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## DELTA REPORT

### 10-K

WERN - WERNER ENTERPRISES INC

10-K - DECEMBER 31, 2023 COMPARED TO 10-K - DECEMBER 31, 2022

The following comparison report has been automatically generated

**TOTAL DELTAS** 7593

█ **CHANGES** 435

█ **DELETIONS** 6449

█ **ADDITIONS** 709

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

FORM 10-K

[Mark one]

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

For the fiscal year ended **December 31, 2022** **December 31, 2023**  
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: 0-14690

**WERNER ENTERPRISES, INC.**

(Exact name of registrant as specified in its charter)

Nebraska	47-0648386
(State or other jurisdiction of incorporation or organization)	(I.R.S. Employer Identification No.)
14507 Frontier Road	
Post Office Box 45308	
Omaha, Nebraska	68145-0308
(Address of principal executive offices)	(Zip Code)
(402) 895-6640 (Registrant's telephone number, including area code)	

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.01 Par Value	WERN	The Nasdaq Stock Market LLC

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes  No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes  No

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or 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"/>	Non-accelerated filer	<input type="checkbox"/>	Emerging growth company	<input type="checkbox"/>
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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 has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

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

The aggregate market value of the common equity held by non-affiliates of the Registrant (assuming for these purposes that all executive officers and Directors are "affiliates" of the Registrant) as of **June 30, 2022** **June 30, 2023**, the last business day of the Registrant's most recently completed second fiscal quarter, was approximately **\$2.421 billion** **\$2.771 billion** (based on the closing sale price of the Registrant's Common Stock on that date as reported by Nasdaq).

As of **February 9, 2023** **February 9, 2024**, **63,248,905** **63,468,690** shares of the registrant's common stock, par value \$0.01 per share, were outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement of Registrant for the Annual Meeting of Stockholders to be held **May 9, 2023** **May 14, 2024**, are incorporated in Part III of this report.

WERNER ENTERPRISES, INC.

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*This Annual Report on Form 10-K for the year ended **December 31, 2022** **December 31, 2023** (this "Form 10-K") and the documents incorporated herein by reference contain forward-looking statements based on expectations, estimates and projections as of the date of this filing. Actual results may differ materially from those expressed in such forward-looking statements. For further guidance, see Item 1A of Part I and Item 7 of Part II of this Form 10-K.*

Unless otherwise indicated, references to "we," "us," "our," "Company," or "Werner" mean Werner Enterprises, Inc. and its subsidiaries.

## PART I

### ITEM 1. BUSINESS

#### General

We are a transportation and logistics company engaged primarily in transporting truckload shipments of general commodities in both interstate and intrastate commerce. We also provide logistics services through our Werner Logistics segment. We believe we are one of the largest truckload carriers in the United States (based on total operating revenues), and our headquarters are located in Omaha, Nebraska, near the geographic center of our truckload service area. We were founded in 1956 by Clarence L. Werner, who started the business with one truck at the age of 19. He served as our Chairman until his term ended at the 2021 Annual Meeting of Stockholders, and was then named Chairman Emeritus by the Board of Directors (the "Board") in recognition of his longstanding leadership. We were incorporated in the State of Nebraska in September 1982 and completed our initial public offering in June 1986 with a fleet of 632 trucks as of February 1986. At the end of 2022, 2023, our Truckload Transportation Services ("TTS") segment had a fleet of 8,600 8,000 trucks, of which 8,305 7,740 were company-operated and 295 260 were owned and operated by independent contractors. Our Werner Logistics division operated an additional 39 35 drayage company trucks and 101 115 company delivery trucks at the end of 2022, 2023. We have historically grown through organic growth, and more recently through a combination of organic growth and four business acquisitions (discussed below). Our business acquisitions expanded our fleet size, customer base, geographic market presence, and network of operational facilities. We remain open to considering acquisitions in North America truckload and logistics companies that are both additive to our business and accretive to our earnings.

We have two reportable segments – TTS and Werner Logistics. Our TTS segment is comprised of Dedicated and One-Way Truckload. Dedicated had 5,450 5,265 trucks as of December 31, 2022 December 31, 2023 and provides truckload services dedicated to a specific customer, generally for a retail distribution center or manufacturing facility, utilizing either dry van or specialized trailers. One-Way Truckload had 3,150 2,735 trucks as of December 31, 2022 December 31, 2023 and includes the following operating fleets: (i) the medium-to-long-haul ("Van") fleet transports a variety of consumer nondurable products and other commodities in truckload quantities over irregular routes using dry van trailers, including Mexico cross-border routes; (ii) the expedited ("Expedited") fleet provides time-sensitive truckload services utilizing driver teams; (iii) the regional short-haul ("Regional") fleet provides comparable truckload van service within geographic regions across the United States; and (iv) the Temperature Controlled fleet provides truckload services for temperature sensitive products over irregular routes utilizing temperature-controlled trailers. Our TTS fleets operate throughout the 48 contiguous U.S. states pursuant to operating authority, both common and contract, granted by the U.S. Department of Transportation ("DOT") and pursuant to intrastate authority granted by various U.S. states. We also have authority to operate in several provinces of Canada and to provide through-trailer service into and out of Mexico. The principal types of freight we transport include retail store merchandise, consumer products, food and beverage products and manufactured products. We focus on transporting consumer nondurable products that generally ship more consistently throughout the year and whose volumes are generally more stable during a slowdown in the economy.

Our Werner Logistics segment is a non-asset-based transportation and logistics provider. Werner Logistics provides services throughout North America and generates the majority of our non-trucking revenues through three operating units. These three Werner Logistics operating units are as follows: (i) Truckload Logistics, which uses contracted carriers to complete shipments for brokerage customers and freight management customers for which we offer a full range of single-source logistics management services and solutions; (ii) the intermodal ("Intermodal") unit offers rail transportation through alliances with rail and drayage providers as an alternative to truck transportation; and (iii) Werner Final Mile ("Final Mile") offers residential and commercial deliveries of large or heavy items using third-party agents, independent contractors, and Company employees with two-person delivery teams operating a liftgate straight truck. In first quarter 2021, we completed the sale of the Werner Global Logistics ("WGL") freight forwarding services for international ocean and air shipments to Scan Global Logistics Group. WGL generated revenues of \$53 million in 2020. Prior to the sale of WGL, Werner Logistics provided international services throughout North America and Asia, with additional coverage throughout Australia, Europe, South America, and Africa. Werner Logistics had over 70,000 qualified carrier logistics relationships as of December 31, 2022.

#### Business Acquisitions

##### 2022 Acquisitions

On November 5, 2022, we acquired 100% of the equity interests in Reed Transport Services, Inc. and RTS-TMS, Inc., doing business as ReedTMS Logistics ("ReedTMS"). ReedTMS, based in Tampa, Florida, is an asset-light logistics provider and dedicated truckload carrier that offers a comprehensive suite of freight brokerage and truckload solutions to a diverse customer base. Prior to the acquisition, ReedTMS achieved revenues of \$372.0 million for the 12-month period ended September 30, 2022, 90% freight brokerage and 10% trucking. Freight brokerage and truckload revenues generated by ReedTMS are reported in our Werner Logistics segment and in Dedicated within our TTS segment, respectively.

On October 1, 2022, we acquired 100% of the equity interests in FAB9, Inc., doing business as Baylor Trucking, Inc. ("Baylor"). Baylor, based in Milan, Indiana, operates 200 trucks and 980 trailers in the east central and south central United States. Prior to the acquisition, Baylor achieved revenues of \$81.5 million for the 12-month period ended August 31, 2022. Revenues generated by Baylor are reported in One-Way Truckload within our TTS segment.

##### 2021 Acquisitions

On November 22, 2021, we acquired 100% of the equity interests in NEHDS Logistics, LLC ("NEHDS"). NEHDS is a final mile residential delivery provider serving customers primarily in the Northeast and Midwest United States markets. NEHDS delivers primarily big and bulky products (primarily furniture and appliances) using 2-person delivery teams performing residential and commercial deliveries. Prior to the acquisition, NEHDS achieved revenues of \$71 million for the 12-month period ended September 30, 2021. Revenues generated by NEHDS are reported in Final Mile within our Werner Logistics segment.

On July 1, 2021, we acquired an 80% equity ownership interest in ECM Associated, LLC ("ECM"). ECM provides regional truckload carrier services in the Mid-Atlantic, Ohio and Northeast regions of the United States. Prior to the acquisition, ECM achieved revenues of \$108 million in 2020. Revenues generated by ECM are reported in One-Way Truckload within our TTS segment.

Additional information regarding these acquisitions is included in Note 2 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K.

#### Marketing and Operations

Our business philosophy is to provide superior on-time customer service at a significant value for our customers. To accomplish this, we operate premium modern tractors and trailers. This equipment has fewer mechanical and maintenance issues and helps attract and retain experienced drivers. We continually develop our business processes and technology to improve customer service and driver retention. We focus on customers who value the broad geographic coverage, diversified truck and logistics services, equipment capacity, technology, customized services and flexibility available from a large, financially-stable transportation and logistics provider.

We operate in the truckload and logistics sectors of the transportation industry. Our TTS segment provides specialized services to customers based on (i) each customer's trailer needs (such as van and temperature-controlled trailers), (ii) geographic area (regional and medium-to-long-haul van, including transport throughout Mexico and Canada), (iii) time-sensitive shipments (expedited) or (iv) conversion of their private fleet to us (dedicated). In 2022, 2023, TTS segment revenues accounted for 74% 70% of total operating revenues, Werner Logistics revenues accounted for 24% 28% of total operating revenues, and the remaining 2% was recorded in non-reportable segments. Our Werner Logistics segment manages the transportation and logistics requirements for customers, providing customers with additional sources of truck capacity, alternative modes of transportation, and systems analysis to optimize transportation needs. Werner Logistics services include (i) truck brokerage, (ii) freight management, (iii) intermodal transport, and (iv) final mile. Werner Logistics is highly dependent on qualified associates, information systems and the services of qualified third-party capacity providers. You can find the revenues generated by services that accounted for more than 10% of our consolidated revenues, consisting of TTS and Werner Logistics, for the last three years in Note 3 and Note 13 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K.

We have a diversified freight base but are dependent on a relatively small number of customers for a significant portion of our revenues. During 2022, 2023, our largest 5, 10, 25 and 50 customers comprised 35%, 46% 48%, 63% 65% and 77% 78% of our revenues, respectively. Our largest customer, Dollar General, accounted for 14% 10% of our total revenues in 2022, 2023. Revenues generated by Dollar General are reported in both of our reportable operating segments. The industry groups of our top 50 customers are 60% 57% retail and consumer products, 17% manufacturing/industrial, 15% 20% food and beverage, 15% manufacturing/industrial, and 8% logistics and other. Many of our One-Way Truckload customer contracts may be terminated upon 30 days' notice, which is common in the truckload industry. We have longer-term Dedicated customer contracts, most of which are two to five years in length (including some contracts with annual evergreen clauses) and generally may be terminated by either party typically upon a notice period following the expiration of the contract's first year. We typically renegotiate rates with our customers for these Dedicated contracts on an annual basis.

Our company and independent contractor tractors are equipped with communication devices. These devices enable us and our drivers to conduct two-way communication using standardized and freeform messages. This technology also allows us to plan and monitor shipment progress. We automatically monitor truck movement and obtain specific data on the location of trucks at fixed intervals. Using the real-time global positioning data obtained from the devices, we have advanced application systems to improve customer and driver service. Examples of such application systems include: (i) an electronic logging system which records and monitors drivers' hours of service and integrates with our information systems to pre-plan driver shipment assignments based on real-time available driving hours; (ii) software that pre-plans shipments drivers can trade enroute to meet driver home-time needs without compromising on-time delivery schedules; and (iii) automated "possible late load" tracking that informs the operations department of trucks possibly operating behind schedule, allowing us to take preventive measures to avoid late deliveries. In 1998, we began a successful pilot program and subsequently became the first trucking company in the United States to receive an exemption from DOT to use a global positioning-based paperless log system as an alternative to the paper logbooks traditionally used by truck drivers to track their daily work activities. We have used electronic logging devices ("ELDs") to monitor and enforce drivers' hours of service since 1996. Since January 2021, we have used an untethered, tablet-based telematics solution that provides an enhanced and more efficient driver experience.

### Seasonality

In the trucking industry, revenues generally follow a seasonal pattern. Peak freight demand has historically occurred in the months of September, October and November. After the December holiday season and during the remaining winter months, our freight volumes are typically lower because some customers reduce shipment levels. Our operating expenses have historically been higher in the winter months due primarily to decreased fuel efficiency, increased cold weather-related maintenance costs of revenue equipment and increased insurance and claims costs attributed to adverse winter weather conditions. We attempt to minimize the impact of seasonality through our marketing program by seeking additional freight from certain customers during traditionally slower shipping periods and focusing on transporting consumer nondurable products. Revenue can also be affected by adverse weather conditions, holidays and the number of business days that occur during a given period because revenue is directly related to the available working days of shippers.

### Human Capital Resources

**Employee Count:** As of December 31, 2022 December 31, 2023, we employed 10,249 9,929 drivers; 693 707 mechanics and maintenance associates for the trucking operation; 1,610 1,587 office associates for the trucking operation; and 1,748 1,586 associates for Werner Logistics, international, driving schools and other non-trucking operations. Most of our associates are based in the U.S., with about 1% based in Mexico and Canada. None of our Our U.S. or Canadian associates are not represented by a collective bargaining unit and we with the exception of fewer than 30 employees at two locations of a U.S. subsidiary. We generally consider relations with our associates to be good.

**Health & Safety:** Werner maintains a safety culture that is based on the premise of eliminating workplace incidents, risks and hazards. In 2022, 2023, our trucking business achieved its lowest work injury rate in 17 years on record, and we achieved the our lowest DOT preventable accident rate per million miles in 10 19 years. The Werner Safety Department is responsible for all compliance and training issues as it relates to drivers under DOT regulation and Werner policy. Responsibilities of the department include developing and delivering all driver training on items such as safety issues, driver certification, driver testing, and hazmat.

Our strong safety culture is demonstrated by ongoing investments in advanced equipment technologies, which lead to improved safety for our professional drivers. Nearly all of our company-owned trucks have collision-mitigation safety systems, automated manual transmissions, and forward-facing cameras.

During the COVID-19 pandemic, the transportation industry was designated by the U.S. government as an essential industry for keeping the U.S. supply chain moving. Our drivers and mechanics were on the front lines to ensure the delivery of essential products, and we take this responsibility seriously. Our primary focus will always be protecting the health and personal safety of our associates, their families and communities, and our customers. Throughout our offices and terminal network, we follow the safety guidelines set forth by the Centers for Disease Control and Prevention (CDC) and World Health Organization (WHO).

**Diversity & Inclusion:** At Werner, we support and encourage the diverse voices and perspectives of our associates, our customers and our suppliers. Diversity contributes to innovation and connects us to the many communities we serve. We embrace these values as we move toward an increasingly inclusive culture where every associate feels empowered to bring their whole self to Werner. Through our Inclusion, Diversity, Equity, Accountability & Learning (IDEAL) Council, we are proud to support ten 11 Associate Resource Groups ("ARGs"). These groups support our commitment to promoting and maintaining an inclusive culture for all associates by bringing together individuals from a wide range of backgrounds, experiences and

perspectives. The ARGs seek to foster a sense of shared community and empowerment for associates and allies who share and

support a common social identity, such as gender, ethnicity and sexual orientation. During 2022, we created an advancement and retention plan, under which new programs are being implemented to increase and elevate women and diverse talent in the management pipeline.

In 2022, Werner, as well as our recently acquired business, ReedTMS, were both recognized among the Top Companies for Women to Work for in Transportation by the Women in Trucking Association. This was Werner's fifth consecutive year of being recognized. Werner was recognized for our support of gender diversity, flexible hours and work requirements, competitive compensation and benefits, and professional development and career advancement opportunities. In 2023, Newsweek named Werner as one of America's Greatest Workplaces for Diversity, America's Greatest Workplaces, and America's Greatest Workplaces for Parents and Families. We were also recognized by 50/50 Women on Boards™ as a "3+" company for having three or more women on our corporate board of directors. At Werner, our female driver workforce is double the national industry average, and over half of our driver associates are ethnically diverse. Additionally, over half of our non-driver associates and our corporate board of directors are female or ethnically diverse. In 2022, Werner was honored to be recognized as No. 13 on the Top 10 Company Military Friendly® Spouse Employer list and No. 45 on the Top 10 Military Friendly® Employer list by VIQTORY. These serve as Werner's highest rankings ever received in these categories. Werner also earned No. 49 on the 2023 Military Times Best for Vets Employer list. Werner was awarded these designations for its commitment, effort, and success in creating sustainable and meaningful career paths for the military community. We are widely recognized as a transportation leader in military hiring with veterans and veteran spouses.

**Professional Driver Recruitment:** We recognize that our professional driver workforce is one of our most valuable assets. Most of our professional drivers are compensated on a per-mile basis. For most company-employed drivers, the rate per mile generally increases with the drivers' length of service. Professional drivers may earn additional compensation through incentive performance pay programs and for performing additional work associated with their job (such as loading and unloading freight and making extra stops and shorter mileage trips).

At times, there are driver shortages in the trucking industry. Availability of experienced drivers can be affected by (i) changes in the demographic composition of the workforce; (ii) alternative employment opportunities other than truck driving that become available in the economy; and (iii) individual drivers' desire to be home more frequently. We believe that a declining number of, and increased competition for, driver training school graduates, aging truck driver demographics and increased truck safety regulations have tightened driver supply.

At Werner, we continue to take actions to strengthen our driver recruiting and retention to make Werner a preferred choice for the best drivers. Our efforts include raising offering competitive driver pay, maintaining a new truck and trailer fleet, purchasing best-in-class safety features for all new trucks, investing in our driver training school network and collaborating with customers to improve or eliminate unproductive freight. We are focused on providing strong mileage utilization and a large percentage of driving jobs in shorter-haul operations (such as Dedicated and Regional) that allow drivers to return home more often. We continue to improve our terminal network to enhance the driver experience. Our untethered, tablet-based telematics solution implemented in 2020 provides Werner drivers with a more efficient experience through smart workflow, best-in-class navigation, improved safety features and reduced manual data entry. While the trucking industry suffers from high driver turnover rates, we are proud that our efforts in recent years have continued to have positive results on our driver retention.

**Talent Development:** We utilize recent driver training school graduates as a significant source of new drivers. These drivers have completed a training program at a driver training school (including those owned and operated by Werner) and hold a commercial driver's license ("CDL"). They continue to gain industry experience through our career track program by partnering with a Werner-certified leader prior to that driver becoming a solo driver with their own truck. As mentioned above, the recruiting environment for recent driver training school graduates became even more challenging in 2021 as social distancing requirements, state licensing cut backs and temporary closures limited the number of placement drivers entering our career track program. The availability of these drivers has also been negatively impacted by the decreased availability of student loan financing for driver training schools. At the end of 2022, we operated a total of 23 driver training locations to assist with the training and development of drivers for our company and the industry, and we expect to open one new driver training location during the first half of 2023.

**Independent Contractors:** We also recognize that independent contractors complement our company-employed drivers. As of December 31, 2022, we had 295 independent contractors. Independent contractors supply their own tractors and drivers and are responsible for their operating expenses. Independent contractors also provide us with another source of drivers to support our fleet. We, along with others in the trucking industry, however, continue to experience independent contractor recruitment and retention difficulties that have persisted over the past several years. Challenging operating conditions, including inflationary cost increases that are the responsibility of independent contractors and a shortage of financing available to independent contractors for equipment purchases, financing, continue to make it difficult to recruit and retain independent contractors.

## Revenue Equipment

As of December 31, 2022, we operated 8,305 company tractors and 295 tractors owned by independent contractors in our TTS segment. Our Werner Logistics segment operated an additional 39 drayage company tractors and 101 company delivery trucks at the end of 2022. The TTS segment company tractors were primarily manufactured by International (a Navistar company), Freightliner (a Daimler company), Kenworth and Peterbilt (both divisions of PACCAR). The Werner Final Mile company delivery trucks are primarily manufactured by Hino, International, and Freightliner. We adhere to a comprehensive maintenance program for both company tractors and trailers. We inspect independent contractor tractors prior to acceptance for compliance with Werner and DOT operational and safety requirements. We periodically inspect these tractors, in a manner similar to company tractor inspections, to monitor continued compliance. We also regulate the vehicle speed of company trucks to improve safety and fuel efficiency.

The average age of our TTS segment company truck fleet was 2.1 years at December 31, 2023, compared to 2.3 years at December 31, 2022, compared to 2.2 years at December 31, 2021. The average age of our trailer fleet was 4.9 years at December 31, 2023, compared to 5.0 years at December 31, 2022, compared to 4.5 years at December 31, 2021. Our trucks are equipped with satellite tracking devices, tablet-based telematics, and nearly all of our company-owned trucks have collision mitigation safety systems and automated manual transmissions.

We operated 29,965 30,810 trailers at December 31, 2022 December 31, 2023, comprised of dry vans, flatbeds, temperature-controlled, and other specialized trailers. Most of our company-owned trailers were manufactured by Wabash National Corporation and Great Dane. Nearly all of our dry van trailer fleet consisted of 53-foot composite trailers, and we also provide other trailer lengths to meet the specialized needs of certain customers. Substantially all of our trailers have satellite tracking devices.

Our wholly-owned subsidiary, Werner Fleet Sales, sells our used trucks and trailers. Werner Fleet Sales has been in business since 1992 and operates in seven locations. At times, we may also trade used trucks to original equipment manufacturers when purchasing new trucks.

#### Fuel

In 2022 2023, we purchased nearly all of our fuel from a predetermined network of fuel truck stops throughout the United States comprised mostly of three large fuel truck stop chains. We negotiate discounted pricing based on historical purchase volumes with these fuel truck stop chains and other factors.

