/or other types of debt obligations, including loans.

“**CERCLA**” means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“**Change of Control**” means ~~(a) any acquisition, directly or indirectly, by any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) of beneficial ownership (within the meaning of Rule 13d-3 of the SEC under the Exchange Act) of 35% or more on a fully diluted basis of the outstanding shares of Voting Stock of (i) prior to the IPO, CwA MidCo (other than the direct beneficial ownership of GAFI of additional Voting Stock of CwA MidCo), or (ii) from and after the IPO, the IPO Entity; (b) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall obtain, directly or indirectly, the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of (i) prior to the IPO, CwA MidCo (other than additional direct power of GAFI to elect a majority of the members of the board of directors (or similar governing body) of CwA MidCo), or (ii) from and after the IPO, the IPO Entity (other than additional direct power of GAFI to elect a majority of the members of the board of directors (or similar governing body) of CwA MidCo); (c)(i) prior to the IPO, Parent or GAFI shall cease to beneficially own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the outstanding shares of Voting Stock of CwA MidCo or (ii) Holdings shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the outstanding shares of Voting Stock of the Borrower; or (d) the occurrence of a “change of control” (howsoever defined) in any instrument governing any Indebtedness of Holdings or its Restricted Subsidiaries with an aggregate outstanding amount in excess of \$75,000,000 that constitutes an “event of default” under such other debt instrument or would constitute an “event of default” after notice or passage of time under such other debt instrument. **Subject to the foregoing, the(i) prior to the consummation of the Mergers, a Pre-Merger Change of Control, and (ii) from and after the consummation of the Mergers, a Post-Merger Change of Control; provided that, if the Mergers are not consummated on or prior to the Merger Outside Date, then clause (ii) above shall not apply and “Change of Control” shall mean, at all times, a Pre-Merger Change of Control. For the avoidance of doubt, (A) the IPO will not constitute a Change of Control, (B) on or prior to the Merger Outside Date, the Mergers will not constitute a Change of Control and (C) from and after the consummation of the Mergers, no change in ownership or control of KKR Management LLP, or indirect change in ownership or control of KKR solely as a result of a change in ultimate ownership or control of KKR Management LLP, is or will constitute a Change of Control.**~~

“**Class**” means (i) with respect to Lenders, Lenders having Revolving Exposure, and (ii) with respect to Loans, Revolving Loans. Until the consummation of an Extension pursuant to [Section 2.13](#), there will be only one Class hereunder.

“**CMOs**” means notes or other instruments secured by collateral consisting primarily of mortgages, mortgage-backed securities and/or other types of mortgage-related obligations.

“**Code**” means the Internal Revenue Code of 1986, and regulations promulgated thereunder.

“**Collateralized L/C Aggregate Collateral Amount**” means, subject to the immediately succeeding paragraph, the sum of the Collateralized L/C Collateral Amounts of all Cash and Eligible Securities that are held in Collateralized L/C Collateral Accounts and subject to a first priority perfected security interest in favor of the Administrative Agent securing the Obligations with respect to Collateralized Letters of Credit.

Notwithstanding the foregoing, (a) if the aggregate fair market value of Eligible Securities of any single corporate issuer (or any Affiliate thereof) that are held in Collateralized L/C Collateral Accounts represents more than 10% of the aggregate fair market value of all Cash and Eligible Securities that are held in Collateralized L/C Collateral Accounts, the excess over 10% will be excluded from the Collateralized L/C Aggregate Collateral Amount, (b) the weighted average rating of all Agency Securities (as described in [Appendix B](#)) constituting Eligible Securities and held in Collateralized L/C Collateral Accounts must at all times be at least (i) AA+ from S&P or (ii) Aa1 from Moody’s, (c) if the aggregate fair market value of Asset-Backed Securities (as described in [Appendix B](#)) (including CMBS) held in Collateralized L/C Collateral Accounts represents more than 20% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 20% will be excluded from the Collateralized L/C Aggregate Collateral Amount, (d) if the aggregate fair value of Asset-Backed Securities constituting CMBS held in Collateralized L/C Collateral Accounts represents more than 10% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 10% will be excluded from the Collateralized L/C Aggregate Collateral Amount, (e) if the aggregate value of OECD Government Securities (as described in [Appendix B](#)) held in Collateralized L/C Collateral Accounts represents more than 20% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 20% will be excluded from the Collateralized L/C Aggregate Collateral Amount, and (f) if the aggregate value of Supranational Securities (as described in [Appendix B](#)) held in Collateralized L/C Collateral Accounts represents more than 20% of the aggregate value of all Cash and Eligible Securities held in Collateralized L/C Collateral Accounts, the excess over 20% will be excluded from the Collateralized L/C Aggregate Collateral Amount. For the avoidance of doubt, (x) any Cash or Eligible Securities that are not held in Collateralized L/C Collateral Accounts or subject to a first priority perfected security interest in favor of the Administrative Agent securing the Obligations with respect to Collateralized Letters of Credit or (y) any Eligible Securities for which an ISIN has not been issued, in each case, will not be included in the Collateralized L/C Aggregate Collateral Amount.

“**Collateralized L/C Collateral**” means, collectively, all property of whatever kind and nature subject or purported to be subject from time to time to a Lien under any Collateralized L/C Security Document.

“**Collateralized L/C Collateral Account**” means any deposit account or securities account maintained by the Borrower with a Custodian in respect of which a Collateralized L/C Security and Control Agreement is in effect.

“**Collateralized L/C Collateral Amount**” means, at any time, with respect to Cash or any category of Eligible Securities, the product of (a)(i) the amount of such Cash or (ii) the fair market value of such Eligible Securities, in each case, that is held in a Collateralized L/C Collateral Account at such time and subject to a first priority perfected security interest in favor of the Administrative Agent securing the Obligations with respect to Collateralized Letters of Credit, *multiplied by* (b) the Collateralized L/C Collateral Rate therefor, in each case, determined as of the close of business on the immediately preceding Business Day. The fair market value of Eligible Securities will be determined by reference to a generally recognized source selected by the applicable Custodian (or the most recent bid quotation from such source). With respect to any Eligible Securities having a fair market value denominated in a currency other than Dollars, the Dollar equivalent thereof (using a method selected by the applicable Custodian) will be used for purposes of determining the value of such Eligible Securities.

“**Collateralized L/C Collateral Certificate**” means a certificate substantially in the form of Exhibit K executed by a Responsible Officer of the Borrower.

“**Collateralized L/C Collateral Deficiency**” has the meaning specified in Section 2.02(l)(vi).

“**Collateralized L/C Collateral Deficiency Correction Date**” has the meaning specified in Section 2.02(l)(vi).

“**Collateralized L/C Collateral Rate**” means, for Cash or any category of obligation or investment specified in Appendix B in the column entitled “Cash and Eligible Securities” (other than Cash, the “**Eligible Securities**”), the percentage set forth opposite such category of Cash or Eligible Securities in Appendix B in the column entitled “Collateralized L/C Collateral Rate” and, in each case, subject to the term to maturity criteria set forth therein.

“**Collateralized L/C Collateral Requirement**” means the requirement that:

(a) the Administrative Agent shall have received a counterpart to a Collateralized L/C Security and Control Agreement with respect to each Collateralized L/C Collateral Account, duly executed and delivered by the Borrower and the Custodian with which such Collateralized L/C Collateral Account is maintained;

(b) all documents and instruments, including Uniform Commercial Code financing statements, required by law or reasonably requested by the Administrative Agent to be filed, registered or recorded to create the Liens intended to be created by the Collateralized L/C Security Documents and perfect or record such Liens to the extent, and with the priority, required



by the Collateralized L/C Security Documents, shall have been filed, registered or recorded or delivered to the Administrative Agent for filing, registration or recording;

(c) the Borrower shall have obtained all consents and approvals required to be obtained by it in connection with the execution and delivery of all Collateralized L/C Security Documents to which it is a party, the performance of its obligations thereunder and the granting of the Liens granted by it thereunder; and

(d) the Borrower shall have taken all other action required under the Collateralized L/C Security Documents to perfect, register and/or record the Liens granted by it thereunder.

**“Collateralized L/C Disbursement”** means a payment made by a Lender pursuant to a Collateralized Letter of Credit.

**“Collateralized L/C Liens”** means the Liens granted or to be granted by the Borrower under the Collateralized L/C Security Documents.

**“Collateralized L/C Security and Control Agreement”** means, with respect to any Collateralized L/C Collateral Account, a Security and Control Agreement substantially in the form of Exhibit E-2 and duly executed and delivered by the Administrative Agent, the Borrower and the Custodian with which such Collateralized L/C Collateral Account is maintained.

**“Collateralized L/C Security Documents”** means the Collateralized L/C Security and Control Agreements and each other security agreement, instrument or document executed and delivered pursuant thereto or pursuant to Section 2.02(l) or Section 6.13, to secure any of the Secured Obligations (as defined in the Collateralized L/C Security and Control Agreements).

**“Collateralized L/C Security Invalidity”** means, at any time, (a) any provision of any Collateralized L/C Security Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations, shall cease to be in full force and effect or (b) any Lien purported to be created under any Collateralized L/C Security Document that is required to be in effect at such time (in accordance with the Collateralized L/C Collateral Requirement) shall cease to be, or shall be asserted by any Credit Party or any Restricted Subsidiary of Holdings not to be, a valid and perfected Lien on any Collateralized L/C Collateral covered thereby, with the priority required by the applicable Collateralized L/C Security Document (except as a result of the Administrative Agent’s failure to maintain possession of any stock certificates, promissory notes or other documents or possessory collateral delivered to it under any Collateralized L/C Security Document).

**“Collateralized L/C True-Up Amount”** means, as of any date of determination, with respect to each Letter of Credit that is a Collateralized Letter of Credit, an amount equal to the difference between (a) the total letter of credit fees referred to in Section 2.08(a)(ii) that would have accrued in respect of such Letter of Credit (if such Letter of Credit was a Non-Collateralized Letter of Credit) from the date of issuance thereof to such date and (b) the total letter of credit fees referred to in Section 2.08(a)(iii) that have accrued in respect of such Letter of Credit from the date of issuance thereof to such date.

“**Collateralized Letter of Credit**” means a Letter of Credit the Obligations with respect to which are secured by a first priority perfected security interest in favor of the Administrative Agent in all Cash and Eligible Securities that are held in the Collateralized L/C Collateral Accounts.

“**Collateralized Letter of Credit Fee**” means *[\*\*]% per annum*.

“**Collateralized Letter of Credit Usage**” means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Collateralized Letters of Credit then outstanding *plus* (ii) the aggregate amount of all Collateralized L/C Disbursements made by the Lenders and not theretofore reimbursed by or on behalf of the Borrower.

“**Commitment Termination Date**” means the earliest to occur of (i) the fifth anniversary of the Restatement Effective Date, (ii) the date the Revolving Commitments are permanently reduced to zero pursuant to Section 2.06, and (iii) the date of the termination of the Revolving Commitments pursuant to Section 8.02.

“**Compensation Period**” has the meaning specified in Section 2.10(c)(ii).

“**Compliance Certificate**” means a certificate substantially in the form of Exhibit A executed by a Responsible Officer of Holdings.

“**Confirming Bank**” means, as provided in Section 2.14 with respect to any Non-NAIC Approved Bank, any Person (including any Lender) that is a NAIC Approved Bank and that has agreed in a written agreement to confirm Letters of Credit with respect to which such Non-NAIC Approved Bank is an issuer, which agreement shall be in form and substance reasonably satisfactory to the Administrative Agent (such an agreement, a “**Confirming Bank Agreement**”).

“**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 Total Assets**” means, with respect to any Person, the total assets which would appear on a consolidated balance sheet of such Person and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

“**Contingent Obligation**” means, without duplication, any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the debt, obligation or other liability of any other Person (other than by endorsements of instruments in the course of collection or indemnities or other similar obligations under contracts entered into in the ordinary course of business and not in respect of Indebtedness or the issuance of Capital Stock), or guarantees the payment of dividends or other distributions upon the shares of any other Person; *provided* that the obligations of any Person under or in connection with insurance policies, under or in connection with Reinsurance

*[\*\*] = Certain information contained in this document, marked by “[\*\*]” has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

Agreements, or in connection with Investments of Insurance Subsidiaries or Subsidiaries of Insurance Subsidiaries permitted by the applicable Department shall not be deemed Contingent Obligations of such Person. The amount of any Contingent Obligation of any Person shall (subject to any limitation set forth therein) be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith.

“**Continuing Existing Credit Agreement Lender**” means an Existing Credit Agreement Lender that has elected to continue as a Lender under this Agreement. Each of the Existing Credit Agreement Lenders immediately prior to the effectiveness of this Agreement is a Continuing Existing Credit Agreement Lender.

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

“**Conversion/Continuation Notice**” means a notice of conversion or continuation of a Revolving Loan substantially in the form of Exhibit C-3.

“**Covered Party**” has the meaning specified in Section 10.25.

“**Credit Extension**” means (a) the making, conversion or continuation of a Loan or (b) the issuance, renewal or extension of a Letter of Credit.

“**Credit Parties**” means the Borrower and the Guarantors.

“**Custodian**” means (a) US Bank and (b) any other bank or financial institution that is (i)(A) with respect to any deposit account, a “bank” within the meaning of Section 9-102(a)(8) of the Uniform Commercial Code, and (B) with respect to any securities account, a “securities intermediary” within the meaning of Section 8-102(a)(14) of the Uniform Commercial Code, (ii) located in the United States of America and (iii) satisfactory to the Administrative Agent.

“**CWA**” means Commonwealth Annuity and Life Insurance Company, a Massachusetts life insurance company.

~~“**CwA-MidCo**” has the meaning specified in the introduction to this Agreement.~~

“**Debt Ratings**” means, as of any date of determination, the public long-term issuer credit ratings as determined by at least two of S&P, Moody’s and Fitch of any Credit Party; *provided* that (a) if more than one Credit Party has Debt Ratings, then the Debt Ratings of the Credit Party with the highest Debt Rating shall apply, (b) if the respective Debt Ratings of the applicable Credit Party issued by the foregoing rating agencies differ by one level, then the Pricing Level for the higher of such Debt Ratings shall apply (with the Debt Ratings for Pricing Level 1 being the highest and the Debt Ratings for Pricing Level 5 being the lowest), (c) if there is a split in

Debt Ratings of the applicable Credit Party of more than one level, then the Pricing Level that is one Pricing Level higher than the Pricing Level of the lower Debt Rating shall apply.

“**Debt to Total Capitalization Ratio**” means, as of any date of determination, without duplication, the ratio of (a) the principal amount of, and accrued but unpaid interest on, all consolidated Indebtedness (other than Operating Indebtedness, Indebtedness in respect of undrawn letters of credit, Non-Recourse Insurance Subsidiary Indebtedness or Intercompany Indebtedness) of any Person and its Restricted Subsidiaries outstanding on such date to (b) Total Capitalization of such Person and its Restricted Subsidiaries on such date.

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

“**Default**” means any event or circumstance that constitutes an Event of Default or that, with the giving of notice, the lapse of time, or both, would (if not cured or otherwise remedied during such time) constitute an Event of Default.

“**Defaulting Lender**” means, subject to Section 2.12(b), any Lender that (a) has failed to (i) fund all or any portion of its Revolving Loans within two (2) Business Days of the date such Revolving 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 (which conditions precedent, together with the applicable default, if any, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (b) has notified the Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lenders’ 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 the applicable default, if any, 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 or 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), (d) the Administrative Agent has received notification that such Lender is, or has a direct or indirect parent company that is (i) insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors or (ii) the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its direct or indirect parent company, or such Lender or its direct or indirect parent company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment, (e) ceases to be a NAIC Approved Bank and has failed to comply with its

obligations under [Section 2.14](#), or (f) is subject of any Bail-In Action; *provided* that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock 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 or instrumentality) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender.

“**Department**” means, with respect to any Insurance Subsidiary, the Governmental Authority of such Insurance Subsidiary’s state or other jurisdiction of domicile with which such Insurance Subsidiary is required to file its Annual Statement.

“**Designated Subsidiary**” means (a) the Borrower, (b) each Restricted Subsidiary of Holdings that directly or indirectly owns any Capital Stock of the Borrower and (c) each Restricted Subsidiary of Holdings (other than an Insurance Subsidiary) that directly or indirectly owns any Capital Stock of any Insurance Subsidiary (including any such Restricted Subsidiary of Holdings that is itself owned by an Insurance Subsidiary) that (i) as of the Restatement Effective Date, has incurred, created, assumed, suffered to exist, guaranteed or at any time become directly or indirectly liable with respect to, any Indebtedness in an aggregate principal amount exceeding \$25,000,000 (other than Intercompany Indebtedness), or (ii) after the Restatement Effective Date, incurs, creates, assumes, suffers to exist, guaranties or at any time becomes directly or indirectly liable with respect to, any Indebtedness in an aggregate principal amount exceeding \$25,000,000 (other than Intercompany Indebtedness). Nothing contained in this definition shall be deemed to limit the ability of any Guarantor (other than Holdings) to merge, consolidate, amalgamate or sell all or substantially all of its assets in accordance with [Section 7.07](#).

“**Disposition**” means the sale, assignment, leasing, transfer, contribution, conveyance, or other disposal of, any of a Person’s assets (other than cash) (including a sale and leaseback transaction and, in the case of any Restricted Subsidiary, the issuance or sale of its Capital Stock). The terms “**Dispose of**” and “**Disposed of**” shall have correlative meaning.

“**Disqualified Lender**” means (i) certain insurance companies that have been identified in writing by [CwA MidCo GAFL](#) to the Arrangers on or prior to May 21, 2018 and (ii) certain additional insurance companies or insurance company holding companies that have become competitors or clients of the Borrower or any Guarantor or any of their Subsidiaries after May 21, 2018 identified in writing by Holdings to the Arrangers and the Administrative Agent, *provided* that any Person (x) that is a Lender or that enters into a binding agreement to assume rights and obligations under this Agreement or (y) that is a Participant or that enters into a binding agreement to purchase a participation in all or a portion of a Lender’s rights and/or obligations under this Agreement and, in the case of either clause (x) or (y), subsequently becomes a Disqualified Lender (but was not a Disqualified Lender on the Restatement Effective Date or at the time it became a Lender or a Participant or entered into an agreement of such type, as applicable) shall be deemed to not be a Disqualified Lender hereunder. The list of Disqualified Lenders shall be made available to all Lenders by posting such list to IntraLinks or another similar electronic system.

“**Documentation Agents**” means, collectively, Bank of Nova Scotia, BMO and Wells Fargo and their respective successors and assigns in such capacity.

“**Dollars**,” “**dollars**” and “**\$**” each mean lawful money of the United States.

“**Economic Sanctions Laws**” means any and all laws, judgments, orders, executive orders, decrees, ordinances, rules, regulations, statutes, case law or treaties relating to economic sanctions and terrorism financing, including any applicable provisions of each of the Trading with the Enemy Act (50 U.S.C. App. §§ 5(b) and 16, as amended), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706, as amended) and Executive Order 13224 (effective September 24, 2001), as amended.

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

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

“**EEA Resolution Authority**” means any public administrative authority or any person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

**“Electronic Signature” means an electronic sound, symbol or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.**

“**Eligible Assignee**” means (a) a Lender; (b) an Affiliate of a Lender; (c) an Approved Fund; and (d) any other Person (other than a Natural Person) approved by (i) the Administrative Agent and (ii) unless an Event of Default under Section 8.01(a), (f) or (g) has occurred and is continuing, the Borrower (each such approval not to be unreasonably withheld or delayed); *provided* that (x) notwithstanding the foregoing, “Eligible Assignee” shall not include Holdings, the Borrower or any of its Affiliates (other than Goldman Sachs & Co. LLC and any lending affiliates thereof, but excluding Holdings and its Subsidiaries) or any Disqualified Lender, (y) each Eligible Assignee must be a NAIC Approved Bank and (z) the Borrower shall be deemed to have approved an assignee unless it shall object thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof.

“**Eligible Securities**” has the meaning set forth in the definition of “Collateralized L/C Collateral Rate”.

“**Embargoed Person**” means any Person that (i) is publicly identified on the most current list of “Specially Designated Nationals and Blocked Persons” published by the United States Treasury’s Office of Foreign Assets Control (“**OFAC**”), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury or other relevant

sanctions authority, or is located, resides, is organized or chartered or has a place of business in a country, region or territory subject to sanctions administered or enforced from time to time by the U.S. government, including those administered by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority or (ii) is publicly identified as prohibited from doing business with the United States under the International Emergency Economic Powers Act, the Trading With the Enemy Act or any other Requirement of Law.

“**Engagement Letter**” means that certain engagement letter, dated as of April 17, 2018, by and among the Borrower, RBC, RBCCM, Wells Fargo, WFS and US Bank, as amended, restated, supplemented or otherwise modified from time to time.

“**Entitled Person**” has the meaning set forth in [Section 10.22\(b\)](#).

“**Environment**” means ambient air, indoor air, surface water, groundwater, drinking water, soil, surface and subsurface strata, and natural resources such as wetlands, flora and fauna.

“**Environmental Claims**” means all written claims, complaints or notices, by any Governmental Authority or other Person alleging potential liability or responsibility for violation of any Environmental Law, or for release or injury to the Environment or threat to public health, personal injury (including sickness, disease or death), property damage, natural resources damage, or otherwise alleging liability or responsibility for damages (punitive or otherwise), cleanup, removal, remedial or response costs, restitution, civil or criminal penalties, injunctive relief or other type of relief, resulting from or based upon the presence, placement, or Release (including intentional or unintentional, negligent or non-negligent, sudden or non-sudden or accidental or non-accidental placement, spills, leaks, discharges, emissions or releases) of any Hazardous Material at, in, under or from property, whether or not owned by Holdings or any of its Restricted Subsidiaries, excluding, in any case, liabilities or claims arising under any insurance contract or policy, reinsurance agreement or retrocession agreement relating to any of the foregoing where Holdings or any of its Restricted Subsidiaries is the insurer.

“**Environmental Laws**” means all Requirements of Law relating to pollution or protection of the Environment, health and safety.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of remediation, fines, penalties or indemnities), of Holdings, any other Credit Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage or treatment of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

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

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with Holdings or any of its Subsidiaries within the meaning of Section 414(b)

or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Single Employer Pension Plan; (b) with respect to any Single Employer Pension Plan, the failure to satisfy the minimum funding standard under Sections 412 or 430 of the Code and Sections 302 or 303 of ERISA, whether or not waived, the failure to make by its due date a required installment under Section 430(j) of the Code or Section 303 of ERISA with respect to any Single Employer Pension Plan or the failure to make a required contribution to a Multiemployer Plan; (c) a withdrawal by Holdings, any of its Subsidiaries or any ERISA Affiliate from a Single Employer Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations which is treated as such a withdrawal under Section 4062(e) of ERISA; (d) a complete or partial withdrawal by Holdings, any of its Subsidiaries or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is insolvent; (e) the filing of a notice of intent to terminate, the treatment of a plan amendment as a termination under Section 4041 or 4041A of ERISA or the commencement of proceedings by the PBGC to terminate a Single Employer Pension Plan or Multiemployer Plan; (f) an event or condition that could reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Single Employer Pension Plan or Multiemployer Plan; (g) the imposition of any liability under Title IV of ERISA, other than required plan contributions and PBGC premiums due but not delinquent under Section 4007 of ERISA, upon Holdings, any of its Subsidiaries or any ERISA Affiliate; (h) the engagement by Holdings, any of its Subsidiaries or any ERISA Affiliate in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; (i) a Multiemployer Plan is determined to be in “critical” or “endangered” status under Section 432 of the Code or Section 305 of ERISA, or, with respect to any Single Employer Pension Plan, a determination that it is “at risk” under Section 430 of the Code or Section 303 of ERISA; or (j) the imposition of a Lien under Section 430(k) of the Code or Section 303(k) or 4068 of ERISA.

“**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.

“**Eurodollar Rate**” means for any Interest Period with respect to a Eurodollar Rate Loan: the rate *per annum* obtained by dividing (i) (a) the rate *per annum* equal to the rate determined by the Administrative Agent to be the London interbank offered rate administered by the ICE Benchmark Administration (or any other person which takes over the administration of that rate) for deposits (for delivery on the first day of such period) with a term equivalent to such period in Dollars displayed on page LIBOR 01 of the Reuters Screen (or any replacement Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Reuters, determined as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, or (b) in the event the rate referenced in the preceding clause (a) is not available, the rate *per annum* determined by the Administrative Agent as the rate of interest equal to the offered quotation rate to major banks in the offshore Dollar market at their request by the Administrative Agent’s London Branch for deposits (for delivery on the first day of the relevant period) in Dollars of amounts in same day



funds comparable to the principal amount of the Revolving Loan, for which the Eurodollar Rate is then being determined with maturities comparable to such period as of approximately 11:00 a.m. (London, England time) on such Interest Rate Determination Date, by (ii) an amount equal to (a) one *minus* (b) the Applicable Reserve Requirement; *provided* that, if such rate *per annum* is less than zero, the Eurodollar Rate will be deemed to be zero for purposes of this Agreement.

“**Eurodollar Rate Loan**” means a Revolving Loan that bears interest at a rate based on the Eurodollar Rate.

“**Event of Default**” has the meaning specified in Section 8.01.

“**Exchange Act**” means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

“**Excluded Taxes**” means, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Credit Party under any Loan Document, (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 (other than an assignee pursuant to a request by the Borrower under Section 3.07 or 10.14) (i) any United States federal withholding Tax that is imposed on amounts payable to such Lender under any laws in effect at the time such Lender becomes a party hereto (or designates a new lending office), except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the time of designation of a new lending office (or assignment), to receive additional amounts from the Borrower with respect to such withholding Tax pursuant to Section 3.01(a) or (ii) any Tax that is attributable to such Lender’s failure to comply with Section 3.01(e) and (c) any United States federal withholding Tax that is imposed pursuant to FATCA.

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

“**Existing Credit Agreement Lenders**” has the meaning specified in the recitals.

“**Existing Credit Agreement Revolving Commitment**” means a Revolving Commitment (as defined in the Existing Credit Agreement). The amount of the aggregate Existing Credit Agreement Revolving Commitments of all Continuing Existing Credit Agreement Lenders immediately prior to the effectiveness of this Agreement is \$650,000,000.

“**Existing Revolving Commitments**” has the meaning specified in Section 2.13(c)(ii).

“**Existing Revolving Loans**” has the meaning specified in Section 2.13(c)(ii).

“**Extended Revolving Commitments**” has the meaning specified in Section 2.13(c)(ii).

“**Extended Revolving Loans**” has the meaning specified in [Section 2.13\(c\)\(ii\)](#).

“**Extended Termination Date**” has the meaning specified in [Section 2.13\(a\)](#).

“**Extension**” has the meaning specified in [Section 2.13\(a\)](#).

“**Extension Amendment**” has the meaning specified in [Section 2.13\(f\)](#).

“**Extension Offer**” has the meaning specified in [Section 2.13\(a\)](#).

“**Facility**” means, collectively, the Revolving Loans and Revolving Commitments therefor.

“**FATCA**” means current Sections 1471 through 1474 of the Code and any amended or successor version that is substantively comparable and not materially more onerous to comply with (including any United States Treasury Regulations or other official administrative guidance promulgated thereunder), any agreements entered into pursuant to Section 1471(b)(1) of the Code and any fiscal or regulatory legislation, rules or official practices adopted pursuant to any published intergovernmental agreement entered into in connection with the implementation of such sections of the Code.

“**Federal Funds Rate**” means, for any day, the greater of (i) the rate calculated by the Federal Reserve Bank of New York based on such day’s Federal funds transactions by depository institutions (as determined in such manner as the Federal Reserve Bank of New York shall set forth on its public website from time to time) and published on the next succeeding Business Day by the Federal Reserve Bank of New York as the Federal funds effective rate and (ii) 0%; *provided* that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Administrative Agent on such day on such transactions as determined by the Administrative Agent.

“**Fee Letter**” means any fee letter agreement entered into pursuant to [Section 2.08\(d\)](#).

“**Fiscal Quarter**” means any fiscal quarter of a Fiscal Year.

“**Fiscal Year**” means any period of twelve consecutive calendar months ending on December 31.

“**Fitch**” means Fitch Ratings Limited, together with any Person succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, including substantially all of its business of rating securities.

“**Foreign Lender**” means any Lender that is not a “United States Person” within the meaning of Section 7701(a)(30) of the Code.

“**Foreign Subsidiary**” means a Subsidiary (which may be a corporation, limited liability company, partnership or other legal entity) organized under the laws of a jurisdiction outside the United States.

“**FRB**” means the Board of Governors of the Federal Reserve System and any Governmental Authority succeeding to any of its principal functions.

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

“**GA Bermuda**” means Global Atlantic Re Limited, a Bermuda exempted company registered under the Bermuda Insurance Act 1978 as a Class 3A and long-term Class C insurer.

“**GAAP**” means generally accepted accounting principles set forth from time to time in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board (or agencies with similar functions of comparable stature and authority within the U.S. accounting profession), that are applicable to the circumstances as of the date of determination.

“**GAFGL**” means Global Atlantic Financial Group Limited, a company incorporated and existing under the laws of Bermuda.

“**GAFL**” has the meaning specified in the introduction to this Agreement.

~~“**GAFL**”~~“**GAFL**” means Global Atlantic Financial Life Limited, a company incorporated and existing under the laws of Bermuda.

“**Governmental Act**” means any act or omission, whether rightful or wrongful, of any present or future de jure or de facto government or Governmental Authority.

“**Governmental Authority**” means any nation or government, any state or other political subdivision thereof, any central bank (or similar monetary or regulatory authority) thereof, any entity exercising executive, legislative, judicial or regulatory functions of or pertaining to government, including any board of insurance, insurance department or insurance commissioner.

“**Guarantee**” has the meaning specified in the Guarantee Agreement.

“**Guarantee Agreement**” means the Second Amended and Restated Guarantee Agreement, dated as of the Restatement Effective Date, among the Guarantors and the Administrative Agent, substantially in the form of Exhibit E-1.

“**Guarantee Requirement**” means the requirement that the Administrative Agent shall have received from Holdings, the Borrower and each other Designated Subsidiary either (a) a counterpart to this Agreement and the Guarantee Agreement, duly executed and delivered on behalf of such Person, or (b) in the case of any Person that becomes a Designated Subsidiary after the Restatement Effective Date, a supplement to this Agreement and the Guarantee

Agreement, in the form specified in the Guarantee Agreement or otherwise reasonably acceptable to the Administrative Agent, duly executed and delivered on behalf of such Designated Subsidiary.

“**Guaranteed Obligations**” has the meaning specified in the Guarantee Agreement.

“**Guaranteed Parties**” has the meaning specified in the Guarantee Agreement.

“**Guaranteed Swap Contract**” means any Swap Contract entered into by a Credit Party with any Person that, at the time such Swap Contract is entered into, is the Administrative Agent, any Arranger, any Bookrunner or any Lender (or an Affiliate of the Administrative Agent, any Arranger, any Bookrunner or any Lender) to hedge interest rate risk of such Credit Party with respect to the Facility.

“**Guarantors**” means each of Holdings and each other Designated Subsidiary that is a party to the Guarantee Agreement. Nothing contained in this definition shall be deemed to limit the ability of any Guarantor (other than Holdings) to merge, consolidate, amalgamate or sell all or substantially all of its assets in accordance with [Section 7.07](#).

“**Hazardous Material**” means: (a) any “hazardous substance,” as defined by CERCLA; (b) any “hazardous waste,” as defined by the Resource Conservation and Recovery Act; (c) petroleum and any petroleum product; or (d) any other pollutant, contaminant, chemical, material, waste or substance in any form that is subject to regulation or, as to which, liability or standards of conduct can be imposed under any Environmental Law.

“**Historical Financial Statements**” means, as of the Restatement Effective Date, the audited consolidated balance sheets and the related consolidated statements of income, stockholders’ equity and cash flows of Holdings for the Fiscal Years ended December 31, 2016 and December 31, 2017.

“**Historical Statutory Statements**” has the meaning specified in [Section 5.11\(b\)](#).

“**Holdings**” means (a) prior to the IPO, ~~CwA MidCo~~ [GAFL](#), and (b) upon and after the IPO, the IPO Entity.

“**Hybrid Securities**” means, at any time, trust preferred securities, deferrable interest subordinated debt securities, mandatory convertible debt or other hybrid securities issued by the Borrower or any Restricted Subsidiary that is accorded at least some equity treatment by S&P or Moody’s at the time of issuance thereof.

“**Increase Amount**” means, at any time, the amount equal to (a) \$150,000,000 less (b) the aggregate amount of all New Revolving Commitments effected at or prior to such time. On the Restatement Effective Date, the Increase Amount is \$150,000,000.

“**Increased Amount Date**” has the meaning specified in [Section 2.15\(a\)](#).

“**Increasing Lender**” means (a) a Continuing Existing Credit Agreement Lender (i) whose Existing Credit Agreement Revolving Commitment immediately prior to the effectiveness

of this Agreement (as a percentage of the aggregate Existing Credit Agreement Revolving Commitments of all Continuing Existing Credit Agreement Lenders immediately prior to the effectiveness of this Agreement), was less than (ii) its Revolving Commitment upon the effectiveness of this Agreement (as a percentage of the aggregate Revolving Commitments of all Lenders upon the effectiveness of this Agreement) and (b) each New Revolving Lender.

“**Indebtedness**” means, with respect to any Person, without duplication: (a) all indebtedness of such Person for borrowed money or in respect of loans or advances; (b) all indebtedness of such Person evidenced by bonds, debentures, notes or other similar instruments; (c) all indebtedness in respect of letters of credit, whether or not drawn, and bankers’ acceptances and letters of guaranty issued for the account or upon the application or request of such Person; (d) all Capitalized Lease Liabilities of such Person; (e) the liabilities (if any) of such Person in respect of Swap Contracts as determined by reference to the Swap Termination Value thereof; (f) all obligations of such Person to pay the deferred purchase price of property or services that are included as liabilities in accordance with GAAP (other than accrued expenses incurred and trade accounts payable in each case in the ordinary course of business) and all obligations secured by a Lien on property owned or being purchased by such Person, but only to the extent of the lesser of the obligations secured or the value of the property to which such Lien is attached (including obligations arising under conditional sales or other title retention agreements); (g) any obligations of a partnership of the kind referred to in clauses (a) through (f) above or clause (h) or (i) below in which such Person is a general partner; (h) solely for purposes of Section 7.10, all obligations in respect of Hybrid Securities (other than Hybrid Securities (or the greatest portion thereof) that are treated as equity by S&P or Moody’s) of such Person; and (i) all Contingent Obligations of such Person in connection with Indebtedness or obligations of others of the kinds referred to in clauses (a) through (h) above; *provided*, that obligations under the Tax Benefit Payment Agreement shall not constitute Indebtedness.

“**Indemnified Liabilities**” has the meaning specified in Section 10.05(a).

“**Indemnified Persons**” has the meaning specified in Section 10.05(a).

“**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) of this definition, Other Taxes.

“**Insolvency Proceeding**” means, with respect to any Person, (a) any case, action or proceeding with respect to such Person before any court or other Governmental Authority relating to bankruptcy, reorganization, insolvency, liquidation, conservation, rehabilitation, receivership, dissolution, winding-up or relief of debtors or (b) any general assignment for the benefit of creditors, composition, marshaling of assets for creditors or other similar arrangement in respect of its creditors generally or any substantial portion of its creditors, in any case, undertaken under U.S. Federal, state or foreign law, including Title 11 of the United States Code.

“**Insurance Investments**” means Investments by an Insurance Subsidiary or any Subsidiary of an Insurance Subsidiary for its investment portfolio (other than such Person’s Investments in its Restricted Subsidiaries engaged in insurance lines of business) in the ordinary

course of business consistent with the policies and procedures approved by the board of directors or the investment committee (or other applicable committee) of such Insurance Subsidiary or any Subsidiary of an Insurance Subsidiary.

“**Insurance Subsidiary**” means any Subsidiary of Holdings that is or is required to be licensed as an insurer or reinsurer.

“**Intercompany Indebtedness**” means Indebtedness owed by Holdings or a Restricted Subsidiary to Holdings or a Restricted Subsidiary; *provided* that all such Indebtedness of any Credit Party owed to any Restricted Subsidiary that is not a Credit Party is unsecured and subject to the Intercompany Subordination Provisions.

“**Intercompany Subordination Provisions**” means the terms and conditions set forth on Exhibit I.