Shortages of fuel, increases in fuel prices and rationing of petroleum products can have a material adverse effect on our operations and profitability. Our customer fuel surcharge reimbursement programs generally enable us to recover from our customers a majority, but not all, of higher fuel prices compared to normalized average fuel prices. These fuel surcharges, which automatically adjust depending on the U.S. Department of Energy ("DOE") weekly retail on-highway diesel fuel prices, enable us to recoup much of the higher cost of fuel when prices increase and provide customers with the benefit of lower fuel costs when fuel prices decline. We do not generally recoup higher fuel costs for empty and out-of-route miles (which are not billable to customers) and truck idle time. We cannot predict whether fuel prices will increase or decrease in the future or the extent to which fuel surcharges will be collected from customers. As of December 31, 2022 December 31, 2023, we had no derivative financial instruments to reduce our exposure to fuel price fluctuations.

We maintain aboveground and underground fuel storage tanks at some of our terminals. Leakage or damage to these facilities could expose us to environmental clean-up costs. The tanks are routinely inspected to help prevent and detect such problems.

We are committed to supporting global efforts to reduce carbon emissions and we continue to continually evaluate update our fleet of tractors to provide energy-efficient transportation options for our customers, including investing in and identify new environmental initiatives to support global sustainability efforts, including testing of alternative fuels, advanced equipment technologies, and investing in start-stop idle reduction technology for our trucks, additional fleet enhancements. We currently maintain a late-model truck fleet to take advantage of the latest technologies to reduce fuel consumption and emissions. Our future environmental goals include doubling intermodal usage by 2030, thereby further reducing emissions, and by 2035, reducing carbon greenhouse gas emissions by 55% compared to a 2007 baseline, with 30% or more of all Company truck miles being executed by zero emission vehicles. 2020 baseline.

#### Regulations

As a for-hire motor carrier, we are regulated by the DOT, and certain areas of our business are Werner is subject to applicable federal, state, local, and international laws and regulations. regulations and is regulated by various federal, state, and local agencies including DOT, Federal Motor Carrier Safety Administration ("FMCSA"), U.S. Department of Homeland Security, the U.S. Environmental Protection Agency ("EPA"), among others.

DOT and an agency within DOT, the Federal Motor Carrier Safety Administration ("FMCSA"), FMCSA, generally govern matters such as safety requirements and compliance, registration to engage in motor carrier operations, drivers' hours of service ("HOS"), and certain mergers, consolidations, and acquisitions. Werner maintains a satisfactory safety rating, which is the highest available rating of the three safety ratings given by FMCSA. A conditional or unsatisfactory safety rating could adversely impact Werner's business, as some of our customer contracts require a satisfactory rating. Werner must also comply with federal, state, and international regulations which govern equipment weight and dimensions.

FMCSA's Compliance, Safety, Accountability ("CSA") safety initiative monitors the safety performance of motor carriers. CSA uses the Safety Measurement System ("SMS") to analyze data from roadside inspections, crash reports, and investigation results. The Fixing America's Surface Transportation ("FAST") Act of 2015 directed FMCSA to remove from public view certain information regarding a carrier's compliance and safety performance. The FAST Act also instructed FMCSA to study the accuracy of CSA and SMS data and issue a corrective action plan. The FMCSA provided a report to Congress in 2020 outlining the changes it may make to the CSA program; however, it remains unclear if, when, and to what extent any such changes will occur. Werner continues to monitor FMCSA's actions and CSA related developments.

Interstate motor carriers are subject to the FMCSA HOS regulations, which govern our drivers' operating hours. The HOS of Drivers Final Rule which became effective September 29, 2020, includes provisions for short haul, adverse driving conditions, a revision to the 30-minute rest break requirement, and split-sleeper berth which allows drivers to split their 10-hour off duty period in different ways. In August 2020, FMCSA proposed a pilot program allowing commercial drivers to pause their 14-hour driving window, which Werner continues to monitor.

Werner is the industry leader for ELDs to record driver hours and pioneered the Werner Paperless Logging System in 1996 that was subsequently approved for our use by FMCSA in 1998. FMCSA's ELD Final Rule went into effect in December 2017, requiring all motor carriers to have certified ELDs that meet specific standards for documenting HOS.

The FMCSA Commercial Driver's License Drug and Alcohol Clearinghouse (the "Clearinghouse") Final Rule was published in December 2016 with the effective date of January 6, 2020. The Clearinghouse requires motor carriers, designated service agents, medical review officers, and substance abuse professionals to submit records related to drug and alcohol tests, including test refusals and positive drug test results, to the nationwide database. Motor carriers are also required to query the database prior to hiring an applicant and on an annual basis.

Continuing in 2022, 2023, motor carriers are required to perform annual random drug tests for 50% of existing drivers. The rate was increased from 25% on January 1, 2020 in response to the 2018 FMCSA Drug and Alcohol Testing Survey, which reported an increase to 1.0% of the random testing positive rate for controlled substances. The minimum annual percentage rate for random alcohol testing remains at 10% for 2024.

FMCSA issued its final rule for Entry-Level Driver Training ("ELDT") in December 2016. However, after delays announced by FMCSA, the new effective date was February 7, 2022. ELDT now requires anyone wanting to obtain a Commercial Driver's License to successfully complete a specific program of theory and behind-the-wheel instruction provided by a school or other entity on FMCSA's new Training Provider Registry. We are in compliance with the ELDT rule.

Following the signing of the The Infrastructure Investment and Jobs Act (IIJA) on November 15, 2021, of 2021 required the FMCSA is required to establish a pilot program to allow persons ages 18, 19, and 20 to operate commercial motor vehicles in interstate commerce. The FMCSA's Safe Driver Apprenticeship Pilot Program is currently accepting applications by motor carriers who are willing to participate in the pilot program, and FMCSA plans to limit the participation to 1,000 carriers and 3,000 apprentices.

The U.S. Environmental Protection Agency ("EPA") EPA and DOT announced in August 2016 Phase 2 of the Greenhouse Gas and Fuel Efficiency Standards for Medium and Heavy-Duty Trucks. The final rule requires a reduction of carbon emissions and fuel savings from engines, vehicles, and new trailers to be phased in over the next decade. In January 2020, EPA announced an Advance Notice of Proposed Rulemaking that would establish new standards for highway heavy-duty engines to lower nitrogen oxide emissions. In August 2021, EPA announced plans to reduce greenhouse gas emissions from Heavy-Duty Trucks through a series of rulemakings over the next three years. In December 2022, EPA adopted its first final rule, which sets stronger emissions standards to reduce air pollution, including pollutants that create ozone and particulate matter, from heavy-duty vehicles and engines starting in model year 2027. In April 2023, EPA announced a proposed rule, Greenhouse Gas Emission Standards for Heavy-Duty Vehicles - Phase 3, which would phase in stronger greenhouse gas emissions standards and zero-emission vehicle requirements for heavy-duty trucks for model years 2028-2032. Werner continues monitoring any EPA-related developments impacting its fleet.

California's ongoing emissions reduction goals have significantly impacted the industry. The California Air Resources Board ("CARB") regulations not only apply to both in-state California intrastate carriers but also to and carriers outside of California who own or dispatch equipment in the state. Werner is impacted by various CARB regulations including the Truck and Bus Regulation, Clean Truck Check (heavy-duty inspection and maintenance), Advanced Clean Trucks, Advanced Clean Fleets, Temperature Refrigeration Units, among other currently effective and forthcoming regulations. Werner continues to structure our fleet plans to operate compliant equipment in California. Approximately 4% 5% of our truck miles in 2022 2023 were in the state of California.

Our operations are subject to applicable federal, state, and local environmental laws and regulations, many of which are implemented by the EPA and similar state regulatory agencies. These laws and regulations govern the management of hazardous wastes, discharge of pollutants into the air and surface and underground waters and disposal of certain substances. We do not believe that compliance with these regulations has a material effect on our capital expenditures, earnings, and competitive position.

Werner is dedicated to participating in the development of meaningful public policy by continuing to evaluate engaging in local, state, and federal legislative and regulatory actions that impact our operations.

## Competition

The freight transportation industry is highly competitive and includes thousands of trucking and non-asset-based logistics companies. We have a small share of the markets we target. Our TTS segment competes primarily with other truckload carriers. Logistics companies, digital brokers, intermodal companies, railroads, less-than-truckload carriers and private carriers provide competition for both our TTS and Werner Logistics segments. Our Werner Logistics segment also competes for the services of third-party capacity providers.

Competition for the freight we transport or manage is based primarily on service, efficiency, available capacity and, to some degree, on freight rates alone. We believe that few other truckload carriers have greater financial resources, own more equipment or carry a larger volume of freight than us. We believe we are one of the largest carriers in the truckload transportation industry based on total operating revenues.

## Internet Website

We maintain an Internet website where you can find additional information regarding our business and operations. The website address is [www.werner.com](http://www.werner.com). On the website, we make certain investor information available free of charge, including our Annual Report on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, stock ownership reports filed under Section 16 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and any amendments to such reports filed or furnished pursuant to Section 13(a) or 15(d) of the Exchange Act. This information is included on our website as soon as reasonably practicable after we electronically file or furnish such materials to the U.S. Securities and Exchange Commission ("SEC"). We also provide our corporate governance materials, such as Board committee charters and our Code of Corporate Conduct, on our website free of charge, and we may occasionally update these materials when necessary to comply with SEC and Nasdaq rules or to promote the effective and efficient governance of our company. Information provided on our website is not incorporated by reference into this Form 10-K.

## ITEM 1A. RISK FACTORS

The following risks and uncertainties may cause our actual results, business, financial condition and cash flows to materially differ from those anticipated in the forward-looking statements included in this Form 10-K. Caution should be taken not to place undue reliance on forward-looking statements made herein because such statements speak only to the date they were made. Unless otherwise required by applicable securities laws, we undertake no obligation or duty to revise or update any forward-looking statements contained herein to reflect subsequent events or circumstances or the occurrence of unanticipated events. Also refer to the Cautionary Note Regarding Forward-Looking Statements in Item 7 of Part II of this Form 10-K.

### Risks Related to our Business and Industry

*Our business is subject to overall economic and geopolitical conditions that could have a material adverse effect on our results of operations, operations and financial condition.*

We are sensitive to changes in overall economic or geopolitical conditions that impact customer shipping volumes, industry freight demand, and industry truck capacity. When shipping volumes decline or available truck capacity increases, freight pricing generally becomes more competitive as carriers compete for loads to maintain truck productivity. We may be negatively affected by future economic conditions including employment levels, business conditions, fuel and energy costs, public health crises, interest rates and tax rates. Economic or geopolitical conditions may also impact the financial condition of our customers, resulting in a decreased demand for services or a greater risk of bad debt losses, and that of our suppliers, which may affect negotiated pricing or availability of needed goods and services.

**Difficulty Labor and employment matters, including difficulty in recruiting and retaining experienced drivers, recent driver training school graduates and independent contractors, impacts could impact our results of operations, operations and financial condition.**

At times, the trucking industry has experienced driver shortages. Driver availability may be affected by changing workforce demographics, alternative employment opportunities, national unemployment rates, freight market conditions, availability of financial aid for driver training schools and changing industry regulations. If such a shortage were to occur and additional driver pay rate increases were became necessary to attract and retain drivers, our results of operations would be negatively impacted to the extent that we could not obtain corresponding freight rate increases. Additionally, a shortage of drivers could result in idled equipment, which would affect our profitability and would limit growth opportunities.

Independent contractor availability may also be affected by both inflationary cost increases that are the responsibility of independent contractors and the availability and cost of equipment financing. On-going Ongoing federal and state legislative challenges to the independent contractor model could also affect independent contractor availability. In recent years, the topic of the classification of individuals as employees or independent contractors has gained increased attention among federal and state regulators as well as the plaintiffs' bar. Various legislative or regulatory proposals have been introduced at the federal and state levels that may affect the classification status of individuals as independent contractors or employees for either employment tax purposes (e.g., withholding, social security, Medicare and unemployment taxes) or other benefits available to employees (e.g., workers' compensation benefits and minimum wage). Recently, certain states (most prominently, California) have seen significant increased activity by tax and other regulators regarding worker classification, and numerous class action lawsuits filed against alleging misclassification by transportation companies that engage independent contractors, have resulted in significant damage awards or monetary settlements. Potential changes, if any, that could impact the legal classification of the independent contractor relationship between us and our independent contractors could have a material adverse effect on our ability to recruit and retain independent contractors. If a shortage of independent contractors occurs, additional increases in per-mile settlement rates (for independent contractors) and driver pay rates (for company drivers) may become necessary to attract and retain a sufficient number of drivers. These increases would negatively affect our results of operations to the extent that we would be unable to obtain corresponding freight rate increases.

Moreover, class action litigation in this area against other transportation companies has During 2023, union organizing efforts occurred at two locations of a U.S. subsidiary, which resulted in significant damage awards and fewer than 30 of our employees being represented by a union. Additional unionization, if broad-based, could have a material adverse effect on our costs, efficiency, and profitability. Driver or monetary settlements for workers who have been allegedly misclassified as independent contractors, other employee dissatisfaction and regulations that govern organization procedures could impact our ability to effectively or timely address any organization efforts.

***Increases in fuel prices and shortages of fuel can have a material adverse effect on the results of operations and profitability.***

Increases in fuel prices and shortages of fuel can be caused by, among other things, changes in macroeconomic and geopolitical conditions. To lessen the effect of fluctuating fuel prices on our margins, we have fuel surcharge programs with our customers. These programs generally enable us to recover a majority, but not all, of the fuel price increases. Fuel prices that change rapidly in short time periods also impact our recovery because the surcharge rate in most programs only changes once per week. Fuel shortages, increases in fuel prices and petroleum product rationing could have a material adverse impact on our operations and profitability. To the extent that we cannot recover the higher cost of fuel through customer fuel surcharges, our financial results would be negatively impacted. As of December 31, 2022 December 31, 2023, we had no derivative financial instruments to reduce our exposure to fuel price fluctuations.

***We operate in a highly competitive industry, which may limit growth opportunities and reduce profitability.***

The freight transportation industry is highly competitive and includes thousands of trucking and non-asset-based logistics companies. We compete primarily with other truckload carriers in our TTS segment. Logistics companies, digital brokers, intermodal companies, railroads, less-than-truckload carriers and private carriers also provide a lesser degree of competition in our TTS segment, but such providers are more direct competitors in our Werner Logistics segment. Competition for the freight we transport or manage is based primarily on service, efficiency, available capacity and, to some degree, on freight rates alone. This competition could have an adverse effect on either the number of shipments we transport or the freight rates we receive, which could limit our growth opportunities and reduce our profitability. If we do not invest in and develop technology in a manner that meets market demands, we may be placed at a competitive disadvantage.

***The seasonal shipping pattern generally experienced in the trucking industry may affect our periodic results during traditionally slower shipping periods and winter months.***

In the trucking industry, revenues generally follow a seasonal pattern which may affect our results of operations. After the December holiday season and during the remaining winter months, our freight volumes are typically lower because some customers reduce shipment levels. Our operating expenses have historically been higher in the winter months because of cold temperatures and other adverse winter weather conditions which result in decreased fuel efficiency, increased cold weather-related maintenance costs of revenue equipment and increased insurance and claims costs. Revenue can also be affected by adverse weather conditions, holidays and the number of business days during a given period because revenue is directly related to the available working days of shippers.

***We depend on key customers, the loss or financial failure of which may have a material adverse effect on our operations and profitability.***

A significant portion of our revenue is generated from key customers. During 2022, 2023, our largest 5, 10, 25 and 50 customers accounted for 35%, 46% 48%, 63% 65%, and 77% 78% of revenues, respectively. Our largest customer, Dollar General, accounted for 14% 10% of our total revenues in 2022, 2023. We do not have long-term contractual relationships with many of our key One-Way Truckload customers. Most of our Dedicated customer contracts are two to five years in length and generally may be terminated by either party typically upon a notice period following the expiration of the contract's first year. We typically renegotiate rates with our customers for these Dedicated contracts annually. We cannot provide any assurance that key customer relationships will continue at the same levels. If a key customer substantially reduced or terminated our services, it could have a material adverse effect on our business and results of operations. We review our customers' financial conditions for granting credit, monitor changes in customers' financial conditions on an ongoing basis and review individual past-due balances and collection concerns. However, a key customer's financial failure may negatively affect our results of operations.

***We depend on the services of third-party capacity providers, the availability of which could affect our profitability and limit growth in our Werner Logistics segment.***

Our Werner Logistics segment is highly dependent on the services of third-party capacity providers, such as other truckload carriers, less-than-truckload carriers, final-mile delivery contractors, and railroads. Many of those providers face the same economic challenges as we do and therefore are actively and competitively soliciting business. These economic

conditions may have an adverse effect on the availability and cost of third-party capacity. If we are unable to secure the services of these third-party capacity providers at reasonable rates, our results of operations could be adversely affected.

**If we cannot effectively manage the challenges associated with doing business internationally, our revenues and profitability may suffer.**

Our results are affected by the success of our operations in Mexico and other foreign countries in which we operate (see Note 13 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K). We are subject to risks of doing business internationally, including fluctuations in foreign currencies, changes in the economic strength of the countries in which we do business, difficulties in enforcing contractual obligations and intellectual property rights, burdens of complying with a wide variety of international and United States export and import laws, and social, political, and economic instability. Additional risks associated with our foreign operations, including restrictive trade policies and imposition of duties, taxes, or government royalties by foreign governments, are present but have been largely mitigated by the terms of **USMCA** the United States-Mexico-Canada Agreement ("USMCA") for Mexico and Canada. The United States, Canada and Mexico ratified the USMCA as an overhaul and update to **NAFTA**, the North America Free Trade Agreement, and it became effective in July 2020. We believe Werner is one of the largest U.S. based truckload carriers in terms of freight volume shipped to and from the United States and Mexico. There are risks, sometimes unforeseen, associated with international operations. The agreement permitting cross border movements for both United States and Mexican based carriers into the United States and Mexico presents additional risks in the form of potential increased competition and the potential for increased congestion on the **cross border** **cross-border** lanes between countries. At the present time, immigration at the southern border has not negatively affected our operations; however, if the situation intensifies, operations could be affected.

**We rely on the services of key personnel, the loss of which could impact our future success.**

We are highly dependent on the services of key personnel, including our executive officers. Although we believe we have an experienced and highly qualified management team, the loss of the services of these key personnel could have a significant adverse impact on us and our future profitability.

**Difficulty in obtaining, or increased costs of, materials, equipment, goods, and services from our vendors and suppliers could adversely affect our business.**

We are dependent on our vendors and suppliers. We believe we have good vendor relationships and that we are generally able to obtain favorable pricing and other terms from vendors and suppliers. If we fail to maintain satisfactory relationships with our vendors and suppliers, or if our vendors and suppliers are unable to provide the products and materials we need or experience significant financial problems, we could experience difficulty in obtaining needed goods and services because of production interruptions, limited material availability, or other reasons. **Tractor** At times, **tractor** and trailer manufacturers have experienced significant shortages of semiconductor chips and other component parts and supplies, forcing many manufacturers to reduce or suspend their production, which has led to a lower supply of tractors and trailers, higher prices, and lengthened **trade replacement** cycles. **Continued shortages** **Emissions** and fuel efficiency regulations may impact equipment availability and pricing. **Shortages** of **these equipment**, component parts, and **other supplies** could have a material adverse effect on our business, financial condition, and results of operations, particularly our maintenance expense, mileage productivity, and driver retention.

**We use our information systems extensively for day-to-day operations, and service interruptions disruption or a failure of our information technology infrastructure or of third-party systems or services integrated therein, or a breach of our information security systems, networks or processes, or those of any vendor that maintains or accesses our data, could have a material adverse effect on our business.**

We rely increasingly on cloud-based technology and depend on the stability, availability and security of our information systems to manage our business. Much of our software was developed internally or by adapting purchased software applications to suit our needs. Our information systems are used for various purposes including, without limitation, enhancing customer service, planning **freight** loads, communicating with and dispatching drivers and other capacity providers, billing and collecting from customers, paying vendors and **providing** associates, maintaining sensitive or confidential Company or third-party information or employee personal information, and generating financial, **reports**, operational, and other information. We rely on strategic vendors for certain services that impact our systems and communications, such as, for example, integrated GPS and satellite communication services **which are integrated in our information systems** and Internet and telecommunications services. System disruption or unavailability could occur due to various events, including, without limitation, a power outage, a hardware or software failure, a cybersecurity threat or breach, a catastrophic occurrence, or the disruption of a vendor's service to us. If any of our **critical** information systems, **fail or become unavailable**, or those of our **service providers**, **we would have become compromised or unavailable**, or are taken offline in response to perform a threat or other event, certain **critical** functions **manually**, which could temporarily affect our ability **may be disrupted**, subject to **efficiently** manage our operations. We have **manual** performance, or **fail**.

Our mitigation of these risks includes, without limitation, using certain redundant computer hardware, **systems** tools and protocols to **reduce this risk**. We also **maintain** monitor and respond to threats, the work of a dedicated internal cybersecurity team, incident and crisis response plans, and enterprise-wide information security policies to protect our systems and data from **cyber security** events and threats. The trainings. However, the security risks associated with information technology systems have increased in recent years because of the **increased** **evolving** sophistication, activities and **evolving** techniques of **perpetrators** methods of **cyber attacks**. **attackers**. The

techniques used to obtain unauthorized access, disable or degrade service or sabotage systems change frequently, may be difficult to detect, **for a long time** and often are not recognized until launched against a **target**. As a result, **target**, and we may be unable or fail to anticipate **these techniques** them or to implement adequate preventative measures. **A failure** We may incur costs in responding to a specific event. Fortifying our systems after a cybersecurity event may be cost prohibitive. Our investments in cybersecurity may not be successful against an attack or breach of our information technology security systems, or those of our third- **malicious** action.

party service providers, as a result of **cyber attacks** or unauthorized network access could disrupt our business, result in the disclosure or misuse of confidential or proprietary information, increase our costs and/or cause losses and reputational damage. In addition, recently, there has also been heightened regulatory and enforcement focus on data protection in the U.S., and failure **Failure** to comply with applicable U.S. and international privacy or data protection regulations or other data protection standards, on which there is heightened focus, may expose us to litigation, fines, sanctions, or other penalties, **penalties**. The risks described herein could create reputational harm or financial liability; disrupt our business and/or impact our customers; result in the loss, disclosure or misuse of operational, confidential or proprietary information; or increase our costs, any of which could harm our reputation and adversely impact our business, results of operations, and financial condition.

**A public health crisis, such as an epidemic, pandemic, or similar outbreak, has had, and may continue to have an adverse impact on our business, as well as the operations of our customers and suppliers.**

The COVID-19 pandemic resulted in a slowdown of economic activity and a disruption in supply chains during 2020 and 2021. Our business is sensitive to changes in overall economic conditions that impact customer shipping volumes, industry freight demand and industry truck capacity. Such conditions may also impact the financial condition of our customers, resulting in a greater risk of bad debt losses, and that of our suppliers, which may affect the availability or pricing of needed goods and services. Although we took numerous actions to lessen the adverse impact of the COVID-19 pandemic, our future results could be further impacted by the disruptive effects of a future pandemic or outbreak, including but not limited to adverse effects on freight volumes and pricing and availability of qualified personnel. Such outbreaks could affect our operations and business continuity if a significant number of our essential employees, overall or in a key location, are quarantined from contraction of or exposure to the disease or if future governmental orders prevent our employees or critical suppliers (including individuals that have not received mandated vaccinations) from working. Our compliance with mandates could lead to employee absences, resignations, labor disputes, or work stoppages. The degree of disruption is difficult to predict because of many factors, including the uncertainty surrounding the magnitude and duration of an outbreak, governmental actions that may be imposed, as well as the rate of economic recovery after an outbreak subsides. The unpredictable nature and uncertainty of a public health crisis could also magnify other risk factors disclosed above and makes it impractical to identify all potential risks.

#### **Risks Related to Laws Legal, Regulatory and ~~Environmental, Social and Governance ("ESG") Matters~~**

**We operate in a highly regulated industry. Changes in existing Compliance with changing transportation, emission, fuel efficiency or other regulations, or violations of existing or future regulations, could adversely affect our operations and profitability.**

We are regulated by DOT and its agency, FMCSA, in the United States and similar governmental transportation agencies in certain U.S. states and in foreign countries in which we operate. We are also regulated by agencies in certain U.S. states. These regulatory agencies have the authority to govern transportation-related activities, such as safety, authorization to conduct motor carrier operations and other matters. The EPA and CARB subject us to emissions and fuel efficiency regulations, and additional regulations by these and other agencies may occur. The ~~Regulations~~ subsection in Item 1 of Part I of this Form 10-K describes several proposed and pending final regulations that may have a significant effect on our operations including our productivity, driver recruitment and retention, and capital expenditures, expenditures for tractors, trailers, and other equipment necessary to comply with such regulations.

Our operations We are subject to applicable environmental laws and regulations, the violation of which could result in substantial fines or penalties.

In addition to direct regulation by DOT, FMCSA, EPA and other federal, state, and local agencies, we are subject to applicable environmental laws and regulations dealing with the handling of hazardous materials, aboveground and underground fuel storage tanks, and discharge and retention of storm-water, and emissions from our vehicles. We operate in industrial areas, where truck terminals and other industrial activities are located and where groundwater or other forms of environmental contamination have occurred. Our operations involve the risks of fuel spillage or seepage, environmental damage and hazardous waste disposal, among others. We also maintain bulk fuel storage at some of our facilities. If we are involved in a spill or other accident involving hazardous substances, or if we are found to be in violation of applicable laws or regulations, it could have a material adverse effect on our business and operating results.

If we fail to comply with applicable environmental regulations, we could be subject to substantial fines or penalties and to civil and criminal liability. Tractors and trailers used in our daily operations have been affected by regulatory changes related to air emissions and fuel efficiency, and may be adversely affected in the future by new regulatory actions.

#### **Increasing scrutiny from investors and other stakeholders regarding environmental, social, and governance ("ESG") ESG related matters may have a negative impact on our business.**

Companies across all industries are facing increasing scrutiny from investors and other stakeholders related to ESG matters, including practices and disclosures related to environmental stewardship, social responsibility, and diversity, equity and inclusion. Organizations that provide information to investors and other stakeholders on corporate governance and related matters have developed ratings processes for evaluating companies on their approach to ESG matters. Such ratings are used by some investors to inform their investment and proxy statement voting decisions. Unfavorable ESG ratings may lead to negative investor

sentiment toward us by investors or other stakeholders, which could have a negative impact on our revenues, stock price and our access to and costs of capital.

We have developed certain initiatives and goals relating to ESG matters. Our ability to successfully execute these initiatives and accurately report our progress presents numerous operational, financial, legal, reputational and other risks, many of which are outside our control, and all of which could have a material negative impact on our business. Additionally, the implementation of these initiatives imposes additional costs on us. If our ESG initiatives and goals do not meet the expectations of our investors or other stakeholders, which continue to evolve, then our reputation, our ability to attract or retain employees, and our attractiveness as an investment and business partner could be negatively impacted. Similarly, our failure, or perceived failure, to pursue or fulfill our goals, targets and objectives or to satisfy various reporting standards in a timely manner, or at all, could also have similar negative impacts and expose us to government enforcement actions and private litigation.

#### **Risks Related to Financial Matters**

**Our earnings could be reduced by increases in the number of insurance claims, cost per claim, costs of insurance premiums, or availability of insurance coverage, coverage, or a significant uninsured liability.**

We are subject to claims and litigation risks regarding a variety of issues, including without limitation, over-the-road accidents and contractual, labor and employment, environmental, regulatory, workers' compensation, and data privacy matters. We are self-insured for a significant portion of liability resulting from bodily injury, property damage, cargo and associate workers' compensation and health benefit claims. This is supplemented by premium-based insurance coverage with insurance carriers above our self-insurance level for each such type of coverage. To the extent we experience a significant increase in the number of claims, cost per claim (including costs resulting from large verdicts) or insurance premium costs for coverage in excess of our retention and deductible amounts, or if we incur a significant liability for which we do not have coverage, our operating results would be negatively affected. Although we believe our aggregate insurance limits should be sufficient to cover reasonably expected claims, it is possible that the amount of one or more claims could exceed our aggregate coverage limits. In addition, the transportation industry has recently experienced significant increases in premiums for insurance coverage above self-insurance levels. Healthcare legislation and inflationary cost increases could also have a negative effect on our results.

**Decreased demand for our used revenue equipment could result in lower unit sales and resale values.**

We are sensitive to changes in used equipment prices and demand especially with respect to tractors. for our tractors and trailers. We have been in the business of selling our used company-owned trucks equipment since 1992, when we formed our wholly-owned subsidiary Werner Fleet Sales. Reduced demand for used equipment could result in a lower volume of sales or lower sales prices, either of which could negatively affect our proceeds from sales of assets.

**ITEM 1B. UNRESOLVED STAFF COMMENTS**

None.

**ITEM 1C. CYBERSECURITY**

Under our "Cloud First, Cloud Now" strategy, we are increasingly relying on cloud-based technology to enable more innovation, enhance customer service, and keep up with the complex demands of the ever-changing trucking and logistics landscape. We are incorporating cybersecurity into this strategy by investing in key technology and skillset development to help protect the confidentiality, integrity, and availability of our systems and electronic data. In addition, we are committed to using reasonable efforts, given identified or reasonably anticipated threats, to prevent information security breaches. We have not experienced any such breach in any of the three years shown in the financial statements in this filing or in 2024 through the date hereof, and cybersecurity threat risks have not materially affected our business strategy, results of operations or financial condition. Based on our analysis of the current threat environment, we do not believe that any such material impacts are reasonably likely to occur. See Item 1A of Part I of this Form 10-K for a discussion of risks and uncertainties related to our information systems and technology infrastructure.

We employ a dedicated cybersecurity team. In coordination with our Chief Information Officer, the team assesses and manages cybersecurity threat risks with a focus on identity verification, system access and security, and governance, risk, and compliance. Our Chief Information Officer has extensive information technology and strategic leadership experience, including modernizing and securing business applications and technology stacks. Our director of cybersecurity is a certified information systems security professional with broad experience in cybersecurity, much of which was gained working for the U.S. military. Various members of the cybersecurity team hold industry certifications. The Chief Information Officer regularly shares cybersecurity developments and concerns with the Chief Executive Officer and with other executive officers as concerns arise that impact their areas.

The Audit Committee of the Board is responsible for oversight of risk management related to cybersecurity and policies and procedures related to the protection of Company proprietary and customer information and compliance with data privacy requirements. The Audit Committee receives quarterly updates from our Chief Information Officer. Reports may address evolving trends in cybersecurity, major threat developments, and technologies, solutions, policies, and procedures we use to detect, prevent, mitigate and remediate threats, respond to incidents and crises, and educate employees on information security importance and requirements. The Audit Committee has regular opportunities to suggest adjustments to the Company's cybersecurity practices. It regularly reports to the Board on fulfillment of its responsibilities, which include cybersecurity risk management oversight.

To design and update our cybersecurity strategy, including awareness, prevention, detection, response and recovery components, we strive to align with a respected maturity framework, and we periodically, with the help of a third-party, analyze our alignment. We use a variety of tools to help identify anomalous activity on our systems, including without limitation logs, artificial intelligence, software programs, and data analyses. In addition to internal resources, we use third-party services and software to monitor our cyber environment for detected risks, including without limitation risks from cyber-attackers, employees, and third-parties that we allow to access or contribute to our information technology systems, and to block threats. To assess system vulnerability, we periodically simulate threats, and following such exercises, we assess penetration results and determine and implement remediations.

Executive management fosters a cybersecurity threat awareness and risk mitigation culture by supporting regular educational phishing simulations and advocating the importance of cybersecurity in communications to employees. We maintain information security policies to promote employee use of our information technology in a safe manner that helps protect our systems and data from cybersecurity events, and we require periodic enterprise-wide security training and testing and analyze test results.

Cybersecurity is integrated with our overall risk management program through cyber coverage as an important component of our insurance portfolio. We maintain cyber insurance to help protect against potential loss or expense arising from a cybersecurity incident or data breach. As part of our cyber insurance renewal, we coordinate with our insurance broker cyber experts to assess our cybersecurity program and align our coverages with our risk management framework. Our oversight processes for reviewing threats from third-parties that we allow to access or contribute to our information technology systems are also important to overall risk management. We subject such third-parties to a variety of cybersecurity analyses, which include our use of risk assessments or scorecards and receipt of third-party audit or other reports related to information security.

We have a program for organized response in the event of a cybersecurity incident. Our Chief Information Officer receives alerts disseminated via the program and reports to the Chief Executive Officer as deemed prudent. In the event the incident rises to the level of a crisis, the cyber component of our crisis management plan is triggered. The plan guides a cyber crisis management team, including representatives from our legal, information technology, finance and operations areas, in analyzing the type, scope, cause, impact and other details of the crisis. Our analysis includes without limitation identifying affected systems and exposed data, and in making key decisions to abate, mitigate or respond to the crisis, drawing on pre-identified third-party sources of forensic and other expertise as deemed necessary or advisable. Responsive steps include oversight of any warranted or required communications, including without limitation potential outreach to law enforcement, and informing the Board or Audit Committee of the incident as required by the plan. A final step is for the team to review lessons learned during the incident with the purpose of strengthening future crisis response. The team periodically reviews and practices its protocols to enhance its effectiveness.

**ITEM 2. PROPERTIES**

Our headquarters are located on approximately 133,147 acres near U.S. Interstate 80 west of Omaha, Nebraska, 53,63 acres of which are undeveloped. Our headquarter facilities have suitable space available to accommodate planned needs for at least the next three to five years. We also have several terminals throughout the United States, consisting of office and/or maintenance facilities. In addition, we own parcels of land in several locations in the United States for future terminal development. Our terminal locations are described below:

Location	Owned or Leased	Description	Segment
Omaha, Nebraska	Owned	Corporate headquarters, maintenance, truck sales	TTS, Werner Logistics, Corporate
Omaha, Nebraska	Owned	Disaster recovery, warehouse	Corporate
Phoenix, Arizona	Owned	Office, maintenance, driver training school	TTS
West Memphis, Arkansas	Owned	Office, maintenance	TTS
Fontana, California	Owned	Office, maintenance, truck sales, driver training school	TTS
Denver, Colorado	Owned	Maintenance	TTS
Lake City, Florida	Owned	Office, maintenance	TTS
Lakeland, Florida	Leased	Maintenance	TTS
Atlanta, Georgia	Owned	Office, maintenance, truck sales, driver training school	TTS
Joliet, Illinois	Owned	Office, maintenance, truck sales	TTS
Milan, Indiana	Owned	Office, maintenance, warehouse	TTS
Brownstown, Michigan	Owned	Maintenance	TTS
Springfield, Ohio	Owned	Office, maintenance, truck sales	TTS
Easton, Pennsylvania	Owned	Office, maintenance	TTS
Portland, Tennessee	Leased	Office, maintenance	TTS
Dallas, Texas	Owned	Office, maintenance, truck sales, driver training school	TTS
El Paso, Texas	Owned	Office, maintenance	TTS
Laredo, Texas	Owned	Office, maintenance, transloading, truck sales	TTS, Werner Logistics

At December 31, 2022 December 31, 2023, we leased (i) operational facilities, office space, and trailer parking yards in various locations throughout the United States and (ii) office space in Mexico and Canada. We own (i) a 96-room motel located near our Omaha headquarters; (ii) an 85-room hotel located near our Atlanta terminal; (iii) a 71-room private driver lodging facility at our Dallas terminal; (iv) six operational facilities located in Ohio, Indiana, Pennsylvania and Florida; and (v) a terminal facility in Queretaro, Mexico, which we lease to a third party. The Werner Fleet Sales network has seven locations, which are primarily located in certain terminals listed above. Our driver training schools operate in 23 locations in the United States, two four of which are located in or near certain terminals listed above, seven five are located in company-owned facilities, and 14 are located in leased facilities.

### ITEM 3. **LEGAL PROCEEDINGS**

We are a party subject to routine litigation incidental to our business, primarily involving claims for bodily injury, property damage, cargo and workers' compensation incurred in the transportation of freight. For more information about our insurance program and legal proceedings, see Item 1A, Risk Factors – "Our earnings could be reduced by increases in the number of insurance claims, cost per claim, costs of insurance premiums, or availability of insurance coverage" coverage, or a significant uninsured liability", Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations – Critical Accounting Estimates, and Item 8, Financial Statements and Supplementary Data – Note 1 and Note 12.

### ITEM 4. **MINE SAFETY DISCLOSURES**

Not applicable

## PART II

### ITEM 5. **MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES**

#### Common Stock

Our common stock trades on the NASDAQ Global Select Markets<sup>SM</sup> tier of the Nasdaq Stock Market under the symbol "WERN". As of February 9, 2023 February 9, 2024, our common stock was held by 432,425 stockholders of record. Because many of our shares of common stock are held by brokers and other institutions on behalf of stockholders, we are unable to estimate the total number of stockholders represented by these record holders.

#### Dividend Policy

We have paid cash dividends on our common stock following each fiscal quarter since the first payment in July 1987. Our current quarterly dividend rate is ~~\$0.13~~ \$0.14 per common share. We currently intend to continue paying a regular quarterly dividend. We do not currently anticipate any restrictions on our future ability to pay such dividends. However, we cannot give any assurance that dividends will be paid in the future or of the amount of any such quarterly or special dividends because they are dependent on our earnings, financial condition, and other factors.

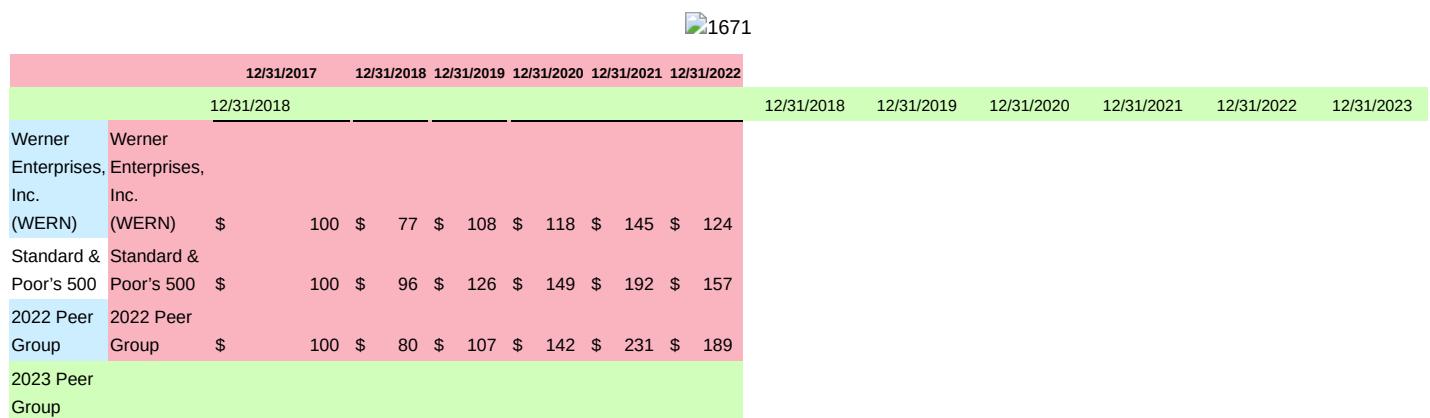
#### Equity Compensation Plan Information

For information on our equity compensation plans, please refer to Item 12 of Part III of this Form 10-K.

#### Performance Graph

Comparison of Five-Year Cumulative Total Return

*The following graph is not deemed to be "soliciting material" or to be "filed" with the SEC or subject to the liabilities of Section 18 of the Exchange Act, and the report shall not be deemed to be incorporated by reference into any prior or subsequent filing by us under the Securities Act of 1933 or the Exchange Act except to the extent we specifically request that such information be incorporated by reference or treated as soliciting material.*



Assuming the investment of \$100 on **December 31, 2017** December 31, 2018, and reinvestment of all dividends, the graph above compares the cumulative total stockholder return on our common stock for the last five fiscal years with the cumulative total return of Standard & Poor's 500 Market Index and our Peer Group Groups over the same period. In 2023, we selected a new Peer Group in order to more closely align with our benchmarking Peer Group. Our Peer Group includes companies similar to us in the transportation industry and has the following companies: ArcBest; Covenant Logistics Group; Daseke; Forward Air; Heartland Express; Hub Group; JB Hunt; Knight-Swift Transportation; Landstar System; Marten Transport; Old Dominion Freight Line; Saia; and Schneider National; National. We added Daseke, Inc. to our 2023 Peer Group and removed US Xpress; Xpress Enterprises, Inc. (acquired by Knight-Swift Transportation in 2023) and Yellow Corporation. Corporation (ceased operations in 2023) from our 2023 and 2022 Peer Groups. Our stock price was ~~\$40.26~~ \$42.37 as of **December 30, 2022** December 29, 2023 (the last business day of fiscal year **2022** 2023). This price was used for purposes of calculating the total return on our common stock for the year ended **December 31, 2022** December 31, 2023.

#### Purchases of Equity Securities by the Issuer and Affiliated Purchasers

On November 9, 2021, our Board of Directors approved and announced a new stock repurchase program under which the Company is authorized to repurchase up to 6,000,000 shares of its common stock. As of **December 31, 2022** December 31, 2023, the Company had purchased 3,688,190 shares pursuant to this authorization and had 2,311,810 shares remaining available for repurchase. The Company may purchase shares from time to time depending on market, economic and other factors. The authorization will continue unless withdrawn by the Board of Directors.

No shares of common stock were repurchased during fourth quarter **2022** 2023 by either the Company or any "affiliated purchaser," as defined by Rule 10b-18 of the Exchange Act.

#### ITEM 6. RESERVED

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") summarizes the financial statements from management's perspective with respect to our financial condition, results of operations, liquidity and other factors that may affect actual results. The MD&A is organized in the following sections:

- Cautionary Note Regarding Forward-Looking Statements
- Business Acquisitions
- Overview
- Results of Operations
- Liquidity and Capital Resources
- Critical Accounting Estimates

### Cautionary Note Regarding Forward-Looking Statements:

This Annual Report on Form 10-K contains historical information and forward-looking statements based on information currently available to our management. The forward-looking statements in this report, including those made in this Item 7 (Management's Discussion and Analysis of Financial Condition and Results of Operations), are made pursuant to the safe harbor provisions of the Private Securities Litigation Reform Act of 1995, as amended. These safe harbor provisions encourage reporting companies to provide prospective information to investors. Forward-looking statements can be identified by the use of certain words, such as "anticipate," "believe," "estimate," "expect," "intend," "plan," "project," and other similar terms and language. We believe the forward-looking statements are reasonable based on currently available information. However, forward-looking statements involve risks, uncertainties and assumptions, whether known or unknown, that could cause our actual results, business, financial condition and cash flows to differ materially from those anticipated in the forward-looking statements. A discussion of important factors relating to forward-looking statements is included in Item 1A (Risk Factors) of Part I of this Form 10-K. Readers should not unduly rely on the forward-looking statements included in this Form 10-K because such statements speak only to the date they were made. Unless otherwise required by applicable securities laws, we undertake no obligation or duty to update or revise any forward-looking statements contained herein to reflect subsequent events or circumstances or the occurrence of unanticipated events.