“**Interest Payment Date**” means (a) with respect to any Base Rate Loan, the last Business Day of each calendar quarter and (b) with respect to any Eurodollar Rate Loan, the last day of each Interest Period applicable to the Credit Extension of which such Revolving Loan is a part; *provided* that if any Interest Period for a Eurodollar Rate Loan exceeds three months, the date that falls three months after the beginning of such Interest Period and after each Interest Payment Date thereafter is also an Interest Payment Date (but in each case, subject to the definition of “Interest Period”).

“**Interest Period**” means, with respect to any Eurodollar Rate Loan, the period beginning on the date of the applicable Credit Extension and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as the Borrower may elect; *provided* that:

(a) if any Interest Period would otherwise end on a day that is not a Business Day, that Interest Period shall be extended to the following Business Day unless the result of such extension would be to carry such Interest Period into another calendar month, in which event such Interest Period shall end on the preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall, subject to clause (c) of this definition, end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period with respect to any portion of any Class of Revolving Loans shall extend beyond such Class’s Commitment Termination Date.

For purposes hereof, the date of a Credit Extension initially shall be the date on which such Credit Extension is made and thereafter shall be the effective date of the most recent continuation of such Credit Extension.

“**Interest Rate Determination Date**” means, with respect to any Interest Period, the date that is two (2) Business Days prior to the first day of such Interest Period.

“**Interest Type**” means, when used with respect to any Revolving Loan, whether the rate of interest on such Revolving Loan is determined by reference to the Eurodollar Rate or the Base Rate.

“**Investment**” means any advance, loan, extension of credit (by way of guaranty or otherwise) or capital contribution to, or purchase (including purchases financed with equity) of any Capital Stock, bonds, notes, obligations, debentures or other debt securities of, or any other investment in, any Person.

“**IPO**” means the consummation of the initial public offering of common Capital Stock in (a) ~~CwA MidCo GAFL~~ or (b) any Person (i) that is a Wholly-Owned Subsidiary of ~~CwA MidCo GAFL~~ immediately prior to the IPO and (ii) of which (A) the Borrower, (B) CwA, (C) GA Bermuda, (D) each Person that is an Insurance Subsidiary of ~~CwA MidCo GAFL~~ immediately prior to the IPO and (E) each Person that, immediately prior to the IPO, is a Subsidiary of ~~CwA MidCo GAFL~~ that directly or indirectly owns any Capital Stock of any Insurance Subsidiary of ~~CwA MidCo GAFL~~ (including each such Subsidiary that is itself owned by an Insurance Subsidiary of ~~CwA MidCo GAFL~~), in the case of each of clauses (A) through (E), is a Wholly-Owned Subsidiary (~~CwA MidCo GAFL~~ or such Person, as the case may be, the “**IPO Entity**”), in each case pursuant to an effective registration statement filed with the SEC pursuant to the Securities Act.

“**IRS**” means the Internal Revenue Service or any Governmental Authority succeeding to any of its principal functions under the Code.

“**Issuance Notice**” means a notice substantially in the form of Exhibit C-2.

“**Joinder Agreement**” means an agreement substantially in the form of Exhibit L.

“**Judgment Currency**” has the meaning set forth in Section 10.22(b).

“**KeyBank**” means KeyBank National Association.

“**KKR**” means KKR & Co. Inc.

“**Knowledge**” means with respect to any Person the actual knowledge of the facts, circumstances or condition by a Responsible Officer, including the chief financial officer, president, chief executive officer, treasurer, senior vice president or vice president involved in negotiating the Transactions of such Person.

“**Latest Maturity Date**” means, at any date of determination, the latest maturity or expiration date applicable to any Revolving Loan or Revolving Commitment hereunder at such time, including the latest maturity or expiration date of any Extended Revolving Commitments or Extended Revolving Loans, in each case as extended in accordance with this Agreement from time to time.

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

“**L/C Exposure**” means at any time the sum of (a) the aggregate undrawn amount of all outstanding Letters of Credit at such time and (b) the aggregate amount of all payments or disbursements made by the Lenders pursuant to a Letter of Credit that have not yet been reimbursed by or on behalf of the Borrower at such time. The L/C Exposure of any Revolving Lender at any time shall equal its Pro Rata Share of the aggregate L/C Exposure at such time.

“**Lenders**” has the meaning specified in the introduction to this Agreement and includes any other Person that shall have become a party hereto pursuant to an Assignment and Assumption in accordance with Section 10.07, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. As the context requires, the term “Lenders” includes each Limited Fronting Lender and each Participating Lender.

“**Lending Office**” means, as to any Lender, the office or offices of such Lender specified as its “Lending Office” or “Domestic Lending Office” or “Eurodollar Lending Office,” as the case may be, in its administrative questionnaire delivered to the Administrative Agent, or such other office or offices or office of a third party or sub-agent, as appropriate, as such Lender may from time to time notify the Borrower and the Administrative Agent.

“**Letter of Credit**” means a standby letter of credit issued or to be issued by the Lenders pursuant to this Agreement. Each Letter of Credit will be a Syndicated Letter of Credit.

“**Letter of Credit Sublimit**” means \$500,000,000.

“**Letter of Credit Usage**” means, as at any date of determination, the sum of (i) the maximum aggregate amount which is, or at any time thereafter may become, available for drawing under all Letters of Credit then outstanding *plus* (ii) the aggregate amount of all L/C Disbursements made by the Lenders and not theretofore reimbursed by or on behalf of the Borrower.

“**License**” means any license, certificate of authority, permit or other authorization that is required to be obtained from any Governmental Authority in connection with the operation, ownership or transaction of insurance business.

“**Lien**” means any security interest, mortgage, deed of trust, pledge, hypothecation, assignment, charge or deposit arrangement, encumbrance, lien (statutory or other) or preferential arrangement of any kind or nature whatsoever in respect of any property (including those created by, arising under or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease or any financing lease having substantially the same economic effect as any of the foregoing) and any contingent or other agreement to provide any of the foregoing, but not including the interest of a lessor under an operating lease or a licensor under a license that does not otherwise secure an obligation.

“**Limited Fronting Lender**” means, with respect to any Participating Lender, any Lender that is an NAIC Approved Bank and that has agreed in a written agreement to act as a fronting bank on behalf of such Participating Lender in accordance with Section 2.02(m), which agreement shall be in form and substance reasonably satisfactory to the Administrative Agent (such an agreement, a “**Limited Fronting Lender Agreement**”).



“**Limited Fronting Percentage**” means, with respect to any Limited Fronting Lender and any Participating Lender, the percentage (not to exceed 100%) of such Participating Lender’s Pro Rata Share of the aggregate undrawn amount of Letters of Credit in respect of which such Limited Fronting Lender has agreed to act as a fronting bank, as set forth in the Limited Fronting Lender Agreement between such Limited Fronting Lender and such Participating Lender.

“**Loan**” means either a Base Rate Loan or a Eurodollar Rate Loan, as the context may require.

“**Loan Documents**” means this Agreement and amendments of and joinders to this Agreement that are deemed pursuant to their terms to be Loan Documents for purposes hereof, all Revolving Loan Notes, the Guarantee Agreement, the Collateralized L/C Security Documents, the Fee Letters and all Extension Amendments.

“**Loan Notice**” means a notice of Credit Extension substantially in the form of Exhibit C-1.

“**Magnolia**” means Magnolia Parent LLC, a Bermuda limited liability company.

“**Margin Stock**” means “margin stock” as such term is defined in Regulation U or X of the FRB.

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the business, properties, results of operations or condition (financial or otherwise) of Holdings and its Restricted Subsidiaries taken as a whole; (b) a material impairment of the ability of any Credit Party to perform under any Loan Document to which it is a party; (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party; or (d) a material adverse change in the rights, remedies and benefits available to, or conferred upon, the Administrative Agent and any Lender under any Loan Document.

“**Material Indebtedness**” means Indebtedness having an aggregate outstanding principal amount, individually or in the aggregate, with all other Indebtedness of the Credit Parties and their respective Restricted Subsidiaries (excluding the Senior Notes, Intercompany Indebtedness, Indebtedness under the Loan Documents and Operating Indebtedness which is recourse only to a Subsidiary of the Borrower which is a special purpose life insurance captive vehicle) of not less than \$75,000,000.

“**Merger Agreement**” means the Agreement and Plan of Merger dated as of July 7, 2020, by and among GAFGL, GAFLL, Magnolia Merger Sub Limited, a Bermuda exempted company, Magnolia, and solely for Section 2.10(a) thereunder, LAMC LP, a Cayman Island exempted limited partnership, and Goldman Sachs & Co. LLC, solely as the Equity Representative.

“**Merger Outside Date**” means the earlier to occur of (i) the date on which the Merger Agreement is terminated in accordance with its terms (other than with respect to provisions therein that expressly survive termination) and (ii) the Outside Termination Date (as defined in Section 8.01(c) of the Merger Agreement as in effect on the date thereof.

as such date may be extended pursuant Section 8.01(c) or Section 9.09 of the Merger Agreement (in each case, as in effect on the date thereof).

“Mergers” means the mergers contemplated by the Merger Agreement.

“**Minimum Cash Collateral Amount**” means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 103% of the L/C Exposure of the Lenders with respect to Letters of Credit issued and outstanding at such time and (ii) otherwise, an amount determined by the Administrative Agent in its reasonable discretion.

“**Minimum Collateralized L/C Aggregate Collateral Amount**” means, as at any date of determination, 103% of the Collateralized Letter of Credit Usage.

“**MNPI**” means material non-public information (within the meaning of United States federal, state or other applicable securities laws) with respect to Holdings, the Borrower or their respective affiliates or securities.

“**Moody’s**” means Moody’s Investors Service, Inc., together with any Person succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, including substantially all of its business of rating securities.

“**Multiemployer Plan**” means a “multiemployer plan,” within the meaning of Section 4001(a)(3) of ERISA, to which Holdings, any of its Subsidiaries or any ERISA Affiliate makes, is making or is obligated to make contributions or, during the preceding six calendar years, has made, or been obligated to make, contributions.

“**NAIC**” means the National Association of Insurance Commissioners or any successor thereto, or in the absence of the National Association of Insurance Commissioners or such successor, any other association, agency or other organization performing advisory, coordination or other like functions among insurance departments, insurance commissioners and similar Governmental Authorities of the various states of the United States toward the promotion of uniformity in the practices of such Governmental Authorities.

“**NAIC Approved Bank**” means any Lender that is a bank listed on the most current “Qualified U.S. Financial Institutions List (“**QUFSI**”)” of banks approved by the NAIC.

“**Natural Person**” means a natural person or any company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person or relative(s) thereof.

“**Net Income**” means, for any Person for any period, the net income (or loss) of such Person for such period as determined, unless otherwise indicated, in accordance with GAAP.

“**Net Worth**” means the total common and preferred shareholders’ equity of any Person as determined in accordance with GAAP (calculated excluding (i) accumulated other comprehensive income (loss), (ii) any charges taken to write off any goodwill included on such Person’s balance sheet on the Restatement Effective Date to the extent such charges are required by FASB ASC 320 (Investments—Debt and Equity Securities) and ASC 350 (Intangibles—Goodwill and Others) and (iii) all noncontrolling interests (as determined in

accordance with FASB ASC 160 (Noncontrolling Interests in Consolidated Financial Statements))).

“**New Revolving Commitment**” has the meaning set forth in Section 2.15(a).

“**New Revolving Lender**” means a Revolving Lender as of the Restatement Effective Date that was not an Existing Credit Agreement Lender immediately prior to the effectiveness of this Agreement. The New Revolving Lender is Citibank, N.A..

“**New Revolving Loan**” has the meaning set forth in Section 2.15(b).

“**New Revolving Loan Lender**” has the meaning set forth in Section 2.15(a).

“**Non-Collateralized Letter of Credit**” means a Letter of Credit that is not a Collateralized Letter of Credit.

“**Non-Consenting Lender**” means a Lender that does not consent to an amendment or waiver pursuant to Section 10.01 that requires the consent of all or all affected Lenders in order to become effective and as to which Lenders holding more than 50% of the Revolving Loans and Revolving Commitments have consented.

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

“**Non-NAIC Approved Bank**” means any Person that is not an NAIC Approved Bank.

“**Non-Recourse Insurance Subsidiary Indebtedness**” means non-recourse Indebtedness of Insurance Subsidiaries and Subsidiaries thereof incurred in the ordinary course of business resulting from the sale or securitization of non-admitted assets, policy loans, CBOs and CMOs or other similar instruments and structures.

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

“**OFAC**” has the meaning set forth in the definition of “Embargoed Person”.

“**Operating Indebtedness**” of any Person means, at any date, without duplication, any Indebtedness of such Person (a) in respect of AXXX, XXX and other similar life or annuity

reserve requirements, (b) incurred in connection with repurchase agreements and securities lending, (c) to the extent the proceeds of which are used directly or indirectly (including for the purpose of funding portfolios that are used to fund trusts in order) to support AXXX, XXX and other similar life or annuity reserves, (d) to the extent the proceeds of which are used to fund discrete assets or pools of assets (and any related hedge instruments and capital) that are segregated from other assets of such Person and in the judgment of such Person have sufficient cash flow to pay principal and interest thereof, with insignificant risk of other assets of such Person being called upon to make such principal and interest payments, (e) in respect of undrawn letters of credit or drawn letters of credit that are reimbursed, issued on behalf of any Insurance Subsidiary or any Subsidiary of an Insurance Subsidiary in the ordinary course of its business for insurance regulatory or reinsurance purposes, (f) that is owed to a Federal Home Loan Bank or (g) that is excluded entirely from financial leverage by either S&P or Moody's in its evaluation of Holdings.

“**Organization Documents**” means (i) with respect to any corporation, the certificate or articles of incorporation, the bylaws, any certificate of designation or instrument relating to the rights of preferred shareholders of such corporation, any shareholder rights agreement, (ii) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement and (iii) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity, or in the case of clauses (i), (ii) and (iii), the equivalent or comparable constituent documents with respect to any Foreign Subsidiary.

“**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 the Revolving Loans, Revolving Commitments or Loan Documents).

“**Other Taxes**” means any present or future recording, stamp, court or documentary Taxes or any other excise, sales or property Taxes, charges or similar levies that arise from any payment made under this Agreement or any other Loan Document or from the execution, delivery, performance, enforcement or registration of, or otherwise with respect to, this Agreement or any other Loan Document, except any such Taxes that are Connection Income Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.07 or 10.14).

~~“**Parent**” means Global Atlantic Financial Group Limited, a company incorporated and existing under the laws of Bermuda.~~

“**Participant**” has the meaning specified in Section 10.07(d).

“**Participant Register**” has the meaning specified in Section 10.07(d).

“**Participating Lender**” means any Lender that is (a) a Non-NAIC Approved Bank or (b) unable to issue Letters of Credit for the benefit of the Borrower and its Subsidiaries due to regulatory restrictions, legal impediments or any other internal or external restrictions, in each case, on behalf of which a Limited Fronting Lender has agreed to act as a fronting bank in accordance with the definition of the term “Limited Fronting Lender” and Section 2.02(m).

“**PATRIOT Act**” has the meaning specified in Section 10.17.

“**PBGC**” means the Pension Benefit Guaranty Corporation or any Governmental Authority succeeding to any of its principal functions under ERISA.

“**Pension Plan**” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA that Holdings, any of its Subsidiaries or any ERISA Affiliate sponsors or maintains, or to which it makes, is making or is obligated to make contributions, or in the case of a multiple employer plan (as described in Section 4064(a) of ERISA) has made contributions at any time during the immediately preceding five (5) plan years.

“Permitted Holders” means any of KKR and its Subsidiaries.

“**Permitted Swap Obligations**” means all obligations (contingent or otherwise) of any Insurance Subsidiary existing or arising under Swap Contracts; *provided* that (x) each of the following criteria is satisfied: (a) such obligations are (or were) entered into by such Person in the ordinary course of business and consistent with past practices of such Person for the purpose of managing risks associated with liabilities, commitments or assets held by such Person, or changes in the value of securities issued by such Person in conjunction with a securities repurchase program not otherwise prohibited hereunder, and not for purposes of speculation or taking a “market view” and (b) such Swap Contracts do not contain any provision (a “walk-away” provision) exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party or (y) such obligations are entered into by such Person in the ordinary course of business and consistent with past practices of such Person to transfer risk that might otherwise be transferred by insurance or reinsurance transactions (and is an established line of business for such Person) and not for purposes of speculation or taking a “market view”.

“**Person**” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture or Governmental Authority or other entity of whatever nature.

“**Plan**” means an employee benefit plan (as defined in Section 3(3) of ERISA) that Holdings or any of its Subsidiaries sponsors or maintains or to which Holdings or any of its Subsidiaries makes, is making or is obligated to make, contributions and includes any Pension Plan.

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

“**Portfolio Interest Exemption**” has the meaning specified in Section 3.01(e)(B)(iii).

“**Post-IPO Offerings**” means any offering, whether public or private, of capital stock of the IPO Entity after the IPO.

“**Post-Merger Change of Control**” means (a) from and after the IPO, any acquisition, directly or indirectly, by any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Permitted Holders, of beneficial ownership (within the meaning of Rule 13d-3 of the SEC under the Exchange Act) of a percentage, on a fully diluted basis, of the outstanding shares of Voting Stock of the IPO Entity that is both (i) equal to or greater than 35% and (ii) greater than the percentage, on a fully diluted basis, of the outstanding shares of Voting Stock of the IPO Entity that is beneficially owned, directly or indirectly, by the Permitted Holders; (b) from and after the IPO, any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act), other than the Permitted Holders, shall obtain, directly or indirectly, the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of the IPO Entity (other than additional direct power of GAFGL to elect a majority of the members of the board of directors (or similar governing body) of GAFL); (c)(i) prior to the IPO, the Permitted Holders shall cease to beneficially own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the outstanding shares of Voting Stock of GAFL or (ii) Holdings shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the outstanding shares of Voting Stock of the Borrower; or (d) the occurrence of a “change of control” (howsoever defined) in any instrument governing any Indebtedness of Holdings or its Restricted Subsidiaries with an aggregate outstanding amount in excess of \$75,000,000 that constitutes an “event of default” under such other debt instrument or would constitute an “event of default” after notice or passage of time under such other debt instrument.

“**Pre-Merger Change of Control**” means (a) any acquisition, directly or indirectly, by any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) of beneficial ownership (within the meaning of Rule 13d-3 of the SEC under the Exchange Act) of 35% or more on a fully diluted basis of the outstanding shares of Voting Stock of (i) prior to the IPO, GAFL (other than the direct beneficial ownership of GAFL of additional Voting Stock of GAFL), or (ii) from and after the IPO, the IPO Entity; (b) any person or group (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act) shall obtain, directly or indirectly, the power (whether or not exercised) to elect a majority of the members of the board of directors (or similar governing body) of (i) prior to the IPO, GAFL (other than additional direct power of GAFL to elect a majority of the members of the board of directors (or similar governing body) of GAFL), or (ii) from and after the IPO, the IPO Entity (other than additional direct power of GAFL to elect a majority of the members of the board of directors (or similar governing body) of GAFL); (c)(i) prior to the IPO, GAFGL or GAFL shall cease to beneficially own and control, directly or indirectly, at least 50.1% on a fully diluted basis of the outstanding shares of Voting Stock of GAFL or (ii) Holdings shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the outstanding shares of Voting Stock of the Borrower; or (d) the occurrence of a “change of control” (howsoever defined) in any instrument governing any Indebtedness of Holdings or its Restricted Subsidiaries with an aggregate outstanding amount in excess of \$75,000,000 that constitutes an “event of

[default” under such other debt instrument or would constitute an “event of default” after notice or passage of time under such other debt instrument.](#)

“**Prepayment Notice**” means a written notice made pursuant to [Section 2.06\(e\)](#) substantially in the form of [Exhibit J](#).

“**Pricing Level**” means any of Pricing Level 1, Pricing Level 2, Pricing Level 3, Pricing Level 4 or Pricing Level 5 set forth in the table in the definition of “Applicable Margin”, “Applicable Revolving Commitment Fee Percentage” and “Applicable Non-Collateralized Letter of Credit Fee”.

“**Pro Rata Share**” means, with respect to all payments, computations and other matters relating to the Revolving Commitment or Revolving Loans of any Lender or any Letters of Credit issued by any Lender, the percentage obtained by dividing (a) the Revolving Exposure of that Lender by (b) the aggregate Revolving Exposure of all Lenders.

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

“**Public Lender**” has the meaning specified in [Section 6.02](#).

“**Purchase Money Debt**” means Indebtedness incurred by a Person in connection with the purchase of fixed or capital assets by such Person, in which assets the seller or financier thereof has taken or retained a Lien; *provided* that (x) any such Lien attaches to such assets concurrently with or within 120 days after the purchase thereof by such Person and (y) at the time of incurrence of such Indebtedness, the aggregate principal amount of such Indebtedness shall not exceed the costs of the assets so purchased plus fees and expenses reasonably related thereto.

[“OFC Credit Support” has the meaning specified in Section 10.25.](#)

“**Quarterly Statement**” means the quarterly statutory financial statement of any Insurance Subsidiary required to be filed with the insurance commissioner (or similar authority) of its jurisdiction of incorporation or, if no specific form is so required, in the form of financial statements permitted by such insurance commissioner (or such similar authority) to be used for filing quarterly statutory financial statements and shall contain the type of financial information permitted by such insurance commissioner (or such similar authority) to be disclosed therein, together with all exhibits or schedules filed therewith.

“**RBC**” means Royal Bank of Canada.

“**RBCCM**” means RBC Capital Markets, a brand name for the capital markets businesses of RBC and its Affiliates.

“**Reducing Lender**” means a Continuing Existing Credit Agreement Lender (a) whose Existing Credit Agreement Revolving Commitment immediately prior to the effectiveness of this Agreement (as a percentage of the aggregate Existing Credit Agreement Revolving Commitments of all Continuing Existing Credit Agreement Lenders immediately prior to the

effectiveness of this Agreement), was greater than (b) its Revolving Commitment upon the effectiveness of this Agreement (as a percentage of the aggregate Revolving Commitments of all Lenders upon the effectiveness of this Agreement).

“**Register**” has the meaning specified in [Section 10.07\(c\)](#).

“**Reimbursement Date**” has the meaning specified in [Section 2.02\(h\)](#).

“**Reinsurance Agreements**” means any agreement, contract, treaty, certificate or other arrangement by which any Insurance Subsidiary agrees to transfer or cede to another insurer all or part of the liability assumed or assets held by it under one or more insurance, annuity, reinsurance or retrocession policies, agreements, contracts, treaties, certificates or similar arrangements. Reinsurance Agreements shall include, but not be limited to, any agreement, contract, treaty, certificate or other arrangement that is treated as such by the applicable Department.

“**Related Parties**” means, with respect to any Person, such Person’s Affiliates and the partners (to the extent such Person is a partnership), directors, officers, employees, agents and advisors of such Person and of such Person’s Affiliates.

“**Release**” means any release, spill, emission, discharge, deposit, disposal, leaking, pumping, pouring, dumping, emptying, injection, migration or leaching into or through the Environment.

“**Reportable Event**” means any of the events set forth in Section 4043(c) of ERISA or the regulations thereunder, other than any such event for which the 30-day notice requirement under ERISA has been waived in regulations issued by the PBGC.

“**Required Lenders**” means, as of any date of determination, one or more Lenders having or holding Revolving Exposure and unused Revolving Commitments representing more than 50% of the aggregate Revolving Exposure and unused Revolving Commitments of all Revolving Lenders; *provided* that the aggregate amount of Revolving Exposure and unused Revolving Commitments shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure and unused Revolving Commitments of such Defaulting Lender.

“**Requirement of Law**” means, as to any Person, any law (statutory or common), treaty, rule or regulation or determination of an arbitrator or of a Governmental Authority and orders of, and all applicable restrictions imposed by, all Governmental Authorities, in each case applicable to or legally binding upon the Person or any of its property or to which the Person or any of its property is subject.

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

“**Responsible Officer**” means the chief executive officer, president, chief financial officer, treasurer or assistant treasurer, or other officer of similar stature or responsibility, of a Credit Party. Any document delivered under any Loan Document that is signed by a Responsible



Officer of a Credit Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Credit Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Credit Party. Unless otherwise specified, "Responsible Officer" means a Responsible Officer of Holdings.

"**Restatement Effective Date**" means May 21, 2018, or, if later, the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01.

"**Restricted Payments**" has the meaning set forth in Section 7.08.

"**Restricted Subsidiary**" means any Subsidiary other than an Unrestricted Subsidiary; *provided* that upon the occurrence of any Unrestricted Subsidiary ceasing to be an Unrestricted Subsidiary, such Subsidiary shall be included in the definition of "Restricted Subsidiary".

"**Revolving Commitment**" means the commitment of a Lender to make or otherwise fund any Revolving Loan and to issue Letters of Credit hereunder (or, in the case of a Participating Lender, to acquire participations in Letters of Credit hereunder pursuant to Section 2.02(m)), and "**Revolving Commitments**" means such commitments of all Lenders in the aggregate. The amount of each Lender's Revolving Commitment, if any, is set forth on Appendix A or in the applicable Assignment and Assumption or Joinder Agreement, as applicable, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Revolving Commitments as of the Restatement Effective Date is \$1,000,000,000.

"**Revolving Commitment Period**" means the period from the Restatement Effective Date to but excluding the Commitment Termination Date.

"**Revolving Exposure**" means, with respect to any Lender as of any date of determination, the sum of (a) the aggregate outstanding principal amount of the Revolving Loans of that Lender and (b) the aggregate Letter of Credit Usage in respect of all Letters of Credit issued by that Lender.

"**Revolving Lender**" means a Lender having a Revolving Commitment.

"**Revolving Loan**" means a Loan made by a Lender to the Borrower pursuant to Section 2.01(a).

"**Revolving Loan Note**" means a promissory note in the form of Exhibit B, as it may be amended, restated, supplemented or otherwise modified from time to time.

"**S&P**" means Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business, together with any Person succeeding thereto by merger, consolidation or acquisition of all or substantially all of its assets, including substantially all of its business of rating securities.

"**SAP**" means, with respect to any Insurance Subsidiary, the statutory accounting practices prescribed or permitted by the insurance commissioner (or other similar authority) in the jurisdiction of such Insurance Subsidiary for the preparation of annual statements and other

financial reports by insurance companies of the same type as such Insurance Subsidiary that are applicable to the circumstances as of the date of filing of such statement or report.

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

“Secured Parties” has the meaning specified in the Collateralized L/C Security and Control Agreement.

“Securities Act” means the Securities Act of 1933 and the regulations promulgated thereunder.

“Security and Control Agreement” means the Second Amended and Restated Security and Control Agreement, dated as of the Restatement Effective Date, among the Borrower, the Administrative Agent and the Custodian.

“Senior Notes” means the \$150,000,000 8.625% Senior Notes due 2021 issued by Forethought Financial Group, Inc., a Delaware corporation (which merged with and into the Borrower, with the Borrower as the surviving entity).

“Single Employer Pension Plan” means a pension plan (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, other than a Multiemployer Plan, that Holdings, any of its Subsidiaries or any ERISA Affiliate sponsors or maintains, or to which Holdings, any of its Subsidiaries or any ERISA Affiliate makes or is obligated to make contributions or could reasonably be expected to have liability, including any liability by reason of having been a substantial employer within the meaning of Section 4063 of ERISA at any time during the preceding five years or by reason of being deemed to be a contributing sponsor under Section 4069 of ERISA.

“Specified Currency” has the meaning set forth in [Section 10.22\(a\)](#).

“Specified Place” has the meaning set forth in [Section 10.22\(a\)](#).

“Subordinated Indebtedness” means any Indebtedness of Holdings or any Restricted Subsidiary that is subordinated in right of payment to the Obligations.

“Subsidiary” of a Person means any corporation, partnership, limited liability company, limited liability partnership, joint venture, trust, association or other unincorporated organization of which or in which such Person and such Person’s Subsidiaries own directly or indirectly more than 50% of (a) the combined voting power of all classes of stock having general voting power under ordinary circumstances to elect a majority of the board of directors, if it is a corporation, (b) the voting or managing interests (which shall mean the general partner in the case of a partnership), if it is a partnership, joint venture or similar entity, (c) the beneficial interest, if it is a trust, association or other unincorporated organization or (d) the voting or managing membership interests, if it is a limited liability company. Unless otherwise specified, “Subsidiary” means a Subsidiary of Holdings. Unless otherwise specified, when used herein, the term “Subsidiary” of KKR shall not include any portfolio company of KKR or any of its Subsidiaries. For the avoidance of doubt, from and after the consummation of the

Mergers, neither Holdings nor any of its Subsidiaries shall be considered a portfolio company of KKR or any of its Subsidiaries.

“**Successor Entity**” has the meaning specified in Section 7.07(c).

“Supported OFC” has the meaning specified in Section 10.25.

“**Surplus Debentures or Notes**” means, as to any Insurance Subsidiary, debt securities or notes of such Insurance Subsidiary issued to Holdings or any of its Subsidiaries the proceeds of which are permitted to be included, in whole or in part, as Capital and Surplus of such Insurance Subsidiary as approved and permitted by the applicable Department and are of a type generally described in the insurance industry as a “surplus note”.

“**Swap Contract**” means any agreement relating to any transaction (whether or not arising under a master agreement) that is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap or option, bond, note or bill option, interest rate option, futures contract, forward foreign exchange transaction, cap, collar or floor transaction, currency swap, cross-currency rate swap, swaption, currency option, credit derivative transaction or any other similar transaction (including any option to enter into any of the foregoing) or any combination of the foregoing, and any master agreement relating to or governing any or all of the foregoing.

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

“**Syndicated Letter of Credit**” means a single multi-bank letter of credit issued by all of the Lenders (acting through the Administrative Agent in accordance with the provisions hereof) in which each Lender, as an issuing bank thereunder, has a several (but not joint) obligation in respect of a specified portion of the amount of such Letter of Credit.

“**Syndication Agents**” means, collectively, RBC, US Bank and Wells Fargo and their respective successors and assigns in such capacity.

“**Synthetic Purchase Agreement**” means any agreement pursuant to which Holdings or any of its Subsidiaries is or may become obligated to make (a) any payment in connection with the purchase by any third party from a Person other than Holdings or any of its Subsidiaries (other than any Subsidiary that is a Subsidiary of an Insurance Subsidiary but is not itself an Insurance Subsidiary) of any Capital Stock or Subordinated Indebtedness of Holdings or any of its Subsidiaries (other than any Subsidiary that is a Subsidiary of an Insurance Subsidiary but is not itself an Insurance Subsidiary) or (b) any payment the amount of which is determined by reference to the price or value at any time of any such Capital Stock or Subordinated

Indebtedness; *provided* that (i) no phantom stock or similar plan providing for payments only to current or former directors, officers or employees of Holdings or any of its Subsidiaries (or to their heirs or estates) and (ii) no such agreement in respect of any Disposition of any Capital Stock of a Subsidiary of Holdings that is permitted by Section 7.03 shall in either case be deemed to be a Synthetic Purchase Agreement.

“**Tax Benefit Payment Agreement**” means the Tax Benefit Payment Agreement, dated as of April 30, 2013, among the Borrower, as Payor, ~~GAFI~~GAFLL, as Intermediate Guarantor, ~~Parent~~GAFGL, as Parent Guarantor and The Goldman Sachs Group, Inc., as Payee.

“**Tax Status Certificate**” has the meaning specified in Section 3.01(e)(B)(iii).

“**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.

“**Total Capitalization**” means, without duplication, (a) the amount described in clause (a) of the definition of “Debt to Total Capitalization Ratio” *plus* (b) the Net Worth of the applicable Person.

“**Total Utilization of Revolving Commitments**” means, as at any date of determination, the sum of (i) the aggregate principal amount of all outstanding Revolving Loans *plus* (ii) the Letter of Credit Usage.

“**Transactions**” means the (i) execution, delivery and performance by each Credit Party of the Loan Documents to which it is to be a party, (ii) borrowing of Loans, use of the proceeds thereof and issuance of Letters of Credit hereunder and (iii) payment of fees and expenses incurred in connection with the foregoing.

“**Transaction Parties**” has the meaning specified in Section 5.07(d).

“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.

“**Unfunded Pension Liability**” means the excess of a Pension Plan’s benefit liabilities under Section 4001(a)(16) of ERISA over the current value of that Pension Plan’s assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to Section 430 of the Code for the applicable plan year.

“**Uniform Commercial Code**” means the Uniform Commercial Code as in effect from time to time in the State of New York; *provided* that, if perfection or the effect of perfection or non-perfection or the priority of any Collateralized L/C Lien on any Collateralized L/C Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than New York, “Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

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

“**Unrestricted Subsidiary**” means any Subsidiary designated by the board of directors (or similar governing body) of (a) Holdings or (b) if such Subsidiary is a Subsidiary of the Borrower, the Borrower, as an Unrestricted Subsidiary pursuant to [Section 6.14](#) subsequent to the date hereof. Holdings or the Borrower may designate any subsidiary (including any existing Subsidiary and any newly acquired or newly formed Subsidiary) to be an Unrestricted Subsidiary unless such Subsidiary or any of its subsidiaries owns any Capital Stock or Indebtedness of, or owns or holds any Lien on any property of, Holdings or any Subsidiary (other than any subsidiary of the subsidiary to be so designated); *provided* that (i) each of (A) the subsidiary to be so designated and (B) its subsidiaries has not at the time of designation, and does not thereafter, create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender has recourse to any of the assets of Holdings or any Restricted Subsidiary, (ii) neither Holdings nor the Borrower may designate (A) the Borrower, (B) any Insurance Subsidiary or (C) any Subsidiary of Holdings or the Borrower that directly or indirectly owns any Capital Stock of any Insurance Subsidiary (including any such Subsidiary of Holdings or the Borrower that is itself owned by an Insurance Subsidiary) to be an Unrestricted Subsidiary and (iii) for the avoidance of doubt, there shall be no Unrestricted Subsidiaries on the Restatement Effective Date.

“**US Bank**” means U.S. Bank National Association.

[“\*\*U.S. Special Resolution Regimes\*\*” has the meaning specified in Section 10.25.](#)

“**Voting Stock**” of any Person means Capital Stock of such Person entitling the holders thereof (whether at all times or only so long as no senior class of stock or other relevant equity interest has voting power by reason of any contingency) to vote in the election of the board of directors or similar governing body of such Person.

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

“**Wells Fargo**” means Wells Fargo Bank, National Association.

“WFS” means Wells Fargo Securities, LLC.

“Wholly-Owned Subsidiary” means any Person in which all of the Capital Stock (other than directors’ and national citizen qualifying shares or similar *de minimis* holdings by another Person, in each case, as required by law) is owned, beneficially and of record, by Holdings, or by one or more of the other Wholly-Owned Subsidiaries, or both.

“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 *Other Interpretive Provisions.*

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.
- (b) The words “hereof,” “herein,” “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and subsection, Section, Article, Schedule and Exhibit references are to this Agreement unless otherwise specified.
- (c)
  - (i) The term “documents” includes any and all instruments, documents, agreements, certificates, indentures, notices and other writings, however evidenced.
  - (ii) The term “including” is not limiting and means “including without limitation”.
  - (iii) 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”.
  - (iv) The term “will” shall be construed to have the same meaning and effect as the word “shall”.
- (d) Unless otherwise expressly provided herein or the context requires otherwise, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent such amendments and other modifications are not prohibited by the terms of any Loan Document, (ii) references to any statute or regulation are to be construed as including all

statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting the statute or regulation, (iii) any reference herein to a Person shall be construed to include such Person's permitted successors and assigns and (iv) the word "**property**" shall be construed to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(e) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(f) This Agreement and other Loan Documents may use several different limitations, tests or measurements to regulate the same or similar matters. All such limitations, tests and measurements are cumulative and shall each be performed in accordance with their terms.

(g) This Agreement and the other Loan Documents are the result of negotiations among, and have been reviewed by counsel to, the Administrative Agent, the Borrower and the other parties, and are the products of all parties. Accordingly, they shall not be construed against the Lenders or the Administrative Agent merely because of the Administrative Agent's or Lenders' involvement in their preparation.

Section 1.03 *Classification of Loans.* For purposes of this Agreement, Loans may be classified and referred to by Interest Type (e.g., a "Eurodollar Rate Loan").