### Business Acquisitions:

We recently acquired the following entities: entities in 2022 and 2021:

- 100% of ReedTMS on November 5, 2022. Freight brokerage and truckload revenues generated by ReedTMS are reported in our Werner Logistics segment and in Dedicated within our TTS segment, respectively.
- 100% of Baylor on October 1, 2022. Revenues generated by Baylor are reported in One-Way Truckload within our TTS segment.
- 100% of NEHDS on November 22, 2021. Revenues generated by NEHDS are reported in Final Mile within our Werner Logistics segment.
- 80% of ECM on July 1, 2021. Revenues generated by ECM are reported in One-Way Truckload within our TTS segment.

Additional information regarding these acquisitions is included in Note 2 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K.

### Overview:

We have two reportable segments, TTS and Werner Logistics, and we operate in the truckload and logistics sectors of the transportation industry. In the truckload sector, we focus on transporting consumer nondurable products that generally ship more consistently throughout the year. In the logistics sector, besides managing transportation requirements for individual customers, we provide additional sources of truck capacity, alternative modes of transportation, a North American delivery network and systems analysis to optimize transportation needs. Our success depends on our ability to efficiently and effectively manage our resources in the delivery of truckload transportation and logistics services to our customers. Resource requirements vary with customer demand, which may be subject to seasonal or general economic conditions. Our ability to adapt to changes in customer transportation requirements is essential to efficiently deploy resources and make capital investments in tractors and trailers (with respect to our TTS segment) or obtain qualified third-party capacity at a reasonable price (with respect to our Werner Logistics segment). We may also be affected by our customers' financial failures or loss of customer business.

Revenues for our TTS segment operating units (Dedicated and One-Way Truckload) are typically generated on a per-mile basis and also include revenues such as stop charges, loading and unloading charges, equipment detention charges and equipment repositioning charges. To mitigate our risk to fuel price increases, we recover additional fuel surcharge revenues from our customers that generally recoup a majority of the increased fuel costs; however, we cannot assure that current recovery levels will continue in future periods. Because fuel surcharge revenues fluctuate in response to changes in fuel costs, we identify them separately and exclude them from the statistical calculations to provide a more meaningful comparison between periods. The key statistics used to evaluate trucking revenues, net of fuel surcharge, are (i) average revenues per tractor per week, (ii) average percentage of empty miles (miles without trailer cargo), (iii) average trip length (in loaded miles) and (iv) average number of tractors in service. General economic conditions, seasonal trucking industry freight patterns and industry capacity are important factors that impact these statistics. Our TTS segment also generates a small amount of revenues categorized as non-trucking revenues, which consist primarily of the intra-Mexico portion of cross-border shipments delivered to or from Mexico where the TTS segment utilizes a third-party capacity provider. We exclude such revenues from the statistical calculations.

Our most significant resource requirements are company drivers, independent contractors, tractors, and trailers. trailers with respect to our TTS segment and qualified third-party capacity providers with respect to our Werner Logistics segment. Independent contractors supply their own tractors and drivers and are responsible for their operating expenses. Our financial results are affected by company driver and independent contractor availability and the markets for new and used revenue equipment. We are self-insured for a significant portion of bodily injury, property damage and cargo claims; workers' compensation claims; and associate health claims (supplemented by premium-based insurance coverage above certain dollar levels). For that reason, our financial results may also be affected by driver safety, medical costs, weather, legal and regulatory environments and insurance coverage costs to protect against catastrophic losses.

The operating ratio is a common industry measure used to evaluate our profitability and that of our TTS segment operating fleets. The operating ratio consists of operating expenses expressed as a percentage of operating revenues. The most significant variable expenses that impact the TTS segment are driver salaries and benefits, fuel, fuel taxes (included in taxes and licenses expense), payments to independent contractors (included in rent and purchased transportation expense), supplies and maintenance and insurance and claims. As discussed further in the comparison of operating results for 2022 2023 to 2021 2022, several industry-wide issues have caused, and could continue to cause, costs to increase in future periods. These issues include shortages of drivers or independent contractors, changing fuel prices, changing used truck and trailer pricing, compliance with new or proposed regulations and tightening of the commercial truck liability insurance market. Our main fixed costs include depreciation expense for tractors and trailers and equipment licensing fees

(included in taxes and licenses expense). The TTS segment requires substantial cash expenditures for tractor and trailer purchases. We fund these purchases with net cash from operations and financing available under our existing credit facilities, facility, as management deems necessary.

We provide non-trucking services primarily through the three operating units within our Werner Logistics segment (Truckload Logistics, Intermodal, and Final Mile). In first quarter 2021, we completed the sale of the Werner Global Logistics ("WGL") freight forwarding services for international ocean and air shipments to Scan Global Logistics Group. WGL had annual revenues of \$53 million in 2020, and we realized a \$1.0 million gain from the sale in first quarter 2021, which assumed achievement of the full earnout. At the end of the twelve month twelve-month period following the completed sale of WGL, the full earnout was achieved. Unlike our TTS segment, the Werner Logistics segment is less asset-intensive and is instead dependent upon qualified associates, information systems and qualified third-party capacity providers. The largest expense item related to the Werner Logistics segment is the cost of purchased transportation we pay to third-party capacity providers. This expense item is recorded as rent and purchased transportation expense. Other operating expenses consist primarily of salaries, wages and benefits, as well as depreciation and amortization, supplies and maintenance, and other general expenses. We evaluate the Werner Logistics segment's financial performance by reviewing operating expenses and operating income expressed as a percentage of revenues. Purchased transportation expenses as a percentage of revenues can be impacted by the rates charged to customers and the costs of securing third-party capacity. We have a mix of contracted long-term rates and variable rates for the cost of third-party capacity, and we cannot assure that our operating results will not be adversely impacted in the future if our ability to obtain qualified third-party capacity providers changes or the rates of such providers increase.

At the end of 2022, 2023, we believe we are well positioned with a strong balance sheet and sufficient liquidity. Our debt is at \$694 million \$649 million, or a net debt ratio (debt less cash) of 1.0 times of 1.2 times earnings before interest, income taxes, depreciation and amortization for the year ended December 31, 2022 December 31, 2023. We had available liquidity of \$523 million \$526 million, considering cash and cash equivalents on hand and available borrowing capacity of \$416 million \$464 million. As of December 31, 2022 December 31, 2023, we were in compliance with our debt covenants and expect to continue to be in compliance in 2023, 2024. We currently plan to continue paying our quarterly dividend, which we

have paid quarterly since 1987. This cash outlay currently results in slightly more than \$8 million nearly \$9 million per quarter. Net capital expenditures (primarily revenue equipment) in 2023, 2024 currently are expected to be in the range of \$350 million \$260 million to \$400 million \$310 million.

#### Results of Operations:

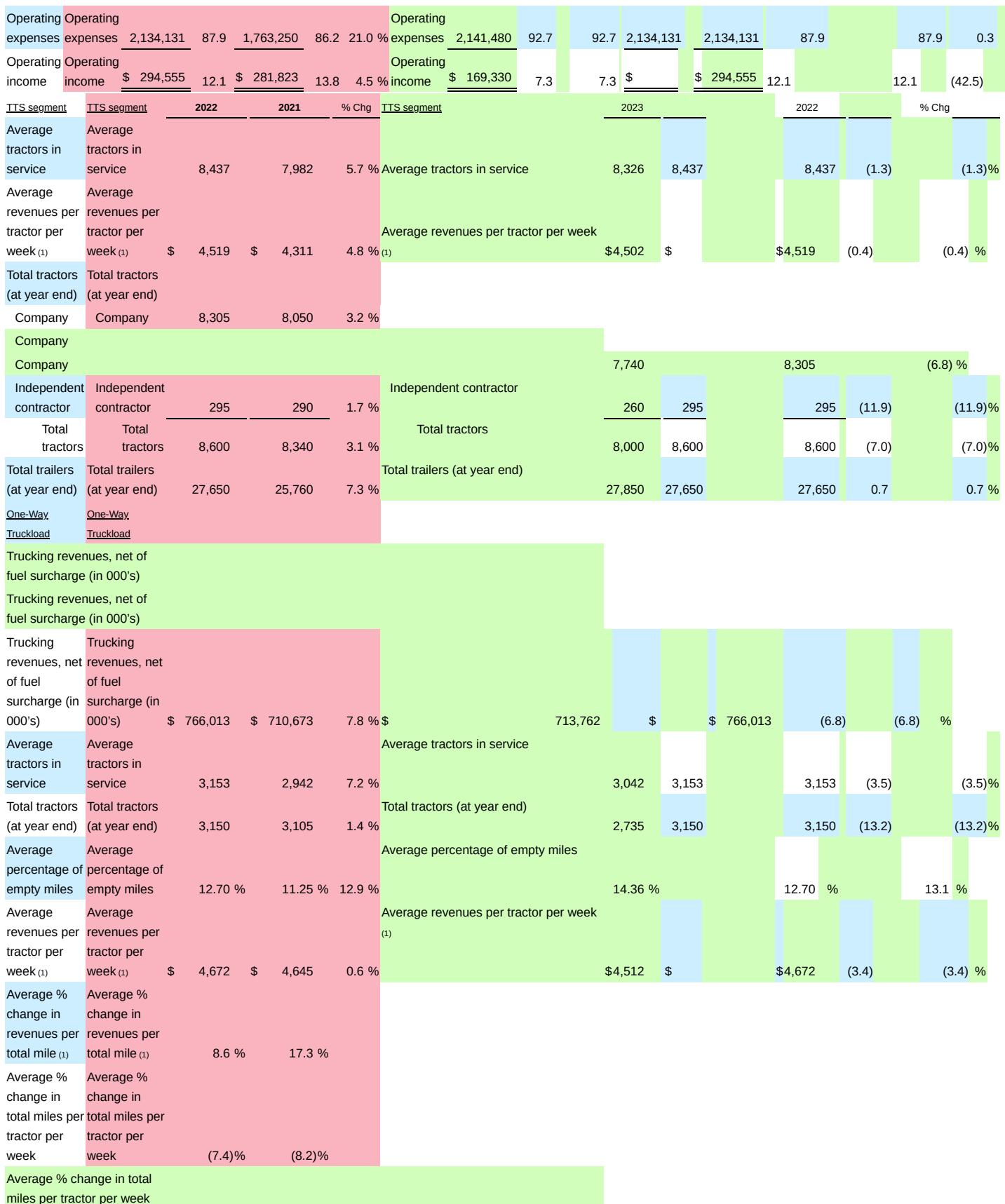
The following table sets forth the consolidated statements of income in dollars and as a percentage of total operating revenues and the percentage increase or decrease in the dollar amounts of those items compared to the prior year.

														Percentage Change in Dollar Amounts	
														Percentage Change in Dollar Amounts	
		2022		2021		Amounts				2023		2022			
(in thousands)	(in thousands)	\$	%	\$	%	%	(in thousands)	\$	%	\$	%	\$	%	\$	%
Operating revenues	Operating revenues	\$3,289,978	100.0	\$2,734,372	100.0	20.3									
Operating revenues	Operating revenues														
Operating expenses:	Operating expenses:														
Salaries, wages and benefits	Salaries, wages and benefits														
Salaries, wages and benefits	Salaries, wages and benefits	1,020,609	31.0	895,012	32.7	14.0									
Fuel	Fuel	437,299	13.3	245,866	9.0	77.9									
Supplies and maintenance	Supplies and maintenance	253,096	7.7	206,701	7.6	22.4									
Taxes and licenses	Taxes and licenses	97,929	3.0	96,095	3.5	1.9									
Insurance and claims	Insurance and claims	147,365	4.5	98,658	3.6	49.4									
Depreciation and amortization	Depreciation and amortization	279,923	8.5	267,700	9.8	4.6									

Rent and purchased transportation	Rent and purchased transportation	777,464	23.6	641,159	23.4	21.3
Communications and utilities	Communications and utilities	15,856	0.5	13,460	0.5	17.8
Other	Other	(62,639)	(1.9)	(39,425)	(1.4)	58.9
Total operating expenses	Total operating expenses	2,966,902	90.2	2,425,226	88.7	22.3
Operating income	Operating income	323,076	9.8	309,146	11.3	4.5
Total other income, net		(1,710)	(0.1)	(36,869)	(1.4)	(95.4)
Total other expense (income), net						
Income before income taxes	Income before income taxes	324,786	9.9	346,015	12.7	(6.1)
Income tax expense	Income tax expense	79,206	2.4	84,537	3.1	(6.3)
Net income	Net income	245,580	7.5	261,478	9.6	(6.1)
Net income attributable to noncontrolling interest		(4,324)	(0.2)	(2,426)	(0.1)	78.2
Net loss (income) attributable to noncontrolling interest						
Net income attributable to Werner	Net income attributable to Werner	\$ 241,256	7.3	\$ 259,052	9.5	(6.9)

The following tables set forth the operating revenues, operating expenses and operating income for the TTS segment and certain statistical data regarding our TTS segment operations, as well as statistical data for the One-Way Truckload and Dedicated operating units within TTS.





Average % change in total miles per tractor per week														
Average completed trip length in miles (loaded)	Average completed trip length in miles (loaded)	675	786	(14.1)%										
Average completed trip length in miles (loaded)														
Dedicated	Dedicated													
Trucking revenues, net of fuel surcharge (in 000's)														
Trucking revenues, net of fuel surcharge (in 000's)														
Trucking revenues, net of fuel surcharge (in 000's)	Trucking revenues, net of fuel surcharge (in 000's)	\$1,216,626	\$1,078,475	12.8 %	\$	1,235,683	\$	\$1,216,626	1.6	1.6	1.6	%		
Average tractors in service	Average tractors in service	5,284	5,040	4.8 %					5,284	5,284	5,284	—	—	%
Total tractors (at year end)	Total tractors (at year end)	5,450	5,235	4.1 %					5,265	5,450	5,450	(3.4)	(3.4)	%
Average revenues per tractor per week <sup>(1)</sup>	Average revenues per tractor per week <sup>(1)</sup>	\$ 4,428	\$ 4,116	7.6 %					\$ 4,496	\$ 4,428	1.5	1.5	1.5	%

(1) Net of fuel surcharge revenues

The following tables set forth the Werner Logistics segment's revenues, purchased transportation expense, other operating expenses (primarily salaries, wages and benefits expense), total operating expenses, and operating income, as well as certain statistical data regarding the Werner Logistics segment.

	2022	2021												
<u>Werner Logistics segment (in thousands)</u>														
<u>Werner Logistics segment (in thousands)</u>														
Werner Logistics segment (in thousands)	Werner Logistics segment (in thousands)	\$	%	\$	%	% Chg	\$		\$		\$		\$	%
Operating revenues	Operating revenues	\$793,492	100.0	\$622,461	100.0	27.5 %	Operating revenues	\$910,433	100.0	100.0	\$	\$ 793,492	100.0	100.0
Operating expenses:														
Purchased transportation expense	Purchased transportation expense	653,185	82.3	535,379	86.0	22.0 %								
Purchased transportation expense														
Purchased transportation expense									761,948	83.7	653,185	82.3		

Other operating expenses	Other operating expenses	104,123	13.1	59,209	9.5	75.9 %	Other operating expenses	132,606	14.6	14.6	104,123	104,123	13.1	13.1	27
Total operating expenses	Total operating expenses	757,308	95.4	594,588	95.5	27.4 %	Total operating expenses	894,554	98.3	98.3	757,308	757,308	95.4	95.4	18
Operating income	Operating income	\$ 36,184	4.6	\$ 27,873	4.5	29.8 %	Operating income	\$ 15,879	1.7	1.7	\$ 36,184	4.6	4.6	4.6	(56.1)
Werner Logistics segment	Werner Logistics segment	2022	2021	% Chg	Werner Logistics segment				2023	2022				% Chg	
Average tractors in service	Average tractors in service	52	41	26.8 %	Average tractors in service				37	52	52	(28.8)	(28.8)	%	
Total tractors (at year end)	Total tractors (at year end)	39	55	(29.1)%	Total tractors (at year end)				35	39	39	(10.3)	(10.3)	%	
Total trailers (at year end)	Total trailers (at year end)	2,315	1,465	58.0 %	Total trailers (at year end)				2,960	2,315	2,315	27.9	27.9	%	

#### 2022 2023 Compared to 2021 2022

##### **Operating Revenues**

Operating revenues increased 20.3% decreased 0.2% in 2022 2023 compared to 2021 2022. When comparing 2022 2023 to 2021 2022, TTS segment revenues increased \$383.6 million decreased \$117.9 million, or 18.8% 4.9%. Revenues for the Werner Logistics segment increased \$171.0 million \$116.9 million or 27.5% 14.7%.

Dedicated continues to experience strong steady demand from the majority of our long-term customers, and our Dedicated pipeline of new opportunities remains strong, healthy. In the current 2024, we expect freight market, there are fewer project demand to remain steady in Dedicated and surge freight opportunities to be seasonally weaker for One-Way Truckload and Werner Logistics compared to record high levels a year ago. We expect that the 2023 freight market will be challenging early in the first half of the year, and then gradually begin to show improvement improve in the second half of the year, as capacity exits the market and retail inventory resets replenishments reset to normalized levels.

Trucking revenues, net of fuel surcharge, increased 10.8% decreased 1.7% in 2022 2023 compared to 2021 2022 due to a 5.7% increase 1.3% decrease in the average number of tractors in service and a 4.8% increase 0.4% decrease in average revenues per tractor per week, net of fuel surcharge. The increase During 2023, One-Way Truckload average revenues per total mile, net of fuel surcharge, decreased 5.5%, as One-Way Truckload was challenged by elevated transactional spot rate exposure and pricing pressure. We expect ongoing pricing pressure for One-Way Truckload during the early part of 2024, then moderating later in the year. Dedicated average revenues per tractor per week, net of fuel surcharge, was due primarily to improved pricing in both Dedicated and One-Way Truckload, partially offset by a decline in miles per tractor. The decline in miles per tractor resulted from several factors, including a lower length of haul due to freight mix, growth in Dedicated, the impact of our acquisitions which have a more regional footprint, and more tractor down time early in the year due to equipment parts shortages and COVID issues. We expect total miles per tractor per week for the One-Way Truckload fleet in 2023 to be comparable to 2022, and we expect a gradually improving pricing environment during the second half of 2023, increased 1.5%. Considering the freight market outlook, we expect average revenues per total mile, net of fuel surcharge, for the One-Way Truckload fleet to decline decrease in a range of 3% 6% to 6% 3% in the first half of 2023 2024 when compared to the first half of 2022, 2023, and we expect Dedicated average revenues per tractor per week, net of fuel surcharge, to remain flat or increase in a range of 0% up to 3% in 2023 2024 compared to 2022, 2023.

The average number of tractors in service in the TTS segment increased 5.7% decreased 1.3% to 8,326 in 2023 compared to 8,437 in 2022, compared as we decreased our fleet size to 7,982 in 2021, adjust to the challenging freight market conditions. We ended 2022 2023 with 8,600 8,000 tractors in the TTS segment, a year-over-year increase decrease of 260 600 tractors. The increase in end of period tractors was due primarily to tractors acquired in the fourth quarter 2022 Baylor and ReedTMS acquisitions, which also contributed to the increase in the average number of tractors in service along with the full year impact in 2022 of the July 1, 2021 ECM acquisition. Our Dedicated unit ended 2022 2023 with 5,450 5,265 tractors (or 63% 66% of our total TTS segment fleet) compared to 5,235 5,450 tractors (or 63%) at the end of 2021 2022. We currently expect our fleet size at the end of 2023 2024 to be in a range of 1% remain flat or decrease up to 4% higher 3% when compared to the fleet size at the end of 2022, 2023, with the majority of the potential for growth planned for in our Dedicated unit in the second half of the year. We cannot predict whether future driver shortages, if any, will adversely affect our ability to maintain our fleet size. If such a driver market shortage were to occur, it could result in a fleet size reduction, and our results of operations could be adversely affected.

Trucking fuel surcharge revenues increased 79.0% decreased 20.7% to \$332.4 million in 2023 from \$419.2 million in 2022 from \$234.2 million in 2021 due primarily to higher lower average diesel fuel prices, driven by impacts of the war in Ukraine early in the year. These revenues represent collections from customers for the increase in fuel and fuel-related expenses, including the fuel component of our independent contractor cost (recorded as rent and purchased transportation expense) and fuel taxes (recorded in taxes and licenses expense), when diesel fuel prices rise. Conversely, when fuel prices decrease, fuel surcharge revenues decrease. To lessen the effect of fluctuating fuel prices on our margins, we collect fuel surcharge revenues from our customers for the cost of diesel fuel and taxes in excess of specified base fuel price levels according to terms in our customer contracts. Fuel surcharge rates generally adjust weekly based on an independent U.S. Department of Energy fuel price survey which is released every Monday. Our fuel surcharge programs are designed to (i) recoup higher fuel costs from customers when fuel prices rise and (ii) provide customers with the benefit of lower fuel costs when fuel prices decline. These programs generally enable us to recover a majority, but not all, of the fuel price increases. The

remaining portion is generally not recoverable because it results from empty and out-of-route miles (which are not billable to customers) and tractor idle time. Fuel prices that change rapidly in short time periods also impact our recovery because the surcharge rate in most programs only changes once per week.

Werner Logistics revenues are generated by its three operating units, following the sale of its WGL freight forwarding services for international ocean and air shipments in first quarter 2021. Werner Logistics revenues exclude revenues for full truckload shipments transferred to the TTS segment, which are recorded as trucking revenues by the TTS segment. Werner Logistics also recorded revenue and brokered freight expense of \$17.7 million in 2023 and \$5.2 million in 2022 and \$0.9 million in 2021 for movements shipments performed by the TTS segment (also recorded as trucking revenue by the TTS segment), and these transactions between reporting segments are eliminated in consolidation. Werner Logistics revenues increased 27.5% 14.7% to \$910.4 million in 2023 from \$793.5 million in 2022 from \$622.5 million in 2021 due primarily to volume growth in Truckload Logistics, which includes eight weeks of the acquired ReedTMS business, a \$74.8 million increase in Final Mile revenues primarily due to growth from the impact of NEHDS acquired in November 2021, and higher pricing in Intermodal. 2022 ReedTMS acquisition. Truckload Logistics revenues (67% (77% of total Werner Logistics revenues), including ReedTMS, increased 24% 32% driven by an increase in shipments due to the ReedTMS acquisition, partially offset by a 20% increase decline in volume and a 4% increase in revenues revenue per shipment. Intermodal revenues (22% (12% of total Werner Logistics revenues) decreased 38% due to a decline in shipments and lower revenue per shipment. Final Mile revenues (11% of total Werner Logistics revenues) increased 6% due to \$11.0 million, or 12%, despite a 23% increase in revenues per shipment, partially offset by a 17% decline in shipment volume, softer market for discretionary spending on big and bulky products. Werner Logistics operating income increased decreased to \$15.9 million in 2023 from \$36.2 million in 2022 compared to \$27.9 million in 2021 and operating margin percentage increased decreased to 1.7% in 2023 from 4.6% in 2022, due to a competitive pricing environment. In 2024, we expect Truckload Logistics margins will remain challenged in the near term, but may improve later in the year from 4.5% further synergies realized from the integration of our acquired companies. We also expect to continue to generate double-digit revenue growth in 2021. During 2022 we experienced fewer premium pop-up freight opportunities, Intermodal customer and market challenges, softening demand and start up costs in Final Mile. Werner Logistics revenues were 24% of total in 2024, while getting back to a mid-single digit operating revenues in 2022. Including our recent acquisition of ReedTMS, we expect Werner Logistics revenues in 2023 will grow to over 30% of total operating revenues, margin percentage entering into 2025.

#### Operating Expenses

Our operating ratio (operating expenses expressed as a percentage of operating revenues) was 94.6% in 2023 compared to 90.2% in 2022 compared to 88.7% in 2021.2022. Expense items that impacted the overall operating ratio are described on the following pages. The tables on pages 18 through 20 show the consolidated statements of income in dollars and as a percentage of total operating revenues and the percentage increase or decrease in the dollar amounts of those items compared to the prior year, as well as the operating ratios, operating margins and certain statistical information for our two reportable segments, TTS and Werner Logistics.

Salaries, wages and benefits increased \$125.6 million \$51.9 million or 14.0% 5.1% in 20222023 compared to 20212022 and decreased increased 1.7% as a percentage of operating revenues. The higher dollar amount of salaries, wages and benefits expense in 20222023 was due primarily to increased non-driver pay, higher driver pay including driver pay rate increases and the impact of 18.0 million from 3.4 million more company tractor miles, in 2022. In August 2021, we implemented driver pay increases of approximately \$11 million annually in our One-Way Truckload fleet. Within Dedicated, we continue to implement driver pay increases as needed, and higher benefit costs. The increase in salaries, wages and benefits non-driver pay was also primarily due to a larger average number of non-driver employees, higher salaries, including the impact from our ReedTMS and higher benefits, Baylor acquisitions. Non-driver salaries, wages and benefits in our non-trucking Werner Logistics segment increased 58.4%37.2%, primarily as a result of more employees to support the 27.5% growth of Logistics revenues. ReedTMS acquisition.

We renewed our workers' compensation insurance coverage on April 1, 2022 April 1, 2023. Our coverage levels are the same as the prior policy year. We continue to maintain a self-insurance retention of \$2.0 million per claim. Our workers' compensation insurance premiums for the policy year beginning April 2022 are \$0.4 million higher than the premiums for 2023 were flat compared to the previous policy year.

While inflationary cost pressures continue to be challenging, particularly for labor, equipment maintenance and insurance, we have begun to see some easing in currently believe the competitive driver recruiting and retention markets. A market may be less difficult in the near term, a competitive driver market presents labor challenges for customers and carriers alike. Several ongoing factors impacting the driver market factors persisted including include a declining number of, and increased competition for, driver training school graduates, aging truck driver demographics and increased truck safety regulations. We continue to take significant actions to strengthen our driver recruiting and retention as we strive to be the truckload employer of choice, including raising competitive driver pay, providing a modern tractor and trailer fleet with the latest safety equipment and technology, investing and expanding in our driver training school network and offering a wide variety of driving positions including daily and weekly home time opportunities. We are unable to predict whether we will experience future driver shortages or maintain our current driver retention rates. If such a driver shortage were to occur and additional driver pay rate increases became necessary to attract and retain drivers, our results of operations would be negatively impacted to the extent that we could not obtain corresponding freight rate increases.

Fuel increased \$191.4 million decreased \$92.3 million or 77.9%21.1% in 20222023 compared to 20212022 and increased 4.3% decreased 2.8% as a percentage of operating revenues due to higher much lower average diesel fuel prices, and 18.0 million partially offset by 3.4 million more company tractor miles in 20222023. Average diesel fuel prices, excluding fuel taxes, for the full year 20222023 were \$1.55 higher 80 cents lower than the full year 20212022, a 71% increase 22% decrease.

We continue to employ measures to improve our fuel mpg such as (i) limiting tractor engine idle time by installing auxiliary power units, (ii) optimizing the speed, weight and specifications of our equipment and (iii) implementing mpg-enhancing equipment changes to our fleet including new tractors, more aerodynamic tractor features, idle reduction systems, trailer tire inflation systems, trailer skirts and automated manual transmissions to reduce our fuel gallons purchased. However, fuel savings from mpg improvement is partially offset by higher depreciation expense and the additional cost of diesel exhaust fluid. Although our fuel management programs require significant capital investment and research and development, we intend to continue these and other environmentally conscious initiatives, including our active participation as an U.S. EPA SmartWay

Transport Partner. The SmartWay Transport Partnership is a national voluntary program developed by the EPA and freight industry representatives to reduce greenhouse gases and air pollution and promote cleaner, more efficient ground freight transportation.

Through February 17, 2024, the average diesel fuel price per gallon in 2023 was approximately 47 cents higher than the average diesel fuel price per gallon in the same period of 2022 and approximately 7 cents higher than the average for first quarter 2022.

Shortages of fuel, increases in fuel prices and petroleum product rationing can have a material adverse effect on our operations and profitability. We are unable to predict whether fuel price levels will increase or decrease in the future or the extent to which fuel surcharges will be collected from customers. As of December 31, 2022, we had no derivative financial instruments to reduce our exposure to fuel price fluctuations.

Supplies and maintenance increased \$46.4 million or 1.3% in 2023 compared to 2021 and increased 0.1% as a percentage of operating revenues. Supplies and maintenance expense increased due to higher costs for tractor and trailer parts, tires, and over-the-road repairs resulting from inflationary cost increases, as well as higher costs for tolls and travel post-COVID. The average age of 3.4 million more company tractor miles in 2023. We have taken steps to reduce repair and maintenance expense by growing our in-house maintenance capabilities throughout our terminal network. We are also developing digital solutions to further optimize the routing and scheduling of tractors and trailers increased by 0.1 years and 0.5 years at December 31, 2022 compared to December 31, 2021, respectively, primarily due to limited new equipment availability. While it remains difficult to obtain new tractors and trailers, we anticipate that new tractor and trailer production will show modest improvement in 2023. Operating older equipment has a direct impact on our supplies and maintenance costs for preventive maintenance.

Insurance and claims increased \$48.7 million or 6.0% in 2023 compared to 2021 and increased 0.9% as a percentage of operating revenues, due primarily to lower expense for large dollar liability claims resulting from a higher amount of unfavorable reserve development and lower new claims, partially offset by higher expense for new small dollar liability claims, increasing cost-per-claim, and higher liability insurance premiums. The majority of the higher unfavorable reserve development in 2022 related to unexpected and unfortunate legal developments for two prior year motor vehicle accidents that have been settled, including a settlement of a lawsuit in Texas arising from a May 24, 2020 accident for which we recognized \$9.5 million of insurance and claims expense in 2022. We also incurred insurance and claims expense of \$5.7 million and \$5.4 million in 2023 and \$5.1 million in 2022, and 2021, respectively, for accrued interest related to a previously-disclosed adverse jury verdict rendered on May 17, 2018, which we are appealing (see Note 12 in the Notes to Consolidated Financial Statements set forth in Part II of this Form 10-K). Interest is accrued at \$0.5 million per month, will continue to accrue monthly until such time as the outcome of our appeal is finalized. The majority of our insurance and claims expense results from our claim experience and claim development under our self-insurance program; the remainder results from insurance premiums for claims in excess of our self-insured limits. In 2023, we achieved our lowest DOT preventable accident rate per million miles in the last 10 years. Over the longer term, we expect our accident per million miles performance will improve our insurance and claims experience. While we cannot ignore the increasing trend of high dollar verdicts and settlements, we expect our 2023 insurance and claims expense to moderate from 2022.

We renewed our liability insurance policies on August 1, 2022 and are responsible for the first \$10.0 million per claim on all claims with an annual \$10.0 million aggregate for claims between \$10.0 million and \$20.0 million. For the policy year that began August 1, 2021, we were responsible for the first \$10.0 million per claim on all claims with an annual \$10.0 million aggregate for claims between \$10.0 million and \$15.0 million. We maintain liability insurance coverage with insurance carriers in excess of the \$10.0 million per claim. Our liability insurance premiums for the policy year that began August 1, 2022 and August 1, 2023 are \$1.9 million higher than premiums for the previous policy year.

Depreciation and amortization expense increased \$12.2 million or 7.0% in 2023 compared to 2021 and decreased 1.3% as a percentage of operating revenues due primarily to the higher tractor depreciation on cost of new tractors and trailers, a larger company tractor trailer fleet, and depreciation and amortization on tangible and intangible assets recorded in our business acquisitions, partially offset by the impact of a change in accounting estimate effective January 1, 2022, due to the ongoing stronger used trailer market and the increasing cost of new trailers, which decreased trailer depreciation expense by \$12.7 million in 2022. Baylor acquisitions.

The average age of our tractor fleet remains low by industry standards and was 2.3 years as of December 31, 2022 and the average age of our trailers was 5.0 years. We continued to invest in new tractors and trailers and our terminals in 2023 to improve our driver experience, increase operational efficiency and more effectively manage our maintenance, safety and fuel costs. In 2024, we expect to slightly lower the average age of our tractor fleet and maintain the average age of our trailer fleet to remain at or near current levels.

Rent and purchased transportation expense increased \$136.3 million or 14.0% in 2023 compared to 2021 and increased 0.2% as a percentage of operating revenues. Rent and purchased transportation expense consists mostly of payments to third-party capacity providers in the Werner Logistics segment and other non-trucking operations, and payments to independent contractors in the TTS segment, and cloud-based technology fees. The payments to third-party capacity providers generally vary depending on changes in the volume of services generated by the Werner Logistics segment. Werner Logistics recorded revenue and brokered freight expense of \$17.7 million in 2023 and \$5.2 million in 2022 for shipments performed by the TTS segment (also recorded as trucking revenue by the TTS segment), and these transactions between reporting segments are eliminated in consolidation. Werner Logistics purchased transportation expense increased \$117.8 million as a result of higher logistics revenues, which includes 8 weeks of including the acquired ReedTMS logistics business, and decreased 8.3% as a percentage of Werner Logistics revenues in 2023 from 86.0% in 2021 due to improved pricing and the effect of the NEHDS acquisition, as NEHDS utilizes both employees and contracted drive teams.

Rent and purchased transportation expense for the TTS segment increased \$17.5 million or 10.6% in 2023 compared to 2021 due primarily to higher average diesel fuel prices. The higher expense was partially offset by fewer independent contractor miles in 2023. Independent contractor miles decreased 10.0 million and increased 1.3 million miles in 2023 and as a percentage of total miles were 4.6% in 2023 compared to 4.5% in 2022 compared to 5.8% in 2021. Because independent contractors supply their own tractors and drivers and are responsible for their operating expenses, the decrease in independent contractor miles as a percentage of total miles shifted costs from the rent and purchased transportation category to other expense categories, including (i) salaries, wages and benefits, (ii) fuel, (iii) depreciation, (iv) supplies and maintenance and (v) taxes and licenses, licenses to the rent and purchased transportation category.

Challenging operating conditions continue to make independent contractor recruitment and retention difficult. Such conditions include inflationary cost increases that are the responsibility of independent contractors and a shortage of financing available to independent contractors for equipment purchases. Historically, we have been able to add company tractors and recruit additional company drivers to offset any decrease in the number of independent contractors. If a shortage of independent contractors and company drivers occurs, further increases in per-mile settlement rates (for independent contractors) and driver pay rates (for company drivers) may become necessary to attract and

retain these drivers. These increased expenses could negatively affect our results of operations to the extent that we would not be able to obtain corresponding freight rate increases.

Other operating expenses decreased \$23.2 million increased \$50.2 million in 2022 2023 compared to 2021 2022 and decreased 0.5% increased 1.5% as a percentage of operating revenues due primarily to higher lower gains on sales of property and equipment (primarily used tractors and trailers), and a \$2.5 million reversal of the contingent consideration recorded in the NEHDS acquisition because the financial performance goals in 2022 were not achieved, partially offset by the impact of a \$1.0 million gain from the sale of WGL in first quarter 2021. increased costs associated with professional technology services related to our multi-year technology and innovation strategy. Gains on sales of property and equipment are reflected as a reduction of other operating expenses and are reported net of sales-related expenses (which include costs to prepare the equipment for sale). Gains on sales of property and equipment were \$42.4 million in 2023, compared to \$88.6 million in 2022, compared to \$61.5 million in 2021. 2022. In 2022, 2023, we sold fewer significantly more tractors and trailers than in 2021. We 2022 and realized substantially higher lower average gains per tractor and trailer sold in 2022 due to significantly improved lower pricing in the market for our used equipment, which we believe is a result of increased due to decreased demand for previously our used equipment because of production delays limiting carriers increasingly exiting the trucking industry in 2023 due to the challenging freight market and an increase in the availability of new equipment due to fewer production delays in the industry. In 2023 we anticipate compared to 2022. For the used truck tractor and trailer market, will weaken, as we expect a greater number continued low demand with moderating pricing and equipment gains through the first half of small carriers to exit the trucking industry due to lower spot rates and much higher operating costs. 2024. As a result, we expect our gains on sales of property and equipment in 2023 2024 to decrease to between \$30 million \$10 million and \$50 million \$30 million.

#### Other Income, Net Expense (Income)

Other income, expense, net of expense, decreased \$35.2 million other income, increased \$30.3 million in 2022 2023 compared to 2021 2022 due primarily to a \$28.1 million \$16.7 million increase in net interest expense, a \$12.5 million decrease in the amount of unrealized net gains recognized on our investments in equity securities, and a loss from our equity method investment of \$1.0 million (see Note 7 in the Notes to Consolidated Financial Statements set forth in Part II of this Form 10-K) and a \$7.4 million increase in interest expense. Interest expense increased primarily due to higher average debt outstanding and higher interest rates. In 2023, we expect 10-K for information regarding our investments). Net interest expense will be higher than in 2022, primarily increased due to higher interest rates as well as maintaining for variable rate debt and an increase in average debt outstanding. In July 2023, we entered into four additional variable-for-fixed interest rate swap agreements for a higher notional amount of \$130.0 million to further limit our exposure to increases in interest rates on a portion of our variable-rate indebtedness (see Note 8 in the Notes to Consolidated Financial Statements set forth in Part II of this Form 10-K regarding these interest rate swaps). We expect net interest expense to increase up to \$10 million in 2024 compared to 2023, primarily due to the repricing of the BMO Term Loan that is maturing in May 2024 and the impact of two interest rate swaps that are expiring in May 2024. We expect these increases in net interest expense to be partially offset by debt level reduction during 2024.

#### Income Tax Expense

Income tax expense decreased \$5.3 million \$43.7 million in 2022 2023 compared to 2021, 2022, due primarily to lower pre-tax income. The effective income tax rate (income taxes expressed as a percentage of income before income taxes) was 24.0% in 2023 compared to 24.4% in 2022 and 2021, 2022. The lower income tax rate in 2023 was attributed primarily to a higher amount of favorable discrete income tax items in 2023, partially offset by the income tax effect of the noncontrolling interest. We currently estimate our full year 2023 2024 effective income tax rate to be approximately 24.0% 24.5% to 25.0% 25.5%.

#### 2021 2022 Compared to 2020 2021

For a comparison of the Company's results of operations for the fiscal year ended December 31, 2021 December 31, 2022 to the fiscal year ended December 31, 2020 December 31, 2021, see [Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations](#), in

the Company's Annual Report on Form 10-K for the year ended December 31, 2021 December 31, 2022, which was filed with the U.S. Securities and Exchange Commission on February 28, 2022 February 27, 2023.

#### Liquidity and Capital Resources:

We closely manage our liquidity and capital resources. Our liquidity requirements depend on key variables, including the level of investment needed to support business strategies, the performance of the business, capital expenditures, borrowing arrangements, and working capital management. Capital expenditures, business acquisitions, stock repurchases, and dividend payments are components of our cash flow and capital management strategy, which to a large extent, can be adjusted in response to economic and other changes in the business environment. Management's approach to capital allocation focuses on investing in key priorities that support our business and growth strategies and providing shareholder returns, while funding ongoing operations.

Management believes our financial position at December 31, 2022 December 31, 2023 is strong. As of December 31, 2022 December 31, 2023, we had \$107.2 million \$61.7 million of cash and cash equivalents and over \$1.4 billion \$1.5 billion of stockholders' equity. Cash is invested primarily in government portfolio short-term money market funds. In addition, we have a \$1.075 billion credit facility, for which our total available borrowing capacity was \$416.2 million \$463.9 million as of December 31, 2022 December 31, 2023. After considering recent developments in the banking sector, we believe the six commercial banks in our \$1.075 billion syndicated credit facility all have strong tier-one capital ratios and good loan-to-deposit ratios. We believe our liquid assets, cash generated from operating activities, and borrowing capacity under our existing credit facility will provide sufficient funds to meet our cash requirements and our planned shareholder returns for the foreseeable future.

Our material cash requirements include the following contractual and other obligations.

- **Debt Obligations and Interest Payments** – As of December 31, 2022 December 31, 2023, we had outstanding debt with an aggregate principal amount of \$693.8 million \$648.8 million, with \$6.3 million \$88.8 million payable within 12 months. We are currently planning to repay the remaining outstanding principal balance of \$86.3 million under the BMO Term Loan in May 2024 using proceeds from the 2022 Credit Agreement. Future interest payments associated with our debt obligations are estimated to be \$136.0 million \$168.9 million through 2027, with \$31.3 million \$39.3 million payable within 12 months. See Note 8 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K for further detail of our debt and the timing of expected future principal payments.
- **Operating Leases** – We have entered into operating leases primarily for real estate. As of December 31, 2022 December 31, 2023, we had fixed lease payment obligations of \$46.6 million \$40.3 million, with \$10.6 million \$10.1 million payable within 12 months. See Note 5 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this

Form 10-K for further detail of our lease obligations and the timing of expected future payments.

- **Purchase Obligations** – As of **December 31, 2022** **December 31, 2023**, we have committed to property and equipment purchases of approximately **\$278.6 million** **\$107.9 million** within the next 12 months.

In addition to our cash requirements, the Board of Directors has authorized us to deliver value to shareholders through stock repurchases and quarterly cash dividends. The stock repurchase program does not obligate the Company to acquire any specific number of shares. We plan to continue paying a quarterly dividend, which currently results in a cash outlay of **slightly more than \$8 million** **nearly \$9 million** per quarter.

#### **Cash Flows**

We generated cash flow from operations of **\$474.4 million** during 2023, a 5.7% or **\$25.7 million** increase in cash flows compared to **\$448.7 million** during 2022 compared to **\$332.8 million** during 2021. 2022. The increase in net cash provided by operating activities was due primarily to working capital changes, resulting from growth including a decrease in accounts receivable days sales outstanding, offset by a decrease in net income during **2021** 2023. We were able to make net capital expenditures, make additional net repayments on our debt, make a strategic loan and investments, and pay dividends and repurchase Company stock with the net cash provided by operating activities and existing cash balances, supplemented by net borrowings under our credit facilities. balances.

Net cash used in investing activities was **\$434.9 million** during 2023 compared to **\$514.3 million** during 2022 compared to **\$397.3 million** during 2021. 2022. Net cash invested in our business acquisitions was **\$0.2 million** during 2023 compared to **\$184.1 million** during 2022 compared to **\$201.8 million** during 2021. 2022. Net property and equipment additions (primarily revenue equipment) were **\$408.7 million** during 2023 compared to **\$317.6 million** during 2022 compared to **\$193.0 million** during 2021. 2022. We currently estimate net capital expenditures (primarily revenue equipment) in **2023** 2024 to be in the range of **\$350 million** **\$260 million** to **\$400 million** **\$310 million**. We intend to fund these net capital expenditures through cash flows from operations and financing available under our existing credit facilities, facility, if necessary. We also purchased a **\$25.0 million** subordinated promissory note from Mastery Logistics Systems, Inc. on January 24, 2023, with a maturity date of January 24, 2030 (see Note 9 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K for information regarding our notes receivable).

Net cash provided by financing activities was used **\$87.1 million** during 2023 and provided **\$118.0 million** during 2022 compared 2022. We had net repayments on our debt of **\$45.0 million** during 2023, decreasing our outstanding debt to **\$89.7 million** during 2021. **\$648.8 million** at December 31, 2023. We had net borrowings on our debt of **\$266.3 million** during 2022, increasing our outstanding debt to **\$693.8 million** at December 31, 2022. A which a portion of the proceeds were used to finance our Baylor and ReedTMS acquisitions. We had net borrowings of **\$227.5 million** during 2021, which were primarily used to finance our ECM and NEHDS acquisitions. We paid dividends of **\$34.2 million** during 2023 and **\$32.2 million** during 2022 and **\$29.1 million** during 2021. 2022. We increased our quarterly dividend rate by **\$0.01** per share, or 8%, beginning with the quarterly dividend paid in July 2023, and we increased our quarterly dividend rate by **\$0.01** per share, or 8%, beginning with the dividend paid in July 2022.