Section 1.04 *Accounting Principles.*

(a) Unless the context otherwise clearly requires, all accounting terms not expressly defined herein shall be construed, and all financial computations required under this Agreement shall be made, in accordance with GAAP as in effect from time to time, consistently applied. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of Holdings and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) References herein to particular columns, lines or sections of any Person's Annual Statement shall be deemed, where appropriate, to be references to the corresponding column, line or section of such Person's Quarterly Statement, or if no such corresponding column, line or section exists or if any report form changes, then to the corresponding item referenced thereby. In the event the columns, lines or sections of the Annual Statement or Quarterly Statement referenced herein are changed or renumbered from the columns, lines and sections applicable to the 2017 Annual Statement, or the September 30, 2017 Quarterly Statement, all such references shall be deemed references to such column, line or section as so renumbered or changed.

(i) If, at any time after the date of this Agreement, any material change is made to GAAP or Holdings' accounting practices that would affect in any material respect the determination of compliance with the covenants set forth in this Agreement, Holdings shall notify the Administrative Agent of the change and Holdings and the Administrative Agent shall negotiate in good faith to amend such covenant, subject to the approval of the Required Lenders, to restore Holdings and the Lenders to the position

they occupied before the implementation of such material change in GAAP or accounting practices; *provided* that if Holdings and the Administrative Agent are unable to reach agreement within sixty (60) days following the implementation of such material change, the Administrative Agent shall be permitted, acting in good faith, to make such amendments, in each case subject to the approval of the Required Lenders, to the covenants set forth in this Agreement as it reasonably determines are necessary to restore Holdings and the Lenders to the position they occupied prior to the implementation thereof.

**Section 1.05**     **Divisions.**

**(a) Solely with respect to Sections 6.11 and 7.03, 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 2  
THE CREDITS

Section 2.01     *Revolving Loans.*

(a)     **Revolving Commitments.** During the Revolving Commitment Period, subject to the terms and conditions hereof, each Lender with a Revolving Commitment severally agrees to make Revolving Loans in Dollars to the Borrower; *provided* that, after giving effect to the making of any Revolving Loans, in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect. Amounts borrowed pursuant to this Section 2.01(a) may be repaid and reborrowed during the Revolving Commitment Period. Each Revolving Commitment shall expire on the Commitment Termination Date and all Revolving Loans and all other amounts owed hereunder with respect to the Revolving Loans and the Revolving Commitments shall be paid in full no later than such date.

(b)     **Borrowing Mechanics for Revolving Loans.**

(i)     Except pursuant to Section 2.02(h) or 2.02(l)(vi), Revolving Loans shall be made in an aggregate minimum amount of \$2,500,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii)    Whenever the Borrower desires that Lenders make Revolving Loans, the Borrower shall deliver to the Administrative Agent a fully executed and delivered Loan Notice no later than 10:00 a.m. (New York City time) (A) in the case of a Eurodollar Rate Loan, at least three (3) Business Days in advance of the proposed Borrowing Date, (B) in the case of one or more Base Rate Loans in an aggregate principal amount greater than \$100,000,000, at least one (1) Business Day in advance of the proposed Borrowing Date, and (C) in the case of one or more Base Rate Loans in an aggregate principal



amount equal to or less than \$100,000,000, on the proposed Borrowing Date; *provided* that, if such Borrowing Date is the Restatement Effective Date, such Loan Notice may be delivered within such period shorter than three (3) Business Days as may be agreed by the Administrative Agent with respect to Eurodollar Rate Loans. Except as otherwise provided herein, a Loan Notice for a Revolving Loan that is a Eurodollar Rate Loan shall be irrevocable on and after the related Interest Rate Determination Date.

(iii) Notice of receipt of each Loan Notice in respect of Revolving Loans, together with the amount of each Lender's Pro Rata Share thereof, if any, together with the applicable interest rate, shall be provided by the Administrative Agent to each applicable Lender by facsimile or other electronic communication with reasonable promptness, but (*provided* that the Administrative Agent shall have received such notice by 10:00 a.m. (New York City time)) not later than 3:00 p.m. (New York City time) (or, in the case of a Loan Notice delivered pursuant to Section 2.01(b)(ii)(C), 12:00 noon (New York City time)) on the same day as the Administrative Agent's receipt of such Loan Notice from the Borrower.

(iv) Each Lender shall make the amount of its Revolving Loan available to the Administrative Agent not later than 12:00 noon (New York City time) (or, in the case of Base Rate Loans with respect to which a Loan Notice is delivered pursuant to Section 2.01(b)(ii)(C), 2:00 p.m. (New York City time)) on the applicable Borrowing Date by wire transfer of same day funds in Dollars, at the Administrative Agent's Office. Except as provided herein, upon satisfaction or waiver of the conditions precedent specified herein, the Administrative Agent shall make the proceeds of such Revolving Loans available to the Borrower on the applicable Borrowing Date by causing an amount of same day funds in Dollars equal to the proceeds of all such Revolving Loans received by the Administrative Agent from Lenders to be credited to the account of the Borrower at the Administrative Agent's Office or to such other account or accounts as may be designated in writing to the Administrative Agent by the Borrower.

Section 2.02 *Issuance of Letters of Credit.*

(a) Letters of Credit. During the Revolving Commitment Period, subject to the terms and conditions hereof (including Section 2.02(m)), the Lenders shall issue Letters of Credit in respect of which the Borrower is the applicant (or, so long as the Borrower is a joint and several co-applicant in respect thereof, any Subsidiary is the applicant; *provided* that, with respect to any such Subsidiary, the Borrower shall have designated such Subsidiary to the Administrative Agent in writing as an applicant of Letters of Credit at least seven (7) Business Days prior to the delivery by the Borrower of the Issuance Notice with respect to the first Letter of Credit in respect of which such Subsidiary is the applicant, and any Lender shall have been provided with documentation and other information it reasonably determines are required by bank regulatory authorities under applicable "know-your-customer" and Anti-Money Laundering Laws, including the PATRIOT Act, at least five (5) Business Days prior to the delivery of such Issuance Notice as has been reasonably requested in writing at least six (6) Business Days prior to the delivery of such Issuance Notice) for the support of obligations of Holdings and/or its Subsidiaries in an aggregate amount up to but not exceeding the Letter of Credit Sublimit; *provided*, (i) each Letter of Credit shall be a standby letter of credit denominated in Dollars; (ii) the stated amount of each

Letter of Credit shall not be less than \$500,000 or such lesser amount as is acceptable to the Administrative Agent; (iii) after giving effect to such issuance, in no event shall the Total Utilization of Revolving Commitments exceed the Revolving Commitments then in effect; (iv) after giving effect to such issuance, in no event shall the Letter of Credit Usage exceed the Letter of Credit Sublimit; (v) after giving effect to the issuance of any Collateralized Letter of Credit, in no event shall the Collateralized L/C Aggregate Collateral Amount be less than the Minimum Collateralized L/C Aggregate Collateral Amount; (vi) in no event shall any Letter of Credit have an expiration date later than the earlier of (A) five (5) days prior to the Commitment Termination Date (unless such Letter of Credit shall on the date of issuance have been Cash Collateralized in the Minimum Cash Collateral Amount which Letter of Credit, for the avoidance of doubt, shall not have an expiration date later than twelve (12) months (or, if required by the applicable Department, thirteen (13) months) after the Commitment Termination Date) and (B) the date which is one (1) year from the date of issuance of such Letter of Credit (or, if required by the applicable Department, thirteen (13) months from the date of issuance of such Letter of Credit); (vii) in no event shall any Letter of Credit be issued if such issuance would violate any Requirement of Law; (viii) in no event shall any Letter of Credit be issued if such Letter of Credit is otherwise unacceptable to the Administrative Agent in its reasonable discretion; and (ix) each Letter of Credit shall be substantially in the form of the Administrative Agent's customary form; *provided, further*, that, without the prior consent of each Lender, no Letter of Credit may be issued that would vary the several and not joint nature of the obligations of the Lenders thereunder and, subject to Section 2.02(m), each Letter of Credit shall be issued by all of the Lenders having Revolving Commitments at the time of issuance as a single multi-bank letter of credit, but the obligation of each Lender thereunder shall be several and not joint, based upon its Pro Rata Share of the aggregate undrawn amount of such Letter of Credit (subject to Section 2.02(m)). Subject to the foregoing, the Administrative Agent may agree that a Letter of Credit will automatically be extended for one or more successive periods not to exceed one year each, unless the Administrative Agent elects not to extend for any such additional period; *provided*, that the Administrative Agent shall not extend any such Letter of Credit if (i) it has received written notice from a Lender or the Borrower that an Event of Default has occurred and is continuing at least two (2) Business Days prior to the time the Administrative Agent must elect to allow such extension; *provided, further*, if a Letter of Credit will not be renewed, the Administrative Agent shall notify the Borrower and the beneficiary of such Letter of Credit of such non-renewal or (ii) such renewal would occur later than five (5) days prior to the Commitment Termination Date (unless such Letter of Credit shall on the date of renewal have been Cash Collateralized in the Minimum Cash Collateral Amount which Letter of Credit, for the avoidance of doubt, shall not have an expiration date later than twelve (12) months (or, if required by the applicable Department, thirteen (13) months) after the Commitment Termination Date).

(b) Notice of Issuance, Amendment, Renewal or Extension. Whenever the Borrower desires the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), it shall deliver to the Administrative Agent an Issuance Notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying (i) the date of issuance, amendment, renewal or extension, as the case may be (which shall be a Business Day), (ii) the date on which such Letter of Credit is to expire (which shall comply with Section 2.02(a)), (iii) the amount of such Letter of Credit, (iv) the name and address of the beneficiary thereof, (v) in the case of the issuance of a Letter of

Credit, whether such Letter of Credit will be a Non-Collateralized Letter of Credit or a Collateralized Letter of Credit and (vi) the other terms and conditions of (and such other information as shall be necessary to prepare, amend, renew or extend, as the case may be) such Letter of Credit no later than 11:00 a.m. (New York City time) at least ten (10) Business Days, or such shorter period as may be agreed to by the Administrative Agent in any particular instance, in advance of the proposed date of issuance, amendment, renewal or extension, as the case may be. Upon receipt by the Administrative Agent of an Issuance Notice, the Administrative Agent shall deliver to each Lender with a Revolving Commitment a copy of such Issuance Notice; *provided* that any failure to deliver or delay in delivering a copy of such Issuance Notice shall not relieve any Lender of its obligations under this Section 2.02. In connection with any request for a Collateralized Letter of Credit, the Borrower shall deliver to the Administrative Agent a Collateralized L/C Collateral Certificate no later than 11:00 a.m. (New York City time) on the Business Day immediately preceding the date of issuance of such Collateralized Letter of Credit, confirming that the Collateralized L/C Aggregate Collateral Amount after giving effect to such issuance shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount. If requested by the Administrative Agent, the Borrower also shall submit a letter of credit application on the Administrative Agent's standard form in connection with any request for a Letter of Credit. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the Borrower to, or entered into by the Borrower with the Administrative Agent relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Upon the issuance, renewal or extension of any Letter of Credit or amendment or modification to a Letter of Credit, the Administrative Agent shall notify each Lender with a Revolving Commitment of such issuance and the amount of such Lender's respective L/C Exposure in such Letter of Credit and deliver to such Lender a copy of such Letter of Credit; *provided* that any failure to give or delay in giving such notice or any failure to deliver or delay in delivering a copy of such Letter of Credit shall not relieve any Lender of its obligations under this Section 2.02.

(c) Obligation of Lenders. With respect to any Letter of Credit, the obligation of any Lender under such Letter of Credit shall be several and not joint and shall at any time be in an amount equal to such Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit (subject to Section 2.02(m)), and each Letter of Credit shall expressly so provide.

(d) Adjustment of Pro Rata Shares. Upon (i) each addition of a new Lender hereunder, (ii) each change in the Revolving Commitment of a Lender pursuant to this Agreement and (iii) each change in status of a Lender as a Participating Lender, then in the case of each outstanding Letter of Credit, without the consent of the beneficiary thereunder unless required under such Letter of Credit or applicable law (including, if applicable, the Uniform Customs and Practices for Documentary Credits governing such Letter of Credit), the Administrative Agent shall promptly amend such Letter of Credit to specify the Lenders that are parties thereto, after giving effect to such event, and such Lenders' respective Pro Rata Shares as of the effective date of such amendment (subject to Section 2.02(m)). However, it is acknowledged by the Administrative Agent and the Lenders that amendments of outstanding Letters of Credit may not be immediately effected and may be subject to the consent of the beneficiaries of such Letters of Credit. Accordingly, whether or not Letters of Credit are amended as contemplated hereby, the Lenders agree that they shall purchase and sell

participations or otherwise make or effect such payments among themselves (but through the Administrative Agent) so that payments by the Lenders of drawings under Letters of Credit and payments by the Borrower of L/C Disbursements made by the Lenders and interest thereon are, except as otherwise expressly set forth herein (including with respect to Limited Fronting Lenders and Defaulting Lenders), in each case shared by the Lenders in accordance with the Revolving Commitments of the Lenders from time to time in effect.

(e) Issuance and Administration of Letters of Credit. With respect to each Letter of Credit, such Letter of Credit shall be executed and delivered by the Administrative Agent in the name and on behalf of, and as attorney-in-fact for, the Lenders party to such Letter of Credit, and the Administrative Agent shall act as the agent of each such Lender to (i) receive drafts, other demands for payment and other documents presented by the beneficiary under such Letter of Credit, (ii) determine whether such drafts, demands and documents are in compliance with the terms and conditions of such Letter of Credit and (iii) notify such Lender and the Borrower that a valid drawing has been made and the date that the related disbursement is to be made; *provided* that the Administrative Agent shall have no obligation or liability for any disbursement under such Letter of Credit, and each Letter of Credit shall expressly so provide. Each Lender hereby irrevocably appoints and designates the Administrative Agent as its attorney-in-fact, acting through any duly authorized officer of the Person that is serving as the Administrative Agent, to execute and deliver in the name and on behalf of such Lender each Letter of Credit (together with any amendment, extension or renewal thereof) to be issued by the Lenders hereunder. Promptly upon the request of the Administrative Agent, each Lender will furnish to the Administrative Agent such powers of attorney or other evidence as any beneficiary of any such Letter of Credit may reasonably request in order to demonstrate that the Administrative Agent has the power to act as attorney-in-fact for such Lender to execute and deliver each Letter of Credit (together with any amendment, extension or renewal thereof).

(f) Responsibility of Administrative Agent With Respect to Requests for Drawings and Payments. In determining whether to honor any drawing under any Letter of Credit by the beneficiary thereof, the Administrative Agent shall be responsible only to examine the documents delivered under such Letter of Credit with reasonable care so as to ascertain whether they appear on their face to be in substantial compliance with the terms and conditions of such Letter of Credit. As between the Borrower and the Administrative Agent, the Borrower assumes all risks of the acts and omissions of, or misuse of the Letters of Credit issued by the Administrative Agent by, the respective beneficiaries of such Letters of Credit. In furtherance and not in limitation of the foregoing, the Administrative Agent shall not be responsible for: (i) the form, validity, sufficiency, accuracy, genuineness or legal effect of any document submitted by any party in connection with the application for and issuance of any such Letter of Credit or any document presented by a beneficiary in connection with a drawing under any such Letter of Credit, even if it should in fact prove to be in any or all respects invalid, insufficient, inaccurate, fraudulent or forged; (ii) the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign any such Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; (iii) failure of the beneficiary of any such Letter of Credit to comply fully with any conditions required in order to draw upon such Letter of Credit; (iv) errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex or otherwise, whether or not they be in cipher; (v) errors in interpretation of technical

terms; (vi) any loss or delay in the transmission or otherwise of any document required in order to make a drawing under any such Letter of Credit or of the proceeds thereof; (vii) the misapplication by the beneficiary of any such Letter of Credit of the proceeds of any drawing under such Letter of Credit; or (viii) any consequences arising from causes beyond the control of the Administrative Agent, including any Governmental Acts; none of the above shall affect or impair, or prevent the vesting of, any of the Administrative Agent's rights or powers hereunder. Without limiting the foregoing and in furtherance thereof, any action taken or omitted by the Administrative Agent under or in connection with the Letters of Credit or any documents and certificates delivered thereunder, if taken or omitted in good faith (as defined under Article 5 of the Uniform Commercial Code as adopted by the State of New York), shall not give rise to any liability on the part of the Administrative Agent to the Borrower. Notwithstanding anything to the contrary contained in this Section 2.02(f), the Borrower shall retain any and all rights it may have against the Administrative Agent for any direct damages (as opposed to special, indirect, consequential or punitive damages, which claims are hereby waived by the Borrower to the extent permitted under applicable law) suffered by the Borrower arising solely out of the gross negligence or willful misconduct of the Administrative Agent in determining whether documents delivered under any Letter of Credit substantially comply with the terms thereof as determined by a final, non-appealable judgment of a court of competent jurisdiction.

(g) Disbursement Procedures. The Administrative Agent shall, within a reasonable time following its receipt thereof, examine all documents purporting to represent a demand for payment under any Letter of Credit. The Administrative Agent shall promptly after such examination notify each of the Lenders by telephone (confirmed by telecopy or electronic mail) of such demand for payment. With respect to any drawing properly made under any such Letter of Credit, as determined by the Administrative Agent, subject to Section 2.02(m), each Lender will make an L/C Disbursement in respect of such Letter of Credit in accordance with its liability under such Letter of Credit and this Agreement, such L/C Disbursement to be made in Dollars to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. The Administrative Agent will make any such L/C Disbursement available to the beneficiary of such Letter of Credit by promptly crediting the amounts so received, in like funds in Dollars, to the account identified by such beneficiary in connection with such demand for payment. Promptly following any L/C Disbursement by any Lender in respect of any such Letter of Credit, the Administrative Agent will notify the Borrower of such L/C Disbursement; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Lenders with respect to any such L/C Disbursement.

(h) Reimbursement by the Borrower of Amounts Drawn or Paid Under Letters of Credit. In the event the Borrower has received a notice of any L/C Disbursement made pursuant to Section 2.02(g), the Borrower shall reimburse each Lender in respect of any such L/C Disbursement by paying to the Administrative Agent on or before the Business Day immediately following the date of such L/C Disbursement, but in no event later than the third (3rd) Business Day immediately following the date of such L/C Disbursement (the "**Reimbursement Date**") in an amount in Dollars and in same day funds equal to the amount of such L/C Disbursement; *provided* that any failure to give or delay in giving such notice shall not relieve the Borrower of its obligation to reimburse the Administrative Agent and the Lenders once such notice is delivered; *provided, further*, that anything contained herein to the contrary notwithstanding,

(i) unless the Borrower shall have notified the Administrative Agent prior to 10:00 a.m. (New York City time) on the date of such L/C Disbursement that the Borrower intends to reimburse the Administrative Agent for the amount of such L/C Disbursement with funds other than the proceeds of Revolving Loans, the Borrower shall be deemed to have given a timely Loan Notice to the Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Reimbursement Date in an amount in Dollars equal to such L/C Disbursement, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Lenders with Revolving Commitments shall, on the Reimbursement Date, make Revolving Loans that are Base Rate Loans in the amount of such L/C Disbursement, the proceeds of which shall be applied directly by the Administrative Agent to reimburse each Lender for its Pro Rata Share of such L/C Disbursement; *provided, further*, if for any reason (including, without limitation, by reason of exceeding the Revolving Commitments) proceeds of Revolving Loans are not received by the Administrative Agent on the Reimbursement Date in an amount equal to the amount of such L/C Disbursement, then the Borrower shall reimburse the Administrative Agent, on demand, in an amount in same day funds equal to the excess of the amount of such L/C Disbursement over the aggregate amount of such Revolving Loans, if any, which are so received. Nothing in this Section 2.02(h) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.02(h).

(i) Obligations Absolute. The obligation of the Borrower to reimburse the Administrative Agent, on behalf of the Lenders, for L/C Disbursements and to repay any Revolving Loans made by Lenders pursuant to Section 2.02(h) shall be absolute, unconditional and irrevocable and shall be paid strictly in accordance with the terms hereof under all circumstances including any of the following circumstances: (i) any lack of validity or enforceability of any Letter of Credit; (ii) the existence of any claim, set-off, defense or other right which the Borrower or any Lender may have at any time against a beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such transferee may be acting), Administrative Agent, Lender or any other Person or, in the case of a Lender, against the Borrower, whether in connection herewith, the transactions contemplated herein or any unrelated transaction (including any underlying transaction between the Borrower or one of its Subsidiaries and the beneficiary for which any Letter of Credit was procured); (iii) any draft or other document presented under any 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; (iv) payment by the Administrative Agent under any Letter of Credit against presentation of a draft or other document which does not substantially comply with the terms of such Letter of Credit; (v) any adverse change in the business, operations, properties, assets, condition (financial or otherwise) or prospects of Holdings or any of its Subsidiaries; (vi) any breach hereof or of any other Loan Document by any party hereto or thereto; (vii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing; or (viii) the fact that an Event of Default or a Default shall have occurred and be continuing.

(j) Indemnification. Without duplication of any obligation of the Borrower under Section 10.04 or 10.05, in addition to amounts payable as provided herein, the Borrower hereby agrees to protect, indemnify, pay and save harmless Administrative Agent from and against any

and all claims, demands, liabilities, damages, losses, costs, charges and expenses (including reasonable fees, expenses and disbursements of one outside counsel) which the Administrative Agent may incur or be subject to as a consequence, direct or indirect, of (i) the issuance or wrongful dishonor of any Letter of Credit by the Administrative Agent, other than as a result of the gross negligence or willful misconduct of the Administrative Agent as determined by a final, non-appealable judgment of a court of competent jurisdiction or (ii) the failure of the Administrative Agent to honor a drawing under any such Letter of Credit as a result of any Governmental Act.

(k) Cash Collateralization. If (i) any Event of Default shall occur and be continuing, on the Business Day that the Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the Loans have been accelerated pursuant to Section 8.02, Lenders with L/C Exposure representing greater than 50% of the total L/C Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, or (ii) at any time, the Letter of Credit Usage exceeds the Letter of Credit Sublimit, the Borrower shall deposit in an account with the Administrative Agent, in the name of the Administrative Agent and for the benefit of the Lenders, an amount in cash equal to 103% of the L/C Exposure (less the Collateralized Letter of Credit Usage) as of such date in Dollars plus any accrued and unpaid interest thereon (or, in the case of clause (ii), an amount in cash equal to 103% of such excess); *provided* that the obligation to deposit such Cash Collateral shall become effective upon notice from the Administrative Agent to the Borrower, *provided, further*, that the obligation to deposit such Cash Collateral shall become effective immediately and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default described in clause (f) or (g) of Section 8.01. Such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the Obligations with respect to the Non-Collateralized Letters of Credit. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Lenders for any drawing under a Letter of Credit for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the L/C Exposure at such time or, if the Loans have been accelerated pursuant to Section 8.02 (but subject to the consent of Lenders with L/C Exposure representing greater than 50% of the total L/C Exposure), be applied to satisfy other obligations of the Borrower under this Agreement. If the Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the Borrower within three (3) Business Days after all Events of Default have been cured or waived.

(l) Collateralized Letters of Credit.

(i) Pursuant to Section 2.02(b), and subject to Section 2.02(a), the Borrower may decide, prior to the issuance thereof, whether a Letter of Credit will be a Non-Collateralized Letter of Credit or a Collateralized Letter of Credit.

(ii) Cash and Eligible Securities provided and pledged to secure a Collateralized Letter of Credit must be held in one or more Collateralized L/C Collateral Accounts, and such Cash and Eligible Securities will be held in such Collateralized L/C Collateral Accounts as collateral for the payment and performance of the Secured Obligations (as defined in the Collateralized L/C Security and Control Agreements). The Administrative Agent will have exclusive dominion and control, including the exclusive right of withdrawal, over the Collateralized L/C Collateral Accounts as provided in the Collateralized L/C Security and Control Agreements. Interest or profits, if any, on Cash and Eligible Securities held in a Collateralized L/C Collateral Account will accumulate in such Collateralized L/C Collateral Account. Cash and the proceeds of Eligible Securities held in Collateralized L/C Collateral Accounts shall be applied by the Administrative Agent to reimburse the Lenders for any drawing under a Collateralized Letter of Credit for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Borrower for the Collateralized Letter of Credit Usage at such time.

(iii) If, on the last Business Day of any calendar month, the Collateralized L/C Aggregate Collateral Amount exceeds the Minimum Collateralized L/C Aggregate Collateral Amount, then the Borrower may, within two (2) Business Days after such day, submit a written request to the Administrative Agent for the return of Cash and/or Eligible Securities held in Collateralized L/C Collateral Accounts having Collateral Amounts, in the aggregate, equal to or less than such excess and identified by the Borrower in such written request (in the manner required by the applicable Collateralized L/C Security and Control Agreement). The Administrative Agent shall, within two (2) Business Days after the date on which the Administrative Agent receives such written request from the Borrower, instruct the applicable Custodian(s) to transfer such Cash and/or Eligible Securities to the Borrower; *provided* that, after giving effect to any such transfer, the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount. The Borrower shall have no right to request the return of, and the Administrative Agent shall have no obligation to instruct any Custodian to transfer, Cash and/or Eligible Securities having Collateral Amounts, in the aggregate, of less than \$100,000.

(iv) So long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may submit a written request to the Administrative Agent for the substitution of Cash and/or Eligible Securities held in a Collateralized L/C Collateral Account and identified by the Borrower in such written request with Cash and/or Eligible Securities to be held in such Collateralized L/C Collateral Account and identified by the Borrower in such written request (in the manner required by the applicable Collateralized L/C Security and Control Agreement). The Administrative Agent shall, within two (2) Business Days after the date on which the Administrative Agent receives such written request from the Borrower, instruct the applicable Custodian to (i) receive from the Borrower for deposit to a Collateralized L/C Collateral Account Cash and/or Eligible Securities identified by the Borrower in such written request and (ii) transfer Cash and/or Eligible Securities identified by the Borrower in such written request to the Borrower; *provided* that, after giving effect to any such substitution, the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum



Collateralized L/C Aggregate Collateral Amount. The Borrower shall have no right to request the substitution of, and the Administrative Agent shall have no obligation to instruct any Custodian to substitute, Cash and/or Eligible Securities having Collateral Amounts, in the aggregate, of less than \$100,000.

(v) So long as no Event of Default has occurred and is continuing or would result therefrom, the Borrower may submit a written request to the Administrative Agent for the investment of cash held in a Collateralized L/C Collateral Account in Cash and/or Eligible Securities to be held in Collateralized L/C Collateral Accounts and identified by the Borrower in such written request (in the manner required by the applicable Collateralized L/C Security and Control Agreement). The Administrative Agent shall, within two (2) Business Days after the date on which the Administrative Agent receives such written request from the Borrower, instruct the applicable Custodian to invest such cash in Cash and/or Eligible Securities identified by the Borrower in such written request; *provided* that, after giving effect to any such investment, the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount. The Borrower shall have no right to request the investment of, and the Administrative Agent shall have no obligation to instruct any Custodian to invest, cash having a Collateral Amount of less than \$100,000.

(vi) The Borrower shall at all times cause the Collateralized L/C Aggregate Collateral Amount to equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount at such time. If on any date the Minimum Collateralized L/C Aggregate Collateral Amount exceeds the Collateralized L/C Aggregate Collateral Amount (such excess, a “**Collateralized L/C Collateral Deficiency**”) (including as a result of any Collateralized L/C Security Invalidation), the Borrower shall, in no event later than the fifth (5th) Business Day immediately following the date on which the Administrative Agent notifies the Borrower of such Collateralized L/C Collateral Deficiency (the “**Collateralized L/C Collateral Deficiency Correction Date**”), transfer to one or more Collateralized L/C Collateral Accounts Cash and/or Eligible Securities so that the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount; *provided* that anything contained herein to the contrary notwithstanding, (i) unless the Borrower shall have notified the Administrative Agent prior to 10:00 a.m. (New York City time) on the Business Day immediately preceding the Collateralized L/C Collateral Deficiency Correction Date that the Borrower intends to transfer to one or more Collateralized L/C Collateral Accounts Cash and/or Eligible Securities so that the Collateralized L/C Aggregate Collateral Amount shall equal or exceed the Minimum Collateralized L/C Aggregate Collateral Amount, the Borrower shall be deemed to have given a timely Loan Notice to the Administrative Agent requesting Lenders with Revolving Commitments to make Revolving Loans that are Base Rate Loans on the Collateralized L/C Collateral Deficiency Correction Date in an amount in Dollars equal to such Collateralized L/C Collateral Deficiency, and (ii) subject to satisfaction or waiver of the conditions specified in Section 4.02, Lenders with Revolving Commitments shall, on the Collateralized L/C Collateral Deficiency Correction Date, make Revolving Loans that are Base Rate Loans in the amount of such Collateralized L/C Collateral Deficiency, the proceeds of which shall be transferred directly by the Administrative Agent to a Collateralized L/C

Collateral Account; *provided, further*, if for any reason (including, without limitation, by reason of exceeding the Revolving Commitments) proceeds of Revolving Loans are not received by the Administrative Agent on the Collateralized L/C Collateral Deficiency Correction Date in an amount equal to the amount of such Collateralized L/C Collateral Deficiency, then the Borrower shall, on the Collateralized L/C Collateral Deficiency Correction Date, pay to the Administrative Agent an amount in Dollars and in same day funds equal to the Collateralized L/C True-Up Amount with respect to all Letters of Credit that are Collateralized Letters of Credit on such date. Upon receipt by the Administrative Agent of an amount in Dollars and in same day funds equal to the Collateralized L/C True-Up Amount with respect to all Letters of Credit that are Collateralized Letters of Credit on such date, each Letter of Credit that is a Collateralized Letter of Credit on such date shall cease to be a Collateralized Letter of Credit for purposes of this Agreement and the Collateralized L/C Security Documents and shall be a Non-Collateralized Letter of Credit as of such date. Nothing in this Section 2.02(l)(vi) shall be deemed to relieve any Lender with a Revolving Commitment from its obligation to make Revolving Loans on the terms and conditions set forth herein, and the Borrower shall retain any and all rights it may have against any such Lender resulting from the failure of such Lender to make such Revolving Loans under this Section 2.02(l)(vi).

(m) Limited Fronting Lenders and Participating Lenders. In the event that, and for so long as, any Lender acts as a Limited Fronting Lender on behalf of any Participating Lender:

(i) such Limited Fronting Lender, in reliance upon the obligations of such Participating Lender contained in this Section 2.02(m), with respect to each Letter of Credit issued hereunder, (A) shall be an issuing bank under such Letter of Credit in place of such Participating Lender and (B) shall have a several (but not joint) obligation in respect of an amount of such Letter of Credit equal to the sum of (1) such Limited Fronting Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit, *plus* (2) the product of the applicable Limited Fronting Percentage and such Participating Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit;

(ii) by the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of such Limited Fronting Lender or such Participating Lender, such Limited Fronting Lender hereby grants to such Participating Lender, and such Participating Lender hereby acquires from such Limited Fronting Lender, a participation in such Letter of Credit equal to the product of the applicable Limited Fronting Percentage and such Participating Lender's Pro Rata Share of the aggregate undrawn amount of such Letter of Credit. In consideration and in furtherance of the foregoing, such Participating Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of such Limited Fronting Lender, the product of the applicable Limited Fronting Percentage and such Participating Lender's Pro Rata Share of each L/C Disbursement made by such Limited Fronting Lender under such Letter of Credit and not reimbursed by the Borrower on the Reimbursement Date, or of any reimbursement payment required to be refunded to the Borrower for any reason. Such Participating Lender acknowledges and agrees that its obligation to acquire participations pursuant to this Section 2.02(m)(ii)

in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or Event of Default or any reduction or termination of the Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. To the extent that such Participating Lender has made payments pursuant to this Section 2.02(m)(ii) to reimburse such Limited Fronting Lender in respect of any participation interests purchased hereunder in respect of any Letter of Credit, promptly following receipt by the Administrative Agent of any payment from the Borrower pursuant to Section 2.02(h) in respect of such Letter of Credit, the Administrative Agent shall distribute such payment to such Limited Fronting Lender and such Participating Lender, in each case as their interests may appear. Any payment made by such Participating Lender in respect of its participation pursuant to this paragraph to reimburse such Limited Fronting Lender for any payment made in any respect of any drawing under a Letter of Credit shall not relieve the Borrower of its obligation to reimburse the amount of such drawing pursuant to the terms of this Agreement;

(iii) such Limited Fronting Lender shall not issue any Letter of Credit hereunder if such Participating Lender is a Defaulting Lender unless such Limited Fronting Lender has entered into arrangements satisfactory to it with the Borrower and/or such Participating Lender to eliminate such Limited Fronting Lender's risk with respect to such Participating Lender in respect of each Letter of Credit hereunder; and

(iv) any reference in this Agreement or any other Loan Document to the issuance by such Participating Lender of a letter of credit pursuant to this Agreement shall be deemed to refer to the issuance by such Limited Fronting Lender of such letter of credit in place of such Participating Lender pursuant to this Section 2.02(m).

Section 2.03 *Pro Rata Shares*. All Revolving Loans shall be made, and all Letters of Credit issued, by Lenders simultaneously and proportionately to their respective Pro Rata Shares (subject to Section 2.02(m)), it being understood that no Lender shall be responsible for any default by any other Lender in such other Lender's obligation to make a Revolving Loan or issue a Letter of Credit requested hereunder nor shall any Revolving Commitment of any Lender be increased or decreased as a result of a default by any other Lender in such other Lender's obligation to make a Revolving Loan or issue a Letter of Credit requested hereunder, except, in each case, as provided in Section 2.02(d).

Section 2.04 *Conversion and Continuation of Revolving Loans*.

(a) Each conversion of Revolving Loans from one Interest Type to the other, and each continuation of Eurodollar Rate Loans, shall be made upon the Borrower's irrevocable written notice to the Administrative Agent in the form of a Conversion/Continuation Notice, appropriately completed and signed by a Responsible Officer of the Borrower. Each such Conversion/Continuation Notice must be received by the Administrative Agent not later than 12:00 noon (New York City time) three (3) Business Days prior to the requested date of any conversion to or continuation of Eurodollar Rate Loans or of any conversion of Eurodollar Rate Loans to Base Rate Loans. Except as otherwise provided herein, a Eurodollar Rate Loan may be

continued or converted only on the last day of an Interest Period for such Eurodollar Rate Loan. The Administrative Agent shall determine the interest rate that shall apply to any converted or continued Eurodollar Rate Loans pursuant to Section 2.07(c).

(b) Each Conversion/Continuation Notice shall specify (i) whether the Borrower is requesting a conversion of Revolving Loans from one Interest Type to the other, or a continuation of Eurodollar Rate Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Loans to be converted or continued, (iv) the Interest Type of Revolving Loans to which existing Revolving Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto (each such Interest Period shall comply with the provisions of the definition of "Interest Period").

(c) Notwithstanding any contrary provision hereof, if (i) an Event of Default of the type described in Section 8.01(a), (f) or (g) has occurred and is continuing, unless the Required Lenders otherwise consent or (ii) any other Event of Default has occurred and is continuing and the Required Lenders have so requested, each Revolving Loan will be converted into a Base Rate Loan at the end of the Interest Period applicable thereto.

Section 2.05 *Notes; Loan Accounts.*

(a) Each Revolving Loan made by each Lender shall be evidenced by one or more loan accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The loan accounts or records maintained by the Administrative Agent and each Lender shall be conclusive evidence of the amount of the Revolving Loans made by the Lenders to the Borrower and the interest and payments thereon absent manifest error. Any failure so to record or any error in doing so shall not, however, limit or otherwise affect the obligations of the Borrower hereunder to pay any amount owing with respect to the Revolving Loans made to the Borrower. 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.

(b) Upon the request of any Lender made through the Administrative Agent, instead of or in addition to loan accounts, the Revolving Loans made by each Lender may be evidenced by one or more Revolving Loan Notes. Each Lender shall endorse on the schedules annexed to its Revolving Loan Note the date, amount and maturity of each Revolving Loan deemed made by it and the amount of each payment of principal made by the Borrower with respect thereto. Each such Lender is irrevocably authorized by the Borrower to endorse its Revolving Loan Note and each Lender's record shall be conclusive absent manifest error; *provided* that the failure of a Lender to make, or an error in making, a notation thereon with respect to the Revolving Loan shall not limit or otherwise affect the obligations of the Borrower hereunder or under any such Revolving Loan Note to such Lender.

Section 2.06 *Prepayments.*

(a) Optional Prepayments. The Borrower will have the right at any time to prepay any Loan in whole or in part, in minimum amounts of \$2,500,000 or any multiple of \$1,000,000 in excess thereof, subject to the provisions of this Section 2.06.

(b) Voluntary Commitment Reductions.