On November 9, 2021, our Board of Directors approved a stock repurchase program under which the Company is authorized to repurchase up to 6,000,000 shares of its common stock. We did not repurchase any shares of common stock in 2023. Financing activities for 2022 also included common stock repurchases of 2,710,304 shares at a cost of \$110.4 million. We repurchased 2,297,911 As of December 31.

2023, the Company had purchased 3,688,190 shares during 2021 at a cost of **\$104.4 million**. pursuant to this authorization and had 2,311,810 shares remaining available for repurchase. The Company has repurchased, and may continue to repurchase, shares of the Company's common stock. The timing and amount of such purchases depend upon economic and stock market conditions and other factors. On November 9, 2021, our Board of Directors approved a new stock repurchase program under which the Company is authorized to repurchase up to 6,000,000 shares of its common stock. As of December 31, 2022, the Company had purchased 3,688,190 shares pursuant to this authorization and had 2,311,810 shares remaining available for repurchase.

#### **Critical Accounting Estimates:**

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires us to make estimates and assumptions that affect the (i) reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and (ii) reported amounts of revenues and expenses during the reporting period. We evaluate these estimates on an ongoing basis as events and circumstances change, utilizing historical experience, consultation with experts and other methods considered reasonable in the particular circumstances. Actual results could differ from those estimates and may significantly impact our results of operations from period to period. It is also possible that materially different amounts would be reported if we used different estimates or assumptions.

Estimates of accrued liabilities for insurance and claims for bodily injury and property damage and workers' compensation is a critical accounting estimate that requires us to make significant judgments and estimates and affects our financial statements. The accruals for bodily injury and property damage and workers' compensation (current and non-current) are recorded at the estimated ultimate payment amounts and are based upon individual case estimates and actuarial estimates of loss development for reported losses and incurred-but-not-reported losses using loss development factors based upon past experience. In order to determine the loss development factors, we make judgments relating to the comparability of historical claims to current claims. These judgments consider the nature, frequency, severity, and age of claims, and industry, regulatory, and company-specific trends impacting the development of claims. An independent actuary reviews our calculation of the undiscounted self-insurance reserves for bodily injury and property damage claims and workers' compensation claims at year-end. The actual cost to settle our self-insured claim liabilities can differ from our reserve estimates because of a number of uncertainties, including the inherent difficulty in estimating the severity of a claim and the potential amount to defend and settle a claim. We have not made any material changes in the accounting methodology or assumptions used to calculate our accrued liabilities for insurance and claims for bodily injury and property damage and workers' compensation during the past three years. At **December 31, 2022** **December 31, 2023** and **2021** 2022, we had an accrual of **\$323.6 million** **\$321.5 million** and **\$309.8 million** **\$323.6 million**, respectively, for estimated insurance and claims for (i) cargo loss and damage, (ii) bodily injury and property damage, (iii) group health, and (iv) workers' compensation claims not

covered by insurance. A 10% change in actuarial estimates for insurance and claims for bodily injury and property damage at December 31, 2022 December 31, 2023, would have changed our insurance and claims accrual by approximately \$30.3 million \$24.8 million.

#### ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

We are exposed to market risk from changes in commodity prices, foreign currency exchange rates, and interest rates.

##### Commodity Price Risk

The price and availability of diesel fuel are subject to fluctuations attributed to changes in the level of global oil production, refining capacity, regulatory changes, seasonality, weather and other market factors. Historically, we have recovered a majority, but not all, of fuel price increases from customers in the form of fuel surcharges. We implemented customer fuel surcharge programs with most of our customers to offset much of the higher fuel cost per gallon. However, we do not recover all of the fuel cost increase through these surcharge programs. As of December 31, 2022 December 31, 2023, we had no derivative financial instruments to reduce our exposure to fuel price fluctuations.

##### Foreign Currency Exchange Rate Risk

We conduct business in foreign countries, primarily in Mexico. To date, most foreign revenues are denominated in U.S. Dollars, and we receive payment for foreign freight services primarily in U.S. Dollars to reduce direct foreign currency risk. Assets and liabilities maintained by a foreign subsidiary company in the local currency are subject to foreign exchange gains or losses. Foreign currency translation gains and losses primarily relate to changes in the value of revenue equipment owned by a subsidiary in Mexico, whose functional currency is the Peso. Foreign currency translation gains were \$6.1 million and \$2.4 million for the year ended December 31, 2022 December 31, 2023 and foreign currency translation losses were \$1.4 million for the year ended December 31, 2021, 2022, respectively, and were recorded in accumulated other comprehensive loss within stockholders' equity in the consolidated balance sheets. The exchange rate between the Mexican Peso and the U.S. Dollar was 19.36 16.89 Pesos to \$1.00 at December 31, 2022 December 31, 2023 compared to 20.58 19.36 Pesos to \$1.00 at December 31, 2021 December 31, 2022.

##### Interest Rate Risk

We manage interest rate exposure through a mix of variable interest rate debt and interest rate swap agreements. We had \$150.0 million \$280.0 million of variable interest rate debt outstanding at December 31, 2022 December 31, 2023, for which the interest rate is effectively fixed at 2.78% through May 2024 4.31% with two interest rate swap agreements to reduce our exposure to interest rate increases. In addition, we had \$450.0 million \$280.0 million of variable interest rate debt outstanding at December 31, 2022 December 31, 2023. The interest rates on our unused credit facility are based on Secured Overnight Financing Rate ("SOFR"). See Note 8 in the Notes to Consolidated Financial Statements under Item 8 of Part II of this Form 10-K for further detail of our debt. Assuming this level of borrowing, a hypothetical one-percentage point increase in the SOFR interest rate would increase our annual interest expense by approximately \$4.5 million. \$4.3 million for the next 12-month period.

#### ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

##### Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors  
Werner Enterprises, Inc.:

###### Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Werner Enterprises, Inc. and subsidiaries (the Company) as of December 31, 2022 December 31, 2023 and 2021, 2022, the related consolidated statements of income, comprehensive income, stockholders' equity and temporary equity - redeemable noncontrolling interest, and cash flows for each of the years in the three-year period ended December 31, 2022 December 31, 2023, and the related notes and financial statement schedule II valuation and qualifying accounts (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 December 31, 2023 and 2021, 2022, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2022 December 31, 2023, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022 December 31, 2023, based on criteria established in *Internal Control – Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 27, 2023 February 26, 2024 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

###### Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles

used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

#### Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

#### Evaluation of insurance and claims accruals

As discussed in Note 1 to the consolidated financial statements, the Company estimates the insurance and claims accruals related to (1) cargo loss and damage, (2) bodily injury and property damage, (3) group health, and (4) workers' compensation claims not covered by insurance. The Company's current and non-current insurance and claims accruals were **\$78.6 million** **\$81.8 million** and **\$244.9 million** **\$239.7 million**, respectively. The accruals specifically for bodily injury and property damage and workers' compensation are based upon individual case estimates and actuarial estimates of loss development for reported losses and incurred-but-not-reported losses using loss development factors based upon past experience. In order to determine the loss development factors, the Company makes judgments relating to the comparability of historical claims to current claims. These judgments consider the nature, frequency, severity and age of claims, and industry, regulatory, and company-specific trends impacting the development of claims. The Company has an independent actuary review their calculation of these undiscounted insurance and claims accruals.

We identified the evaluation of the Company's insurance and claims accruals related to bodily injury and property damage and workers' compensation claims not covered by insurance as a critical audit matter. Specifically, evaluating the loss development factors used to determine these insurance and claims accruals involved a high degree of complexity and subjectivity. In addition, specialized skills were needed to evaluate the Company's models to calculate these undiscounted insurance and claims accruals.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls related to these insurance and claims accruals, including controls related to the determination of loss development factors used to determine these insurance and claims accruals. We involved actuarial professionals with specialized skills and knowledge who assisted in:

- assessing the models used by the Company to determine these insurance and claims accruals for consistency with generally accepted actuarial standards
- assessing the determination of loss development factors used in the models for consistency with historical Company data and company-specific trends
- developing an independent expectation of the Company's insurance and claims accruals and comparing to the Company's estimate.

We tested historical claims paid and claims reported, but not paid, that are used as an input to the Company's models to calculate these insurance and claims accruals for consistency with data used in the prior year. We tested actual claims paid and claims reported, but not paid, for the current year that are used as an input to the Company's models to calculate these insurance and claims accruals for consistency with the Company's actual claims paid and claims reported, but not paid. We compared the Company's prior period insurance and claims accruals to actual claims in the current period to assess the Company's ability to accurately estimate costs.

/s/ KPMG LLP

We have served as the Company's auditor since 1999.

Omaha, Nebraska

February 27, 2023

26, 2024

#### WERNER ENTERPRISES, INC. CONSOLIDATED STATEMENTS OF INCOME

(In thousands, except per share amounts)	Years Ended December 31,			Years Ended December 31,		
	2022	2021	2020	(In thousands, except per share amounts)	2023	2022
Operating revenues	Operating revenues	\$3,289,978	\$2,734,372	\$2,372,178		
Operating expenses:	Operating expenses:					
Salaries, wages and benefits						
Salaries, wages and benefits						
Salaries, wages and benefits	Salaries, wages and benefits	1,020,609	895,012	795,847		

Fuel	Fuel	437,299	245,866	157,124
Supplies and maintenance	Supplies and maintenance	253,096	206,701	175,842
Taxes and licenses	Taxes and licenses	97,929	96,095	95,746
Insurance and claims	Insurance and claims	147,365	98,658	109,816
Depreciation and amortization	Depreciation and amortization	279,923	267,700	263,286
Rent and purchased transportation	Rent and purchased transportation	777,464	641,159	519,184
Communications and utilities	Communications and utilities	15,856	13,460	14,474
Other	Other	(62,639)	(39,425)	13,421
Total operating expenses	Total operating expenses	2,966,902	2,425,226	2,144,740
Operating income	Operating income	323,076	309,146	227,438
Other expense (income):	Other expense (income):			
Interest expense	Interest expense	11,828	4,423	4,215
Interest expense	Interest expense			
Interest income	Interest income	(1,731)	(1,211)	(1,634)
Gain on investments in equity securities, net	Gain on investments in equity securities, net	(12,195)	(40,317)	—
Loss (gain) on investments in equity securities, net	Loss (gain) on investments in equity securities, net			
Loss from equity method investment	Loss from equity method investment			
Other	Other	388	236	163
Total other expense (income)	Total other expense (income)	(1,710)	(36,869)	2,744
Income before income taxes	Income before income taxes	324,786	346,015	224,694
Income tax expense	Income tax expense	79,206	84,537	55,616
Net income	Net income	245,580	261,478	169,078
Net income attributable to noncontrolling interest	Net income attributable to noncontrolling interest	(4,324)	(2,426)	—
Net loss (income) attributable to noncontrolling interest	Net loss (income) attributable to noncontrolling interest			
Net income attributable to Werner	Net income attributable to Werner	\$ 241,256	\$ 259,052	\$ 169,078
Earnings per share:	Earnings per share:			
Basic	Basic	\$ 3.76	\$ 3.84	\$ 2.45

Diluted	Diluted	\$ 3.74	\$ 3.82	\$ 2.44
Weighted-average common shares outstanding:	Weighted-average common shares outstanding:			
Basic	Basic	64,125	67,434	69,018
Basic	Basic			
Diluted	Diluted	64,579	67,855	69,427

See Notes to Consolidated Financial Statements.

**WERNER ENTERPRISES, INC.**  
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

(In thousands)	(In thousands)	Years Ended December 31,			Years Ended December 31,		
		2022	2021	2020	2023	2022	2021
Net income	Net income	\$245,580	\$261,478	\$169,078			
Other comprehensive income (loss):	Other comprehensive income (loss):						
Foreign currency translation adjustments	Foreign currency translation adjustments	2,426	(1,381)	(2,867)			
Foreign currency translation adjustments	Foreign currency translation adjustments						
Change in fair value of interest rate swaps, net of tax	Change in fair value of interest rate swaps, net of tax	6,886	3,610	(5,238)			
Other comprehensive income (loss)	Other comprehensive income (loss)	9,312	2,229	(8,105)			
Other comprehensive income, net	Other comprehensive income, net						
Comprehensive income	Comprehensive income	254,892	263,707	160,973			
Comprehensive income attributable to noncontrolling interest	Comprehensive income attributable to noncontrolling interest	(4,324)	(2,426)	—			
Comprehensive loss (income) attributable to noncontrolling interest	Comprehensive loss (income) attributable to noncontrolling interest						
Comprehensive income attributable to Werner	Comprehensive income attributable to Werner	\$250,568	\$261,281	\$160,973			

See Notes to Consolidated Financial Statements.

**WERNER ENTERPRISES, INC.**  
**CONSOLIDATED BALANCE SHEETS**

		December 31,			
		December 31,		December 31,	
(In thousands, except share amounts)		(In thousands, except share amounts)		(In thousands, except share amounts)	
		2022	2021	2023	2022
<b>ASSETS</b>	<b>ASSETS</b>				
Current assets:	Current assets:				
Current assets:	Current assets:				
Cash and cash equivalents	Cash and cash equivalents	\$ 107,240	\$ 54,196		
Accounts receivable, trade, less allowance of \$10,271 and \$9,169, respectively		518,815	460,518		
Cash and cash equivalents					
Cash and cash equivalents					
Accounts receivable, trade, less allowance of \$9,337 and \$10,271, respectively					
Other receivables	Other receivables	29,875	24,449		
Inventories and supplies	Inventories and supplies	14,527	11,140		
Prepaid taxes, licenses and permits	Prepaid taxes, licenses and permits	17,699	17,549		
Other current assets	Other current assets	74,459	63,361		
Other current assets					
Other current assets					
Total current assets	Total current assets	762,615	631,213		
Property and equipment, at cost:	Property and equipment, at cost:				
Land					
Land					
Land	Land	100,594	77,172		
Buildings and improvements	Buildings and improvements	309,241	287,331		
Revenue equipment	Revenue equipment	2,169,172	1,910,874		
Service equipment and other	Service equipment and other	306,634	282,448		
Total property and equipment	Total property and equipment	2,885,641	2,557,825		
Less – accumulated depreciation	Less – accumulated depreciation	1,060,365	944,582		
Property and equipment, net	Property and equipment, net	1,825,276	1,613,243		
Goodwill	Goodwill	132,717	74,618		
Intangible assets, net	Intangible assets, net	81,502	55,315		

Other non-current assets	Other non-current assets	295,145	229,324
Total assets	Total assets	\$3,097,255	\$2,603,713
<b>LIABILITIES, TEMPORARY EQUITY AND STOCKHOLDERS' EQUITY</b>	<b>LIABILITIES, TEMPORARY EQUITY AND STOCKHOLDERS' EQUITY</b>		
Current liabilities:	Current liabilities:		
Current liabilities:			
Accounts payable			
Accounts payable			
Accounts payable	Accounts payable	\$ 124,483	\$ 93,987
Current portion of long-term debt	Current portion of long-term debt	6,250	5,000
Insurance and claims accruals	Insurance and claims accruals	78,620	72,594
Accrued payroll	Accrued payroll	49,793	44,333
Accrued expenses			
Accrued expenses			
Accrued expenses	Accrued expenses	20,358	28,758
Other current liabilities	Other current liabilities	30,016	24,011
Total current liabilities	Total current liabilities	309,520	268,683
Long-term debt, net of current portion	Long-term debt, net of current portion	687,500	422,500
Other long-term liabilities	Other long-term liabilities	59,677	43,314
Insurance and claims accruals, net of current portion	Insurance and claims accruals, net of current portion	244,946	237,220
Deferred income taxes	Deferred income taxes	313,278	268,499
Total liabilities	Total liabilities	1,614,921	1,240,216
Commitments and contingencies	Commitments and contingencies		
Temporary equity - redeemable	Temporary equity - redeemable		
noncontrolling interest	noncontrolling interest	38,699	35,947
Stockholders' equity:	Stockholders' equity:		
Common stock, \$0.01 par value, 200,000,000 shares authorized; 80,533,536 shares	Common stock, \$0.01 par value, 200,000,000 shares authorized; 80,533,536 shares		
issued; 63,223,003 and 65,790,112 shares outstanding, respectively	805	805	
Common stock, \$0.01 par value, 200,000,000 shares authorized; 80,533,536 shares			

Common stock, \$0.01 par value, 200,000,000 shares authorized; 80,533,536 shares issued; 63,444,681 and 63,223,003 shares outstanding, respectively issued; 63,444,681 and 63,223,003 shares outstanding, respectively issued; 63,444,681 and 63,223,003 shares outstanding, respectively			
Paid-in capital	Paid-in capital	129,837	121,904
Retained earnings	Retained earnings	1,875,873	1,667,104
Accumulated other comprehensive loss	Accumulated other comprehensive loss	(11,292)	(20,604)
Treasury stock, at cost; 17,310,533 and 14,743,424 shares, respectively		(551,588)	(441,659)
Treasury stock, at cost; 17,088,855 and 17,310,533 shares, respectively			
Total stockholders' equity	Total stockholders' equity	1,443,635	1,327,550
Total liabilities, temporary equity and stockholders' equity	Total liabilities, temporary equity and stockholders' equity	<u>\$3,097,255</u>	<u>\$2,603,713</u>

See Notes to Consolidated Financial Statements.

WERNER ENTERPRISES, INC. CONSOLIDATED STATEMENTS OF CASH FLOWS						
(In thousands)	(In thousands)	Years Ended December 31,			Years Ended December 31,	
		2022	2021	2020	(In thousands)	
Cash flows from operating activities:	Cash flows from operating activities:					
Net income	Net income	\$245,580	\$261,478	\$169,078		
Net income						
Net income						
Adjustments to reconcile net income to net cash provided by operating activities:	Adjustments to reconcile net income to net cash provided by operating activities:					
Depreciation and amortization						
Depreciation and amortization						
Depreciation and amortization	Depreciation and amortization	279,923	267,700	263,286		
Deferred income taxes	Deferred income taxes	42,553	29,488	(10,233)		
Gain on disposal of property and equipment	Gain on disposal of property and equipment	(88,564)	(60,528)	(11,271)		
Non-cash equity compensation	Non-cash equity compensation	12,486	10,807	8,903		

Insurance and claims accruals, net of current portion	Insurance and claims accruals, net of current portion	7,726	5,582	3,420
Gain on investments in equity securities, net		(12,195)	(40,317)	—
Loss (gain) on investments in equity securities, net				
Loss from equity method investment				
Other	Other	(13,295)	(3,105)	13,641
Changes in certain working capital items:	Changes in certain working capital items:			
Accounts receivable, net				
Accounts receivable, net	Accounts receivable, net	3,174	(101,007)	(18,258)
Other current assets	Other current assets	(18,333)	(27,903)	(7,390)
Accounts payable	Accounts payable	(3,665)	14,742	(2,483)
Other current liabilities	Other current liabilities	(6,679)	(24,118)	37,216
Net cash provided by operating activities	Net cash provided by operating activities	448,711	332,819	445,909
Cash flows from investing activities:	Cash flows from investing activities:			
Additions to property and equipment	Additions to property and equipment	(507,252)	(370,850)	(413,065)
Additions to property and equipment				
Additions to property and equipment				
Proceeds from sales of property and equipment	Proceeds from sales of property and equipment	189,673	177,801	146,824
Net cash invested in acquisitions	Net cash invested in acquisitions	(184,118)	(201,845)	—
Investment in equity securities		(20,250)	(10,000)	(5,000)
Investment in equity securities, net				
Payments to acquire equity method investment				
Purchase of promissory note				
Decrease in notes receivable	Decrease in notes receivable	7,614	7,593	7,966
Net cash used in investing activities				

Net cash used in investing activities					
Net cash used in investing activities	Net cash used in investing activities	(514,333)	(397,301)	(263,275)	
Cash flows from financing activities:					
Repayments of short-term debt	Repayments of short-term debt				
Repayments of short-term debt	Repayments of short-term debt	(3,750)	(27,500)	(90,000)	
Proceeds from issuance of short-term debt	Proceeds from issuance of short-term debt	—	5,000	40,000	
Repayments of long-term debt	Repayments of long-term debt	(100,000)	—	(50,000)	
Proceeds from issuance of long-term debt	Proceeds from issuance of long-term debt	370,000	250,000	—	
Dividends on common stock	Dividends on common stock	(32,162)	(29,083)	(24,888)	
Dividends on common stock					
Dividends on common stock	Dividends on common stock				
Repurchases of common stock	Repurchases of common stock	(110,400)	(104,444)	(56,521)	
Tax withholding related to net share settlements of restricted stock awards	Tax withholding related to net share settlements of restricted stock awards	(4,082)	(4,270)	(4,553)	
Distribution to noncontrolling interest	Distribution to noncontrolling interest	(1,572)	(35)	—	
Distribution to noncontrolling interest					
Distribution to noncontrolling interest					
Other					
Net cash provided by (used in) financing activities	Net cash provided by (used in) financing activities	118,034	89,668	(185,962)	
Effect of exchange rate fluctuations on cash	Effect of exchange rate fluctuations on cash	632	(324)	(780)	
Net increase (decrease) in cash and cash equivalents	Net increase (decrease) in cash and cash equivalents	53,044	24,862	(4,108)	
Cash and cash equivalents, beginning of period	Cash and cash equivalents, beginning of period	54,196	29,334	33,442	
Cash and cash equivalents, end of period	Cash and cash equivalents, end of period	\$107,240	\$ 54,196	\$ 29,334	
<b>Supplemental disclosures of cash flow information:</b>					
Interest paid	Interest paid	\$ 11,186	\$ 4,228	\$ 4,415	
Interest paid	Interest paid				
Interest paid	Interest paid				

Income taxes paid	Income taxes paid	40,313	81,185	54,173
<b>Supplemental schedule of non-cash investing and financing activities:</b>				
Notes receivable issued upon sale of property and equipment	Notes receivable issued upon sale of property and equipment	\$ 5,577	\$ 5,953	\$ 3,441
Notes receivable issued upon sale of property and equipment				
Notes receivable issued upon sale of property and equipment				
Change in fair value of interest rate swaps				
Change in fair value of interest rate swaps				
Change in fair value of interest rate swaps	Change in fair value of interest rate swaps	6,886	3,610	(5,238)
Property and equipment acquired included in accounts payable	Property and equipment acquired included in accounts payable	5,937	7,124	12,250
Property and equipment disposed included in other receivables	Property and equipment disposed included in other receivables	110	—	30
Dividends accrued but not yet paid at end of period	Dividends accrued but not yet paid at end of period	8,220	7,895	6,114
Noncontrolling interest associated with acquisition	Noncontrolling interest associated with acquisition	—	33,556	—
Contingent consideration associated with acquisition	Contingent consideration associated with acquisition	13,400	2,500	—

See Notes to Consolidated Financial Statements.