(i) The Borrower may, upon not less than three (3) Business Days' prior written or telephonic notice to the Administrative Agent (or such shorter period of time as may be agreed to by the Administrative Agent), at any time and from time to time terminate in whole or permanently reduce in part, without premium or penalty, the Revolving Commitments in an amount up to the amount by which the Revolving Commitments exceed the Total Utilization of Revolving Commitments at the time of such proposed termination or reduction; *provided* that any such partial reduction of the Revolving Commitments shall be in an aggregate minimum amount of \$5,000,000 and integral multiples of \$1,000,000 in excess of that amount.

(ii) The Borrower's notice to the Administrative Agent shall designate the date (which shall be a Business Day) of such termination or reduction and the amount of any partial reduction, and shall reduce the Revolving Commitment of each Lender proportionately to its Pro Rata Share thereof.

(c) Mandatory Prepayments. The Borrower shall from time to time prepay the Revolving Loans and/or Cash Collateralize the Letters of Credit to the extent necessary so that the Total Utilization of Revolving Commitments shall not at any time exceed the Revolving Commitments then in effect.

(d) Application of Prepayments.

(i) Any prepayment of the Revolving Loan pursuant to Section 2.06(a) shall be applied to repay outstanding Revolving Loans owing by the Borrower making such prepayment to the full extent thereof.

(ii) Any prepayment of Revolving Loans pursuant to Section 2.06(c) shall be applied as follows:

(1) *first*, to prepay the Revolving Loans to the full extent thereof without any permanent reduction of the Revolving Commitments;  
and

(2) *second*, to prepay outstanding reimbursement obligations with respect to Letters of Credit without any permanent reduction of the Revolving Commitments;

(3) *third*, to Cash Collateralize Letters of Credit making such prepayment without any permanent reduction of the Revolving Commitments; and

(4) *fourth*, to the Borrower.

(e) Notice of Prepayments. The Borrower shall notify the Administrative Agent in the form of a Prepayment Notice of any prepayment of any Loan hereunder not later than 12:00 noon (New York City time) one (1) Business Day before the date of prepayment. Each such Prepayment Notice shall be irrevocable (other than to the extent provided in connection with refinancing the Obligations) and shall specify the prepayment date and the principal amount of each Loan or portion thereof to be prepaid.

(f) Application of Prepayments of Revolving Loans to Base Rate Loans and Eurodollar Rate Loans. Considering each Class of Revolving Loans being prepaid separately, any prepayment thereof shall be applied first to Base Rate Loans to the full extent thereof before application to Eurodollar Rate Loans, in each case in a manner which minimizes the amount of any payments required to be made by the Borrower pursuant to Section 3.04.

Section 2.07 *Interest.*

(a) Except as otherwise set forth herein, each Class of Revolving Loans shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof as follows:

- (i) if a Base Rate Loan, at the Base Rate *plus* the Applicable Margin; or
- (ii) if a Eurodollar Rate Loan, at the Eurodollar Rate *plus* the Applicable Margin.

(b) The basis for determining the rate of interest with respect to any Revolving Loan, and the Interest Period with respect to any Eurodollar Rate Loan, shall be selected by the Borrower and notified to the Administrative Agent and Lenders pursuant to the applicable Loan Notice or Conversion/Continuation Notice, as the case may be; *provided* that the Borrower may not select the Eurodollar Rate for any Credit Extension if the aggregate amount of such Credit Extension is less than \$1,000,000.

(c) In connection with Eurodollar Rate Loans there shall be no more than eight (8) Interest Periods outstanding at any time. In the event the Borrower fails to specify between a Base Rate Loan or a Eurodollar Rate Loan in the applicable Loan Notice or Conversion/Continuation Notice, such Revolving Loan (if outstanding as a Eurodollar Rate Loan) will be automatically converted into a Base Rate Loan on the last day of the then-current Interest Period for such Revolving Loan (or if outstanding as a Base Rate Loan will remain as, or (if not then outstanding) will be made as, a Base Rate Loan). In the event the Borrower fails to specify an Interest Period for any Eurodollar Rate Loan in the applicable Loan Notice or Conversion/Continuation Notice (or fails to deliver a Conversion/Continuation Notice within the time limits provided in Section 2.04(a)), the Borrower shall be deemed to have selected an Interest Period of one (1) month. As soon as practicable after 10:00 a.m. (New York City time) on each Interest Rate Determination Date, the Administrative Agent shall determine (which determination shall, absent manifest error, be final, conclusive and binding upon all parties) the interest rate that shall apply to the Eurodollar Rate Loans for which an interest rate is then being determined for the applicable Interest Period and shall promptly give notice thereof (in writing or by telephone confirmed in writing) to the Borrower and each Lender. At any time that Base Rate

Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the Administrative Agent's prime commercial lending rate used in determining the Base Rate promptly following the public announcement of such change.

(d) The Borrower agrees to pay to each Lender, with respect to any L/C Disbursement on behalf of the Borrower, interest on the amount paid by such Lender in respect of each such L/C Disbursement from the date of such L/C Disbursement to but excluding the date such amount is reimbursed by or on behalf of the Borrower at a rate equal to (i) for the period from the date of such L/C Disbursement to but excluding the applicable Reimbursement Date, the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans, and (ii) thereafter, a rate which is 2.00% *per annum* in excess of the rate of interest otherwise payable hereunder with respect to Revolving Loans that are Base Rate Loans.

(e) Interest payable pursuant to Section 2.07(d) shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed in the period during which it accrues, and shall be payable in Dollars on demand or, if no demand is made, on the date on which the related drawing under a Letter of Credit is reimbursed in full. Promptly upon receipt by the Administrative Agent of any payment of interest pursuant to Section 2.07(d), the Administrative Agent shall distribute to each Lender with respect to such L/C Disbursement such Lender's Pro Rata Share of any interest received by the Administrative Agent in respect of such Lender's Pro Rata Share of such L/C Disbursement for the period from the date on which such L/C Disbursement was made by Lenders to but excluding the date on which such L/C Disbursement is reimbursed by the Borrower.

(f) Notwithstanding the foregoing, if any principal of or interest on any Revolving Loan or any fee or other amount payable by the Borrower pursuant to any Loan Document is not paid when due, whether upon acceleration or otherwise, such overdue amount shall, without further notice, bear interest, after as well as before judgment to the extent permitted by law, at a rate *per annum* equal to (i) in the case of overdue principal of any Revolving Loan, 2.00% plus the rate otherwise applicable to such Revolving Loan as provided in the preceding subsections of this Section 2.07 and (ii) in the case of any other amount, 2.00% *plus* the rate otherwise applicable to Base Rate Loans as provided in the preceding subsections of this Section 2.07.

(g) Interest on each Revolving Loan shall be paid in arrears by the Borrower on each Interest Payment Date for such Revolving Loan; *provided* that (i) interest accrued pursuant to Section 2.07(f) shall be payable on demand of the Administrative Agent, (ii) upon any repayment or prepayment of any Revolving Loan, interest accrued on the principal amount repaid shall be payable on the date of such repayment and (iii) upon any conversion of a Eurodollar Rate Loan before the end of the current Interest Period therefor, interest accrued on such Revolving Loan shall be payable on the effective date of such conversion.

(h) Anything herein to the contrary notwithstanding, the obligations of the Borrower to any Lender hereunder shall be subject to the limitation that payments of interest shall not be required for any period for which interest is computed hereunder to the extent (but only to the extent) that contracting for or receiving such payment by such Lender would be contrary to the provisions of any law applicable to such Lender limiting the highest rate of interest that may be lawfully contracted for, charged or received by such Lender, and in such event the Borrower

shall pay such Lender interest at the highest rate permitted by applicable law until the total amount of interest due hereunder equals the amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect. In addition, if when the Revolving Loans made hereunder are repaid in full the total interest due hereunder (taking into account the increase provided for above) is less than the total amount of interest which would have been due hereunder if the stated rates of interest set forth in this Agreement had at all times been in effect, then to the extent permitted by law, the Borrower shall pay to the Administrative Agent an amount equal to the difference between the amount of interest paid and the amount of interest which would have been paid if the highest rate of interest that may be lawfully contracted for, charged or received had at all times been in effect. Notwithstanding the foregoing, it is the intention of Lenders and the Borrower to conform strictly to any applicable usury laws. Accordingly, if any Lender contracts for, charges, or receives any consideration which constitutes interest in excess of the highest rate of interest that may be lawfully contracted for, charged or received by such Lender, then any such excess shall be cancelled automatically and, if previously paid, shall at such Lender's option be applied to the outstanding amount of the Revolving Loans made hereunder or be refunded to the Borrower.

Section 2.08 *Fees.*

(a) The Borrower agrees to pay to Lenders:

(i) commitment fees equal to (1) the average of the daily difference between (A) the Revolving Commitments and (B) the aggregate principal amount of (x) all outstanding Revolving Loans *plus* (y) the Letter of Credit Usage, *multiplied by* (2) the Applicable Revolving Commitment Fee Percentage;

(ii) letter of credit fees equal to (1) the Applicable Non-Collateralized Letter of Credit Fee, *multiplied by* (2) the average aggregate daily maximum amount available to be drawn under all Non-Collateralized Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination, but in any event expressly including all Non-Collateralized Letters of Credit which may have been drawn, to the extent not yet reimbursed pursuant to Section 2.02(h)); and

(iii) letter of credit fees equal to (1) the Collateralized Letter of Credit Fee, *multiplied by* (2) the average aggregate daily maximum amount available to be drawn under all Collateralized Letters of Credit (regardless of whether any conditions for drawing could then be met and determined as of the close of business on any date of determination, but in any event expressly including all Collateralized Letters of Credit which may have been drawn, to the extent not yet reimbursed pursuant to Section 2.02(h)). All fees referred to in this Section 2.08(a) shall be paid in Dollars to the Administrative Agent at the Administrative Agent's Office and upon receipt, the Administrative Agent shall promptly distribute to each Lender (including each Participating Lender) its Pro Rata Share thereof.



(b) The Borrower agrees to pay directly to the Administrative Agent, for its own account, the following fees:

(i) a letter of credit issuance fee of \$[\*\*] per Letter of Credit issued; and

(ii) such documentary and processing charges for any issuance, amendment, transfer or payment of a Letter of Credit as are in accordance with the Administrative Agent's standard schedule for such charges and as in effect at the time of such issuance, amendment, transfer or payment, as the case may be.

(c) All fees referred to in Section 2.08(a) and 2.08(b) shall be calculated pursuant to the second sentence of Section 2.09(a). The commitment fee referred to in Section 2.08(a)(i) shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year during the Revolving Commitment Period, commencing on the first such date to occur after the Restatement Effective Date, and on the Commitment Termination Date. The fees referred to in Sections 2.08(a)(ii), 2.08(a)(iii) and 2.08(b) shall be payable quarterly in arrears on the last Business Day of March, June, September and December of each year during the period from the Restatement Effective Date to but excluding the later of the Commitment Termination Date and the date on which there ceases to be any Letter of Credit Usage, commencing on the first such date to occur after the Restatement Effective Date, and on the later of the Commitment Termination Date and the date on which there ceases to be any Letter of Credit Usage; *provided* that any such fees accruing after such later date shall be payable on demand.

(d) In addition to the foregoing, the Borrower shall pay to the Administrative Agent for its own account, fees payable in the amounts and at the times separately agreed upon by the Borrower and the Administrative Agent. Such fees shall be fully earned when paid and shall not be refundable under any circumstances.

Section 2.09 *Computation of Fees and Interest.*

(a) All computations of interest for Base Rate Loans when the Base Rate is determined by the Administrative Agent's prime commercial lending 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 shall be made on the basis of a 360-day year and actual days elapsed. Interest and fees shall accrue during each period in which such interest or fees are computed from the first day thereof to the last day thereof.

(b) Each determination of an interest rate by the Administrative Agent shall be conclusive and binding on the Borrower and the Lenders in the absence of manifest error. The Administrative Agent will, at the request of the Borrower or any Lender, deliver to the Borrower or such Lender, as the case may be, a statement showing the quotations used by the Administrative Agent in determining any interest rate and the resulting interest rate.

Section 2.10 *Payments Generally.*

(a) All payments to be made by the Borrower under the Loan Documents shall be made without condition or deduction for any defense, set-off, recoupment or counterclaim.

[\*\*] = *Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

Except as otherwise expressly provided in any Loan Document, all payments to be made by the Borrower under any Loan Document shall be made to the Administrative Agent for the account of the Lenders at the Administrative Agent's Office, and shall be made in dollars and in immediately available funds, no later than 2:00 p.m. (New York City time) on the date specified in such Loan Document. The Administrative Agent will promptly distribute to each Lender its Pro Rata Share (or other applicable share as expressly provided herein) of such payment in like funds as received. Any payment received by the Administrative Agent later than 2:00 p.m. (New York City time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue.

(b) Subject to the provisions set forth in the definition of "Interest Period" herein, whenever any payment is due on a day other than a Business Day, such payment shall be made on the following Business Day, and such extension of time shall in such case be included in the computation of interest or fees, as the case may be.

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

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

(ii) if any Lender failed to make such payment, such Lender shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "**Compensation Period**") at the customary rate set by the Administrative Agent for the correction of errors among banks for three (3) Business Days and thereafter at the Base Rate. If such Lender pays such amount to the Administrative Agent, then such amount (other than the interest thereon) shall constitute such Lender's Revolving Loan included in the applicable Credit Extension. If such Lender does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate *per annum* equal to the applicable rate for Base Rate Loans to the applicable Credit Extension. Nothing herein shall be deemed to relieve any Lender from its obligation to fulfill its Revolving

Commitments or to prejudice any rights that the Administrative Agent or the Borrower may have against any Lender as a result of any default by such Lender hereunder.

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

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

(e) The obligations of the Lenders hereunder to make Revolving Loans are several and not joint. The failure of any Lender to make any Revolving Loan on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loans.

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

Section 2.11 *Sharing of Payments by Lenders.*

(a) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment (i) on account of any Obligations due and payable hereunder and under the other Loan Documents at such time resulting in such Lender receiving payment in excess of its ratable share (calculated according to the proportion of (A) the amount of such Obligations due and payable to such Lender at such time to (B) the aggregate amount of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (ii) of or on account of any of Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (calculated according to the proportion of (A) the amount of such Obligations owing (but not due and payable) to such Lender at such time to (B) the aggregate amount of Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time, then, in each case, such Lender shall (x) notify the Administrative Agent of such fact, and (y) purchase (for cash at face value) participations in the Obligations of the other Lenders due and payable or owing, as the case may be, or make such other adjustments as shall be equitable, so that the benefit of such excess payments shall be shared by all such Lenders; *provided that*:

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

(ii) the provisions of this Section 2.11 shall not be construed to apply to (1) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement or (2) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Revolving Loans to any assignee or participant.

(b) Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Credit Party rights of set-off and counterclaim (subject to Section 10.09) with respect to such participation as fully as if such Lender were a direct creditor of such Credit Party in the amount of such participation.

Section 2.12 *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) 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 8 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.09 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*, as the Borrower may request (so long as no Default or Event of Default shall have occurred and be continuing), to the funding of any Revolving Loan or L/C Disbursement on a pro rata basis 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; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Revolving Loans and L/C Disbursements on a pro rata basis under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Event of Default shall have occurred and be continuing, 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 *sixth*, 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 Revolving Loans or reimbursement obligations with respect to Letters of Credit in respect of which such Defaulting Lender has not fully funded its appropriate

share, and (y) such Revolving Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Revolving Loans of, and reimbursement obligations with respect to Letters of Credit owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Revolving Loans of, or reimbursement obligations with respect to Letters of Credit owed to, such Defaulting Lender until such time as all Revolving Loans and funded and unfunded Letters of Credit are held by the Lenders pro rata in accordance with the applicable Revolving Commitments without giving effect to Section 2.12(a)(iii). 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 shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(ii) Certain Fees.

(1) No Defaulting Lender shall be entitled to receive any fee pursuant to Section 2.08(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(2) With respect to any fees not required to be paid to any Defaulting Lender pursuant to clause (1) 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 Pro Rata Share of Letters of Credit that has been reallocated to such Non-Defaulting Lender pursuant to clause (iii) below and (y) not be required to pay the remaining amount of any such fee.

(iii) Reallocation of Letters of Credit. With respect to any Letter of Credit outstanding at the time such Lender becomes a Defaulting Lender, with the consent of the beneficiary thereunder to the extent required under applicable law (including, if applicable, the Uniform Customs and Practices for Documentary Credits governing such Letter of Credit), but only if there has not occurred and shall not be continuing any Default or Event of Default unless all Non-Defaulting Lenders shall otherwise agree, (A) all or any part of such Defaulting Lender's Pro Rata Share of the outstanding Obligations with respect to Letters of Credit shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Pro Rata Shares but only to the extent (1) the sum of all Non-Defaulting Lenders' Revolving Exposures plus such Defaulting Lender's Revolving Exposure does not exceed the total of all Non-Defaulting Lenders' Commitments and (2) the sum of each Non-Defaulting Lender's Revolving Exposure plus the amount of such Defaulting Lender's Revolving Exposure reallocated to such Non-Defaulting Lender does not exceed such Non-Defaulting Lender's Commitment and (B) each such Letter of Credit shall be amended by the Administrative Agent to specify the Lenders that are parties to such Letter of Credit (excluding, for avoidance of doubt, such Lender), after giving effect to such event, and such Lenders' respective Pro Rata Shares as of the effective date of such amendment. Subject to Section 10.24, no reallocation pursuant to this Section 2.12(a)(iii) shall constitute a

waiver or release of any claim by any party hereto against such Defaulting Lender arising from such Lender becoming a Defaulting Lender.

(b) Defaulting Lender Cure. If the Borrower and the Administrative Agent 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), such Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Loans and Letters of Credit of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Loans and funded and unfunded Letters of Credit to be held pro rata by the Lenders in accordance with the applicable Revolving Commitments (without giving effect to Section 2.12(a)(iii)), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and *provided, further*, that, except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender having been a Defaulting Lender.

(c) New Letters of Credit. So long as any Lender is a Defaulting Lender, the Pro Rata Shares of the Lenders in respect of any newly issued Letter of Credit shall be allocated among Non-Defaulting Lenders in a manner consistent with Section 2.12(a)(iii) above (and such Defaulting Lender shall have no obligation under each such Letter of Credit to the extent such Pro Rata Shares in respect thereof are so reallocated).

(d) Lender Counterparties. So long as any Lender is a Defaulting Lender, such Lender shall not be a contractual counterparty with respect to any Guaranteed Swap Contract entered into while such Lender was a Defaulting Lender.

Section 2.13 *Maturity Extensions of Revolving Loans.*

(a) The Borrower may from time to time, pursuant to the provisions of this Section 2.13, agree with one or more Lenders holding Revolving Loans and Revolving Commitments of any Class to extend the maturity date of such Class of Loans and to provide for other terms consistent with this Section 2.13 (each such modification, an “**Extension**”) pursuant to one or more written offers (each, an “**Extension Offer**”) made from time to time by the Borrower to all Lenders under any Class that is proposed to be extended under this Section 2.13, in each case on a pro rata basis (based on the relative principal amounts of the outstanding Revolving Commitments of each Lender in such Class) and on the same terms to each such Lender. In connection with each Extension, the Borrower will provide notification to the Administrative Agent (for distribution to the Lenders of the applicable Class), no later than thirty (30) days prior to the maturity of the applicable Class or Classes to be extended of the requested new termination date for the extended Revolving Loans and Revolving Commitments of each such Class (each, an “**Extended Termination Date**”) and the due date for Lender responses, which due date shall be no sooner than ten (10) Business Days after delivery of such notice by the Borrower. In connection with any Extension, each Lender of the applicable Class wishing to participate in such Extension shall, prior to such due date, provide the Administrative Agent with

a written notice thereof in a form reasonably satisfactory to the Administrative Agent. Any Lender that does not respond to an Extension Offer by the applicable due date shall be deemed to have rejected such Extension. In connection with any Extension, the Borrower shall agree to such procedures, if any, as may be reasonably established by, or acceptable to, the Administrative Agent to accomplish the purposes of this Section 2.13.

(b) After giving effect to any Extension, the Revolving Commitments so extended shall cease to be a part of the Class of which they were a part immediately prior to the Extension and shall be a new Class hereunder; *provided* that at no time shall there be more than four (4) different Classes of Revolving Commitments; *provided, further*, that, (i) all Credit Extensions and all prepayments of Revolving Loans shall continue to be made on a ratable basis among all Lenders, based on the relative amounts of their Revolving Commitments, until the repayment of the Revolving Loans attributable to the non-extended Revolving Commitments on the applicable Commitment Termination Date, (ii) the allocation of the outstanding Obligations with respect to any then-existing or subsequently issued or made Letter of Credit as between the Revolving Commitments of such new “Class” and the remaining Revolving Commitments shall be made on a ratable basis in accordance with the relative amounts thereof until the applicable Commitment Termination Date has occurred, (iii) no termination of Extended Revolving Commitments and no repayment of Extended Revolving Loans accompanied by a corresponding permanent reduction in Extended Revolving Commitments shall be permitted unless such termination or repayment (and corresponding reduction) is accompanied by at least a pro rata termination or permanent repayment (and corresponding pro rata permanent reduction), as applicable, of the Existing Revolving Loans and Existing Revolving Commitments (or all Existing Revolving Commitments of such Class and related Existing Revolving Loans shall have otherwise been terminated and repaid in full) and (iv) with respect to Letters of Credit, the Commitment Termination Date with respect to the Revolving Commitments may not be extended without the prior written consent of the Administrative Agent. If the Total Utilization of Revolving Commitments exceeds the Revolving Commitments as a result of the occurrence of the Commitment Termination Date (or the applicable Extended Termination Date with respect to any Class of Revolving Loans or Class of Revolving Commitments extended pursuant to this Section 2.13) while an extended Class of Revolving Commitments remains outstanding, the Borrower shall make such payments as are necessary in order to eliminate such excess on such date.

(c) The consummation and effectiveness of each Extension shall be subject to the following:

(i) no Default or Event of Default shall have occurred and be continuing at the time any Extension Offer is delivered to the Lenders or at the time of such Extension (after giving effect to such Extension);

(ii) the Revolving Loans or Revolving Commitments, as applicable, of any Lender extended pursuant to any Extension (as applicable, “**Extended Revolving Loans**” or “**Extended Revolving Commitments**”) shall have the same terms as the Class of Revolving Loans or Revolving Commitments, as applicable, subject to the related Extension Amendment (as applicable, “**Existing Revolving Loans**” or “**Existing Revolving Commitments**”); except (A) the final maturity date of any Extended

Revolving Commitments of a Class to be extended pursuant to an Extension may be later than the Latest Maturity Date at the time of such Extension, and the Weighted Average Life to Maturity of any Extended Revolving Commitments of a Class to be extended pursuant to an Extension shall be no shorter than the Weighted Average Life to Maturity of the Class of Existing Revolving Commitments, as applicable, subject to the Latest Maturity Date at the time of such Extension; (B) the all-in pricing (including, without limitation, margins, fees and premiums) with respect to the Extended Revolving Loans or Extended Revolving Commitments, as applicable, may be higher or lower than the all-in pricing (including, without limitation, margins, fees and premiums) for the Existing Revolving Loans or Existing Revolving Commitments, as applicable; (C) the revolving credit commitment fee rate with respect to the Extended Revolving Commitments may be higher or lower than the revolving credit commitment fee rate for Existing Revolving Commitments, in each case, to the extent provided in the applicable Extension Amendment; (D) no repayment of any Extended Revolving Loans or Extended Revolving Commitments, as applicable, shall be permitted unless such repayment is accompanied by an at least pro rata repayment of all earlier maturing Loans (including previously extended Loans) (or all earlier maturing Loans (including previously extended Loans) shall otherwise be or have been terminated and repaid in full); (E) the Extended Revolving Loans and/or Extended Revolving Commitments may contain a “most favored nation” provision for the benefit of Lenders holding Extended Revolving Commitments; and (F) the other terms and conditions applicable to Extended Revolving Loans and/or Extended Revolving Commitments may be terms different than those with respect to the Existing Revolving Loans or Existing Revolving Commitments, as applicable, so long as such terms and conditions only apply after the Latest Maturity Date; *provided, further*, that each Extension Amendment may, without the consent of any Lender other than the applicable extending Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the opinion of the Administrative Agent and the Borrower, to give effect to the provisions of this Section 2.13, including any amendments necessary to treat the applicable Loans and/or Revolving Commitments of the extending Lenders as a new “Class” of loans and/or commitments hereunder; *provided, however*, that no Extension Amendment may provide for any Class of Extended Revolving Commitments to be secured by any assets of any Restricted Subsidiary that do not also secure the Existing Revolving Commitments;

(iii) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by the Borrower generally directed to the applicable Lenders under the applicable Class in connection therewith shall be in form and substance consistent with the foregoing and otherwise reasonably satisfactory to the Administrative Agent;

(iv) a minimum amount in respect of such Extension (to be determined in the Borrower’s discretion and specified in the relevant Extension Offer, but in no event less than \$50,000,000, unless another amount is agreed to by the Administrative Agent in its reasonable discretion) shall be satisfied; and

(v) no Extension shall become effective unless, on the proposed effective date of such Extension, the conditions precedent set forth in Section 4.02(a), (b) and (c) shall



be satisfied (with all references in such Section to the making of a Loan being deemed to be references to the Extension on the applicable date of such Extension), and the Administrative Agent shall have received a certificate to that effect dated the applicable date of such Extension and executed by a Responsible Officer of the Borrower.

(d) For the avoidance of doubt, it is understood and agreed that the provisions of Section 2.08 and Section 10.04 will not apply to any payment of interest or fees in respect of any Extended Revolving Commitments that have been extended pursuant to an Extension at a rate or rates different from those paid or payable in respect of Revolving Loans of any other Class, in each case as is set forth in the relevant Extension Offer made pursuant to and in accordance with the provisions of this Section 2.13 with respect to such Extensions of Revolving Commitments.

(e) No Lender who rejects any request for an Extension shall be deemed a Non-Consenting Lender for purposes of Section 10.14.

(f) The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments (collectively, “**Extension Amendments**”) to this Agreement and the other Loan Documents as may be necessary in order to establish new Classes of Revolving Commitments created pursuant to an Extension, in each case on terms consistent with this Section 2.13, so long as the Lenders shall have received at least five (5) Business Days’ prior written notice of any Extension Amendment and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required Lenders stating that the Required Lenders object to such Extension Amendment; *provided*, that all such Extension Amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding on the Lenders. Without limiting the foregoing, in connection with any Extension, (i) the Borrower and the appropriate Guarantors and Subsidiaries shall (at their expense) amend (and the Administrative Agent is hereby directed to amend) any Loan Document that the Administrative Agent reasonably requests to be amended to reflect the then latest Extended Termination Date and (ii) the Borrower and the appropriate Guarantors and Subsidiaries shall deliver such board resolutions, secretary’s certificates, officer’s certificates and other documents as shall reasonably be requested by the Administrative Agent in connection therewith and, if requested by the Administrative Agent, a legal opinion of counsel in form and substance reasonably acceptable to the Administrative Agent.

(g) Promptly following the consummation and effectiveness of any Extension, the Borrower will furnish to the Administrative Agent (who shall promptly furnish to each Lender) written notice setting forth the Extended Termination Date and material economic terms of the Extension and the aggregate principal amount of each Class of Revolving Loans and Revolving Commitments after giving effect to the Extension and attaching a copy of the fully executed Extension Amendment.

**Section 2.14** *Provisions Relating to NAIC Approved Banks.* If, at any time from and after the Restatement Effective Date, any Lender is not or ceases to be a NAIC Approved Bank, such Lender shall promptly notify the Borrower and the Administrative Agent thereof. Each Lender agrees to use commercially reasonable efforts, at all times from and after the Restatement Effective Date, (a) to be a NAIC Approved Bank or (b) if such Lender is not or ceases to be a NAIC Approved Bank, (i) to maintain in effect a Confirming Bank Agreement with a

Confirming Bank (which Confirming Bank (if not a Lender), prior to entering into such Confirming Bank Agreement, shall be subject to the prior written consent of the Borrower and the Administrative Agent (such consent, in each case, not to be unreasonably withheld)) upon such terms and conditions as such parties may agree or (ii) to maintain in effect a Limited Fronting Lender Agreement with a Limited Fronting Lender upon such terms and conditions as such parties may agree. In the event that any Person (including any other Lender) agrees to act as a Confirming Bank or a Limited Fronting Lender for any Lender which is a Non-NAIC Approved Bank, such other Person shall receive such compensation therefor as such Non-NAIC Approved Bank and such Person may agree. If any Lender shall enter into a Confirming Bank Agreement or a Limited Fronting Lender Agreement hereunder at any time, it shall promptly furnish a copy thereof to the Borrower and the Administrative Agent and, thereafter, promptly notify the Borrower and the Administrative Agent of the termination or expiration of such Confirming Bank Agreement or Limited Fronting Lender Agreement, as the case may be. Notwithstanding anything herein to the contrary, no Lender shall have any obligation to agree to act hereunder as a Confirming Bank or a Limited Fronting Lender for any other Lender.

Section 2.15 *Incremental Facilities.*

(a) The Borrower may, by written notice to the Administrative Agent, elect to request prior to the Commitment Termination Date, an increase to the then-existing Revolving Commitments (any such increase, “**New Revolving Commitments**”), by an amount not in excess of the Increase Amount at such time and not less than \$10,000,000 individually (or such lesser amount which shall be approved by the Administrative Agent or such lesser amount that shall equal the Increase Amount at such time), and integral multiples of \$1,000,000 in excess of that amount. Each such notice shall specify (A) the date (each, an “**Increased Amount Date**”) on which the Borrower proposes that the New Revolving Commitments shall be effective, which shall be a date not less than 10 Business Days after the date on which such notice is delivered to the Administrative Agent and (B) the identity of each Lender or other Person that is an Eligible Assignee (each, a “**New Revolving Loan Lender**”) to whom the Borrower proposes any portion of such New Revolving Commitments be allocated and the amounts of such allocations; *provided* that the Administrative Agent may elect or decline to arrange such New Revolving Commitments in its sole discretion and any Lender approached to provide all or a portion of the New Revolving Commitments may elect or decline, in its sole discretion, to provide a New Revolving Commitment. Such New Revolving Commitments shall become effective as of such Increased Amount Date; *provided* that (1) no Default or Event of Default shall exist on such Increased Amount Date before or after giving effect to such New Revolving Commitments; (2) all of the representations and warranties contained herein or in any Loan Document (other than the representations and warranties contained in Sections 5.05 and 5.11(d)) shall be true and correct in all material respects on and as of such Increased Amount Date to the same extent as though made on and as of such Increased Amount Date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof, (3) Holdings and its Subsidiaries shall be in pro forma compliance with Sections 7.10 and 7.11 as of the last day of the most recently ended Fiscal Quarter after giving effect to such New Revolving Commitments; (4) all New Revolving Commitments shall be effected pursuant

to one or more Joinder Agreements executed and delivered by the Borrower, the New Revolving Loan Lender and the Administrative Agent, each of which shall be recorded in the Register and each New Revolving Loan Lender shall be subject to the requirements set forth in Section 3.01(e); (5) Holdings shall make any payments required pursuant to Section 3.04 in connection with the New Revolving Commitments; and (6) the Borrower shall deliver or cause to be delivered any legal opinions or other documents reasonably requested by the Administrative Agent in connection with any such transaction.

(b) On any Increased Amount Date on which New Revolving Commitments are effected, subject to the satisfaction of the foregoing terms and conditions, (i) (x) each of the Revolving Lenders shall assign to each of the New Revolving Loan Lenders, and each of the New Revolving Loan Lenders shall purchase from each of the Revolving Lenders, at the principal amount thereof, such interests in the Revolving Loans outstanding on such Increased Amount Date and (y) each outstanding Letter of Credit shall be amended in accordance with the procedures set forth in Section 2.02(d), in each case as shall be necessary in order that, after giving effect to all such assignments and purchases, the Revolving Exposure will be held by then-existing Revolving Lenders and New Revolving Loan Lenders ratably in accordance with their Revolving Commitments after giving effect to the addition of such New Revolving Commitments to the Revolving Commitments, (ii) each New Revolving Commitment shall be deemed for all purposes a Revolving Commitment and each Loan made thereunder (a “**New Revolving Loan**”) shall be deemed, for all purposes, a Revolving Loan and (iii) each New Revolving Loan Lender shall become a Lender with respect to the New Revolving Commitment and all matters relating thereto. For the avoidance of doubt, the terms and provisions of the New Revolving Loans and New Revolving Commitments shall be documented solely as an increase, and shall be identical, to the then-existing Revolving Commitments.

The Administrative Agent shall notify Lenders promptly upon receipt of the Borrower’s notice of each Increased Amount Date and in respect thereof (x) the New Revolving Commitments and the New Revolving Loan Lenders, and (y) the respective interests in such Lender’s Revolving Loans, in each case subject to the assignments contemplated by this Section 2.15.

ARTICLE 3  
TAXES, YIELD PROTECTION AND ILLEGALITY

Section 3.01 *Taxes.*

(a) Payments Free of Indemnified Taxes and Other Taxes. Any and all payments by or on account of any obligation of any Credit Party hereunder or under any other Loan Document shall be made free and clear of and without deduction or withholding for any Taxes, *provided* that if any applicable withholding agent shall be required by applicable law to deduct or withhold any Taxes from such payments, then (i) the applicable withholding agent shall make such deductions or withholdings, (ii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and (iii) if such Tax is an Indemnified Tax, the sum payable by the applicable Credit Party shall be increased as necessary so that after all required deductions or withholdings have been made (including deductions applicable to additional sums payable under this Section 3.01) the

Administrative Agent or Lender, as the case may be, receives an amount equal to the sum it would have received had no such deductions or withholdings been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of subsection (a) above, the Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.

(c) Indemnification by the Borrower. Without duplication of the provisions of subsection (a) above, the Borrower shall indemnify the Administrative Agent and each Lender, within ten (10) Business Days after written demand therefor, for the full amount of any Indemnified Taxes in respect of payments under any Loan Document (including Indemnified Taxes imposed on or attributable to amounts payable under this Section 3.01) that are imposed on or payable by the Administrative Agent or such Lender, as the case may be, and reasonable expenses arising therefrom, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; *provided*, that the Borrower shall not be required to indemnify the Administrative Agent or a Lender pursuant to this Section 3.01 for any Indemnified Taxes to the extent that such recipient fails to notify the Borrower within 270 days after the date on which such Person has made payment of such Indemnified Taxes; *provided, further*, that, if the Indemnified Taxes imposed or asserted giving rise to such claims are retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof. A certificate setting forth the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error.

(d) Evidence of Payments. As soon as practicable after any payment of Indemnified Taxes by any Credit Party to a Governmental Authority, 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 or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) Status of Lenders. Each Lender shall deliver to the Borrower and to the Administrative Agent, whenever reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation prescribed by applicable laws and such other reasonably requested information as will permit the Borrower or the Administrative Agent, as the case may be, (A) to determine whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) to determine, if applicable, the required rate of withholding or deduction and (C) to establish such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of any payments to be made to such Lender pursuant to any Loan Document or otherwise to establish such Lender's status for withholding tax purposes in an applicable jurisdiction. If any form, certification or other documentation provided by a Lender pursuant to this Section 3.01(e) (including any of the specific documentation described below) expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly notify the Borrower and the Administrative Agent in writing and shall promptly update or otherwise correct the affected documentation or promptly notify the

Borrower and the Administrative Agent in writing that such Lender is not legally eligible to do so.

Without limiting the generality of the foregoing,

(A) any Lender that is a “United States person” within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower and the Administrative Agent duly completed and executed copies of IRS Form W-9 or such other documentation or information prescribed by applicable laws or reasonably requested by the Borrower or the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon request of the Borrower or the Administrative Agent) as will enable the Borrower or the Administrative Agent, as the case may be, to determine that such Lender is not subject to U.S. federal backup withholding or information reporting requirements;

(B) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of U.S. federal withholding tax with respect to any payments hereunder or under any other Loan Document shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower or the Administrative Agent), duly completed and executed copies of whichever of the following is applicable:

(i) IRS Form W-8BEN or W-8BEN-E claiming eligibility for benefits of an income tax treaty to which the United States is a party,

(ii) IRS Form W-8ECI (or any successor thereto) claiming that specified payments (as applicable) under this Agreement or any other Loan Documents (as applicable) constitute income that is effectively connected with such Foreign Lender’s conduct of a trade or business in the United States,

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code (the “**Portfolio Interest Exemption**”), (x) a certificate (a “**Tax Status Certificate**”), substantially in the form of Exhibit F-1, to the effect that such Foreign Lender is not (1) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (2) a “10 percent shareholder” of the Borrower, within the meaning of Section 881(c)(3)(B) of the Code or (3) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code, and that no interest to be received is effectively connected with a U.S. trade or business and (y) IRS Form W-8BEN or W-8BEN-E,

(iv) where such Lender is a partnership (for U.S. federal income tax purposes) or otherwise not a beneficial owner (e.g., where such Lender has sold a participation), IRS Form W-8IMY (or any successor thereto), a Tax Status Certificate substantially in the form of Exhibit F-2 or Exhibit F-4 and all required supporting documentation (including, where one or more of the underlying beneficial owner(s) is claiming the benefits of the Portfolio Interest Exemption, a Tax Status Certificate of such beneficial

owner(s); *provided* that, if the Foreign Lender is a partnership and not a participating Lender, a Tax Status Certificate substantially in the form of Exhibit F-3 from the beneficial owner(s) shall be provided by the Foreign Lender on behalf of the beneficial owner(s)), or

(v) any other form prescribed by applicable laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable laws to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(C) each Lender shall deliver to the Borrower and the Administrative Agent (in such number of duly completed and executed copies as shall be requested by the recipient), at such time or times reasonably requested by the Borrower or the Administrative Agent, such documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent (1) to comply with the Borrower's and/or Administrative Agent's obligations under FATCA, (2) to determine that such Lender has complied with such Lender's obligations under FATCA and/or (3) to determine the amount to deduct and withhold from any payment under this Agreement or the other Loan Documents pursuant to FATCA. Solely for purposes of this clause (C), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Notwithstanding anything to the contrary in this Section 3.01(e), no Lender shall be required to deliver any documentation that it is not legally eligible to provide.

(f) Status of Administrative Agent. The Administrative Agent shall deliver the following to the Borrower on or before the date on which it becomes the Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower): (1) if the Administrative Agent is not acting through a U.S. office, (x) executed copies of IRS Form W-8BEN-E with respect to any amounts payable to the Administrative Agent for its own account and (y) executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, IRS Form W-8BEN-E, and/or other certification documents from each beneficial owner, as applicable with respect to any amounts payable to the Administrative Agent for the account of others; provided, however, that no additional amounts for non-U.S. Taxes and non-U.S. Other Taxes shall be payable by the Borrower under Section 3.01 or Section 3.03(a) if such additional amounts or Other Taxes would not have been payable had the Administrative Agent acted through a U.S. office; provided, further, that such additional amounts for Taxes and Other Taxes shall be payable in accordance with Section 3.01 and Section 3.03(a) to the extent that such Taxes that are payable as a result of a change in law that occurred after the date hereof; and (2) if the Administrative Agent is acting through a U.S. office, (x) executed copies of IRS Form W-8ECI with respect to any amounts payable to the Administrative Agent for its own account and (y) executed copies of IRS Form W-8IMY with respect to any amounts payable to the Administrative Agent for the account of others, certifying that it is a "U.S. branch," that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business within the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. person with respect to such payments (and the Borrower and the Administrative Agent agree to so treat

the Administrative Agent as a U.S. person with respect to such payments as contemplated by Section 1.1441-1(b)(2)(iv) of the United States Treasury Regulations).

(g) Treatment of Certain Refunds. If the Administrative Agent or any Lender determines, in its good faith discretion, that it has received a refund in cash of any Indemnified Taxes as to which it has been indemnified by a Credit Party or with respect to which a Credit Party has paid additional amounts pursuant to this Section 3.01, it shall promptly pay to the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by a Credit Party under this Section 3.01 with respect to the Indemnified Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender (including any Taxes), as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); *provided* that the Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority (other than any penalties arising from the gross negligence or willful misconduct of the Administrative Agent or the Lender as determined in a final, non-appealable judgment by a court of competent jurisdiction)) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. Such Lender or Administrative Agent, as the case may be, shall, at the Borrower's reasonable request, provide the Borrower with a copy of any notice of assessment or other evidence reasonably satisfactory to the Borrower of the requirement to repay such refund received from the relevant taxing authority. This subsection shall not be construed to require the Administrative Agent, or any Lender to make available its tax returns (or any other information relating to its taxes that it deems confidential) to the Borrower or any other Person.

Section 3.02 *Illegality*.

(a) If any Lender reasonably and in good faith determines that the introduction of any Requirement of Law, or any change in any Requirement of Law, or in the interpretation or administration of any Requirement of Law, after the Restatement Effective Date, has made it unlawful, or that any central bank or other Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make Eurodollar Rate Loans, then, on notice thereof by the Lender to the Borrower through the Administrative Agent, any obligation of that Lender to make Eurodollar Rate Loans shall be suspended until the Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist.

(b) If a Lender reasonably and in good faith determines that it is unlawful for such Lender to maintain any Eurodollar Rate Loan after the Restatement Effective Date, on notice thereof by the Lender to the Borrower through the Administrative Agent, such Eurodollar Rate Loans of that Lender then outstanding, either on the last day of the Interest Period thereof, if the Lender may lawfully continue to maintain such Eurodollar Rate Loans to such day, or immediately, if the Lender may not lawfully continue to maintain such Eurodollar Rate Loan, shall convert to a Base Rate Loan on such applicable date and within three (3) Business Days after the Borrower's receipt of such notice the Borrower shall pay to the applicable Lender

accrued interest on such Eurodollar Rate Loan along with all amounts required under Section 3.04.

(c) If the obligation of any Lender to make or maintain Eurodollar Rate Loans has been so terminated or suspended, the Borrower may elect, by giving notice to the Lenders through the Administrative Agent, that all Revolving Loans which would otherwise be made or maintained by the Lenders as Eurodollar Rate Loans shall instead be Base Rate Loans.

(d) If any Lender gives a notice pursuant to this Section 3.02, then such Lender shall use reasonable efforts to designate a different Lending Office for funding or booking its Eurodollar Rate 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 the need for the notice pursuant to this Section 3.02, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender in any material economic, legal or regulatory respect.

Section 3.03 *Increased Costs and Reduction of Return.*

(a) If any Lender reasonably and in good faith determines that, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance by that Lender with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) after the later of (x) the Restatement Effective Date and (y) the date such Lender becomes a party to this Agreement, there shall be any increase in the cost (including Taxes, other than (i) Taxes described in clauses (b) and (c) of the definition of "Excluded Taxes", (ii) Connection Income Taxes and (iii) Indemnified Taxes) to such Lender of agreeing to make or making, funding or maintaining any Loans or participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligations to participate in or issue any Letter of Credit), or any reduction in the amount of any sum received or receivable by such Lender, then the Borrower shall be liable for, and shall from time to time, promptly upon written demand (with a copy of such demand to be sent to the Administrative Agent), pay to the Administrative Agent for the account of such Lender, additional amounts as are sufficient to compensate such Lender for such increased costs or reduction suffered, to the extent such Lender is imposing such costs on borrowers that are similarly situated to the Borrower with respect to whom such Lender has similar rights of compensation.

(b) If any Lender reasonably and in good faith shall have determined that (i) the introduction of any Capital Adequacy Regulation, (ii) any change in any Capital Adequacy Regulation, (iii) any change in the interpretation or administration of any Capital Adequacy Regulation by any central bank or other Governmental Authority charged with the interpretation or administration thereof, or (iv) compliance by the Lender (or its Lending Office) or any corporation controlling the Lender with any Capital Adequacy Regulation, in each case after the later of (x) the Restatement Effective Date and (y) the date such Lender becomes a party to this Agreement, affects or would affect the amount of capital or liquidity required or expected to be maintained by the Lender or any corporation controlling the Lender and (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy or



liquidity and such Lender's desired return on capital) determines that the amount of such capital or liquidity is increased as a consequence of its Revolving Commitment, loans, credits or obligations under this Agreement, then, thirty (30) days after written demand by such Lender to the Borrower through the Administrative Agent, the Borrower shall pay to the Lender, from time to time as specified by the Lender, additional amounts sufficient to compensate the Lender for such increase, to the extent such Lender is employing such increase with respect to borrowers that are similarly situated to the Borrower with respect to whom such Lender has similar rights of compensation.

(c) Notwithstanding anything herein to the contrary, for all purposes of the Loan Documents, all requests, rules, guidelines or directives concerning liquidity and capital adequacy issued by any United States regulatory authority (i) under or in connection with the implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act and (ii) in connection with the implementation of the recommendations of the Bank for International Settlements or the Basel Committee on Banking Regulations and Supervisory Practices (or any successor or similar authority), in each case pursuant to Basel III, regardless of the date adopted, issued, promulgated or implemented are deemed to have been adopted and to have taken effect after the date hereof and after the date any Lender becomes a party to this Agreement.

(d) The Borrower shall not be required to compensate any Lender pursuant to this Section 3.03 for any increased costs or reduced returns to the extent such Lender makes written demand on the Borrower for compensation later than 270 days after the date any such increased cost or reduced return is incurred; *provided* that, if the change in law giving rise to any such increased cost or reduced giving rise to such claims are retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof. A certificate setting forth the amount of such increased costs or reduced returns 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.

Section 3.04 *Funding Losses*. The Borrower shall reimburse each Lender and hold each Lender harmless from any loss (other than loss of profits or the Applicable Margin), expense or liability which the Lender may sustain or incur as a consequence of:

- (a) the failure of the Borrower to make on a timely basis any payment of principal of any Eurodollar Rate Loan;
- (b) the failure of the Borrower to continue a Eurodollar Rate Loan after the Borrower has given (or is deemed to have given) a Conversion/Continuation Notice thereof;
- (c) the failure of the Borrower to make any prepayment of a Eurodollar Rate Loan in accordance with any notice of prepayment given by the Borrower;
- (d) the prepayment (including pursuant to Section 2.06) or other payment (including after acceleration thereof) of a Eurodollar Rate Loan on a day that is not the last day of the relevant Interest Period;
- (e) a Credit Extension of any Eurodollar Rate Loan does not occur on a date specified therefor in a Loan Notice delivered by or on behalf of the Borrower, or a conversion to or

continuation of any Eurodollar Rate Loan does not occur on a date specified therefor in a Conversion/Continuation Notice delivered by or on behalf of the Borrower; or

(f) any conversion of any of its Eurodollar Rate Loans occurring on a date prior to the last day of an Interest Period applicable to the Revolving Loan;

including any such loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain its Eurodollar Rate Loans or from fees payable to terminate the deposits from which such funds were obtained, but excluding any administrative fee or other amount chargeable by such Lender for the calculation of such loss.

Section 3.05 *Inability to Determine Rates.* (a) If the Required Lenders determine that for any reason adequate and reasonable means do not exist for determining the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan, or that the Eurodollar Rate for any requested Interest Period with respect to a proposed Eurodollar Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Revolving Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, the obligation of the Lenders to make or maintain Eurodollar Rate Loans shall be suspended until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice in writing. Upon receipt of such notice, the Borrower may revoke any notice of continuation then submitted by it pursuant to Section 2.04. If the Borrower does not revoke such notice of continuation, the Lenders shall make, convert or continue the Revolving Loans, as proposed by the Borrower, in the amount specified in the applicable notice submitted by the Borrower, but such Revolving Loans shall be made, converted or continued as Base Rate Loans instead of Eurodollar Rate Loans.

(b) Notwithstanding the foregoing, if the Administrative Agent (i) determines in its reasonable judgment that the circumstances described in clause (a) of this Section 3.05 have arisen and such circumstances are unlikely to be temporary or (ii) determines in its reasonable judgment that the circumstances described in clause (a) of this Section 3.05 have not arisen but the supervisor for the administrator of the Eurodollar Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the Eurodollar Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Borrower shall endeavor to establish an alternate rate of interest to the Eurodollar Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and the Administrative Agent and the Borrower shall enter into an amendment to this Agreement in form and substance satisfactory to each of them to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable, *provided* that to the extent that the Administrative Agent determines that adoption of any portion of such market convention is not administratively feasible or that no market convention for the administration of such alternate rate of interest exists, the Administrative Agent shall administer such alternate rate of interest in a manner determined by the Administrative Agent with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed). Notwithstanding anything to the contrary in Section 10.01, such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate

rate of interest is provided to the Lenders, a written notice from the Required Lenders stating that such Required Lenders object to such amendment. If a notice of an alternate rate of interest has been given and no such alternate rate of interest has been determined, and (x) the circumstances under clause (i) above exist or (y) the specific date referred to in clause (ii) has occurred (as applicable), the Base Rate shall apply without regard to clause (c) of the definition thereof. Provided that, if such alternate rate of interest shall be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

Section 3.06 *Certificates of Lenders*. Any Lender claiming reimbursement or compensation under this Article 3 shall deliver to the Borrower (with a copy to the Administrative Agent) a certificate setting forth in reasonable detail the amount payable to the Lender hereunder and such certificate shall be conclusive and binding on the Borrower in the absence of demonstrable error. Such certificate shall set forth in reasonable detail the methodology used in determining the amount payable to the Lender.

Section 3.07 *Substitution of Lenders*. If the Borrower receives from any Lender notice of a claim for compensation under Section 3.01 or 3.03 or notice of illegality under Section 3.02, the Borrower may, upon notice to such Lender and the Administrative Agent, replace such Lender by causing such Lender to assign its Revolving Loans and Revolving Commitment (with the assignment fee to be paid by the Borrower in such instance) pursuant to Section 10.07(b) to one or more other Lenders or Eligible Assignees procured by the Borrower; *provided* that (x) the Borrower shall be obligated to replace all Lenders that have made similar requests and (y) each such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans, accrued interest thereon, accrued fees and all other amounts payable to it under the Loan Documents from the applicable assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts). The Borrower shall release such Lender from its obligations under the Loan Documents. Any Lender being replaced shall execute and deliver an Assignment and Assumption with respect to such Lender's outstanding Revolving Loans.

Section 3.08 *Survival*. The agreements and obligations of the Borrower in Section 3.01, Section 3.03 and Section 3.04 and the agreements and obligations of the Lenders in Section 3.06 shall survive the termination of this Agreement and the payment of all other Obligations.

#### ARTICLE 4 CONDITIONS PRECEDENT

Section 4.01 *Conditions to Effectiveness*. This Agreement (and the amendment and restatement of the Existing Credit Agreement effected hereby) shall become effective on the date that each of the following conditions precedent are satisfied or waived:

(a) The Administrative Agent shall have received each of the following, each of which shall be originals or facsimiles or Adobe PDFs delivered by electronic mail (followed promptly by originals) unless otherwise specified:

(i) from each party hereto (including each Continuing Existing Credit Agreement Lender), a counterpart of this Agreement executed by such party; and

(ii) a Revolving Loan Note executed by the Borrower in favor of each Lender that has requested a Revolving Loan Note at least two (2) Business Days prior to the Restatement Effective Date.

(b) The Guarantee Requirement shall have been satisfied.

(c) The Collateralized L/C Collateral Requirement shall have been satisfied.

(d) The Administrative Agent shall have received:

(i) copies of the resolutions of the board of directors, authorized subcommittee thereof, or other equivalent body of each Credit Party authorizing the Transactions to which such Credit Party is a party, certified as of the Restatement Effective Date by the Secretary or an Assistant Secretary of such Credit Party;

(ii) a certificate of the Secretary or Assistant Secretary of each Credit Party certifying the names and true signatures of the officers of such Credit Party authorized to execute, deliver and perform, as applicable, this Agreement and all other Loan Documents to be delivered by such Credit Party hereunder;

(iii) the articles or certificate of incorporation or equivalent document of each Credit Party as in effect on the Restatement Effective Date, certified by the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or organization as of a recent date;

(iv) the bylaws or equivalent document of each Credit Party as in effect on the Restatement Effective Date, certified by the Secretary or Assistant Secretary of such Credit Party as of the Restatement Effective Date;

(v) a certificate of good standing or equivalent document for each Credit Party from the Secretary of State (or similar, applicable Governmental Authority) of its state of incorporation or organization as of a recent date; and

(vi) certified copies of Uniform Commercial Code, tax and judgment lien searches, or equivalent reports or searches, each of a recent date listing all effective financing statements, lien notices or comparable documents that name any Credit Party as debtor and that are filed in those state and county jurisdictions in which any Credit Party is organized or maintains its principal place of business and such other searches that the Administrative Agent reasonably deems necessary and requested at least five (5) days prior to the Restatement Effective Date.

(e) The Administrative Agent shall have received a written opinion, reasonably acceptable to the Administrative Agent in form and substance (addressed to the Administrative Agent and the Lenders and dated the Restatement Effective Date), from each of (i) Sidley Austin LLP, counsel for the Credit Parties, substantially in the form of Exhibit G-1 and (ii) Appleby

(Bermuda) Limited, Bermuda counsel for the Credit Parties, substantially in the form of Exhibit G-2.

(f) The Administrative Agent shall have been paid (i) all costs, fees and expenses (including, without limitation, Attorney Costs of the Administrative Agent, the Arrangers, the Bookrunners and recording taxes and fees) to the extent then due and payable to the Administrative Agent, the Arrangers or the Bookrunners and (ii) all other compensation contemplated by the Engagement Letter and each Fee Letter payable to the Administrative Agent, the Arrangers, the Bookrunners or the Lenders on or before the Restatement Effective Date, in each case to the extent invoiced at least two (2) Business Days prior to the Restatement Effective Date.

(g) All accrued and unpaid interest and fees under the Existing Credit Agreement shall have been paid in full.

(h) The Administrative Agent shall have received (i) a certificate signed by a Responsible Officer of Holdings on behalf of the Borrower, dated as of the Restatement Effective Date, (A) confirming that Holdings and its Restricted Subsidiaries have received all required approvals of the Transactions from each applicable Governmental Authority except applicable regulatory approvals of Governmental Authorities required under applicable law in connection with the enforcement of any Collateralized L/C Security Document and (B) certifying that the conditions precedent specified in this Section 4.01(h), (i), (k), (l) and (n) have been satisfied and (ii) a solvency certificate executed by an authorized representative of Holdings, substantially in the form of Exhibit H.

(i) All governmental and regulatory authorizations necessary in connection with the financing contemplated hereby shall have been obtained and be in full force and effect.

(j) Each Credit Party shall have provided the documentation and other information to the Administrative Agent as the Lenders reasonably determine are required by bank regulatory authorities under applicable “know-your-customer” and Anti-Money Laundering Laws, including the PATRIOT Act, at least two (2) Business Days prior to the Restatement Effective Date as has been reasonably requested in writing at least four (4) Business Days prior to the Restatement Effective Date by the Lenders. The Borrower shall have delivered a Beneficial Ownership Certification to the Administrative Agent and each Lender requesting one.

(k) There will not exist (after giving effect to the financing hereunder) any “event of default” under (i) any Material Indebtedness of Holdings or its Subsidiaries or (ii) the Senior Notes.

(l) The organizational structure of Holdings and its Subsidiaries will be as set forth on Schedule 4.01(l).

(m) The Administrative Agent and the Lenders shall have received at least five (5) calendar days prior to the Restatement Effective Date (i) the Historical Financial Statements and (ii) the most recent Annual Statements and Quarterly Statements (for those periods ending after delivery of the most recent Annual Statements for each Insurance Subsidiary) of each Insurance Subsidiary as filed with the insurance regulator of such Insurance Subsidiary’s

jurisdiction of domicile on or prior to such date, in each case, to the extent such reports and statements have been prepared by such Insurance Subsidiaries.

(n) All of the representations and warranties contained herein or in any Loan Document shall be true and correct in all material respects on and as of the Restatement Effective Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

Section 4.02 *Conditions to All Borrowings and Letter of Credit Issuances.* The obligation of any Lender to make any Loans or to issue, renew or extend any Letter of Credit, on any Borrowing Date (including on the Restatement Effective Date) is subject to satisfaction of the following conditions precedent:

(a) All of the representations and warranties contained herein or in any Loan Document by any Credit Party (other than the representations and warranties contained in Sections 5.05 and 5.11(d)), shall be true and correct in all material respects on and as of such Borrowing Date to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date; *provided* that, in each case, such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof.

(b) No Default or Event of Default shall have occurred and be continuing on such date or immediately after giving effect to the proposed Credit Extension.

(c) The Administrative Agent shall have received a Loan Notice or Issuance Notice in accordance with the requirements hereof, along with a Collateralized L/C Collateral Certificate, if applicable.

(d) After making the Credit Extension requested on such Borrowing Date, (i) the Total Utilization of Revolving Commitments shall not exceed the Revolving Commitments then in effect, (ii) the Letter of Credit Usage shall not exceed the Letter of Credit Sublimit and (iii) in the case of any Credit Extension consisting of the issuance, renewal or extension of a Collateralized Letter of Credit, the Collateralized L/C Aggregate Collateral Amount shall not be less than the Minimum Collateralized L/C Aggregate Collateral Amount.

(e) On or before the date of issuance of any Letter of Credit, the Administrative Agent shall have received all other information required by the applicable Issuance Notice, and such other documents or information as the Administrative Agent may reasonably require in connection with the issuance of such Letter of Credit.

Each Loan Notice submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied (or waived) on and as of the date of the applicable Credit Extension.

Section 4.03 *Determinations Under Section 4.01.* For purposes of determining compliance with the conditions specified in Section 4.01, (i) each of the Lenders shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by, or acceptable or satisfactory to, the Lenders unless an officer of the Administrative Agent responsible for the Transactions shall have received notice from such Lender prior to the Restatement Effective Date specifying its objection thereto and, in the case of any Lender, such Lender shall not have made available to the Administrative Agent on the Restatement Effective Date such Lender's Pro Rata Share of the borrowing to be made on such date and (ii) transactions occurring (or to occur) on the Restatement Effective Date in accordance with, and as expressly set forth in, the funds flow memorandum delivered to (and approved by) the Administrative Agent shall be deemed to occur and have occurred substantially simultaneously with the effectiveness hereof on the Restatement Effective Date.

ARTICLE 5  
REPRESENTATIONS AND WARRANTIES

Each Credit Party represents and warrants to the Administrative Agent and the Lenders on behalf of itself and its Restricted Subsidiaries that on the Restatement Effective Date and, to the extent provided in Section 4.02(a), on the date of the making of each Revolving Loan or issuance, renewal or extension of a Letter of Credit hereunder the following statements are true and correct:

Section 5.01 *Corporate Existence and Power.* Such Credit Party and each of its Restricted Subsidiaries:

(a) is duly organized, validly existing and in good standing (but, with respect to any Credit Party or Restricted Subsidiary that is not incorporated, organized or formed under the laws of the United States of America, any State thereof or the District of Columbia, only to the extent such concept is applicable to such Credit Party or Restricted Subsidiary) under the laws of the jurisdiction of its incorporation, organization or formation;

(b) has the corporate (or other organizational) power and authority (i) to own its assets and carry on its business and (ii) in the case of a Credit Party, to perform its obligations, if any, under the Loan Documents to which it is a party;

(c) is duly qualified as a foreign entity and in good standing under the laws of each jurisdiction where its ownership, lease or operation of its property or the conduct of its business requires such qualification; and

(d) is in compliance with all Requirements of Law;

except, in each case referred to in clauses (c) and (d), to the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.02 *Corporate Authorization; No Contravention.* The Transactions to be entered into by such Credit Party are within such Credit Party's corporate or other organizational powers. The Transactions (including the execution, delivery and performance by such Credit Party of each Loan Document to which it is a party) have been duly authorized by all necessary corporate or other organizational action of such Credit Party and do not and will not:

- (a) contravene the terms of any of such Credit Party's Organization Documents;
- (b) result in any breach, violation or contravention of, or result in or require the creation of any Lien (other than the Collateralized L/C Liens) under, any document evidencing the Senior Notes or any Material Indebtedness to which such Credit Party or any of its Restricted Subsidiaries is a party; or
- (c) violate any Requirement of Law or any order, injunction, writ or decree of any Governmental Authority to which such Credit Party or any of its Restricted Subsidiaries or its property is subject, except to the extent that such violations, in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

Section 5.03 *Governmental Authorization; Other Consents.* No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the Transactions (including the execution, delivery or performance by, or enforcement against, such Credit Party of each Loan Document to which it is a party), except (a) such as have been obtained and are in full force and effect (including, without limitation, the approval of the applicable Department of each Insurance Subsidiary, if required) and (b) filings necessary to perfect the Collateralized L/C Liens or, if required under applicable law in connection with the enforcement of any Collateralized L/C Liens, to enforce the Collateralized L/C Liens.

Section 5.04 *Binding Effect.* This Agreement has been duly executed and delivered by such Credit Party and constitutes, and each other Loan Document to which such Credit Party is to be a party, when executed and delivered by such Credit Party, will constitute, a legal, valid and binding obligation of such Credit Party, in each case enforceable against such Credit Party in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

Section 5.05 *Litigation.* Except as set forth on Schedule 5.05, there are no actions, suits or proceedings pending, or to the Knowledge of such Credit Party, threatened, at law, in equity, in arbitration or before any Governmental Authority, by or against such Credit Party or any of its Restricted Subsidiaries or any of their respective properties that: (a) purport to affect or pertain to this Agreement, any other Loan Document, or any of the transactions (including the Transactions) contemplated hereby or thereby or (b) individually or in the aggregate could reasonably be expected to have a Material Adverse Effect. No injunction, writ, temporary



restraining order or any order of any nature has been issued by any court or other Governmental Authority against such Credit Party or any of its Restricted Subsidiaries purporting to enjoin or restrain the execution, delivery or performance of this Agreement or any other Loan Document by such Credit Party or directing that the Transactions not be consummated as herein or therein provided.

Section 5.06 *No Default.* No Default or Event of Default has occurred and is continuing. Neither such Credit Party nor any of its Restricted Subsidiaries is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect.

Section 5.07 *ERISA Compliance.*

(a) Each Plan is in compliance with the applicable provisions of ERISA, the Code and other federal or state law except to the extent that such non-compliance could not reasonably be expected to have a Material Adverse Effect. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS and to the Knowledge of such Credit Party, nothing has occurred which would reasonably be expected to cause the loss of such qualification, except where such non-qualification could not reasonably be expected to have a Material Adverse Effect. Such Credit Party, its Restricted Subsidiaries and each ERISA Affiliate have made all required contributions to any Pension Plan, and no application for a funding waiver or an extension of any amortization period pursuant to Section 412 of the Code has been made with respect to any Pension Plan, except where such lack of contribution or application for funding waiver could not reasonably be expected to have a Material Adverse Effect.

(b) There are no pending or, to the Knowledge of such Credit Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan or Pension Plan that could reasonably be expected to have a Material Adverse Effect. To the Knowledge of such Credit Party, there has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan or Pension Plan that could reasonably be expected to have a Material Adverse Effect.

(c) Except for occurrences or circumstances that individually or in the aggregate could not reasonably be expected to have a Material Adverse Effect: (i) no ERISA Event has occurred or is reasonably expected to occur and (ii) no Single Employer Pension Plan has any Unfunded Pension Liability.

(d) To the extent the assets of the Borrower are deemed to be “plan assets” within the meaning of Section 3(42) of ERISA, or otherwise, (i) on each day that an extension of credit pursuant to a Credit Extension is in effect, such extension of credit will not constitute a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code as a result of the applicability of Prohibited Transaction Class Exemption 95-60, and (ii) at any time when regulation 29 C.F.R. Section 2510.3-21, as modified in 2016, is applicable, the fiduciary

making the decision on behalf of the Borrower with respect to the Credit Extension will be deemed to represent and warrant that it (v) is a bank, insurance company, registered investment adviser, broker-dealer or other person with financial expertise, in each case as described in 29 C.F.R. Section 2510.3-21(c)(1)(i); (w) is an independent plan fiduciary within the meaning of 29 C.F.R. Section 2510.3-21; (x) is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies; (y) is responsible for exercising independent judgment in evaluating the transaction and (z) it is not paying any fee or other compensation to the Lenders or the Agents (the “**Transaction Parties**”) for investment advice (as opposed to other services) in connection with the transaction. In addition, such fiduciary will be deemed to acknowledge and agree that it (1) has been informed (and it is hereby expressly confirmed) that none of the Transaction Parties, or other persons that provide marketing services, nor any of their affiliates, has provided, and none of them will provide, impartial investment advice and they are not giving any advice in a fiduciary capacity, in connection with the Credit Extensions and (2) has received information concerning, and understands the existence and nature of, the financial interests of the Transaction Parties in the Credit Extensions.

Section 5.08 *Margin Regulations.* Neither such Credit Party nor any of its Restricted Subsidiaries is engaged principally, or as one of its important activities, in the business of purchasing or carrying Margin Stock or extending credit for the purpose of purchasing or carrying Margin Stock. Margin Stock does not constitute more than 25% of the value of the consolidated assets of such Credit Party and its Restricted Subsidiaries. None of the proceeds of the Revolving Loans will be used to acquire Margin Stock. None of the transactions contemplated by this Agreement (including the direct or indirect use of the proceeds of the Revolving Loans) will violate or result in a violation of Regulation U or X of the FRB.

Section 5.09 *Title to Properties.* Each of such Credit Party and its Restricted Subsidiaries has (i) good, sufficient and legal title to (in the case of fee interests in real property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), (iii) valid license rights in (in the case of licensed interests in intellectual property) and (iv) good title to (in the case of all other personal property), all of their respective properties and assets necessary in the ordinary conduct of their respective businesses, except for any failure of any of the foregoing as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.

Section 5.10 *Taxes.*

(a) Such Credit Party and each of its Restricted Subsidiaries have timely filed all U.S. federal income Tax, other income Tax and other Tax returns and reports required to be filed, and have paid all federal income Tax, other income Tax and other Taxes levied or imposed upon it or its properties, income or assets that have become due and payable (including in its capacity as a withholding agent) when due and payable, except those that are being contested in good faith by appropriate proceedings and for which adequate reserves have been provided in accordance with SAP or GAAP, as applicable (*provided* that such contest effectively suspends collection of the same and enforcement of any Lien securing the same) or those the failure to so file or pay could not reasonably be expected, individually or in the aggregate, to have a Material

Adverse Effect. There is no current or proposed Tax audit, assessment, deficiency or other claim or proceeding against such Credit Party or any of its Restricted Subsidiaries that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

(b) Except as could not be reasonably expected to, individually or in the aggregate, result in a Material Adverse Effect (i) such Credit Party and each of its Restricted Subsidiaries have made adequate provision in accordance with SAP or GAAP (as applicable) for all Taxes not yet due and payable and (ii) neither such Credit Party nor any Restricted Subsidiary has ever participated in a “listed transaction” within the meaning of United States Treasury Regulation Section 1.6011-4.

Section 5.11 *Financial Condition.*

(a) Each of the Historical Financial Statements:

(i) was prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, subject, in the case of such unaudited financial statements, to ordinary, good faith year-end and audit adjustments and the absence of footnote disclosure;

(ii) fairly presents in all material respects the financial condition, results of operations, cash flows and changes in shareholders’ equity of GAFI or Holdings, as the case may be, and its respective Subsidiaries as of the date thereof and results of operations for the period covered thereby; and

(iii) in the case of the Historical Financial Statements, shows all material Indebtedness and other material Contingent Obligations, of Holdings and its consolidated Subsidiaries as of the date thereof.

(b) Each of (i) the December 31, 2017 Annual Statement of each Insurance Subsidiary, (ii) the September 30, 2017 Quarterly Statement of each Insurance Subsidiary and (iii) the June 30, 2017 Quarterly Statement of each Insurance Subsidiary (collectively, the “**Historical Statutory Statements**”):

(i) was prepared in accordance with SAP, except as may be reflected in the notes thereto and subject, with respect to the Quarterly Statements, to the absence of notes required by SAP and to normal year-end adjustments; and

(ii) was in all material respects in compliance with applicable Requirements of Law when filed and present fairly in all material respects the financial condition of the respective Insurance Subsidiaries covered thereby as of the respective dates thereof and changes in Capital and Surplus of the respective Insurance Subsidiaries covered thereby for the respective periods then ended.

Except for liabilities and obligations disclosed or provided for in the Historical Statutory Statements (including, without limitation, reserves, policy and contract claims and statutory liabilities), no Insurance Subsidiary had, as of the date of its respective Historical Statutory Statements, any material liabilities or obligations of any nature whatsoever (whether absolute,

contingent or otherwise and whether or not due) that, in accordance with SAP, would have been required to have been disclosed or provided for in such Historical Statutory Statement.

(c) On and as of the Restatement Effective Date, the financial projections set forth in the lenders' presentation dated as of April 18, 2018 have been prepared in good faith based upon assumptions that are believed by the preparer thereof to be reasonable at the time such financial projections were furnished to the Lenders, it being understood and agreed that financial projections are not a guarantee of financial performance and actual results may differ from financial projections and such differences may be material.

(d) Since December 31, 2017, no event, circumstance or change has occurred that has caused or evidences, or could reasonably be expected to result in, either in any case or in the aggregate, a Material Adverse Effect.

Section 5.12 *Environmental Matters.*

(a) All real properties owned or leased by such Credit Party or any of its Restricted Subsidiaries have been, and continue to be, owned or operated by such Credit Party and its Restricted Subsidiaries in compliance with all Environmental Laws, except where failure to so comply could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(b) There have been no past, and there are no pending or, to the Knowledge of such Credit Party, threatened, Environmental Claims against such Credit Party or any of its Restricted Subsidiaries, except for such Environmental Claims that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) There has been no Release of Hazardous Materials at, on, under or from any real property now or, to the Knowledge of such Credit Party, previously owned or leased by such Credit Party or any of its Restricted Subsidiaries that, individually or in the aggregate, have had, or could reasonably be expected to have, a Material Adverse Effect.

(d) Such Credit Party and each of its Restricted Subsidiaries have been issued and are in compliance with all permits, certificates, approvals, licenses and other authorizations required under any Environmental Law to own and operate their real property or to conduct their businesses except where failure to obtain or comply with the foregoing could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(e) There are no underground or above-ground storage tanks, active or abandoned, including petroleum storage tanks, on or under any real property now owned or leased by such Credit Party or any of its Restricted Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(f) To the Knowledge of such Credit Party, neither such Credit Party nor any of its Restricted Subsidiaries has directly transported or directly arranged for the transportation of any Hazardous Material to any location that could reasonably be expected to result in liability of such Credit Party or any of its Restricted Subsidiaries under any Environmental Law, except any such

liability which could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

(g) To the Knowledge of such Credit Party, there are no polychlorinated biphenyls or friable asbestos present at any real property now owned or leased by such Credit Party or any of its Restricted Subsidiaries that, individually or in the aggregate, could be reasonably expected to have a Material Adverse Effect.

Section 5.13 *Investment Company Act of 1940.* Neither such Credit Party, nor any of its Restricted Subsidiaries, is required to register as an investment company under the Investment Company Act of 1940.

Section 5.14 *Subsidiaries.*

(a) The Capital Stock of each of such Credit Party and its Restricted Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. Except as set forth on Schedule 5.14(a), as of the date hereof, there is no existing option, warrant, call, right, commitment or other agreement to which such Credit Party or any of its Restricted Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of such Credit Party or any of its Restricted Subsidiaries outstanding which upon conversion or exchange would require, the issuance by such Credit Party or any of its Restricted Subsidiaries of any additional membership interests or other Capital Stock of such Credit Party or any of its Restricted Subsidiaries or other securities convertible into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of such Credit Party or any of its Restricted Subsidiaries.

(b) Schedule 5.14(b) sets forth the name of, and the ownership interest of Holdings (or the applicable Subsidiary) in, each of its Subsidiaries and identifies each Subsidiary that is a Foreign Subsidiary and/or an Insurance Subsidiary, in each case as of the Restatement Effective Date. All Holdings' Subsidiaries are, and will at all times be, fully consolidated in its consolidated financial statements.

Section 5.15 *Insurance and Other Licenses.*

(a) To such Credit Party's Knowledge, no License that is required to be obtained in order to be an insurer or a reinsurer of any Insurance Subsidiary, the loss of which individually or in the aggregate could reasonably be expected to have a Material Adverse Effect, is the subject of a proceeding for suspension or revocation. To such Credit Party's Knowledge, there is no sustainable basis for such suspension or revocation, and no such suspension or revocation has been threatened by any Governmental Authority.