### Statements.

#### WERNER ENTERPRISES, INC. CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY AND TEMPORARY EQUITY - REDEEMABLE NONCONTROLLING INTEREST

(In thousands, except share and per share amounts)	(In thousands, except share and per share amounts)	Accumulated							Temporary Equity - Redeemable Noncontrolling Interest	(In thousands, except share and per share amounts)	Accumulated				To Stock Eq
		Common Stock	Paid-In Capital	Retained Earnings	Other Loss	Treasury Stock	Stockholders' Equity	Other Comprehensive Loss			Common Stock	Paid-In Capital	Retained Earnings	Treasury Stock	
BALANCE, December 31, 2019	\$ 805	\$112,649	\$1,294,608	\$ (14,728)	\$ (282,326)	\$ 1,111,008	\$ —								
Net income attributable to Werner	—	—	169,078	—	—	169,078	—								
Other comprehensive loss	—	—	—	(8,105)	—	(8,105)	—								
Purchase of 1,482,992 shares of common stock	—	—	—	—	(56,521)	(56,521)	—								
Dividends on common stock (\$0.36 per share)	—	—	(24,770)	—	—	(24,770)	—								

Equity compensation activity, 170,193 shares	—	(5,513)	—	—	960	(4,553)	—
Non-cash equity compensation expense	—	8,903	—	—	—	8,903	—
<b>BALANCE, December 31, 2020</b>	<b>BALANCE, December 31, 2020</b>	<b>805</b>	<b>116,039</b>	<b>1,438,916</b>	<b>(22,833)</b>	<b>(337,887)</b>	<b>1,195,040</b>
Net income attributable to Werner	Net income attributable to Werner	—	—	259,052	—	—	259,052
Net income attributable to noncontrolling interest	Net income attributable to noncontrolling interest	—	—	—	—	—	2,426
Other comprehensive income	Other comprehensive income	—	—	—	2,229	—	2,229
Purchase of 2,297,911 shares of common stock	Purchase of 2,297,911 shares of common stock	—	—	—	—	(104,444)	(104,444)
Dividends on common stock (\$0.46 per share)	Dividends on common stock (\$0.46 per share)	—	—	(30,864)	—	—	(30,864)
Equity compensation activity, 156,297 shares	Equity compensation activity, 156,297 shares	—	(4,942)	—	—	672	(4,270)
Non-cash equity compensation expense	Non-cash equity compensation expense	—	10,807	—	—	—	10,807
Investment in noncontrolling interest	Investment in noncontrolling interest	—	—	—	—	—	35,322
Purchase accounting adjustments	Purchase accounting adjustments	—	—	—	—	—	(1,766)
Distribution to noncontrolling interest	Distribution to noncontrolling interest	—	—	—	—	—	(35)
<b>BALANCE, December 31, 2021</b>	<b>BALANCE, December 31, 2021</b>	<b>805</b>	<b>121,904</b>	<b>1,667,104</b>	<b>(20,604)</b>	<b>(441,659)</b>	<b>1,327,550</b>
Net income attributable to Werner	Net income attributable to Werner	—	—	241,256	—	—	241,256
Net income attributable to noncontrolling interest	Net income attributable to noncontrolling interest	—	—	—	—	—	4,324
Other comprehensive income	Other comprehensive income	—	—	—	9,312	—	9,312
Purchase of 2,710,304 shares of common stock	Purchase of 2,710,304 shares of common stock	—	—	—	(110,400)	(110,400)	—
Dividends on common stock (\$0.51 per share)	Dividends on common stock (\$0.51 per share)	—	—	(32,487)	—	—	(32,487)

Equity compensation activity, 143,195 shares	Equity compensation activity, 143,195 shares	—	(4,553)	—	—	471	(4,082)	—
Non-cash equity compensation expense	Non-cash equity compensation expense	—	12,486	—	—	—	12,486	—
Distribution to noncontrolling interest								
Distribution to noncontrolling interest								
Distribution to noncontrolling interest	Distribution to noncontrolling interest	—	—	—	—	—	—	(1,572)
BALANCE, December 31, 2022	BALANCE, December 31, 2022	\$ 805	\$129,837	\$1,875,873	\$ (11,292)	\$ (551,588)	\$ 1,443,635	\$ 38,699
Net income attributable to Werner								
Net loss attributable to noncontrolling interest								
Other comprehensive income								
Dividends on common stock (\$0.55 per share)								
Dividends on common stock (\$0.55 per share)								
Dividends on common stock (\$0.55 per share)								
Equity compensation activity, 221,678 shares								
Non-cash equity compensation expense								
BALANCE, December 31, 2023								
BALANCE, December 31, 2023								
BALANCE, December 31, 2023								

See Notes to Consolidated Financial Statements.

**WERNER ENTERPRISES, INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

**(1) SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**Principles of Consolidation:** The accompanying consolidated financial statements include the accounts of Werner Enterprises, Inc. and its subsidiaries (collectively, the "Company"). **Redeemable noncontrolling interest on the consolidated balance sheets represents the portion of a consolidated entity in which we do not have a direct equity ownership. In these notes, the terms "we," "us," or "our" refer to Werner Enterprises, Inc. and its subsidiaries.** All significant intercompany accounts and transactions relating to these entities have been eliminated.

**Nature of Business:** The Company is a truckload transportation and logistics provider operating under the jurisdiction of the U.S. Department of Transportation, similar governmental transportation agencies in the foreign countries in which we operate and various U.S. state regulatory authorities. Our ten largest customers comprised 48%, 46%, and 49% of our revenues for the year ended December 31, 2022, and 49% for the years ended December 31, 2021 December 31, 2023, 2022, and 2020, 2021, respectively. Our largest customer, Dollar General, accounted for 10% of our total revenues in 2023, and 14% of our total revenues in 2022 and 2021, and 12% in 2020, 2021. Revenues generated

by Dollar General are reported in both of our reportable operating segments. Dollar General accounted for **13% 10%** and **16% 13%** of our accounts receivable, trade balance as of **December 31, 2022** **December 31, 2023** and **2021, 2022**, respectively.

**Use of Management Estimates:** The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the (i) reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and (ii) reported amounts of revenues and expenses during the reporting period. The most significant estimates that affect our financial statements include the accrued liabilities for insurance and claims and useful lives and salvage values of property and equipment. Actual results could differ from those estimates.

**Cash and Cash Equivalents:** We consider all highly liquid investments, purchased with a maturity of three months or less, to be cash equivalents. Accounts at banks with an aggregate excess of the amount of checks issued over cash balances are included in current liabilities in the consolidated balance sheets, and changes in such accounts are reported as a financing activity in the consolidated statements of cash flows.

**Trade Accounts Receivable:** We record trade accounts receivable at the invoiced amounts, net of an allowance for doubtful accounts for potentially uncollectible receivables. We review the financial condition of customers for granting credit and determine the allowance based on analysis of individual customers' financial condition, historical write-off experience and national economic conditions. We evaluate the adequacy of our allowance for doubtful accounts quarterly. Past due balances over 90 days and exceeding a specified amount are reviewed individually for collectibility. Account balances are charged off against the allowance after all means of collection have been exhausted and the potential for recovery is considered remote. We do not have any off-balance-sheet credit exposure related to our customers.

**Inventories and Supplies:** Inventories and supplies are stated at the lower of average cost and net realizable value and consist primarily of revenue equipment parts, tires, fuel and supplies. Tires placed on new revenue equipment are capitalized as a part of the equipment cost. Replacement tires are expensed when placed in service.

**Property, Equipment, and Depreciation:** Additions and improvements to property and equipment are capitalized at cost, while maintenance and repair expenditures are charged to operations as incurred. Gains and losses on the sale or exchange of property and equipment are recorded in other operating expenses.

Depreciation is calculated based on the cost of the asset, reduced by the asset's estimated salvage value, using the straight-line method. Accelerated depreciation methods are used for income tax purposes. The lives and salvage values assigned to certain assets for financial reporting purposes are different than for income tax purposes. For financial reporting purposes, assets are generally depreciated using the following estimated useful lives and salvage values:

	Lives	Salvage Values
Building and improvements	30 years	0%
Tractors	80 months	\$0 - \$10,000
Trailers	12 years	\$6,000
Service and other equipment	3-10 years	0%

Depreciation expense was **\$273.8 million** **\$289.2 million**, **\$265.8 million** **\$273.8 million**, and **\$263.3 million** **\$265.8 million** for the years ended **December 31, 2022** **December 31, 2023**, **2021, 2022**, and **2020** **2021** respectively, and is reported in depreciation and amortization on the consolidated statements of income.

Due to the **ongoing** stronger used trailer market and the **increasing** **increased** cost of new trailers, a change in accounting estimate was made during the first quarter of 2022, which decreased depreciation expense by \$12.7 million in 2022. During first quarter 2020, we changed the **estimated life of certain trucks expected to be sold in 2020 to more rapidly depreciate the trucks to their estimated residual values due to the weak used truck market. The effect of this change in accounting estimate was a \$9.6 million increase to 2020 depreciation expense. These trucks continued to depreciate at the same higher rate per truck, until all were sold in 2020.**

**Goodwill:** Goodwill represents the excess of cost over the fair value of net identifiable tangible and intangible assets acquired in business combinations and is allocated to reporting units that are expected to benefit from the combinations. Goodwill is not amortized, but rather is tested for impairment annually in the fourth quarter, or more frequently if indicators of a potential impairment exist. Impairment exists when the carrying amount of a reporting unit that includes goodwill exceeds its fair value, resulting in an impairment charge for the excess up to the amount of goodwill allocated to the reporting unit. To test goodwill for impairment, we have the option to first perform a qualitative assessment to determine if it is more likely than not that the carrying amount of a reporting unit exceeds its fair value. If a qualitative test indicates a potential for impairment, a quantitative impairment test must be performed. Alternatively, we may bypass the qualitative assessment and perform a quantitative impairment test. A qualitative assessment considers relevant events and circumstances such as macroeconomic, industry, and market conditions; legal, regulatory, and competitive environments; and overall financial performance. For a quantitative impairment test, we estimate the fair values of the goodwill reporting units and compare it to their carrying values. The estimated fair values of the reporting units are established using a combination of the income and market approaches. No impairment charges have resulted from the annual impairment tests.

**Amortization of Intangible Assets:** Intangible assets with finite lives are amortized on a straight-line basis over their estimated useful lives, ranging from **ten** **10** to 12 years.

**Long-Lived Assets and Intangible Assets:** We review our long-lived assets and finite-lived intangible assets for impairment whenever events or circumstances indicate the carrying amount of such assets may not be recoverable. If based on that review, changes in circumstances indicate that the carrying amount of such assets may not be recoverable, we evaluate recoverability by comparing the undiscounted cash flows associated with the asset to the asset's carrying amount. We also evaluate the remaining useful lives of intangible assets to determine if events or trends warrant a revision to the remaining period of amortization. An impairment loss would be recognized if the carrying amount of the long-lived asset or intangible asset is not recoverable and the carrying amount exceeds its fair value. For long-lived assets classified as held and used, the carrying amount is not recoverable when the carrying value of the long-lived asset exceeds the sum of the future net cash flows. We do not separately identify assets by operating segment because tractors and trailers are routinely transferred from one operating fleet to another. As a result, none of our long-lived assets have identifiable cash flows from use that are largely

independent of the cash flows of other assets and liabilities. Thus, the asset group used to assess impairment would include all of our assets. No impairment charges were recorded during the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020 2021.

**Insurance and Claims Accruals:** Insurance and claims accruals (both current and non-current) reflect the estimated cost (including estimated loss development, incurred-but-not-reported losses and loss adjustment expenses) for (i) cargo loss and damage, (ii) bodily injury and property damage, (iii) group health and (iv) workers' compensation claims not covered by insurance. The costs for cargo, bodily injury and property damage insurance and claims are included in insurance and claims expense in the consolidated statements of income; the costs of group health and workers' compensation claims are included in salaries, wages and benefits expense. The insurance and claims accruals are recorded at the estimated ultimate payment amounts. The accruals for bodily injury, property damage and workers' compensation are based upon individual case estimates and actuarial estimates of loss development for reported losses and incurred-but-not-reported losses using loss development factors based upon past experience. In order to determine the loss development factors, we make judgments relating to the comparability of historical claims to current claims. These judgments consider the nature, frequency, severity, and age of claims, and industry, regulatory, and company-specific trends impacting the development of claims. An independent actuary reviews our calculation of the undiscounted self-insurance reserves for bodily injury and property damage claims and workers' compensation claims at year-end.

We renewed our liability insurance policies on August 1, 2022 August 1, 2023 and are responsible for the first \$10.0 million per claim on all claims with an annual \$12.5 million aggregate for claims between \$10.0 million and \$20.0 million. For the policy year that began August 1, 2022, we were responsible for the first \$10.0 million per claim on all claims with an annual \$10.0 million aggregate for claims between \$10.0 million and \$20.0 million. For the policy year that began August 1, 2021, we were responsible for the first \$10.0 million per claim on all claims with an annual \$10.0 million aggregate for claims between \$10.0 million and \$15.0 million. For the policy year that began on August 1, 2020, we were responsible for the first \$10.0 million per claim with no aggregates. Our self-insured retention ("SIR") and deductible amount was \$3.0 million, with an additional \$5.0 million deductible per claim for each claim between \$5.0 million and \$10.0 million, for policy years from August 1, 2017 through July 31, 2020, and we were also responsible for annual aggregate amounts of liability for claims in excess of the SIR and deductible. We maintain liability insurance coverage with insurance carriers in excess of the \$10.0 million per claim. We are also responsible for administrative expenses for each occurrence involving bodily injury or property damage.

Our SIR self-insured retention ("SIR") for workers' compensation claims is \$2.0 million \$2.0 million per claim, with premium-based coverage (issued by insurance companies) for claims exceeding this amount. Our SIR for workers' compensation claims increased from \$1.0 million to \$2.0 million per claim on April 1, 2020. We also maintain a \$25.0 million \$24.9 million bond for the State of Nebraska and a \$14.5 million \$15.1 million bond for our workers' compensation insurance carrier.

Under these insurance arrangements, we maintained \$46.8 million \$49.4 million in letters of credit as of December 31, 2022 December 31, 2023.

**Revenue Recognition:** The consolidated statements of income reflect recognition of operating revenues (including fuel surcharge revenues) and related direct costs over time as control of the promised services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those services. For shipments where a third-party capacity provider (including independent contractors under contract with us) is utilized to provide some or all of the service, we evaluate whether we are the principal (i.e., report revenues on a gross basis) or agent (i.e., report revenues on a net basis).

**Foreign Currency Translation:** Local currencies are generally considered the functional currencies outside the United States. Assets and liabilities are translated at year-end exchange rates for operations in local currency environments. Foreign revenues and expense items denominated in the functional currency are translated at the average rates of exchange prevailing during the year. Foreign currency translation adjustments reflect the changes in foreign currency exchange rates applicable to the net assets of the foreign operations. Foreign currency translation adjustments are recorded in accumulated other comprehensive loss within stockholders' equity in the consolidated balance sheets and as a separate component of comprehensive income in the consolidated statements of comprehensive income.

**Income Taxes:** Deferred income tax assets and liabilities are recognized for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. Deferred income tax assets and liabilities are measured using the enacted tax rates that are expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

In accounting for uncertain tax positions, we recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate settlement. We recognize interest and penalties directly related to income tax matters in income tax expense.

**Common Stock and Earnings Per Share:** Basic earnings per share is computed by dividing net income attributable to Werner by the weighted average number of common shares outstanding during the period. Diluted earnings per share is computed by dividing net income attributable to Werner by the weighted average number of common shares outstanding plus the effect of dilutive potential common shares outstanding during the period using the treasury stock method. Dilutive potential common shares include outstanding stock options and restricted stock awards. Performance awards are excluded from the calculation of dilutive potential common shares until the threshold performance conditions have been satisfied. There are no differences in the numerators of our computations of basic and diluted earnings per share for any periods presented. The computation of basic and diluted earnings per share is shown below (in thousands, except per share amounts).

	Years Ended December 31,		
	2022	2021	2020
Net income attributable to Werner	\$ 241,256	\$ 259,052	\$ 169,078
Weighted average common shares outstanding	64,125	67,434	69,018
Dilutive effect of stock-based awards	454	421	409
Shares used in computing diluted earnings per share	64,579	67,855	69,427

Basic earnings per share	\$ 3.76	\$ 3.84	\$ 2.45
Diluted earnings per share	\$ 3.74	\$ 3.82	\$ 2.44

There were no options to purchase shares of common stock that were outstanding during the periods indicated above that were excluded from the computation of diluted earnings per share because the option purchase price was greater than the average market price of the common shares during the period. Performance awards are excluded from the calculation of dilutive potential common shares until the threshold performance conditions have been satisfied.

	Years Ended December 31,		
	2023	2022	2021
Net income attributable to Werner	\$ 112,382	\$ 241,256	\$ 259,052
Weighted average common shares outstanding	63,374	64,125	67,434
Dilutive effect of stock-based awards	344	454	421
Shares used in computing diluted earnings per share	63,718	64,579	67,855
Basic earnings per share	\$ 1.77	\$ 3.76	\$ 3.84
Diluted earnings per share	\$ 1.76	\$ 3.74	\$ 3.82

**Equity Compensation:** We have an equity compensation plan that provides for grants of non-qualified stock options, restricted stock and units ("restricted awards"), unrestricted stock awards, performance awards and stock appreciation rights to our associates employees, directors, and consultants. We apply the fair value method of accounting for equity compensation awards. Issuances of stock upon an exercise of stock options or vesting of restricted stock are made from treasury stock; shares reacquired to satisfy withholding obligations upon vesting of restricted stock are recorded as treasury stock. Grants of stock options, restricted stock, and performance awards vest in increments, and we recognize compensation expense over the requisite service period of each award. We accrue compensation expense for performance awards for the estimated number of shares expected to be issued using the most current information available at the date of the financial statements. If the performance objectives are not met, no compensation expense will be recognized, and any previously recognized compensation expense will be reversed. We account for forfeitures in the period in which they occur.

**Comprehensive Income:** Comprehensive income consists of net income and other comprehensive income (loss). Other comprehensive income (loss) refers to revenues, expenses, gains and losses that are not included in net income, but rather are recorded directly in stockholders' equity. For the years ended December 31, 2022 December 31, 2023, 2021 2022, and 2020, 2021, comprehensive income consists of net income, foreign currency translation adjustments and change in fair value of interest rate swaps. The components of accumulated other comprehensive loss reported in the consolidated balance sheets as of December 31, 2022 December 31, 2023 and 2021, 2022, consisted of foreign currency translation adjustment losses of \$16.2 million \$10.0 million and \$18.6 million \$16.2 million, respectively, and gains of \$4.9 million \$0.3 million and losses of \$2.0 million \$4.9 million related to changes in fair value of interest rate swaps, net of tax, respectively.

**New Recently Issued Accounting Pronouncements, Adopted: Not Yet Effective:** In first quarter 2022, we adopted November 2023, the Financial Accounting Standards Board ("FASB") issued Accounting Standards Update ("ASU") No. 2020-04, 2023-07 *Reference Rate Reform Segment Reporting (Topic 848) 280: Improvements to Reportable Segment Disclosures*, which provides optional guidance for a limited period with the objective of time to ease the potential burden in accounting for reference rate reform on improving financial reporting, primarily through enhanced disclosures about significant segment expenses. The provisions of this update apply are effective for fiscal years beginning after December 15, 2023, and interim periods within fiscal years beginning after December 15, 2024, using a retrospective approach. Early adoption is permitted. We are evaluating the impact of adopting ASU 2023-07, and we expect this ASU to only impact our disclosures with no impacts to contracts, hedging relationships, our results of operations, cash flows, and other transactions that reference financial condition.

In December 2023, FASB issued ASU 2023-09 *Income Taxes (Topic 740): Improvements to Income Tax Disclosures*, with the London Interbank Offered Rate ("LIBOR") or another reference objective of enhancing the transparency and decision usefulness of income tax information through income tax disclosure improvements, primarily related to the rate expected reconciliation and income taxes paid information. The provisions of this update are effective for annual periods beginning after December 15, 2024, using a prospective approach. Early adoption and retrospective application are permitted. We are evaluating the impact of adopting ASU 2023-09, and we expect this ASU to be discontinued because only impact our disclosures with no impacts to our results of reference rate reform. The adoption of the new guidance did not have a material impact on our consolidated operations, cash flows, and financial statements condition.