(b) Such Credit Party and each of its Restricted Subsidiaries has all governmental licenses, authorizations, consent, and approvals (i) to own, lease or operate its assets and to conduct its business and (ii) in the case of a Credit Party, to perform its obligations, if any, under the Loan Documents to which it is a party; except, in each case referred to in this clause (b), to the extent that the failure to do so, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

(a) All written or formally presented information (other than financial projections) provided by such Credit Party to the Lenders in connection with the Transactions is, when taken as a whole with all other information so provided, complete and correct in all material respects and when taken as a whole, did not and will not, when furnished, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein not materially misleading. There are no facts known to such Credit Party (other than matters of a general economic nature) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Lenders for use in connection with the Transactions.

(b) As of the Restatement Effective Date, the information included in the Beneficial Ownership Certification delivered pursuant to Section 4.01(j) is true and correct in all respects.

Section 5.17 *Solvency.* Immediately after the Transactions to occur on the Restatement Effective Date are consummated, and, upon the incurrence of any Obligation by such Credit Party on any date on which this representation and warranty is made:

(a) the fair value of the assets of Holdings and its Restricted Subsidiaries, on a consolidated basis, exceeds the fair value of their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis;

(b) the present fair saleable value of the property of Holdings and its Restricted Subsidiaries, on a consolidated basis, is greater than the amount that will be required to pay the probable liability, on a consolidated basis, of their debts and other liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such debts and other liabilities become absolute and matured;

(c) Holdings and its Restricted Subsidiaries, on a consolidated basis, are able to pay their debts and liabilities, subordinated, contingent or otherwise, on a consolidated basis, as such liabilities become absolute and matured;

(d) Holdings and its Restricted Subsidiaries, on a consolidated basis, do not intend to incur, nor believe that they will incur on or immediately following the Restatement Effective Date, debts, including current obligations, beyond their ability to pay such debts as they become absolute and matured; and

(e) Holdings and its Restricted Subsidiaries, on a consolidated basis, are not engaged in, and are not about to engage in, business for which they have unreasonably small capital.

Section 5.18 *Insurance.* Other than as could not reasonably be expected to have a Material Adverse Effect, the insurance maintained by or reserved on the books of such Credit Party and its Restricted Subsidiaries is sufficient to protect such Credit Party and its Restricted Subsidiaries and their respective directors and officers against such risks as are usually insured against in accordance with industry practice by companies in the same or similar business.

(a) Such Credit Party and each of its Subsidiaries and, to the Knowledge of such Credit Party, each of such Credit Party's and its Subsidiaries' officers, directors and employees has conducted its business activities in material compliance with Anti-Corruption Laws. Each Insurance Subsidiary has instituted and maintains and will continue to maintain policies and procedures designed to promote and achieve compliance with applicable Anti-Corruption Laws.

(b) Neither such Credit Party nor any of its Subsidiaries or, to the Knowledge of such Credit Party, none of such Credit Party's or any of its Subsidiaries' officers, directors or employees has violated or is in violation of any applicable Anti-Money Laundering Law in any material respect.

(c) Neither such Credit Party nor any of its Subsidiaries or, to the Knowledge of such Credit Party, none of such Credit Party's or any of its Subsidiaries' officers, directors or employees is acting or benefiting in any capacity in connection with the Revolving Loans or the Letters of Credit (i) is an Embargoed Person or (ii) except as otherwise authorized by OFAC or any other relevant sanctions authority, otherwise permitted for U.S. persons by a U.S. Governmental Authority or by any rule, regulation or order of a U.S. Governmental Authority, will use any proceeds of the Revolving Loans, or lend, contribute or otherwise make available such proceeds to any Person (A) for the purpose of financing the activities of or with any Person or in any country or territory that, at the time of funding or facilitation, is an Embargoed Person or (B) in any other manner that would result in a violation of Economic Sanctions Laws or Anti-Corruption Laws.

(d) Except as otherwise authorized by OFAC or any other relevant sanctions authority, neither such Credit Party nor any of its Subsidiaries or, to the Knowledge of such Credit Party, none of such Credit Party's or any of its Subsidiaries' officers, directors or employees acting or benefiting in any capacity in connection with the Revolving Loans or the Letters of Credit (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deals in, or otherwise engages in any transaction related to, any property or interests in property blocked pursuant to any applicable Economic Sanctions Laws or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the applicable prohibitions set forth in any applicable Economic Sanctions Laws.

Section 5.20 *Surplus Debenture Interest and Dividends.* Neither such Credit Party nor any of its Restricted Subsidiaries has received any notice from the NAIC, any other Governmental Authority or any other insurance regulatory authority that its Insurance Subsidiaries will not be permitted to pay dividends or interest, as applicable, on any Surplus Debentures or Notes.

Section 5.21 *Use of Proceeds.* Such Credit Party will use the proceeds of the Revolving Loans (i) only in compliance (and not in contravention of) applicable laws and each Loan Document, and (ii) for working capital and general corporate purposes of Holdings and its Subsidiaries.

Section 5.22. ~~EEA~~Affected Financial Institution. No Credit Party is an ~~EEA~~Affected Financial Institution.

ARTICLE 6  
AFFIRMATIVE COVENANTS

Until all principal of and interest on each Revolving Loan and all fees and other amounts payable hereunder have been paid in full (other than unmatured, surviving contingent indemnification obligations not yet due and payable), all Revolving Commitments have been terminated and all Letters of Credit have been cancelled or have expired (or Cash Collateralized at the Minimum Cash Collateral Amount), each Credit Party, as applicable, covenants and agrees with the Lenders that:

Section 6.01 *Financial Statements*. Holdings and/or the Borrower shall deliver to the Administrative Agent and each Lender:

(a) as soon as available, and in any event within one hundred thirty-five (135) days after the end of each Fiscal Year, commencing with the Fiscal Year ending December 31, 2018, (i) the consolidated balance sheets of Holdings and its Restricted Subsidiaries as at the end of such Fiscal Year (including, any adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) (which may be in footnote form only) from the consolidated financial statements) and the related consolidated statements of income, stockholders' equity and cash flows of Holdings and its Restricted Subsidiaries for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year (to the extent corresponding figures for the previous Fiscal Year were prepared), all in reasonable detail and (ii) with respect to such consolidated financial statements a report thereon of PricewaterhouseCoopers LLP or other independent certified public accountants of recognized national standing selected by Holdings and reasonably satisfactory to the Administrative Agent (which report and/or the accompanying financial statements shall be unqualified as to going concern and scope of audit, and shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial position of Holdings and its Restricted Subsidiaries, in each case, as at the dates indicated and the results of their operations and their cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except as otherwise disclosed in such financial statements) and that the examination by such accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards);

(b) as soon as available, and in any event within sixty (60) days after the end of (x) in the case of clause (i), each of the first three Fiscal Quarters of each Fiscal Year, or (y) in the case of clause (ii), each Fiscal Quarter of each Fiscal Year, in each case, commencing with the Fiscal Quarter ended March 31, 2018, (i) the consolidated balance sheets of Holdings and its Restricted Subsidiaries, as at the end of such Fiscal Quarter and the related consolidated statements of income and stockholders' equity of Holdings and its Restricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year (to the extent corresponding figures for the corresponding periods of the previous Fiscal Year were prepared), all in reasonable detail and



certified by a Responsible Officer of Holdings or the Borrower as fairly presenting in all material respects, in accordance with GAAP (subject to the absence of footnotes and year-end audit adjustments), the financial position, the results of operations of Holdings and its Restricted Subsidiaries, and (ii) consolidated balance sheets of the Borrower and its Restricted Subsidiaries, as at the end of such Fiscal Quarter and the related consolidated statements of income, stockholders' equity of the Borrower and its Restricted Subsidiaries for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year (to the extent corresponding figures for the corresponding periods of the previous Fiscal Year were prepared), all in reasonable detail and certified by a Responsible Officer of the Holdings or the Borrower as fairly presenting in all material respects, in accordance with GAAP (subject to the absence of footnotes and year-end audit adjustments), the financial position and the results of operations of the Borrower and its Restricted Subsidiaries, *provided* that, in lieu of the information required by this Section 6.01(b)(ii) for the fourth Fiscal Quarter of a Fiscal Year, the Borrower may, upon prior written notice to the Administrative Agent and within one hundred thirty-five (135) days after the end of such Fiscal Year, provide financial statements of the Borrower for such Fiscal Year that comply with the requirements of Section 6.01(a) and *provided, further*, that, no separate financial information of the Borrower shall be required to be delivered under this Section 6.01(b)(ii) if the financial statements of Holdings provided pursuant to Section 6.01(a) and Section 6.01(b)(i) include information regarding the Borrower that complies with Section 3-10 of Regulation S-X;

(c) within two (2) Business Days after delivery to the applicable Department, and in any event not later than one hundred twenty-five (125) days after the close of each Fiscal Year of each Insurance Subsidiary, copies of the unaudited Annual Statement of such Insurance Subsidiary on a stand-alone basis in each case, to the extent such Annual Statement is required to be delivered to the applicable Department, the stand-alone Annual Statement to be certified by a Responsible Officer of such Insurance Subsidiary, all such statements to be prepared in accordance with SAP consistently applied throughout the periods reflected therein and, if required by the applicable Governmental Authority, audited and certified by independent certified public accountants of recognized national standing (such audited Annual Statement to be delivered as soon as available but not later than June 15 of each Fiscal Year of such Insurance Subsidiary); *provided* that, no certification by any independent certified public accountants will be required with respect to SAP prescribed or permitted by the insurance commissioner (or other similar authority) in Bermuda;

(d) within two (2) Business Days after delivery to the applicable Department, and in any event not later than fifty (50) days after the close of each of the first three Fiscal Quarters of each Fiscal Year of each Insurance Subsidiary, copies of the Quarterly Statement of such Insurance Subsidiary, in each case, to the extent such Quarterly Statement is required to be delivered to the applicable Department, on a stand-alone basis, the stand-alone Quarterly Statement to be certified by a Responsible Officer of such Insurance Subsidiary, all such statements to be prepared in accordance with SAP consistently applied through the period reflected therein;

(e) promptly following the delivery to or receipt by Holdings or any of its Restricted Subsidiaries of any regular or periodic final Triennial Examination Reports, final risk adjusted

capital reports or final results of any market conduct examination or examination by any Department or the NAIC of the financial condition and operations of, or any final notice of any assertion as to violation of any Requirement of Law by, any Insurance Subsidiary, or any final report with respect to any Insurance Subsidiary (including any summary report from the NAIC with respect to the performance of such Insurance Subsidiary as measured against the ratios and other financial measurements developed by the NAIC under its Insurance Regulatory Information System as in effect from time to time) that could reasonably be expected to result in a Material Adverse Effect; and

(f) within ninety-five (95) days after the close of each Fiscal Year of each Insurance Subsidiary, a copy of the “Statement of Actuarial Opinion” and “Management Discussion and Analysis” for each such Insurance Subsidiary that is provided to the applicable Department (or equivalent information should such Department no longer require such a statement), to the extent required by the applicable Department, as to the adequacy of reserves of such Insurance Subsidiary, such opinion to be in the format prescribed by the insurance code of the state of domicile of such Insurance Subsidiary.

Section 6.02 *Certificates; Other Information.* The Borrower shall furnish to the Administrative Agent, for further distribution to each Lender:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a) and Section 6.01(b)(i), a Compliance Certificate;

(b) (i) on the Business Day immediately preceding the proposed date of issuance of any Collateralized Letter of Credit, (ii) if Collateralized Letters of Credit are outstanding during any calendar month, within ten (10) Business Days after the end of each such calendar month, (iii) as of the Commitment Termination Date, (iv) at and as of such other times as the Administrative Agent may reasonably request and (v) at such other times as the Borrower may desire, a Collateralized L/C Collateral Certificate;

(c) promptly upon receipt thereof, copies of all final reports submitted to Holdings or any of its Restricted Subsidiaries by independent public accountants in connection with each annual, interim or special audit of the financial statements of Holdings or any of its Restricted Subsidiaries made by such accountants;

(d) promptly, copies of all Forms 10-K and 10-Q that Holdings or the Borrower may file with the SEC, copies of all registration statements and prospectuses that Holdings or the Borrower may file with the SEC and copies of all other financial statements, proxy statements and regular, periodic or special reports (including Form 8-K) that Holdings or the Borrower may make to, or file with, the SEC, unless such copies have been publicly filed with the SEC and are available on the SEC’s website or have been posted to Holdings’ or the Borrower’s website (and notification of any such posting has been provided to the Administrative Agent);

(e) (i) promptly and in any event within three (3) Business Days after learning thereof, notification of any changes after the date hereof in any rating given by S&P, Moody’s, Fitch or A.M. Best in respect of Holdings, any of its Restricted Subsidiaries or any of their Indebtedness or securities and (ii) promptly upon receipt thereof by Holdings or any Restricted

Subsidiary, as applicable, a copy of any written communication from S&P, Moody's or Fitch addressed to any Credit Party that could reasonably be expected to have an adverse effect on the then current Debt Rating; and

(f) promptly, (i) such additional information regarding the business, financial or corporate affairs of Holdings or any Restricted Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent, for itself or at the request of any Lender, may from time to time reasonably request and (ii) information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know-your-customer" and Anti-Money Laundering Laws, including the PATRIOT Act.

Documents required to be delivered pursuant to Section 6.01, this Section 6.02 or Section 6.03 may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which Holdings posts such documents or provides a link thereto on Holdings' website on the Internet; (ii) on which such documents are posted on Holdings' behalf on IntraLinks/IntraAgency or another relevant 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); or (iii) on which such documents are made publicly available at [www.sec.gov](http://www.sec.gov); *provided* that, with respect to clauses (ii) and (iii) of this paragraph, Holdings shall notify the Administrative Agent of the posting of any such documents and, solely with respect to clause (ii), provide to the Administrative Agent by electronic mail electronic versions (*i.e.*, soft copies) of such documents. Except for 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, Holdings or its Restricted Subsidiaries 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.

Each of the Credit Parties hereby acknowledges that (a) the Administrative Agent will make available information and projections (collectively, "**Borrower Materials**") to the Lenders by posting the Borrower Materials on IntraLinks or another similar secure electronic system (the "**Platform**") and (b) certain of the Lenders may be "public side" Lenders that do not wish to receive MNPI (each, a "**Public Lender**"). Each of Holdings and the Borrower shall clearly designate as such all Borrower Materials provided to the Administrative Agent by or on behalf of Holdings or the Borrower which is suitable to make available to Public Lenders. If Holdings or the Borrower has not indicated whether Borrower Materials cannot be distributed to Public Lenders, the Administrative Agent reserves the right to post such Borrower Materials solely on that portion of the Platform designated for non-Public Lenders.

Section 6.03 *Notices*. The Borrower shall promptly notify the Administrative Agent:

(a) of the occurrence of any Default;

(b) of any matter that has resulted in, or could reasonably be expected to result in, a Material Adverse Effect, including any of the following that could reasonably be expected to have a Material Adverse Effect: (i) any material breach or non-performance of, or any default under, a material Contractual Obligation of Holdings or any Restricted Subsidiary; (ii) the

commencement of, or any material development in, any litigation (including any governmental proceeding or arbitration proceeding), tax audit or investigative proceeding, claim, lawsuit, and/or investigation against or involving Holdings or any of its Restricted Subsidiaries or any of its or their businesses or operations; (iii) the expiration without renewal, revocation, suspension or restriction of, or the institution of any proceedings to revoke, suspend or restrict, any License now or hereafter held by any Insurance Subsidiary that is required to conduct insurance business in compliance with all applicable laws and regulations; (iv) the institution of any disciplinary proceedings against or in respect of any Insurance Subsidiary, or the issuance of any order, the taking of any action or any request for an extraordinary audit for cause by any Governmental Authority; or (v) the issuance or adoption of any judicial or administrative order limiting or controlling the insurance business of any Insurance Subsidiary (and not the insurance industry generally);

(c) of the filing or commencement of, or the occurrence of any development in, any litigation or proceeding against any Credit Party that seeks to enjoin, prohibit, discontinue or otherwise impacts (i) the validity or enforceability of this Agreement or any of the other Loan Documents or (ii) the transactions contemplated hereby or thereby and, in the case of this subclause (ii), that could reasonably be expected to have a Material Adverse Effect;

(d) of the occurrence of any of the following events affecting Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate (but in no event more than ten (10) days after such event) and deliver to the Administrative Agent and each Lender a copy of any notice with respect to such event that is filed with a Governmental Authority and any notice delivered by a Governmental Authority to Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate with respect to such event:

(i) an ERISA Event;

(ii) the incurrence of any Unfunded Pension Liabilities of any Pension Plan;

(iii) the adoption of or the commencement of contributions to any Pension Plan by Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate; or

(iv) the adoption of any amendment to a Single Employer Pension Plan, if such amendment results in a material increase in contributions or results in Unfunded Pension Liability;

*provided* that no such notice will be required under this Section 6.03(d) with respect to the occurrence of any such event if such occurrence does not result in, and is not reasonably expected to result in, any liability to Holdings, any of its Restricted Subsidiaries or any ERISA Affiliate of more than \$75,000,000 in the aggregate;

(e) of any material change in accounting policies or financial reporting practices by any Credit Party; and

(f) (i) of the consummation of the IPO and (ii) of the identity of the IPO Entity, in each case, promptly after the occurrence of the IPO.

Each notice under this Section 6.03 shall be accompanied by a written statement by a Responsible Officer setting forth details of the occurrence referred to therein, and stating what action Holdings or any affected Restricted Subsidiary proposes to take with respect thereto and at what time. Each notice under Section 6.03(a) shall describe with particularity any and all clauses or provisions of this Agreement or other Loan Document that have been breached or violated.

Section 6.04 *Preservation of Corporate Existence, Etc.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to (except as permitted by Section 7.03 or Section 7.07):

(a) preserve and maintain in full force and effect its existence and good standing (but, with respect to such Credit Party or Restricted Subsidiary that is not incorporated, organized or formed under the laws of the United States of America, any State thereof or the District of Columbia, only to the extent such concept is applicable to such Credit Party or Restricted Subsidiary) under the laws of the jurisdiction of its incorporation, organization or formation, as applicable; *provided* no Restricted Subsidiary (other than the Credit Parties) shall be required to preserve any such existence or good standing if such Person's board of directors (or similar governing body) shall determine that the preservation thereof is no longer desirable in the conduct of the business of such Person, and that the loss thereof is not disadvantageous in any material respect to such Person or to the Lenders; and

(b) preserve and maintain in full force and effect all governmental rights, privileges, qualifications, permits, licenses and franchises necessary in the normal conduct of its business, except, in the case of this clause (b), where such failure to preserve and maintain could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.05 *Insurance.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to, maintain with financially sound and reputable independent insurers insurance against losses or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts (after giving effect to any self-insurance reasonable and customary for similarly situated Persons engaged in the same or similar businesses as Holdings and its Restricted Subsidiaries) as are customarily carried under similar circumstances by such other Persons and at commercially reasonable rates, except where such failure to maintain such insurance could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 6.06 *Payment of Taxes and Claims.* Such Credit Party will, and will cause each of its Restricted Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, except (i) to the extent a failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) as is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with SAP and GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may

become a Lien against any of the Collateralized L/C Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateralized L/C Collateral to satisfy such Tax or claim. Such Credit Party will not, nor will it permit any of its Restricted Subsidiaries to, file or consent to the filing of any consolidated income tax return with any Person (other than Holdings or any of its Subsidiaries).

Section 6.07 *Compliance with Laws.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to, comply with all Requirements of Law of any Governmental Authority having jurisdiction over it or its business (including the Federal Fair Labor Standards Act, the PATRIOT Act and all applicable Environmental Laws), except (i) for such non-compliance that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) as may be contested in good faith and by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP.

Section 6.08 *Compliance with ERISA.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries and ERISA Affiliates to: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state law; (b) cause each Pension Plan to maintain such qualification; and (c) make all required contributions to any Pension Plan, except where such failure to maintain as set forth in clause (a) or (b) or to make contributions as set forth in clause (c) could not, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect.

Section 6.09 *Inspection of Property and Books and Records.* Such Credit Party shall, and shall cause each of its Restricted Subsidiaries to, (i) maintain proper books of record and account, in which full, true and correct entries in all material respects in conformity with GAAP or SAP, as applicable, consistently applied (except as stated therein) shall be made of all financial transactions and matters involving the assets and business of such Credit Party and such Restricted Subsidiary and (ii) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over such Credit Party or such Restricted Subsidiary, as the case may be. Such Credit Party shall permit, and shall cause each of its Restricted Subsidiaries to permit, representatives and independent contractors (subject to, in the case of representatives or independent contractors, such representatives or independent contractors executing confidentiality agreements in form reasonably satisfactory to Holdings) of the Administrative Agent or its designees, at the Borrower's expense, to visit and inspect any of their respective properties, to examine their respective corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss their respective affairs, finances and accounts with their respective directors, officers, and independent public accountants, all at such reasonable times during normal business hours, upon reasonable advance notice to the Borrower; *provided* that members of senior management will be notified and permitted to be present during any such meetings; and *provided, further*, that when an Event of Default exists the Administrative Agent or any Lender (through coordination with the Administrative Agent) may do any of the foregoing at any time during normal business hours and without advance notice; *provided, further*, that the Borrower shall not be required to reimburse the costs of the Administrative Agent and the Lenders collectively for more than one visit per Fiscal Year unless an Event of Default has occurred and is continuing.

Section 6.10 *Information Regarding Collateralized L/C Collateral.* The Credit Parties will furnish to the Administrative Agent prompt written notice of any change in (i) any Credit Party's legal name or any Credit Party's location (determined as provided in Section 9-307 of the Uniform Commercial Code), (ii) any Credit Party's identity or corporate structure or (iii) any Credit Party's Federal Taxpayer Identification Number or organizational identification number. The Credit Parties agree not to effect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateralized L/C Collateral as contemplated in the Collateralized L/C Security Documents.

Section 6.11 *Use of Proceeds.* The proceeds of the Revolving Loans shall be used for working capital and general corporate purposes of Holdings and its Subsidiaries.

Section 6.12 *Additional Guarantors.* If any Person becomes a Designated Subsidiary after the Restatement Effective Date, the Borrower will promptly, and in any event not later than ten (10) Business Days after such Person becomes a Designated Subsidiary, notify the Administrative Agent thereof and cause the Guarantee Requirement to be satisfied with respect to such Person, whereupon such Person will become a "Credit Party" and a "Guarantor" for purposes of the Loan Documents.

Section 6.13 *Further Assurances.* Each Credit Party will, and will cause each other Credit Party to, at the request of the Administrative Agent, execute and deliver any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents, if applicable), that may be required under any applicable law to cause the Guarantee Requirement and the Collateralized L/C Collateral Requirement to be and remain satisfied, all at the Borrower's expense. The Borrower will provide to the Administrative Agent, from time to time upon request, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Collateralized L/C Security Documents.

Section 6.14 *Designation of Subsidiaries.* The board of directors (or similar governing body) of Holdings may at any time designate any Restricted Subsidiary as an Unrestricted Subsidiary or any Unrestricted Subsidiary as a Restricted Subsidiary; *provided* that (i) immediately before and after such designation, no Default or Event of Default shall have occurred and be continuing, (ii) immediately after giving effect to such designation, Holdings and its Subsidiaries shall be in compliance with Sections 7.10 and 7.11, (iii) no Subsidiary may be designated as an Unrestricted Subsidiary if it is a "Restricted Subsidiary" for the purpose of the Senior Notes, (iv) no Restricted Subsidiary may be designated as an Unrestricted Subsidiary if it was previously designated an Unrestricted Subsidiary, (v) the Borrower shall deliver to the Administrative Agent at least five (5) Business Days prior to such designation a certificate of a Responsible Officer of Holdings, together with all relevant financial information reasonably requested by the Administrative Agent, demonstrating compliance with the foregoing clauses (i) through (iv) of this Section 6.14 and, if applicable, certifying that such subsidiary meets the requirements of an Unrestricted Subsidiary and (vi) at least ten (10) days prior to the designation of any Unrestricted Subsidiary as a Restricted Subsidiary, the Lenders shall have received all

documentation and other information required by bank regulatory authorities under applicable “know-your-customer” and Anti-Money Laundering Laws, including the PATRIOT Act, with respect to such subsidiary. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

Section 6.15 *Maintenance of Properties.* Such Credit Party will, and will cause each of its Restricted Subsidiaries to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of Holdings and its Restricted Subsidiaries and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof, except to the extent a failure to do so could not, individually or in the aggregate, have a Material Adverse Effect.

Section 6.16 *Lender Meetings.* Holdings and the Borrower will, upon the request of the Administrative Agent or the Required Lenders, participate in a meeting of the Administrative Agent and Lenders once during each Fiscal Year to be held at the Borrower’s corporate offices (or at such other location as may be agreed to by the Borrower and the Administrative Agent) at such time during normal business hours as may be agreed to by Holdings and the Administrative Agent.

Section 6.17 *Environmental.*

(a) Environmental Disclosure. Holdings will deliver to the Administrative Agent and Lenders:

(i) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release of Hazardous Materials, which has a reasonable possibility of resulting in one or more Environmental Claims or otherwise having, individually or in the aggregate, a Material Adverse Effect and (2) any remedial action taken by Holdings or any other Person in response to (A) any past, current, or threatened event or occurrence involving any Hazardous Materials, and any corrective action or response action with respect to any such event or occurrence, the existence of which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(ii) as soon as practicable following the sending or receipt thereof by Holdings or any of its Subsidiaries, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (2) any Release of Hazardous Materials, which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect and (3) any occurrence or condition on any real property adjoining, or in the vicinity of, any real property which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect;



(iii) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by Holdings or any of its Subsidiaries that could reasonably be expected to (A) result in Environmental Claims the existence of which could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of Holdings or any of its Subsidiaries to maintain in full force and effect all material governmental authorizations required under any Environmental Laws for their respective operations, except as could otherwise not reasonably be expected to have a Material Adverse Effect and (2) any proposed action to be taken by Holdings or any of its Subsidiaries to modify current operations in a manner that could reasonably be expected to subject Holdings or any of its Subsidiaries to any additional material obligations or requirements under any Environmental Laws, the existence of which could reasonably be expected to result in one or more Environmental Claims or otherwise have, individually or in the aggregate, a Material Adverse Effect; and

(iv) with reasonable promptness, such other documents and information as from time to time may be reasonably requested by Administrative Agent in relation to any matters disclosed pursuant to this [Section 6.17\(a\)](#).

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

## ARTICLE 7 NEGATIVE COVENANTS

Until all principal of and interest on each Revolving Loan and all fees and other amounts payable hereunder have been paid in full (other than unmatured, surviving contingent indemnification obligations not yet due and payable), all Revolving Commitments have been terminated and all Letters of Credit have been cancelled or have expired (or Cash Collateralized at the Minimum Cash Collateral Amount), each Credit Party, as applicable, covenants and agrees with the Lenders that:

Section 7.01. *Limitation on Certain Indebtedness.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, incur, create, assume, suffer to exist any Indebtedness owed to Holdings, any Restricted Subsidiary or any other Affiliate of Holdings (other than Goldman Sachs & Co. [LLC](#) and any Affiliates thereof [and, from and after the Mergers \(provided that the Mergers are consummated on or prior to the Merger Outside Date\), KKR and any Affiliates thereof \(other than in the case of KKR and its Subsidiaries, any portfolio company of KKR or any of its Subsidiaries\)](#), but excluding Holdings and its Subsidiaries), except (a) Intercompany Indebtedness and (b) Indebtedness owed by Holdings or a Restricted Subsidiary to any Affiliate of Holdings (other than Intercompany Indebtedness) that is

unsecured and subordinated in right of payment to the Obligations on terms reasonably satisfactory to the Administrative Agent.

Section 7.02 *Liens.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, create, assume, incur or suffer to exist any Lien on any property now owned or hereafter acquired by it, except for the following:

- (a) Liens granted or to be granted by the Borrower under the Loan Documents;
- (b) Liens on assets of Insurance Subsidiaries and Subsidiaries thereof securing (x) Operating Indebtedness, (y) obligations under transactions entered into in connection with Insurance Investments and (z) statutory Liens on assets of Insurance Subsidiaries and Subsidiaries thereof;
- (c) collateral (x) securing Permitted Swap Obligations or (y) securing captive financing arrangements entered into by an Insurance Subsidiary;
- (d) Liens for Taxes not yet due or for Taxes being contested in good faith and by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;
- (e) Liens existing on the date hereof and listed on Schedule 7.02; *provided* that (i) such Lien shall not apply to any additional property (other than after acquired title in or on such property and proceeds of the existing collateral in accordance with the document creating such Lien) and (ii) the Indebtedness secured thereby is not increased;
- (f) Liens incurred in the ordinary course of business in connection with worker's compensation, unemployment insurance or other forms of governmental insurance or benefits or to secure performance of tenders, statutory obligations, leases and contracts (other than for borrowed money) entered into in the ordinary course of business or to secure obligations on surety or appeal bonds;
- (g) Liens of mechanics, carriers, and materialmen and other like Liens imposed by law and arising in the ordinary course of business in respect of obligations that in the case of this clause (g) are not overdue for more than sixty (60) days or that are being contested in good faith and by appropriate proceedings and with respect to which adequate reserves are being maintained in accordance with GAAP;
- (h) Liens incurred in connection with the collection or disposition of delinquent accounts receivable in the ordinary course of business;
- (i) Liens securing Capitalized Lease Liabilities or Purchase Money Debt in an aggregate principal amount not to exceed \$75,000,000 at any time outstanding; *provided* that such Liens are limited to the assets financed thereby;
- (j) easements, rights-of-way, zoning restrictions, restrictions and other similar encumbrances incurred in the ordinary course of business that do not secure any monetary

obligation and which do not materially interfere with the ordinary course of business of the Credit Parties and their Restricted Subsidiaries;

(k) Liens on property of the Credit Parties and their Restricted Subsidiaries in favor of licensees and landlords securing licenses, subleases or leases of property not otherwise prohibited hereunder;

(l) licenses, leases or subleases not otherwise prohibited hereunder granted to others not materially interfering in any material respect in the business of the Credit Parties and their Restricted Subsidiaries;

(m) attachment or judgment Liens not constituting an Event of Default under Section 8.01(i);

(n) Liens arising from precautionary Uniform Commercial Code financing statement filings with respect to operating leases or consignment arrangements entered into by Holdings and its Restricted Subsidiaries in the ordinary course of business;

(o) Liens incurred to secure Cash Management Obligations incurred in the ordinary course of business and in an aggregate amount not to exceed \$20,000,000 at any time outstanding and customary set-off rights in favor of depository banks;

(p) Liens attaching solely to cash earnest money deposits required to be made under the terms of any letter of intent or purchase agreement for the acquisition of stock, assets or property;

(q) Liens arising out of deposits by Holdings or any Restricted Subsidiary of cash, securities or other property (other than any Capital Stock of any Restricted Subsidiary) securing obligations of such Person in respect of (i) trust arrangements formed in the ordinary course of business for the benefit of cedents to secure insurance and reinsurance recoverables owed to them by any Insurance Subsidiary, or (ii) other security arrangements in connection with reinsurance agreements in the ordinary course of business; and

(r) other Liens on property (other than the Collateralized L/C Collateral) securing obligations with respect to Indebtedness not otherwise covered by any of clauses (a) through (q) of this Section 7.02; *provided* that the aggregate amount of all Indebtedness secured by Liens in reliance on this clause (r) shall not exceed the greater of (x) \$325,000,000 and (y) 10% of the Net Worth of Holdings and its consolidated Restricted Subsidiaries at any time outstanding.

Notwithstanding the foregoing, none of the Credit Parties or Restricted Subsidiaries may directly or indirectly, create, assume, incur or suffer to exist any Lien on any Capital Stock of an Insurance Subsidiary now owned or hereafter acquired by it.

Section 7.03 *Disposition of Assets*. Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, Dispose of (whether in one or a series of transactions) any property (including accounts and notes receivable with or without recourse and Capital Stock of any of its Restricted Subsidiaries whether newly issued or otherwise), except:

- (a) (i) Dispositions of inventory and equipment in the ordinary course of business and (ii) Dispositions of Cash Equivalents in the ordinary course of business;
- (b) the sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment or the proceeds of such sale are reasonably promptly applied to the purchase price of such replacement equipment;
- (c) Dispositions of Insurance Investments by any Insurance Subsidiary (or any Subsidiary of an Insurance Subsidiary) (i) in the ordinary course of business in compliance with the policies and procedures approved by the board of directors or the investment committee (or other applicable committee) of such Insurance Subsidiary (or such Subsidiary of an Insurance Subsidiary), or which were otherwise approved by such board of directors or committee, or (ii) to a special purpose entity in exchange for investments therein (*provided* that such special purpose entity shall not create, incur, issue, assume, guarantee or otherwise become directly or indirectly liable with respect to any Indebtedness pursuant to which the lender to such special purpose entity has recourse to any of the assets of Holdings or any Restricted Subsidiary (other than the assets of such special purpose entity));
- (d) Dispositions by a Credit Party to a Credit Party or any of its Restricted Subsidiaries or by any Restricted Subsidiary to a Credit Party or any of its Restricted Subsidiaries; *provided* that the aggregate fair value of all property Disposed of in reliance on this clause (d) by Credit Parties to Restricted Subsidiaries that are not Credit Parties shall not exceed \$800,000,000;
- (e) (i) any Dispositions pursuant to a Reinsurance Agreement entered into in the ordinary course of business and (ii) any other Dispositions pursuant to a Reinsurance Agreement so long as the aggregate statutory profit and/or gains on insurance policy sales or other portfolio transfers resulting from all Dispositions described in this subclause (ii) consummated after the Restatement Effective Date do not exceed \$800,000,000 in the aggregate during the term of this Agreement;
- (f) obsolete, surplus or worn out property disposed of by a Credit Party or any of its Restricted Subsidiaries in the ordinary course of business of such Person;
- (g) transfers resulting from any casualty or condemnation of property or assets;
- (h) licenses or sublicenses of intellectual property and general intangibles and licenses, leases or subleases of other property in the ordinary course of business of the Credit Parties and their Restricted Subsidiaries and which do not materially interfere with the business of the Credit Parties and their Restricted Subsidiaries;
- (i) Dispositions of shares of Capital Stock in order to qualify members of the board of directors or equivalent governing body of a Credit Party or Restricted Subsidiary or such other nominal shares required to be held other than by such Credit Party or Restricted Subsidiary, as required by applicable law;

(j) the sale, discount, forgiveness or other compromise of notes or other accounts in the ordinary course of business or in connection with collection thereof;

(k) issuances of Capital Stock (i) by a directly or indirectly Wholly-Owned Subsidiary of Holdings to Holdings or to one or more Wholly-Owned Subsidiaries of Holdings (*provided* that except in compliance with Section 6.12 or Section 7.03(i), any direct Wholly-Owned Subsidiary of a Credit Party shall only issue Capital Stock to such Credit Party), (ii) by a non-Wholly-Owned Subsidiary of Holdings to the respective equity holders of such non-Wholly-Owned Subsidiary, on a pro rata basis or (iii) by the IPO Entity pursuant to the IPO and any Post-IPO Offerings (so long as no Event of Default shall have occurred and be continuing or would result therefrom); and

(l) Dispositions not otherwise permitted hereunder (other than pursuant to Reinsurance Agreements, which shall be subject to the limitations in clause (e) above); *provided* that (i) the aggregate fair value of all property Disposed of in any Disposition made in reliance on this clause (l), together with the aggregate fair value of all other property Disposed of in reliance on this clause (l), shall not exceed 20% of the Consolidated Total Assets of Holdings and its Restricted Subsidiaries at the time of such Disposition, (ii) each Disposition made in reliance on this clause (l) shall be for fair market value and at least 75% of the consideration therefor shall be in the form of cash or Cash Equivalents and (iii) after giving effect to each Disposition made in reliance on this clause (l), Holdings and its Restricted Subsidiaries shall be in compliance with Sections 7.10 and 7.11.

Except as otherwise permitted in Section 7.07, notwithstanding the foregoing no Credit Party or Restricted Subsidiary shall Dispose of (whether in one or a series of transactions) or otherwise cease to hold any Capital Stock of (a)(i) any Subsidiary of Holdings that directly or indirectly owns any Capital Stock of any Insurance Subsidiary or (ii) any Insurance Subsidiary, in each case, whether newly issued or otherwise, other than in accordance with clause (i), (k) or (l) above or (b) GA Bermuda or CwA.

Upon consummation of a sale, transfer or other Disposition permitted under this Section 7.03, (i) Liens created under the Collateralized L/C Security Documents in respect of the assets Disposed of shall be automatically released and the Administrative Agent shall (to the extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as necessary to evidence the release of the Administrative Agent's security interests, if any, in the assets being Disposed of, including amendments or terminations of Uniform Commercial Code financing statements and (ii) in the case of a sale, transfer or other Disposition permitted under this Section 7.03 of all of the Capital Stock of any Subsidiary that is a Guarantor to any Person other than Holdings or a Subsidiary of Holdings, the Guarantee of such Subsidiary shall be automatically released and the Administrative Agent shall (to the extent applicable) deliver to the Borrower, upon the Borrower's request and at the Borrower's expense, such documentation as necessary to evidence the release of the Guarantee of such Subsidiary; *provided* that the Borrower shall have provided to the Administrative Agent such certificates evidencing compliance with the Loan Documents as the Administrative Agent shall reasonably request. Notwithstanding anything to the contrary contained in this Section 7.03, (x) none of the Liens created under the Collateralized L/C Security Documents shall be released upon the IPO and (y) none of the Guarantees shall be released upon the IPO (other than the Guarantee of ~~CwA~~).

~~MidCo~~GAFLL, if and only if, (1) the IPO Entity is not ~~CwA-MidCo~~GAFLL, (2) prior to or substantially simultaneously with such release, the Guarantee Requirement has been satisfied with respect to the IPO Entity and (3) ~~CwA-MidCo~~GAFLL is not an obligor (including as a guarantor) in respect of the Senior Notes).

Section 7.04 *Sales and Lease Backs*. Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease of any property (whether real, personal or mixed), whether now owned or hereafter acquired, which such Credit Party or Restricted Subsidiary (a) has sold or transferred or is to sell or to transfer to any other Person (other than Holdings or any of its Restricted Subsidiaries), or (b) intends to use for substantially the same purpose as any other property which has been or is to be sold or transferred by such Credit Party or Restricted Subsidiary to any Person (other than Holdings or any of its Restricted Subsidiaries) in connection with such lease.

Section 7.05. *Transactions with Affiliates*. Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, enter into any transaction with any Affiliate of Holdings, other than (a) transactions no less favorable to such Credit Party or Restricted Subsidiary than would be obtained in a comparable arm's-length transaction with a Person that is not an Affiliate of Holdings, (b) insurance transactions, intercompany pooling and other reinsurance transactions entered into in the ordinary course of business and consistent with past practice, (c) transactions between or among Holdings and its Restricted Subsidiaries and between or among Restricted Subsidiaries, (d) any Restricted Payment permitted by Section 7.08, (e) arrangements for indemnification payments for directors and officers of Holdings and its Restricted Subsidiaries, (f) intercompany transactions between or among ~~the Parent, GAFLL~~GAFGL, (prior to the Mergers) GAFLL, (from and after the Mergers; provided that the Mergers are consummated on or prior to the Merger Outside Date) KKR or any of its Subsidiaries (including Magnolia), Holdings and ~~its~~ Restricted Subsidiaries and between or among Restricted Subsidiaries, relating to any or all of the (i) provision of management services and other corporate overhead services, (ii) provision of personnel to other locations within Holdings' consolidated group on a temporary basis, and (iii) provision, purchase or lease of services, operational support, assets, equipment, data, information and technology, that, in the case of any such intercompany transaction referred to in this clause (f), are subject to reasonable reimbursement or cost-sharing arrangements (as determined in good faith by Holdings), which reimbursement or cost-sharing arrangements may be effected through transfers of cash or other assets or through book-entry credits or debits made on the ledgers of each involved Subsidiary; *provided* that any such intercompany transaction is either (1) entered into in the ordinary course of business or (2) otherwise entered into pursuant to the reasonable requirements of the business of Holdings and the Restricted Subsidiaries, (g) transactions entered into in connection with the IPO or any Post-IPO Offerings (including various shareholder agreements), (h) ordinary-course business transactions (other than transactions of the type described in clause (c) or (f) above) that (A) do not involve the sale, transfer or other Disposition of operations or assets and (B) do not materially adversely affect the Lenders and (i) loans, Investments and guarantees among Holdings and the Restricted Subsidiaries to the extent not prohibited under this Article 7.

Section 7.06 *Change in Business.* Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, engage in any business other than the businesses conducted by the Credit Parties and their Restricted Subsidiaries on the date of this Agreement or any business reasonably related, incidental or complementary thereto as reasonably determined by the board of directors of Holdings or such Person.

Section 7.07 *Fundamental Changes.* Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, merge, consolidate, amalgamate or sell all or substantially all of the assets of any Credit Party or any of its Restricted Subsidiaries, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), except if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing, (a) any Restricted Subsidiary that is not a Credit Party may merge, consolidate, amalgamate or sell all or substantially all of its assets to another Restricted Subsidiary that is not a Credit Party; *provided* that, if either such Restricted Subsidiary is a direct Subsidiary of a Credit Party, the surviving entity or the transferee entity, as applicable, shall be a direct Subsidiary of a Credit Party; (b) any Restricted Subsidiary that is a Credit Party (other than the Borrower) may merge, consolidate, amalgamate or sell all or substantially all of its assets to another Restricted Subsidiary that is a Credit Party (including the Borrower); *provided* that the surviving entity or the transferee entity, as applicable, shall be a Credit Party; *provided, further,* that, in the event that any of the foregoing involves the Borrower, the surviving entity or the transferee entity, as applicable, shall be the Borrower; (c) the Borrower may merge, consolidate, amalgamate or sell all or substantially all of its assets to a Restricted Subsidiary owned directly by Holdings or the Borrower immediately prior to such transactions; *provided* that (i) the surviving entity of a merger with the Borrower or the transferee entity that receives all or substantially all of the Borrower's assets, as applicable (the "**Successor Entity**"), shall be a corporation or limited liability company organized and existing under the laws of the United States, any State thereof or the District of Columbia and shall expressly assume all of the obligations of the Borrower under the Loan Documents pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, (ii) immediately after giving effect to such merger, consolidation, amalgamation or sale, as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom, (iii) except as the Administrative Agent may otherwise agree, each Guarantor, unless it is the other party to such merger, consolidation, amalgamation or sale, as applicable, shall execute and deliver a reaffirmation agreement with respect to its obligations under the other Loan Documents in form and substance reasonably satisfactory to the Administrative Agent, (iv) the Successor Entity shall provide the documentation and other information to the Administrative Agent as the Administrative Agent and the Lenders reasonably determine are required by bank regulatory authorities under applicable "know-your-customer" and Anti-Money Laundering Laws, including the PATRIOT Act; *provided* that, the Borrower shall have notified the Administrative Agent in writing at least seven (7) Business Days prior to such merger, consolidation, amalgamation or sale, as applicable, and each Lender shall have been provided with documentation and other information it reasonably determines are required by bank regulatory authorities under applicable "know-your-customer" and Anti-Money Laundering Laws, including the PATRIOT Act, at least five (5) Business Days prior to the consummation of such merger, consolidation, amalgamation or sale, as applicable, as has been reasonably requested in writing at least six (6) Business Days prior to such merger, consolidation, amalgamation or sale, as applicable, and (v) the Successor Entity shall deliver an officer's certificate to the Administrative Agent to the effect that after

giving effect to such merger, consolidation, amalgamation or sale, as applicable, no Default or Event of Default shall have occurred and be continuing or would result therefrom (it being understood and agreed that, if the foregoing conditions under clauses (i) through (v) are satisfied, the Successor Entity will succeed to, and be substituted for, the Borrower under this Agreement and the other Loan Documents); and (d) any of its Restricted Subsidiaries that is not a Credit Party may liquidate, wind up or dissolve so long as the assets of such Restricted Subsidiary are distributed to a Guarantor; *provided that*, no such action pursuant to clause (a), (b), (c) or (d) above is permitted if such action could reasonably be expected, in the judgment of Holdings, to (i) have a material adverse effect on the Lenders, (ii) be disproportionately beneficial to the holders of the Senior Notes or any Material Indebtedness of Holdings or its Restricted Subsidiaries as compared to the Lenders or (iii) be disproportionately adverse to the Lenders as compared to such other holders.

Section 7.08 *Restricted Payments.* Such Credit Party shall not, and shall not suffer or permit any of its Restricted Subsidiaries to, declare or pay any dividend on (or make any payment to a related trust for the purpose of paying a dividend), or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, defeasance, retirement or other acquisition of, any Capital Stock of a Credit Party or such Restricted Subsidiary (or any related trust), whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of a Credit Party or such Restricted Subsidiary (collectively, “**Restricted Payments**”), except that:

(a) any of its Restricted Subsidiaries may declare or pay dividends with respect to its Capital Stock to Holdings and to any Wholly-Owned Subsidiary (and in the case of a non-Wholly-Owned Subsidiary, to Holdings and any of its Restricted Subsidiaries and to each other owner of Capital Stock or other equity interests of such Restricted Subsidiary on a pro rata basis based on their relative ownership interests);

(b) Holdings may pay dividends solely in the form of shares of its Capital Stock;

(c) Holdings may make Restricted Payments so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom;

(d) Holdings may make cash payments in lieu of fractional shares in connection with the exercise of warrants, options or other securities, convertible or exchangeable for Capital Stock; and

(e) Holdings may pay any dividend within sixty (60) days after the date of declaration thereof; *provided that* on the date of declaration such payment shall comply with one of the exceptions to this Section 7.08 listed in clauses (b) through (d) hereof.

Section 7.09 *Prepayment of Certain Indebtedness; Modifications of Certain Agreements; Synthetic Purchase Agreements.*

(a) Such Credit Party shall not, nor shall it suffer or permit any of its Restricted Subsidiaries to, pay or make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property, and including optional prepayments and open market



purchases) of or in respect of principal of or interest on any Subordinated Indebtedness, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, defeasance or termination of any Subordinated Indebtedness, other than (i) payment of regularly scheduled principal and interest payments as and when due in respect thereof, other than any payment prohibited by the subordination provisions thereof, (ii) to the extent the consideration thereof consists of Capital Stock of Holdings or (iii) so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom.

(b) Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, amend, modify, waive or otherwise change, or consent to any amendment, modification, waiver or other change to, the subordination provisions within documents or instruments governing or evidencing any Subordinated Indebtedness in any manner adverse in any material respect to the Lenders.

(c) Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, amend or modify its respective Organization Documents, other than any amendments or modifications which are not adverse in any material respect to the interests of the Lenders.

(d) Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, enter into or be party to, or make any payment under, any Synthetic Purchase Agreement.

Section 7.10 *Debt to Total Capitalization Ratio.* Holdings shall not permit the Debt to Total Capitalization Ratio of Holdings as at the end of any Fiscal Quarter to be more than 35% for Holdings and its consolidated Restricted Subsidiaries.

Section 7.11. *Holdings Net Worth.* Holdings shall not permit the GAAP Net Worth of Holdings and its consolidated Restricted Subsidiaries, at all times when such calculations are available and, in any event, at the end of any calendar month, to be less than the sum of 70% of the Net Worth of ~~CwA MidCo~~ [GAFL](#) and its consolidated Restricted Subsidiaries as of the last day of the Fiscal Quarter most recently ended prior to the Restatement Effective Date, *plus* 50% of the aggregate Net Income since the last day of the Fiscal Quarter most recently ended prior to the Restatement Effective Date for Holdings and its consolidated Restricted Subsidiaries (to the extent positive).

Section 7.12 *Non-Contravention of OFAC.*

(a) Such Credit Party shall not, and shall not permit any of its Restricted Subsidiaries or, to the Knowledge of such Credit Party, any of such Credit Party's or any of its Subsidiaries' officers, directors or employees to (i) become an Embargoed Person or (ii) except as otherwise authorized by OFAC or any other relevant sanctions authority, otherwise permitted for U.S. persons by a U.S. Governmental Authority or by any rule, regulation or order of a U.S. Governmental Authority, use any proceeds of the Revolving Loans, or lend, contribute or otherwise make available such proceeds to any Person for the purpose of financing the activities of or with any Person or in any country or territory that is an Embargoed Person.

(b) Except as otherwise authorized by OFAC or any other relevant sanctions authority, such Credit Party shall not and shall not permit any of its Restricted Subsidiaries or, to

the Knowledge of Holdings or the Borrower, any of such Credit Party's or any of its Subsidiaries' officers, directors or employees to (i) conduct any business or engage in making or receiving any contribution of funds, goods or services to or for the benefit of any Embargoed Person, (ii) deal in, or otherwise engage in any transaction related to, any property or interests in property blocked pursuant to any applicable Economic Sanctions Laws or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the applicable prohibitions set forth in any Economic Sanctions Laws.

Section 7.13 *Restrictive Agreements*. Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, directly or indirectly, enter into or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition on (a) the ability of Holdings or any of its Restricted Subsidiaries to create or permit to exist any Lien on any of its property to secure the Obligations or (b) the ability of any of its Restricted Subsidiaries to pay dividends or other distributions with respect to any shares of its Capital Stock (other than dividends or distributions on the Capital Stock of Holdings or the Borrower) or to make, repay or prepay intercompany loans or advances to Holdings or any other Restricted Subsidiary or to Dispose of assets to Holdings or any other Restricted Subsidiary; *provided* that (i) the foregoing shall not apply to restrictions and conditions imposed by applicable law (including pursuant to regulatory restrictions), (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof and under any document evidencing the Senior Notes or identified on Schedule 7.13 (but shall apply to any amendment or modification, or any extension or renewal, of any such restriction or condition that has the effect of making such restriction or condition materially more restrictive), (iii) the foregoing shall not apply to restrictions that are not more restrictive than those contained in this Agreement contained in any documents governing any Indebtedness not prohibited by this Agreement, (iv) clause (a) of this Section 7.13 shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness or other obligations permitted to be secured hereunder (including Capitalized Lease Liabilities and Purchase Money Debt) not prohibited by this Agreement if such restrictions or conditions apply only to the collateral securing such Indebtedness or such other obligations permitted to be secured hereunder, (v) clause (a) of this Section 7.13 shall not apply to customary provisions in leases or licenses or other contracts and agreements restricting the assignment, subletting or sublicensing thereof and (vi) this Section 7.13 shall not apply to (A) any of its Restricted Subsidiaries that is not a Wholly-Owned Subsidiary with respect to restrictions and conditions imposed by such Restricted Subsidiary's Organization Documents or any related joint venture or similar agreement so long as any such restriction or condition applies only to such Subsidiary and to any Capital Stock in such Restricted Subsidiary, (B) restrictions and conditions imposed on any of its Restricted Subsidiaries in existence at the time such Restricted Subsidiary became a Subsidiary (but shall apply to any amendment or modification expanding the scope of any such restriction or condition which makes such restrictions and conditions, taken as a whole, materially more restrictive); *provided* that such restrictions and conditions (x) apply only to such Restricted Subsidiary and (y) were not imposed in anticipation of the Facility, (C) customary provisions contained in leases, sub-leases, licenses, sub-licenses or similar agreements, including with respect to intellectual property and other agreements, in each case entered into in the ordinary course of business; *provided* that such provisions apply only to the assets that are the subject of such lease, sub-lease, license, sub-license or other agreement and shall not apply to any other assets of Holdings or any of its Restricted Subsidiaries and (D) restrictions on pledging

joint venture interests included in customary provisions in joint venture agreements or arrangements and other similar agreements applicable to joint ventures.

Section 7.14 *Holding Company Activities.* Notwithstanding anything herein to the contrary, each of Holdings and the Borrower shall not (a) incur, directly or indirectly, any Indebtedness other than the Indebtedness not prohibited to be incurred by them under this Agreement; (b) create or suffer to exist any Lien upon any property or assets now owned or hereafter acquired, leased or licensed by it other than the Liens (x) created under the Collateralized L/C Security Documents to which it is a party and (y) permitted pursuant to Section 7.02; (c) engage in any business other than as permitted by this Agreement; (d) merge, consolidate or amalgamate with, or sell all or substantially all of its assets to, any other Person except as permitted by Section 7.07; (e) sell or otherwise dispose of any Capital Stock of any of its Subsidiaries other than as permitted to be disposed by them under this Agreement; or (f) fail to hold itself out to the public as a legal entity separate and distinct from all other Persons.

Section 7.15 *Changes in Accounting Policies; Fiscal Year.* Such Credit Party shall not, nor shall it permit any of its Restricted Subsidiaries to, (a) make any change to its accounting policies or reporting practices, except as required or permitted by GAAP or SAP or applicable securities laws or (b) change the last day of its fiscal year from December 31 of each year.

ARTICLE 8  
EVENTS OF DEFAULT

Section 8.01 *Events of Default.* Each of the following shall constitute an “**Event of Default**”:

(a) Non-Payment. The Borrower fails to pay (i) when and as required to be paid herein, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise, any amount of principal of any Revolving Loans, or (ii) within five (5) Business Days after the same becomes due, any interest, fee or any other amount payable hereunder (including pursuant to Sections 2.02(h) or 2.02(l)(vi)) or under any other Loan Document; or

(b) Representation or Warranty. Any representation or warranty by any Credit Party made or deemed made herein or in any other Loan Document (other than any Collateralized L/C Security Document) or any amendment or modification hereof or thereof or waiver hereunder or thereunder, or contained in any certificate, document or financial or other written statement by a Credit Party, any Restricted Subsidiary or any Responsible Officer, furnished at any time in connection with this Agreement or in any other Loan Document (other than any Collateralized L/C Security Document) or any written amendment or modification hereof or thereof or waiver hereunder or thereunder, is incorrect in any material respect on or as of the date made or deemed made; or

(c) Specific Defaults. Any Credit Party fails to perform or observe any term, covenant or agreement contained in any of Section 6.03(a), Section 6.04(a) (with respect to corporate existence), or Article 7 on its part to be performed; or

(d) Other Defaults. Any Credit Party or any of their Restricted Subsidiaries fails to perform or observe any other term or covenant contained in this Agreement (other than Section 2.02(1)(vi)) or any other Loan Document (other than any Collateralized L/C Security Document) on its part to be performed, and such default shall continue unremedied for a period of thirty (30) days after the date upon which written notice thereof is given to the Borrower by the Administrative Agent or the Required Lenders; or

(e) Cross-Default. (i) Any Credit Party or any of their Restricted Subsidiaries (A) fails to make any payment in respect of the Senior Notes or any Material Indebtedness (other than in respect of Swap Contracts), when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) beyond the applicable grace or cure period thereunder or (B) fails to perform or observe any other condition or covenant, or any other event shall occur or condition exist, under any agreement or instrument relating to any such Indebtedness beyond the applicable grace or cure period thereunder if the effect of such failure, event or condition is to cause, or to permit (or, with the giving of notice or lapse of time or both, would permit) the holder or holders of the Senior Notes or any Material Indebtedness or beneficiary or beneficiaries of such Indebtedness (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, the Senior Notes or any Material Indebtedness to be declared to be due and payable prior to its stated maturity; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (x) any event of default under such Swap Contract as to which a Credit Party or any Restricted Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (y) any Termination Event (as so defined) as to which any Credit Party or any of their Restricted Subsidiaries is an Affected Party (as so defined), and, in either event, the Swap Termination Value owed by a Credit Party or such Restricted Subsidiary as a result thereof is greater than \$75,000,000 (in the aggregate for all such Swap Contracts) beyond the applicable grace or cure period thereunder (and, in the case of clause (y), a Credit Party or such Restricted Subsidiary fails to pay such Swap Termination Value when due beyond the applicable grace or cure period thereunder); *provided, however*, that no Default or Event of Default shall be deemed to occur under clause (i)(B) of this Section 8.01(e) in respect of the failure to perform or observe any such condition or covenant, or the occurrence of any such event or existence of any such condition, under any agreement or instrument relating to any Material Indebtedness owing to the Federal Home Loan Bank of Boston that is cured, remedied or otherwise resolved within five (5) Business Days of the occurrence thereof and prior to such Material Indebtedness being declared to be due and payable prior to its stated maturity; or

(f) Insolvency; Voluntary Proceedings. Any Credit Party or any Restricted Subsidiary of Holdings (i) generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any, whether at stated maturity or otherwise; (ii) voluntarily ceases to conduct its business in the ordinary course; (iii) commences any Insolvency Proceeding with respect to itself; (iv) applies for or consents to the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor) or other similar Person for itself or for a substantial part of its assets; or (v) takes any corporate action to effectuate or authorize any of the foregoing; or

(g) Involuntary Proceedings. (i) Any involuntary Insolvency Proceeding is commenced or filed against any Credit Party or any Restricted Subsidiary of Holdings, or any

writ, judgment, warrant of attachment, execution or similar process, is issued or levied against a substantial part of any Credit Party's or any Restricted Subsidiary's properties, and any such proceeding or petition shall not be dismissed, or such writ, judgment, warrant of attachment, execution or similar process shall not be released, vacated or fully bonded within sixty (60) days after commencement, filing or levy; (ii) any Credit Party or any Restricted Subsidiary of Holdings admits the material allegations of a petition against it in any Insolvency Proceeding, or an order for relief (or similar order under non-U.S. law) is ordered in any Insolvency Proceeding; (iii) any Credit Party or any Restricted Subsidiary of Holdings acquiesces in the appointment of a receiver, trustee, custodian, conservator, liquidator, mortgagee in possession (or agent therefor) or other similar Person for itself or a substantial portion of its property or business; or (iv) any Credit Party or any Restricted Subsidiary of Holdings shall become subject to any conservation, rehabilitation or liquidation order, directive or mandate issued by any Governmental Authority; or

(h) Pension Plans and Welfare Plans. With respect to any Single Employer Pension Plan or Multiemployer Plan, any ERISA Event has occurred that could reasonably be expected to result in the incurrence of liability by Holdings, or any of its Restricted Subsidiaries, or steps are taken to terminate any Multiemployer Plan and such termination could reasonably be expected to result in any liability of Holdings, or any of its Restricted Subsidiaries, where in any event, individually or in the aggregate, the liability incurred by Holdings and its Restricted Subsidiaries could have a Material Adverse Effect; or

(i) Material Judgments. One or more monetary judgments or decrees shall be entered against any Credit Party or any of its Restricted Subsidiaries involving in the aggregate a liability (not paid or fully covered by insurance as to which the relevant insurance company has not denied coverage) of \$75,000,000 or more, and all such judgments or decrees shall not have been paid, vacated, discharged, stayed or bonded pending appeal within sixty (60) days from the entry thereof, or any action shall be taken by a judgment creditor to attach or levy upon any asset of any Credit Party or any of their Restricted Subsidiaries to enforce any such judgment or decree; or

(j) Material Regulatory Matters. (i) Any Insurance Subsidiary shall not make a scheduled payment of interest or principal on any surplus note or similar form of indebtedness (due to actions (as opposed to any inaction) of any Governmental Authority), (ii) any Insurance Subsidiary's ability to pay fees to its Affiliates under existing agreements (or extensions of existing agreements) shall be restricted (due to actions (as opposed to any inaction) of any Governmental Authority) or (iii) in any Fiscal Year, an Insurance Subsidiary's ability to pay dividends to its stockholders is restricted in any manner (due to actions (as opposed to any inaction) of any Governmental Authority), other than by restrictions relating to dividends that apply generally to other insurance companies domiciled in the Insurance Subsidiary's state of domicile under the insurance law of the state, and (1) in the cases of subclauses (i) through (iii) above, such event or condition, together with all other such events or conditions, could reasonably be expected to have a Material Adverse Effect and (2) in each case, such event or condition was not in effect as of the date hereof; or

(k) Change of Control. There occurs any Change of Control; or

(l) Invalidity of Loan Documents. Any provision of any Loan Document (other than any Collateralized L/C Security Document), at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all Obligations, ceases to be in full force and effect; or any Credit Party contests in writing the validity or enforceability of any provision of any Loan Document (other than any Collateralized L/C Security Document); or any Credit Party denies in writing that it has any further liability or obligation under any provision of any Loan Document (other than any Collateralized L/C Security Document), or purports to revoke, terminate or rescind any provision of any Loan Document (other than any Collateralized L/C Security Document).

Section 8.02 *Remedies*. If any Event of Default shall have occurred and be continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders:

(a) declare the obligation of each Lender to make extensions of the Revolving Loans or issuances, extensions or renewals of Letters of Credit to be terminated;

(b) declare the unpaid principal amount of all outstanding Revolving Loans, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, whereupon such outstanding principal amount of the Revolving Loans, all interest accrued and unpaid thereon and all other amounts owing or payable hereunder or under any other Loan Document shall become immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable law;

(d) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under the Collateralized L/C Security Documents or applicable law;

*provided* that upon the occurrence of any event specified in Section 8.01(f) or Section 8.01(g) (upon the expiration of the 60-day period mentioned therein, if applicable), the obligation of each Lender to make Revolving Loans or issue, extend or renew Letters of Credit shall automatically terminate and the unpaid principal amount of all outstanding Revolving Loans and all interest and other amounts as aforesaid shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower.

Section 8.03 *Rights Not Exclusive*. The rights provided for in this Agreement and the other Loan Documents are cumulative and are not exclusive of any other rights, powers, privileges or remedies provided by law or in equity, or under any other instrument, document or agreement now existing or hereafter arising.

ARTICLE 9  
THE AGENTS

Section 9.01 *Appointment and Authority.* Each of the Lenders hereby irrevocably appoints RBC to act on its behalf as the Administrative Agent hereunder and the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 9 are solely for the benefit of the Administrative Agent, the Arrangers, the Bookrunners, the Syndication Agents, the Documentation Agents and the Lenders, and neither the Borrower nor any other Credit Party shall have rights as a third-party beneficiary of any of such provisions (other than Sections 9.06 and 9.10).

Section 9.02 *Rights as a Lender.* The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent, and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower, any Credit Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 9.03 *Exculpatory Provisions.* No Agent-Related Person shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, no Agent-Related Person:

- (a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that it is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); *provided* that no Agent-Related Person shall be required to take any action that, in its opinion or the opinion of its counsel, may expose such Agent-Related Person to liability or that is contrary to any Loan Document or applicable law; and
- (c) shall, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, or shall be liable for the failure to disclose, any information relating to Holdings or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent, any Agent-Related Person or any of their respective Affiliates in any capacity.

No Agent-Related Person shall be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as such Person shall believe in good faith shall be necessary, under the circumstances as provided in Sections 8.02 and 10.01) or (ii) in the absence of such Agent-Related Person's own gross negligence or willful misconduct. No Agent-Related Person shall be deemed to have knowledge of any Default unless and until notice describing such Default is given to such Agent-Related Person by the Borrower or a Lender.

No Agent-Related Person shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article 4 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to such Agent-Related Person.

Section 9.04 *Reliance by Administrative Agent.* The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Revolving Loan that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Revolving Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 9.05 *Delegation of Duties.* The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by it. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article 9 shall apply to any such sub-agent selected by the Administrative Agent with reasonable care and to the Related Parties of the Administrative Agent, and shall apply to their respective activities in connection with the syndication of the Facility as well as activities as Administrative Agent.

Section 9.06 *Resignation of Administrative Agent.* The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), to appoint a



successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; *provided* that if the Administrative Agent shall notify the Borrower and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Administrative Agent, with the consent of the Borrower (such consent not to be unreasonably withheld, conditioned or delayed), as provided for above in this Section 9.06. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section 9.06). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article 9 and Sections 10.04 and 10.05 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as Administrative Agent.

**Section 9.07**      *Non-Reliance on Administrative Agent and Other Lenders.* Each Lender acknowledges that it has, independently and without reliance upon any Agent-Related Person, any Arranger, any Bookrunner, any Syndication Agent, any Documentation Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon any Agent-Related Person, any Arranger, any Bookrunner, any Syndication Agent, any Documentation Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**Section 9.08**      *No Other Duties; Other Agents; Etc.* Each of RBC, US Bank and Wells Fargo are hereby appointed Syndication Agents hereunder, and each Lender hereby authorizes RBC, US Bank and Wells Fargo to act as Syndication Agents in accordance with the terms hereof and the other Loan Documents. Each of Bank of Nova Scotia, BMO and KeyBank are hereby appointed Documentation Agents hereunder, and each Lender hereby authorizes Bank of

Nova Scotia, BMO and KeyBank to act as Documentation Agents in accordance with the terms hereof and the other Loan Documents. The Syndication Agents, Documentation Agents and any other Agent may resign from such role at any time, with immediate effect, by giving prior written notice thereof to the Administrative Agent and the Borrower. Anything herein to the contrary notwithstanding, none of the Arrangers, Bookrunners, Syndication Agents or Documentation Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

Section 9.09 *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 any Credit Party, the Administrative Agent (irrespective of whether the principal of the Revolving Loan shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Revolving Loans 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 2.02, 2.08, 10.04 and 10.05) 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;

(c) 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 2.02, 2.08, 10.04 and 10.05.

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.

Section 9.10 *Collateral and Guarantee Matters.* The Lenders irrevocably authorize the Administrative Agent to:

(a) release (x) any Guarantor from the Guarantee or (y) any Lien on any property granted to or held by the Administrative Agent under any Loan Document, (i) upon payment in

full of all Obligations (other than unmatured, surviving contingent indemnification obligations) and the termination of all Revolving Commitments and the cancellation or expiration of all Letters of Credit (or Cash Collateralization of outstanding Letters of Credit at the Minimum Cash Collateral Amount), (ii) as expressly permitted under the Loan Documents, (iii) in connection with a merger, consolidation, amalgamation or sale of all or substantially all of the assets of a Restricted Subsidiary that is a Guarantor with or to the Borrower in accordance with Section 7.07(b) or (iv) in the case of clause (y), subject to Section 10.01, if approved, authorized or ratified in writing by Lenders having or holding Revolving Exposure and unused Revolving Commitments representing more than 66-2/3% of the aggregate Revolving Exposure and unused Revolving Commitments of all Revolving Lenders (*provided* that the aggregate amount of Revolving Exposure shall be determined with respect to any Defaulting Lender by disregarding the Revolving Exposure of such Defaulting Lender); and

(b) subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02(j).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the authority of the Administrative Agent to release or subordinate its interest in particular types or items of property, pursuant to this Section 9.10.

Section 9.11      *Indemnification of Agent-Related Persons.* Whether or not the transactions contemplated hereby are consummated, the Lenders shall indemnify upon demand each Agent-Related Person (to the extent not reimbursed by or on behalf of the Borrower and without limiting the obligation of the Borrower to do so), ratably according to their respective portions of the total Revolving Loans and unused Revolving Commitments held on the date on which indemnification is sought, and hold harmless each Agent-Related Person from and against any and all Indemnified Liabilities incurred by it; *provided* that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities to the extent determined in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Agent-Related Person's own gross negligence or willful misconduct; and *provided, further*, that no action taken in accordance with the directions of the Required Lenders shall be deemed to constitute gross negligence or willful misconduct for purposes of this Section 9.11. Without limitation of the foregoing, each Lender shall reimburse each Agent-Related Person upon demand for its ratable share of any costs or out-of-pocket expenses (including Attorney Costs) incurred by such Agent-Related Person in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, any other Loan Document or any document contemplated by or referred to herein, to the extent that such Agent-Related Person is not reimbursed for such expenses by or on behalf of the Borrower. The undertaking in this Section 9.11 shall survive the payment of all other Obligations and the resignation of the Administrative Agent or any Agent-Related Person.

Section 9.12      *Withholding Tax.* To the extent required by any applicable law, the Administrative Agent shall withhold from any payment to any Lender an amount equal to any applicable withholding Tax. If the IRS or any Governmental Authority asserts a claim that the

Administrative Agent did not properly withhold Tax from any amount paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered or was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify and hold harmless the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by the Borrower and without limiting or expanding the obligation of the Borrower to do so) for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including any penalties, additions to Tax or interest thereon, together with all expenses incurred, including legal expenses and any out-of-pocket expenses, whether or not such Tax was 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 this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Article 9. The agreements in this Article 9 shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Loans and the repayment, satisfaction or discharge of all obligations under this Agreement. Unless required by applicable laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender any refund of Taxes withheld or deducted from funds paid for the account of such Lender.

Section 9.13 *Certain ERISA Matters.*

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, and the Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, 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 Revolving Loans, the Letters of Credit or the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Revolving Loans, the Letters of Credit, the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving 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 Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that:

(i) none of the Administrative Agent, or the 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 Revolving Loans, the Letters of Credit, the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving 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 Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Revolving Loans, the Letters of Credit, the Revolving 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, the Arrangers or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Revolving Loans, the Letters of Credit, the Revolving Commitments or this Agreement.

(c) The Administrative Agent and each of the Arrangers hereby informs 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 Revolving Loans, the Letters of Credit, the Revolving Commitments and this Agreement, (ii) may recognize a gain if it extended the Revolving Loans, the Letters of Credit or the Revolving Commitments for an amount less than the amount being paid for an interest in the Revolving Loans, the Letters of Credit or the Revolving 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.

ARTICLE 10  
MISCELLANEOUS

Section 10.01 *Amendments and Waivers.* No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Credit Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Credit Party, as the case may be, and acknowledged by the Administrative Agent, and each such amendment, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided* that the Administrative Agent may, with the consent of the Borrower only, amend, modify or supplement this Agreement or any other Loan Document to cure any ambiguity, omission, defect or inconsistency (as reasonably determined by the Administrative Agent), so long as such amendment, modification or supplement does not adversely affect the rights of any Lender or the Lenders shall have received at least five (5) Business Days' prior written notice thereof and the Administrative Agent shall not have received, within five (5) Business Days of the date of such notice to the Lenders, a written notice from the Required

Lenders stating that the Required Lenders object to such amendment, modification or supplement; *provided, further*, that no such amendment, waiver or consent shall:

(a) extend or increase the Revolving Commitment of any Lender (or reinstate any Revolving Commitment terminated pursuant to Section 8.02) without the written consent of such Lender; *provided* that no amendment, modification or waiver of any condition precedent, covenant, Default or Event of Default prior to the termination of the Revolving Commitments pursuant to Section 8.02 shall constitute an increase in any Revolving Commitment of any Lender;

(b) postpone or delay the maturity of the Revolving Loans or any reimbursement obligation in respect of any Letter of Credit or any date for the payment of any interest, premium or fees due to the Lenders (or any of them) hereunder or under any other Loan Document, or reduce the amount of, or rate, as applicable, waive or excuse any such payment, without the written consent of each Lender directly and adversely affected thereby (other than as a result of waiving (i) an Event of Default in accordance with the terms hereof, (ii) default interest hereunder to the extent a waiver of the underlying default giving rise to such default interest does not require a vote of all Lenders or (iii) a mandatory prepayment to be made hereunder); *provided* that, for the avoidance of doubt, the provisions of Section 3.05(b) shall not be deemed to be a reduction of the amount of, or rate of, interest payable on any Revolving Loan;

(c) amend the definition of “Required Lenders” or “Pro Rata Share” without the consent of each Lender; *provided* that with the consent of Required Lenders, additional extensions of credit pursuant hereto may be included in the determination of “Required Lenders” or “Pro Rata Share” on substantially the same basis as the Revolving Commitments and the Revolving Loans are included on the Restatement Effective Date without the written consent of each Lender;

(d) amend the definition of “Interest Period” to permit Interest Periods with a duration of longer than six months without the written consent of each Lender;

(e) release all or substantially all of the Collateralized L/C Collateral from the Collateralized L/C Liens or any Guarantor from the Guarantee except as expressly permitted under the Loan Documents (including Section 9.10(a)) and except in connection with a “credit bid” undertaken by the Administrative Agent at the direction of the Required Lenders pursuant to Section 363(k), Section 1129(b)(2)(a)(ii) or otherwise of the Bankruptcy Code or other sale or disposition of assets in connection with an enforcement action with respect to the Collateralized L/C Collateral, as applicable, permitted pursuant to the applicable Loan Documents (in which case only the consent of the Required Lenders will be needed for such release), without the written consent of each Lender;

(f) extend the stated expiration date of any Letter of Credit beyond the Commitment Termination Date without the written consent of each Lender and the Administrative Agent, unless all such Letters of Credit are Cash Collateralized at the Minimum Cash Collateral Amount in accordance with Section 2.02(a)(vi);

(g) amend this Section 10.01, or any other provision of this Agreement that by its express terms requires the consent of all or all affected Lenders, without the written consent of each Lender or each affected Lender, as applicable;

(h) subject to Section 2.12, change Section 2.11 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender;

(i) consent to the assignment or transfer by any Credit Party of any of its rights and obligations under any Loan Document without the written consent of each Lender;

(j) amend, modify or waive this Agreement or the Guarantee Agreement so as to alter the ratable treatment of Obligations arising under the Loan Documents and Guaranteed Obligations arising under the Guaranteed Swap Contracts or the definition of “Guaranteed Swap Contract”, “Obligations” or “Guaranteed Obligations” in each case in a manner adverse to any contractual counterparty to any such Guaranteed Swap Contract with Guaranteed Obligations then outstanding without the written consent of any such contractual counterparty;

(k) modify (i) the Collateralized L/C Aggregate Collateral Amount or any component thereof with the effect of increasing the Collateralized L/C Aggregate Collateral Amount or (ii) the Minimum Collateralized L/C Aggregate Collateral Amount or any component thereof with the effect of decreasing the Minimum Collateralized L/C Aggregate Collateral Amount, in each case, without the written consent of each Lender; or

(l) amend, modify, terminate or waive any provision of the Loan Documents as the same applies to the Administrative Agent, or any other provision hereof as the same applies to the rights or obligations of the Administrative Agent, in each case without the consent of the Administrative Agent;

*provided, further*, that (i) no such agreement shall, unless in writing and signed by the Administrative Agent, in addition to the Required Lenders or all the Lenders, as the case may be, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document (except with respect to the removal of the Administrative Agent) and (ii) any fee agreement referred to in Section 2.08 may be amended, or rights or privileges thereunder waived, in a writing executed by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except for any amendment, waiver or consent pursuant to Section 10.01(a), (b) or (c).

Section 10.02 *Notices.*

(a) Unless otherwise expressly provided herein, all notices and other communications *provided* for hereunder shall be in writing (including by facsimile or electronic transmission). All such written notices shall be mailed, emailed, faxed or delivered to the applicable address, facsimile number (*provided* that any matter transmitted by the Borrower by facsimile (1) shall be immediately confirmed by a telephone call to the recipient at the number specified on Schedule 10.02, and (2) shall be followed promptly by delivery of a hard copy original thereof) or (subject to clause (c) below) electronic mail address, and all notices and other



communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, any other Credit Party or the Administrative Agent, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the other parties; and

(ii) if to any other Lender, to the address, facsimile number, electronic mail address or telephone number specified in its administrative questionnaire or to such other address, facsimile number, electronic mail address or telephone number as shall be designated by such party in a notice to the Borrower and the Administrative Agent.

All such notices and other communications shall be deemed to be given or made upon the earlier to occur of (i) actual receipt by the relevant party hereto and (ii) (A) if delivered by hand or by courier, when signed for by or on behalf of the relevant party hereto; (B) if delivered by mail, four (4) Business Days after deposit in the mails, postage prepaid; (C) if delivered by facsimile or electronic mail, when sent and receipt has been confirmed by telephone; and (D) if delivered by electronic mail (which form of delivery is subject to the provisions of clause (c) below), when delivered; *provided* that notices and other communications to the Administrative Agent pursuant to Article 2 shall not be effective until actually received by such Person. In no event shall a voicemail message be effective as a notice, communication or confirmation hereunder.

(b) Electronic Communications:

(1) Notices and other communications to the Administrative Agent, and the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites, including the Platform) pursuant to procedures approved by the Administrative Agent, *provided* that the foregoing shall not apply to notices to the Administrative Agent or any Lender pursuant to Article 2 if such Person 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. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the

intended recipient at its e-mail address as described in the foregoing subclause (i) of notification that such notice or communication is available and identifying the website address therefor.

(2) Holdings and each of its Subsidiaries understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees and assumes the risks associated with such electronic distribution, except to the extent that such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of the Administrative Agent.

(3) The Platform and any Approved Electronic Communications are provided “as is” and “as available”. None of the Agent-Related Persons warrant the accuracy, adequacy or completeness of the Approved Electronic Communications or the Platform and each expressly disclaims liability for errors or omissions in the Platform and the Approved Electronic Communications, except for such losses, costs, expenses or liabilities as are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Person. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects is made by the Agent-Related Persons in connection with the Platform or the Approved Electronic Communications.

(4) Holdings, each of its Subsidiaries and each Lender agrees that the Administrative Agent may, but shall not be obligated to, store any Approved Electronic Communications on the Platform in accordance with the Administrative Agent’s customary document retention procedures and policies.

(c) The Agent-Related Persons and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify each Agent-Related Person and each Lender from all losses, costs, out-of-pocket expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower; *provided* that such indemnity shall not, as to any such Person, be available to the extent that such losses, costs, expenses or liabilities are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Person. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

Section 10.03 *No Waiver; Cumulative Remedies.* No failure to exercise and no delay in exercising, on the part of the Administrative Agent or any Lender, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or

privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

Section 10.04 *Costs and Expenses.* The Borrower agrees to pay or reimburse (a) the Administrative Agent, each Arranger, each Bookrunner and each Syndication Agent, in each case together with their respective Affiliates, and the officers, directors, employees, agents and attorneys-in-fact of such Persons and Affiliates, for all reasonable costs and out-of-pocket expenses incurred in connection with the development, preparation, negotiation and execution of this Agreement and the other Loan Documents, including all Attorney Costs, which Attorney Costs shall be limited to the reasonable fees and reasonable disbursements of Milbank, Tweed, Hadley & McCloy LLP and, if reasonably necessary (in the sole discretion of the Administrative Agent), a single local counsel in each appropriate jurisdiction and a single insurance regulatory counsel, collectively, for each of the foregoing Persons, (b) each Agent-Related Person for all reasonable costs and out-of-pocket expenses incurred in connection with any amendment, waiver, consent or other modification of the provisions hereof and thereof and the consummation and administration of the transactions contemplated hereby and thereby, including all Attorney Costs, which Attorney Costs shall be limited to the reasonable fees and reasonable disbursements of a single primary counsel and, if reasonably necessary (in the sole discretion of the Administrative Agent), a single local counsel in each appropriate jurisdiction and a single insurance regulatory counsel, collectively, for each Agent-Related Person, and (c) each Agent-Related Person and each Lender for all costs and expenses incurred in connection with the enforcement, attempted enforcement or preservation of any rights or remedies under this Agreement (including this Section 10.04) or the other Loan Documents (including all such costs and expenses incurred during any “workout” or restructuring in respect of the Obligations and during any legal proceeding, including in any Insolvency Proceeding or appellate proceeding), including all reasonable fees, expenses and disbursements of any law firm or other external legal counsel. The foregoing costs and expenses shall include all search, filing, recording, title insurance and appraisal charges and fees and taxes related thereto and other out-of-pocket expenses incurred by each Agent-Related Person and the cost of independent public accountants and other outside experts (subject to the limitations above) retained by such Agent-Related Person or any Lender, as applicable. All amounts due under this Section 10.04 shall be payable within ten (10) Business Days after written demand therefor. The agreements in this Section 10.04 shall survive the repayment of the Revolving Loans and the other Obligations.

Section 10.05 *Borrower Indemnification; Damage Waiver.*

(a) Whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify and hold harmless the Administrative Agent, each Arranger, each Bookrunner, each Syndication Agent, each Documentation Agent, each Lender and their respective Affiliates, and the directors, officers, employees, agents and partners (to the extent such Person is a partnership) of such Persons and Affiliates involved with the Transactions (collectively, the “**Indemnified Persons**”) from and against any and all liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, charges and costs, expenses and disbursements (including reasonable Attorney Costs) of any kind or nature whatsoever (including those arising from or relating to any environmental matters) that may at any time be imposed on, incurred by or asserted against any such Indemnified Person by any

third party or by the Borrower or any other Credit Party (x) that directly or indirectly owns the equity interests of the Borrower or (y) whose equity interests are owned directly or indirectly by the Borrower, in any way relating to or arising out of or in connection with (i) the execution, delivery, enforcement, performance or administration of any Loan Document or any other agreement, letter or instrument delivered in connection with the transactions contemplated thereby or the consummation of the transactions contemplated thereby, (ii) any Revolving Commitment, Revolving Loan or Letter of Credit or the use or proposed use of the proceeds therefrom, (iii) any Environmental Liability related to Holdings or any of its Subsidiaries or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including any investigation of, preparation for or defense of any pending or threatened claim, investigation, litigation or proceeding) and regardless of whether any Indemnified Person is a party thereto (all the foregoing, collectively, the “**Indemnified Liabilities**”), in all cases, whether or not caused by or arising, in whole or in part, out of the negligence of the Indemnified Person; *provided* that such indemnity shall not, as to any Indemnified Person, be available to the extent that such liabilities, obligations, losses, damages, penalties, claims, demands, actions, judgments, suits, costs, expenses or disbursements (including Attorney Costs) (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person in connection with or as a result of the transactions hereunder or (B) arise out of or are in connection with any claim, litigation, loss or proceeding not involving an act or omission of Holdings or any of its Subsidiaries (other than an Indemnified Person) and that is brought by an Indemnified Person against another Indemnified Person (other than against the Administrative Agent, any Arranger, any Bookrunner, any Syndication Agent or any Documentation Agent in their capacities as such or any other Indemnified Person in performing the services that are the subject of the Loan Documents). No Indemnified Person shall be liable for any damages arising from the use by others of any information or other materials obtained through IntraLinks or other similar information transmission systems in connection with this Agreement other than for any direct damages (and specifically excluding indirect, consequential, special or punitive damages) determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person. Neither any Credit Party nor any Indemnified Person will have any liability for any indirect, consequential, special or punitive damages in connection with or as a result of such Credit Party’s or such Indemnified Person’s activities related to the transactions hereunder; *provided* that, that nothing contained in this sentence shall limit the Credit Parties’ indemnification obligations hereunder to the extent such indirect, consequential, special or punitive damages are included in any third-party claim whereby any Indemnified Person is entitled to indemnification hereunder. All amounts due under this Section 10.05 shall be payable within thirty (30) days after written demand therefor together with, if requested by the Borrower, backup documentation supporting such indemnification request. The agreements in this Section 10.05 shall survive the resignation of the Administrative Agent, the replacement of any Lender and the repayment, satisfaction or discharge of all the other Obligations.

(b) No Indemnified Person shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby

other than for any direct damages (and specifically excluding indirect, consequential, special or punitive damages) determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnified Person.

Section 10.06 *Marshaling; Payments Set Aside.* Neither of the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of any Credit Party or any other Person or against or in payment of any or all of the Obligations. To the extent that the Borrower makes a payment to the Administrative Agent or the Lenders (or to the Administrative Agent on behalf of the Lenders), or the Administrative Agent or any Lender enforces any security interests or exercises any right of set-off, and such payment or the proceeds of such enforcement or the proceeds of such set-off or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any Insolvency Proceeding or otherwise, then (a) to the extent of such recovery the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such set-off had not occurred and (b) each Lender severally agrees to pay to the Administrative Agent upon demand its pro rata share of any amount so recovered from or repaid by the Administrative Agent.

Section 10.07 *Assignments, Successors, Participations, Etc.*

(a) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Credit Party may assign or otherwise transfer any of its rights or obligations hereunder (except as expressly permitted in Section 7.07) without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 10.07(b) or (ii) by way of participation in accordance with the provisions of Section 10.07(d) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants (as defined below) to the extent provided in Section 10.07(e) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Commitment and Revolving Loans at the time owing to it (*provided, however,* that each assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any applicable Revolving Loan and any related Revolving Commitments)); *provided that:*

(i) except in the case of an assignment of the entire remaining amount of the assigning Lender's Revolving Loans or Revolving Commitment at the time owing to it or

in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Revolving Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing under Section 8.01(a), (f) or (g), the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided* that the Borrower shall be deemed to have consented unless it shall object thereto by written notice to the Administrative Agent within fifteen (15) Business Days after having received notice thereof;

(ii) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Revolving Loans or the Revolving Commitments assigned under the Facility;

(iii) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption; such Assignment and Assumption to be (A) electronically executed and delivered to the Administrative Agent via an electronic settlement system then acceptable to the Administrative Agent (or, if previously agreed with the Administrative Agent, manually) and (B) delivered together with a processing and recordation fee of \$[\*\*], unless waived or reduced by the Administrative Agent in its sole discretion; *provided* that, no processing and recordation fee shall be payable in connection with an assignments by or to any Arranger or its Affiliates; and

(iv) if the Eligible Assignee shall not be a Lender, (A) the relevant assignor, at the time that it notifies the Administrative Agent of such proposed assignment, shall deliver to the Administrative Agent a duly executed Form W-9 of the proposed Eligible Assignee and (B) such Eligible Assignee shall deliver to the Administrative Agent an administrative questionnaire, in the form prescribed by the Administrative Agent.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 10.07(c), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, (*provided* that, with respect to circumstances in effect on the effective date of such Assignment and Assumption, an Eligible Assignee shall not be entitled to receive any greater payment under Section 3.01 than the applicable Lender would have been entitled to receive had the assignment not taken place) and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.03, 3.04, 10.04 and 10.05 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at their expense)

[\*\*] = *Certain information contained in this document, marked by "[\*\*]" has been excluded because it is both (i) not material and (ii) is the type that the registrant treats as private or confidential.*

shall execute and deliver a Revolving Loan Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with [Section 10.07\(d\)](#).

(c) [Register](#). The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Commitments of, and principal and interest amounts of the Revolving Loans owing to, each Lender pursuant to the terms hereof from time to time (the "**Register**"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and each Lender (with respect to its own interests in the Facility only) at any reasonable time and from time to time upon reasonable prior notice. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(d) [Participations](#). Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a Natural Person or the Borrower, Holdings or any Affiliate or Subsidiary of the Borrower or Holdings (other than Goldman Sachs & Co. [LLC](#) and any lending affiliates thereof, but excluding Holdings and its Subsidiaries) or any Disqualified Lender) (each, a "**Participant**") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Commitment and/or the owing to it); *provided* that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to [Section 10.01](#) that directly affects such Participant. Except to the extent limited by [Section 10.07\(e\)](#), the Borrower agree that each Participant shall be entitled to the benefits of [Sections 3.01](#), [3.03](#) and [3.04](#) (subject to the limitations and requirements of such Sections (including [Section 3.01\(e\)](#) and [Section 3.01\(f\)](#)) and [Section 3.07](#), as if such Participant were a Lender) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to [Section 10.07\(b\)](#). To the extent permitted by law, each Participant also shall be entitled to the benefits of [Section 10.09](#) as though it were a Lender; provided that such Participant agrees to be subject to [Section 2.11](#) as though it were a Lender.

Each Lender that sells a participation pursuant to this [Section 10.07\(d\)](#) shall, acting solely for U.S. federal income tax purposes as a non-fiduciary agent of the Borrower, maintain a register on which it records the name and address of each participant and the principal amounts

of each participant's participation interest with respect to the Revolving Loans or other obligations under the Loan Documents (each, a "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any participant or any information relating to a participant's interest in any Revolving Commitments, Revolving Loans or its other obligations under this Agreement) except to the extent that the relevant parties, acting reasonably and in good faith, determine that such disclosure is necessary to establish that such Revolving Commitment, Revolving Loan or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations and Section 1.163-5(b)(1) of the proposed 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.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.03 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant; *provided* that this Section 10.07(e) shall not apply if the sale of the participation to such Participant is made with the Borrower's prior written consent.

(f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Revolving Loan Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank of similar function having jurisdiction over such Lender; *provided* that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

Section 10.08 Confidentiality. The Administrative Agent, each Arranger, each Bookrunner, each Syndication Agent, each Documentation Agent and each Lender shall maintain the confidentiality of all information provided to it by or on behalf of Holdings or any Subsidiary, or by the Administrative Agent on Holdings' or such Subsidiary's behalf, under this Agreement or any other Loan Document, it being understood and agreed by the Credit Parties that, in any event, the Administrative Agent may disclose such information to the Lenders and the Administrative Agent, each Arranger, each Bookrunner, each Syndication Agent, each Documentation Agent and each Lender may make disclosures thereof to the extent such information (i) was or becomes generally available to the public other than as a result of disclosure by such Person on breach of the provisions of this Section 10.08, or (ii) was or



becomes available on a non-confidential basis from a source other than Holdings or its Subsidiaries; *provided* that such source is not bound by a confidentiality agreement with Holdings or any of its Subsidiaries known to such Person; *provided, further*, that the Administrative Agent, any Arranger, any Bookrunner, any Syndication Agent, any Documentation Agent or any Lender may disclose such information (a) at the request or pursuant to any requirement of any Governmental Authority or representative thereof to which such Person is subject (including the NAIC) or in connection with an examination of such Person by any such authority; (b) pursuant to subpoena or other court process; (c) when required to do so in accordance with the provisions of any applicable Requirement of Law; (d) to the extent reasonably required in connection with the exercise of any remedy hereunder or under any other Loan Document; (e) to such Person's independent auditors and other professional advisors on a confidential basis; (f) to any Participant, Lender or Eligible Assignee, actual or potential; *provided* that such Person agrees to be bound by the terms of this Section 10.08 (or language substantially similar to this Section 10.08) which agreement may be pursuant to customary syndication practice; (g) as to any Lender or its Affiliate, as expressly permitted under the terms of any other document or agreement regarding confidentiality to which Holdings or any Subsidiary is party with such Lender or such Affiliate; (h) to its Affiliates and to their respective officers, directors, partners, members, employees, legal counsel, independent auditors and other advisors, experts or agents who need to know such information and who have been informed of the confidential nature thereof (and to other Persons authorized by a Lender or the Administrative Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.08); (i) to any other party to this Agreement; (j) to any pledgee referred to in Section 10.07(f) or any direct or indirect contractual counterparty or prospective counterparty (or such counterparty's or prospective counterparty's professional advisor) to any swap or derivative transaction relating to the Revolving Loans who have been informed of the confidential nature of the information; (k) to Moody's and S&P and other rating agencies in connection with the ratings contemplated by the Loan Documents; (l) on a confidential basis to the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Revolving Loans and (m) with the consent of the Borrower. In addition, the Administrative Agent and each Lender may disclose the existence of this Agreement and the information about this Agreement to market data collectors, and on a need to know and confidential basis, similar services providers to the lending industry, and service providers to the Administrative Agent and the Lenders in connection with the administration and management of this Agreement and the other Loan Documents. In the case of confidential information received from Holdings or any Subsidiary after the date hereof, such information shall be clearly identified at the time of delivery as confidential. In the case of clauses (b) and (c), the disclosing party shall give notice of such disclosure to the Borrower (other than any disclosure in connection with routine bank examinations), to the extent not otherwise prohibited by any Requirement of Law.

**Section 10.09** *Set-off.* In addition to any rights and remedies of the Lenders provided by law, if an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is authorized at any time and from time to time, without prior notice to the Borrower, any such notice being waived by the Borrower, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held by, and other indebtedness at any time owing by, such Lender or Affiliate to or for the credit or the account of the Borrower against any and all Obligations owing to such Lender, now

or hereafter existing, irrespective of whether or not the Administrative Agent or such Lender shall have made demand under this Agreement or any Loan Document and although such Obligations may be contingent or unmaturing; *provided* that neither any Lender nor any of its Affiliates shall be entitled to exercise any such set off with respect to any trust, tax reserve, employee benefit or payroll account. Each Lender agrees to promptly notify the Borrower and the Administrative Agent after any such set-off and application made by such Lender; *provided* that the failure to give such notice shall not affect the validity of such set-off and application.

Section 10.10 *Notification of Addresses, Lending Offices, Etc.* Each Lender shall notify the Administrative Agent in writing of any changes in the address to which notices to the Lender should be directed, of addresses of any Lending Office, of payment instructions in respect of all payments to be made to it hereunder and of such other administrative information as the Administrative Agent shall reasonably request.

Section 10.11. *Effectiveness; Counterparts.* (a) This Agreement (and the amendment and restatement of the Existing Credit Agreement effected hereby) shall become effective upon (i) the execution of a counterpart hereof by each of the parties hereto (including each Continuing Existing Credit Agreement Lender), (ii) the receipt by the Borrower and the Administrative Agent of written notification of such execution and authorization of delivery thereof and (iii) the satisfaction or waiver of the conditions precedent set forth in Section 4.01. This Agreement may be executed in any number of separate counterparts, each of which, when so executed, shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute but one and the same instrument. ~~Delivery of an executed counterpart of this Agreement by facsimile transmission or other electronic transmission (e.g., “.pdf” or “.tif”) shall be effective as delivery of a manually executed counterpart hereof.~~

(b) Electronic Signatures. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, emailed pdf. or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement and any other document to be signed in connection with this Agreement and the transactions contemplated hereby shall be deemed to include Electronic Signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that nothing herein shall require the Administrative Agent to accept electronic signatures in any form or format without its prior written consent, provided that, the Administrative Agent hereby agrees to accept, and hereby consents to the use of, electronic signatures to this Agreement from all parties hereto. Without limiting the generality of the foregoing, the Borrower hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Borrower, electronic images of this Agreement or any other Loan Documents (in each case, including

with respect to any signature pages thereto) shall have the same legal effect, validity and enforceability as any paper original, and (ii) waives any argument, defense or right to contest the validity or enforceability of the Loan Documents based solely on the lack of paper original copies of any Loan Documents, including with respect to any signature pages thereto. Upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be followed by a manually executed counterpart thereof, if and when reasonably practicable.

Section 10.12 *Survival of Representations and Warranties.* All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf, and shall continue in full force and effect as long as the Revolving Loans or any other Obligation hereunder shall remain unpaid or unsatisfied.

Section 10.13 *Severability.* If any provision of any Loan Document is invalid, illegal or unenforceable in any jurisdiction then, to the fullest extent permitted by law, (i) such provision shall, as to such jurisdiction, be ineffective to the extent (but only to the extent) of such invalidity, illegality or unenforceability, (ii) the other provisions of the Loan Documents shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of the Lenders in order to carry out the intentions of the parties thereto as nearly as may be possible and (iii) the invalidity, illegality or unenforceability of any such provision in any jurisdiction shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

Section 10.14 *Replacement of Defaulting Lenders and Non-Consenting Lenders.* 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 10.07), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided that*:

(a) the Administrative Agent shall have received the assignment fee specified in Section 10.07(b) from the Borrower; and

(b) such Lender shall have received payment of an amount equal to the outstanding principal of its Revolving Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Sections 2.06(c), 3.01, 3.03 and 3.04) 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).

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.

No action by or consent of a Defaulting Lender or a Non-Consenting Lender shall be necessary in connection with such assignment, which shall be immediately and automatically effective upon payment of such purchase price. In connection with any such assignment the Borrower, the Administrative Agent, such Defaulting Lender or such Non-Consenting Lender and the replacement Lender shall otherwise comply with this Section 10.14; *provided* that if such Defaulting Lender or such Non-Consenting Lender does not comply with this Section 10.14 within one (1) Business Day after the Borrower's request, compliance with this Section 10.14 shall not be required to effect such assignment.

Section 10.15 *Governing Law; Jurisdiction; Consent to Service of Process.*

(a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each of the parties hereto irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of the Supreme Court of the State of New York sitting in New York County and of the United States District Court for the Southern District of New York, and any relevant appellate court, in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment, and each party hereto irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such New York State court or, to the extent permitted by law, in such Federal court. Each party hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Each Credit Party that is organized under the laws of a jurisdiction outside the United States hereby appoints the Borrower, and the Borrower hereby accepts such appointment, as agent for service of process of each such Credit Party in any matter related to this Agreement or the other Loan Documents. Nothing in any Loan Document shall affect any right that any Lender or the Administrative Agent may otherwise have to bring any action or proceeding relating to any Loan Document against any Credit Party or its properties in the courts of any jurisdiction.

(c) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in clause (b) of this Section 10.15. Each party hereto irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of any such suit, action or proceeding in any such court.

(d) To the extent permitted by applicable law, each party hereto irrevocably consents to service of process in the manner provided for notices in Section 10.02. Nothing in any Loan Document will affect the right of any party hereto to serve process in any other manner permitted by law.

Section 10.16 *Waiver of Jury Trial.* EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER ANY LOAN DOCUMENT OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO ANY LOAN DOCUMENT, OR THE TRANSACTIONS RELATED THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER FOUNDED IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 10.16 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE SIGNATORIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO OR OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 10.17 *PATRIOT Act Notice.* Each Lender and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies each Credit Party that pursuant to the requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "**PATRIOT Act**"), it is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Credit Party in accordance with the PATRIOT Act.

Section 10.18 *Entire Agreement.* This Agreement, together with the other Loan Documents and any separate agreements with respect to fees payable to the Administrative Agent, the Arrangers and the Bookrunners, embodies the entire agreement and understanding among the Credit Parties, the Lenders and the Administrative Agent and supersedes all prior or contemporaneous agreements and understandings of such Persons, verbal or written, relating to the subject matter hereof and thereof.

Notwithstanding the foregoing, other than the provisions of the Fee Letters and those provisions of the Engagement Letter which by the terms of the Engagement Letter remain in full force and effect after execution and delivery of the Loan Documents, on the Restatement Effective Date, all of the obligations of the Arrangers, Bookrunners and engagement parties under the Engagement Letter shall terminate and be superseded by the Loan Documents and the Arrangers, Bookrunners and engagement parties under the Engagement Letter shall be released from all liability in connection therewith, including any claim for injury or damages, whether consequential, special, direct, indirect, punitive or otherwise.

Section 10.19 *Independence of Covenants.* All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within

the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

Section 10.20 *Obligations Several; Independent Nature of Lenders Right.* The obligations of Lenders hereunder are several and no Lender shall be responsible for the obligations or Revolving Commitment of any other Lender hereunder. Nothing contained herein or in any other Loan Document, and no action taken by Lenders pursuant hereto or thereto, shall be deemed to constitute Lenders as a partnership, an association, a joint venture or any other kind of entity. The amounts payable at any time hereunder to each Lender shall be a separate and independent debt, and each Lender shall be entitled to protect and enforce its rights arising out hereof and it shall not be necessary for any other Lender to be joined as an additional party in any proceeding for such purpose.

Section 10.21 *No Fiduciary Duty.* The Administrative Agent, each Lender and their Affiliates (collectively, solely for purposes of this paragraph, the “Lenders”), may have economic interests that conflict with those of the Credit Parties, their stockholders and/or their affiliates. Each Credit Party agrees that nothing in the Loan Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between any Lender, on the one hand, and such Credit Party, its stockholders or its affiliates, on the other. The Credit Parties acknowledge and agree that (a) the transactions contemplated by the Loan Documents (including the exercise of rights and remedies hereunder and thereunder) are arm’s-length commercial transactions between the Lenders, on the one hand, and the Credit Parties, on the other, and (b) in connection therewith and with the process leading thereto, (x) no Lender has assumed an advisory or fiduciary responsibility in favor of any Credit Party, its stockholders or its affiliates with respect to the transactions contemplated hereby (or the exercise of rights or remedies with respect thereto) or the process leading thereto (irrespective of whether any Lender has advised, is currently advising or will advise any Credit Party, its stockholders or its Affiliates on other matters) or any other obligation to any Credit Party except the obligations expressly set forth in the Loan Documents and (y) each Lender is acting solely as principal and not as the agent or fiduciary of any Credit Party, its management, stockholders, creditors or any other Person. Each Credit Party acknowledges and agrees that it has consulted its own legal and financial advisors to the extent it deemed appropriate and that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Credit Party agrees that it will not claim that any Lender has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to such Credit Party, in connection with such transaction or the process leading thereto.

Section 10.22 *Judgment Currency.*

(a) This is an international loan transaction in which the specification of a particular currency (the “**Specified Currency**”) and place of payment (the “**Specified Place**”) is of the essence, and the obligation of each Credit Party under this Agreement to make payment to or for account of a Guaranteed Party in the Specified Currency shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed or converted into any other currency or in another place except to the extent that such tender or recovery results in the effective

receipt by such Guaranteed Party in the Specified Place of the full amount of the Specified Currency payable to such Guaranteed Party under this Agreement.

(b) If for the purpose of obtaining judgment in any court it is necessary to convert a sum due hereunder in the Specified Currency into another currency (the “**Judgment Currency**”), the rate of exchange that shall be applied shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase such Specified Currency at the principal office of the Administrative Agent in the Specified Place with the Judgment Currency on the Business Day next preceding the day on which such judgment is rendered. The obligation of each Credit Party in respect of any such sum due from it to the Administrative Agent or any Guaranteed Party (the “**Entitled Person**”) shall, notwithstanding the rate of exchange actually applied in rendering such judgment, be discharged only to the extent that on the Business Day following receipt by such Entitled Person of any sum adjudged to be due hereunder in the Judgment Currency such Entitled Person may in accordance with normal banking procedures purchase and transfer of the Specified Currency to the Specified Place with the amount of the Judgment Currency so adjudged to be due; and each Credit Party hereby, as a separate obligation and notwithstanding any such judgment, agrees to indemnify such Entitled Person against, and to pay such Entitled Person on demand, in the Specified Currency, the amount (if any) by which the sum originally due to such Entitled Person in the Specified Currency hereunder exceeds the amount of the Specified Currency so purchased and transferred.

Section 10.23 *Existing Credit Agreement Amended and Restated; Consents to Amendments to Existing Loan Documents; Restatement Effective Date Assignments.*

(a) Upon satisfaction of the conditions precedent to the effectiveness of this Agreement on the Restatement Effective Date, (i) this Agreement shall amend and restate the Existing Credit Agreement in its entirety, (ii) the rights and obligations of the parties under the Existing Credit Agreement shall be subsumed within and be governed by this Agreement; provided, however, that (A) each of the “Revolving Loans” (as such term is defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement on the Restatement Effective Date shall remain outstanding hereunder (with the existing Interest Periods therefor) and shall constitute Revolving Loans hereunder; (B) each “Letter of Credit” (as defined in the Existing Credit Agreement) issued under the Existing Credit Agreement and outstanding on the Restatement Effective Date shall constitute a Letter of Credit hereunder, and (C) all Obligations (as defined in the Existing Credit Agreement) of the Credit Parties (as defined in this Agreement) shall constitute continuing Obligations hereunder, and neither this Agreement nor any other Loan Document shall be deemed to evidence or result in a novation or repayment and reborrowing of such Obligations, and (iii) all references to the Existing Credit Agreement in any Loan Document or other document or instrument delivered in connection therewith shall be deemed to refer to this Agreement.

(b) Each Credit Party, the Administrative Agent, each Lender (including each Continuing Existing Credit Agreement Lender) hereby consents to (i) the amendment and restatement of the Existing Guarantee Agreement (as defined in the Guarantee Agreement) effected by the Guarantee Agreement and (ii) the amendment and restatement of the Existing

Security and Control Agreement (as defined in the Collateralized L/C Security and Control Agreement) effected by the Collateralized L/C Security and Control Agreement.

(c) Certain of the Revolving Lenders party hereto on the Restatement Effective Date are New Revolving Lenders. Certain Continuing Existing Credit Agreement Lenders are Increasing Lenders, and certain Continuing Existing Credit Agreement Lenders are Reducing Lenders. On the Restatement Effective Date, (i) each of the Reducing Lenders shall assign to each of the Increasing Lenders, and each of the Increasing Lenders shall purchase from each of the Reducing Lenders, at the principal amount thereof, such interests in the Revolving Loans outstanding on the Restatement Effective Date and (ii) each outstanding Letter of Credit shall be amended in accordance with the procedures set forth in Section 2.02(d), in each case as shall be necessary in order that, after giving effect to all such assignments and purchases, the Revolving Exposure will be held by the Revolving Lenders ratably in accordance with their Revolving Commitments.

Section 10.24 *Acknowledgment 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:

Section 10.24. *Acknowledgment and Consent to Bail-In of ~~EEA~~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 ~~an EEA~~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 ~~an EEA~~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 ~~an EEA~~the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any ~~Lender~~party hereto that is an ~~EEA~~Affected Financial Institution; and

(b) the effects of any ~~Bail-In~~Bail-in Action on any such liability, including, if applicable:

(i) ~~(ii)~~ a reduction in full or in part or cancellation of any such liability;

(ii) ~~(iii)~~ a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such ~~EEA~~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) ~~(iv)~~ the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of ~~any EEA~~the applicable Resolution Authority.

**Section 10.25. Acknowledgement Regarding Any Supported OFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Guaranteed Swap Contracts 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 OFC and OFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported OFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States);

(a) In the event a Covered Entity that is party to a Supported OFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported OFC and the benefit of such OFC Credit Support (and any interest and obligation in or under such Supported OFC and such OFC Credit Support, and any rights in property securing such Supported OFC or such OFC 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 OFC and such OFC 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 OFC or any OFC 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 OFC 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 OFC or any OFC Credit Support.

(b) As used in this Section 10.25, the following terms have the following meanings:

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

“Covered Entity” means any of the following:

- (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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

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

[SIGNATURE PAGES FOLLOW]

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

**GLOBAL ATLANTIC FINANCIAL LIMITED (F/K/A COMMONWEALTH RE MIDCO LIMITED)**, as Holdings and a Guarantor

**By:** \_\_\_\_\_  
**By:** \_\_\_\_\_

Name:  
Title:

**GLOBAL ATLANTIC (FIN) COMPANY**, as  
Borrower

**By:** \_\_\_\_\_  
**By:** \_\_\_\_\_

Name:  
Title:

**ROYAL BANK OF CANADA**,  
as Administrative Agent

**By:** \_\_\_\_\_  
**By:** \_\_\_\_\_

Name:  
Title:

**ROYAL BANK OF CANADA**,  
as Lender

**By:** \_\_\_\_\_  
**By:** \_\_\_\_\_

Name:  
Title:

[Signature Page to Second Amended and Restated Credit Agreement]

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**U.S. BANK NATIONAL ASSOCIATION,**  
as Lender

~~By:~~ \_\_\_\_\_

**By:** \_\_\_\_\_

Name:

Title:

[Signature Page to Second Amended and Restated Credit Agreement]

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**WELLS FARGO BANK,  
NATIONAL ASSOCIATION,**  
as Lender

~~By:~~ \_\_\_\_\_

**By:** \_\_\_\_\_

Name:

Title:

[Signature Page to Second Amended and Restated Credit Agreement]

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**[LENDER],**  
as Lender

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

Name:

Title:

[Signature Page to Second Amended and Restated Credit Agreement]

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**Subsidiary Issuer of Guaranteed Securities**

KKR Group Finance Co. IX LLC, an indirect finance subsidiary of KKR & Co. Inc., is the issuer of a series of debt securities designated as the 4.625% Subordinated Notes due 2061 (the "Notes"). The Notes are fully and unconditionally guaranteed by each of KKR & Co. Inc. and KKR Group Partnership L.P., another indirect subsidiary of KKR & Co. Inc.

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## CO-CHIEF EXECUTIVE OFFICER CERTIFICATION

I, Henry R. Kravis, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2021 of KKR & Co. 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 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 officers 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 officers 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: May 10, 2021

/s/ Henry R. Kravis

Henry R. Kravis

*Co-Chief Executive Officer*



## CO-CHIEF EXECUTIVE OFFICER CERTIFICATION

I, George R. Roberts, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2021 of KKR & Co. 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 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 officers 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 officers 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: May 10, 2021

/s/ George R. Roberts

George R. Roberts

*Co-Chief Executive Officer*

## CHIEF FINANCIAL OFFICER CERTIFICATION

I, Robert H. Lewin, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q for the period ended March 31, 2021 of KKR & Co. 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 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 officers 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 officers 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: May 10, 2021

/s/ Robert H. Lewin

Robert H. Lewin

*Chief Financial Officer*

**CERTIFICATION OF CO-CHIEF EXECUTIVE OFFICER**

**Pursuant to 18 U.S.C. §1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of KKR & Co. Inc. (the "Corporation") on Form 10-Q for the period ended March 31, 2021 as filed with the Securities and Exchange Commission (the "Report"), I, Henry R. Kravis, Co-Chief Executive Officer of the Corporation, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Date: May 10, 2021

/s/ Henry R. Kravis

Henry R. Kravis

*Co-Chief Executive Officer*

\* The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.

**CERTIFICATION OF CO-CHIEF EXECUTIVE OFFICER**

**Pursuant to 18 U.S.C. §1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of KKR & Co. Inc. (the "Corporation") on Form 10-Q for the period ended March 31, 2021 as filed with the Securities and Exchange Commission (the "Report"), I, George R. Roberts, Co-Chief Executive Officer of the Corporation, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Date: May 10, 2021

/s/ George R. Roberts

George R. Roberts

*Co-Chief Executive Officer*

\* The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**

**Pursuant to 18 U.S.C. §1350,  
As Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Quarterly Report of KKR & Co. Inc. (the "Corporation") on Form 10-Q for the period ended March 31, 2021 as filed with the Securities and Exchange Commission (the "Report"), I, Robert H. Lewin, Chief Financial Officer of the Corporation, certify, pursuant to 18 U.S.C. §1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to my knowledge:

- (1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Corporation.

Date: May 10, 2021

/s/ Robert H. Lewin

Robert H. Lewin

*Chief Financial Officer*

\* The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.