## (2) BUSINESS ACQUISITIONS

### 2022 Business Acquisitions

Developments during the year ended December 31, 2023 related to our 2022 business acquisitions are discussed below.

#### ReedTMS Acquisition

On November 5, 2022, we acquired 100% of the equity interests in Reed Transport Services, Inc. and RTS-TMS, Inc., doing business as ReedTMS Logistics ("ReedTMS"), for a total final purchase price of \$109.2 million \$108.6 million after including the impacts of working capital adjustments, cash acquired, net present value of future insurance payments, and contingent consideration. The contingent consideration, arrangement, also referred to as earnout, requires us to pay the former owners of ReedTMS an additional amount in cash if ReedTMS achieves certain performance financial goals over a one-year period beginning January 1, 2023. The potential undiscounted future contingent earnout payment that we could be required to make is between \$0 and \$7.5 million. On a pro forma basis (unaudited), operating revenues for ReedTMS for the year ended December 31, 2022 was \$368.5 million and operating revenues for ReedTMS for the year ended December 31, 2021 was \$339.8 million earnout. We financed the transaction through existing credit facilities. The contingent earnout period related to the ReedTMS acquisition ended on December 31, 2023 and resulted in an additional cash payment of \$1.5 million based on the

achievement level of certain financial performance goals. This payment resulted in Tampa, Florida, a \$2.7 million net favorable change to the contingent earnout liability, which was recorded in other operating expenses on the consolidated statements of income for the year ended December 31, 2023.

ReedTMS is an asset-light logistics provider and dedicated truckload carrier that offers a comprehensive suite of freight brokerage and truckload solutions to a diverse customer base. The acquisition further strengthens our freight brokerage capabilities and elevates our logistics portfolio with new customers.

The results of operations for ReedTMS are included in our consolidated financial statements beginning November 5, 2022. Freight brokerage and truckload revenues generated by ReedTMS are reported in our Werner Logistics segment and in Dedicated within our Truckload Transportation Services ("TTS") segment, respectively. We incurred transaction costs related to the acquisition, such as legal and professional fees, of \$0.7 million for the year ended December 31, 2022, which is included in other operating expenses on the consolidated statements of income.

## **Baylor Acquisition**

On October 1, 2022, we acquired 100% of the equity interests in FAB9, Inc., doing business as Baylor Trucking, Inc. ("Baylor"), for a final **total** purchase price of \$89.0 million after including the impacts of working capital adjustments, cash acquired, and contingent consideration. **We financed the transaction through existing credit facilities.** The contingent consideration arrangement requires us to pay the former owner of Baylor an additional amount in cash if Baylor achieves certain performance financial goals over a three-year period beginning on November 1, 2022. The potential undiscounted future contingent earnout payment that we could be required to make is between \$0 and \$15.0 million. **We financed the transaction through existing credit facilities.**

Baylor based in Milan, Indiana, operates 200 trucks and 980 trailers in the east central and south central United States. The acquisition expands our terminal, fleet, and professional driver presence in these geographic truckload markets and adds two terminals to our network.

The results of operations for Baylor are included in our consolidated financial statements beginning October 1, 2022. Revenues generated by Baylor are reported in One-Way Truckload within our TTS segment. We incurred transaction costs related to the acquisition, such as legal and professional fees, of \$0.4 million for the year ended December 31, 2022, which is included in other operating expenses on the consolidated statements of income. No measurement period adjustments were recorded during the year ended December 31, 2023.

## **Purchase Price Allocations**

We accounted for the ReedTMS and Baylor purchases using the acquisition method of accounting under U.S. generally accepted accounting principles (GAAP). The purchase price of each acquisition has been allocated to the assets acquired and liabilities assumed using market data and valuation techniques. The estimated fair values of the assets acquired and liabilities assumed are considered provisional for ReedTMS and Baylor, pending the completion of acquired tangible assets valuations, independent valuations of certain acquired intangible assets, and calculations of deferred taxes based upon the underlying tax basis of assets acquired and liabilities assumed. The determination of estimated fair values requires management to make significant estimates and assumptions. We believe that the information available provides a reasonable basis for estimating the values of assets acquired and liabilities assumed in the ReedTMS and Baylor acquisitions; however, these provisional estimates may be adjusted upon the availability of new information regarding facts and circumstances which existed at the acquisition dates, and such adjustments may impact future earnings. We expect to finalize the valuation of assets and liabilities for ReedTMS and Baylor as soon as practicable, but not later than one year from the respective acquisition dates. Any adjustments to the initial estimates of the fair value of the acquired assets and liabilities assumed in the ReedTMS and Baylor acquisitions will be recorded as adjustments to the respective assets and liabilities, with the residual amounts allocated to goodwill.

The provisional purchase price allocations for ReedTMS and Baylor were considered final as of December 31, 2022 are summarized as follows June 30, 2023.

The following table summarizes the purchase price allocation for ReedTMS, including any adjustments (in thousands):

ReedTMS	Baylor
November 5, 2022	
Opening Balance	
Sheet	
as Reported at	
December 31,	
2022	
<u>Purchase</u>	<u>Purchase</u>
<u>Price</u>	<u>Price</u>
<u>Purchase Price</u>	
<u>Purchase Price</u>	
Cash consideration paid	
Cash consideration paid	
Cash consideration paid	Cash consideration paid
\$ 116,989	\$ 90,150
\$ 116,989	\$ —
\$ 116,989	\$ —

Cash and cash equivalents acquired	Cash and cash equivalents acquired	(12,120)	(10,150)	
Contingent consideration arrangement	Contingent consideration arrangement	5,000	8,400	
Contingent consideration arrangement				
Contingent consideration arrangement		5,000	(800)	4,200
Working capital surplus (deficiency)	Working capital surplus (deficiency)	(689)	643	
Total purchase price (fair value of consideration)	Total purchase price (fair value of consideration)	109,180	89,043	
Total purchase price (fair value of consideration)				
Total purchase price (fair value of consideration)				
<u>Purchase Price Allocation</u>				
<u>Purchase Price Allocation</u>				
Purchase Price Allocation	Purchase Price Allocation			
Current assets	Current assets	52,531	11,371	
Current assets				
Current assets				
Property and equipment	Property and equipment			
Property and equipment				
Property and equipment	Property and equipment	35,000	54,639	
Intangible assets	Intangible assets	12,000	20,300	
Intangible assets				
Intangible assets				
Other non-current assets	Other non-current assets			
Other non-current assets				
Other non-current assets	Other non-current assets current assets	7,927	556	
Total assets acquired	Total assets acquired	107,458	86,866	
Total assets acquired				
Total assets acquired				
Current liabilities				

Current liabilities			
Current liabilities	Current liabilities	(45,497)	(2,993)
Other long-term liabilities	Other long-term liabilities	(5,622)	(302)
Other long-term liabilities			
Other long-term liabilities			
Total liabilities assumed			
Total liabilities assumed			
Total liabilities assumed	Total liabilities assumed	(51,119)	(3,295)
Goodwill	Goodwill	\$ 52,841	\$ 5,472
Goodwill			
Goodwill			

(1) The measurement period adjustments were recorded during the three months ended March 31, 2023. No material statement of income effects were identified with these adjustments.

(2) Includes \$0.9 million related to the net present value of future insurance payments. At closing, \$11.5 million of the cash consideration was placed in escrow to secure certain indemnification obligations of the sellers and to cover post-closing adjustments.

(3) At closing, \$8.5 million During the three months ended March 31, 2023, we received \$2.1 million from escrow for post-closing adjustments. The remaining balance of the cash consideration escrow, except for \$0.5 million, was placed in escrow returned to secure certain indemnification obligations of the sellers. In exchange, the sellers and to cover post-closing adjustments obtained a \$10.0 million Standby Letter of Credit with the Company named as beneficiary.

(4) The estimated fair value of the ReedTMS and Baylor contingent consideration arrangements earnout liability was based upon probability-adjusted inputs for each acquired entity and are recorded in other long-term liabilities on the consolidated balance sheet as of December 31, 2022.

#### Goodwill and Intangible Assets

Goodwill associated with For additional information regarding the ReedTMS and Baylor business acquisitions was primarily attributable to acquiring and retaining each valuation of the companies' existing networks and the anticipated synergies from combining the operations of the Company and the acquired companies. The goodwill associated with the acquisitions above is expected to be deductible for income tax purposes.

We have allocated a total of \$32.3 million of the purchase prices above to finite-lived intangible assets, consisting of customer relationships and trade names. The estimated fair values of the intangible assets were determined, with the assistance of an independent third-party valuation firm, using the multi-period excess earnings method for customer relationships and the relief-from-royalty method for trade names. All methods are forms of the income approach, which require a forecast of all the expected future cash flows.

The following table summarizes the major classes of intangible assets and the respective weighted-average estimated amortization periods:

	Estimated Fair Value (in thousands)	Weighted-Average Estimated Amortization Period (Years)	
Customer relationships	\$ 24,700		10
Trade names	7,600		12
Total intangible assets	\$ 32,300		

contingent liability, see Note 6 – Fair Value.

#### 2021 Business Acquisitions

##### NEHDS Acquisition

On November 22, 2021, we acquired 100% of the equity interests in NEHDS Logistics, LLC ("NEHDS"). In first quarter 2022, post-closing net working capital changes of \$0.7 million decreased the purchase price, resulting in for a final total purchase price of \$62.3 million after including the impacts of contingent consideration and net working capital changes. We financed the transaction through a combination of cash on hand and existing credit facilities. The contingent earnout period related to the NEHDS acquisition ended on December 31, 2022 and did not result in any additional cash payments, as the financial performance goals were not achieved. This resulted in a \$2.5 million favorable change to the contingent earnout liability, which was recorded in other operating expenses on the consolidated statements of income for the year ended December 31, 2022.

NEHDS is a final mile residential delivery provider serving customers primarily in the Northeast and Midwest United States markets. NEHDS delivers primarily big and bulky products (primarily furniture and appliances) using 2-person delivery teams performing residential and commercial deliveries.

The results of operations for NEHDS are included in our consolidated financial statements beginning November 22, 2021. Revenues generated by NEHDS are reported in Final Mile within our Werner Logistics ("Logistics") segment. The contingent earnout liability was \$0 and \$2.5 million as of December 31, 2022 and 2021, respectively. The contingent earnout period related to the NEHDS acquisition ended on December, 31, 2022 and did not result in any additional cash payments, as the financial performance goals were not achieved. This favorable change to the contingent earnout liability was recorded in other operating expense on the consolidated statements of income for the year ended December 31, 2022. We incurred transaction costs related to the acquisition, such as legal and professional fees, of \$0.6 million for the year ended December 31, 2021, which is included in other operating expenses on the consolidated statements of income.

#### ECM Acquisition

On July 1, 2021, we acquired an 80% ownership interest in ECM Associated, LLC ("ECM") for a final **total** purchase price of \$141.3 million after net working capital changes and net of cash acquired. We have an exclusive option to purchase the remaining 20% ownership interest in ECM upon the occurrence of certain events or after a period of five years following transaction close, based on a fixed multiple of ECM's average annual adjusted earnings before interest, taxes, depreciation and amortization. The noncontrolling interest holder also has an option to put the remaining 20% ownership interest to us on the same terms. We record the 20% remaining interest in temporary equity – redeemable noncontrolling interest in the consolidated balance sheets.

**ECM provides regional truckload carrier services in the Mid-Atlantic, Ohio, and Northeast regions of the United States.** We financed the cash transaction through a combination of cash on hand, existing credit facilities, and the addition of a \$100.0 million unsecured fixed-rate term loan commitment with BMO Harris Bank N.A. on June 30, 2021. For more information regarding our debt, see Note 8 – Debt and Credit Facilities.

**ECM provides regional truckload carrier services in the Mid-Atlantic, Ohio, and Northeast regions of the United States.** The results of operations for ECM are included in our consolidated financial statements beginning July 1, 2021. Revenues generated by ECM are reported in our TTS segment. We incurred transaction costs related to the ECM acquisition, such as legal and professional fees, of \$1.0 million for the year ended December 31, 2021, which is included in other operating expenses on the consolidated statements of income.

#### (3) REVENUE

##### Revenue Recognition

Revenues are recognized over time as control of the promised services is transferred to our customers, in an amount that reflects the consideration we expect to be entitled to in exchange for those services.

The following table presents our revenues disaggregated by revenue source (in thousands):

		Years Ended December 31,			Years Ended December 31,		
		2022	2021	2020	2023	2022	2021
Truckload	Truckload						
Transportation	Transportation						
Services	Services	\$2,428,686	\$2,045,073	\$1,843,209			
Werner	Werner						
Logistics	Logistics	793,492	622,461	469,791			
Inter-segment	Inter-segment						
eliminations	eliminations	(5,218)	(899)	(107)			
Transportation	Transportation						
services	services	3,216,960	2,666,635	2,312,893			
Other	Other						
revenues	revenues	73,018	67,737	59,285			
Total	Total						
revenues	revenues	<u>\$3,289,978</u>	<u>\$2,734,372</u>	<u>\$2,372,178</u>			

The following table presents our revenues disaggregated by geographic areas in which we conduct business (in thousands):

		Years Ended December 31,		
		2023	2022	2021
United States		\$ 3,089,205	\$ 3,051,788	\$ 2,532,720
Mexico		159,170	191,126	156,405
Other		35,124	47,064	45,247
Total revenues		<u>\$ 3,283,499</u>	<u>\$ 3,289,978</u>	<u>\$ 2,734,372</u>

Operating revenues for foreign countries include revenues for (i) shipments with an origin or destination in that country and (ii) other services provided in that country. If both the origin and destination are in a foreign country, the revenues are attributed to the country of origin.

	Years Ended December 31,		
	2022	2021	2020
United States	\$ 3,051,788	\$ 2,532,720	\$ 2,144,105
Mexico	191,126	156,405	149,438

Other	47,064	45,247	78,635
Total revenues	\$ 3,289,978	\$ 2,734,372	\$ 2,372,178

#### Transportation Services

We generate nearly all of our revenues by transporting truckload freight shipments for our customers. Transportation services are carried out by our TTS segment and our Werner Logistics segment. The TTS segment utilizes company-owned and independent contractor trucks to deliver shipments, while the our Werner Logistics segment uses third-party capacity providers.

We generate revenues from billings for transportation services under contracts with customers, generally on a rate per mile or per shipment, based on origin and destination of the shipment. Our performance obligation arises when we receive a shipment order to transport a customer's freight and is satisfied upon delivery of the shipment. The transaction price may be defined in a transportation services agreement or negotiated with the customer prior to accepting the shipment order. A customer may submit several shipment orders for transportation services at various times throughout a service agreement term, but each shipment represents a distinct service that is a separately identified performance obligation. We often provide additional or ancillary services as part of the shipment (such as loading/unloading and stops in transit) which are not distinct or are not material in the context of the contract; therefore, the revenues for these services are recognized with the freight transaction price. The average transit time to complete a shipment is approximately 3 days. Invoices for transportation services are typically generated soon after shipment delivery and, while payment terms and conditions vary by customer, are generally due within 30 days after the invoice date.

The consolidated statements of income reflect recognition of transportation revenues (including fuel surcharge revenues) and related direct costs over time as the shipment is being delivered. We use distance shipped (for the TTS segment) and transit time (for the Werner Logistics segment) to measure progress and the amount of revenues recognized over time, as the customer simultaneously receives and consumes the benefit. Determining a measure of progress requires us to make judgments that affect the timing of revenues recognized. We have determined that the methods described provide a faithful depiction of the transfer of services to the customer.

For shipments where a third-party capacity provider (including independent contractors under contract with us) is utilized to provide some or all of the service, we evaluate whether we are the principal (i.e., report revenues on a gross basis) or agent (i.e., report revenues on a net basis). Generally, we report such revenues on a gross basis, that is, we recognize both revenues for the service we bill to the customer and rent and purchased transportation expense for transportation costs we pay to the third-party provider. Where we are the principal, we control the transportation service before it is provided to our customers, which is supported by us being primarily responsible for fulfilling the shipment obligation to the customer and having a level of discretion in establishing pricing with the customer.

#### Other Revenues

Other revenues include revenues from our driver training schools, transportation-related activities such as third-party equipment maintenance and equipment leasing, and other business activities. These revenues are generally recognized over time and accounted for 2% of our total revenues in 2023, 2022 2021 and 2020.2021. Revenues from our driver training schools require us to make judgments regarding price concessions in determining the amount of revenues to recognize.

#### Contract Balances and Accounts Receivable

A receivable is an unconditional right to consideration and is recognized when shipments have been completed and the related performance obligation has been fully satisfied. At December 31, 2022 December 31, 2023 and 2021, 2022, the accounts receivable, trade, net, balance was \$518.8 million \$444.9 million and \$460.5 million \$518.8 million, respectively. Contract assets represent a conditional right to consideration in exchange for goods or services and are transferred to receivables when the rights become unconditional. At December 31, 2022 December 31, 2023 and 2021, 2022, the balance of contract assets was \$8.9 million \$7.4 million and \$9.0 million \$8.9 million, respectively. We have recognized contract assets within the other current assets financial statement caption on the consolidated balance sheets. These contract assets are considered current assets as they will be settled in less than 12 months.

Contract liabilities represent advance consideration received from customers and are recognized as revenues over time as the related performance obligation is satisfied. At December 31, 2022 December 31, 2023 and 2021, 2022, the balance of contract liabilities was \$0.9 million and \$1.2 million, respectively. The amount of revenues recognized in 2022 2023 that was included in the December 31, 2021 December 31, 2022 contract liability balance was \$1.2 million \$0.9 million. We have recognized contract liabilities within the accounts payable and other current liabilities financial statement captions on the consolidated balance sheets. These contract liabilities are considered current liabilities as they will be settled in less than 12 months.

#### Performance Obligations

We have elected to apply the practical expedient in Accounting Standards Codification ("ASC") Topic 606, *Revenue From Contracts With Customers*, to not disclose the value of remaining performance obligations for contracts with an original expected length of one year or less. Remaining performance obligations represent the transaction price allocated to future reporting periods for freight shipments started but not completed at the reporting date that we expect to recognize as revenue in the period subsequent to the reporting date; transit times generally average approximately 3 days.

During 2023, 2022, 2021, and 2020, 2021, revenues recognized from performance obligations related to prior periods (for example, due to changes in transaction price) were not material.

#### (4) GOODWILL AND INTANGIBLE ASSETS

The following table summarizes changes in the carrying amount of goodwill by segment for the years ended December 31, 2022 December 31, 2023 and 2021 2022 (in thousands):

	Werner		
	TTS	Logistics	Total
Balance as of December 31, 2020	\$ —	\$ —	\$ —

Goodwill recorded in acquisition of NEHDS	—	36,534	36,534	
Goodwill recorded in acquisition of ECM	44,710	—	44,710	
Purchase accounting adjustments <sup>(1)</sup>	(6,626)	—	(6,626)	
	TTS	TTS	Werner Logistics	Total
Balance as of December 31, 2021	31, 2021	38,084	36,534	74,618
Goodwill recorded in acquisition of ReedTMS	ReedTMS	10,341	42,500	52,841
Goodwill recorded in acquisition of Baylor	Baylor	5,472	—	5,472
Purchase accounting adjustments <sup>(2)</sup>		—	(214)	(214)
Purchase accounting adjustments				
(1)	Balance as of December 31, 2022	\$53,897	\$78,820	\$132,717
Purchase accounting adjustments				
(1)	Balance as of December 31, 2023			

<sup>(1)</sup>The purchase accounting adjustments are primarily attributable to post-closing adjustments related to net assets assumed in, and the redeemable noncontrolling interest associated with, the acquisition of ECM.

<sup>(2)</sup>The purchase accounting adjustments consist of post-closing adjustments related to net assets assumed in the acquisition acquisitions of NEHDS.

Acquired intangible assets consists of NEHDS and ReedTMS for the following as of years ended December 31, 2022 and 2021 2023, respectively. For additional information regarding the ReedTMS purchase accounting adjustments, see Note 2 – Business Acquisitions.

The following table presents acquired intangible assets (in thousands):

December 31,					
2022		2021			
Gross	Net	Gross	Net		
Carrying Amount	Accumulated Amortization	Carrying Amount	Carrying Amount	Accumulated Amortization	Carrying Amount
December 31,				December 31,	
2023				2023	
					2022

	Gross						Gross		Net		Gross		Net	
	Carrying			Amount			Carrying		Accumulated		Carrying		Carrying	
	Amount						Amount		Amortization		Amount		Amount	
Customer relationships	Customer relationships	\$64,900	\$ (5,714)	\$59,186	\$40,200	\$ (1,177)	\$39,023							
Trade names	Trade names	24,600	(2,284)	22,316	17,000	(708)	16,292							
Total intangible assets	Total intangible assets	\$89,500	\$ (7,998)	\$81,502	\$57,200	\$ (1,885)	\$55,315							

Amortization expense on intangible assets was \$10.3 million, \$6.1 million, and \$1.9 million for the years ended December 31, 2022, December 31, 2023, 2022, and 2021, respectively, and is reported in depreciation and amortization on the consolidated statements of income. No amortization expense on intangible assets was recorded for the year ended December 31, 2020.

As of December 31, 2022 December 31, 2023, the estimated future amortization expense for intangible assets by year is as follows (in thousands):

			Estimated Amortization Expense
2023		\$	8,540
2024	2024		8,540
2025	2025		8,540
2026	2026		8,540
2027	2027		8,540
2028			
Thereafter (to 2034)	Thereafter (to 2034)		38,802
<b>Total</b>	<b>Total</b>	<b>\$</b>	<b>81,502</b>

**(5) LEASES**

We have entered into operating leases primarily for real estate. The leases have terms which range from 1 year to 18 years, and some include options to renew. Renewal terms are included in the lease term when it is reasonably certain that we will exercise the option to renew.

Operating leases are included in other non-current assets, other current liabilities and other long-term liabilities on the consolidated balance sheets. These assets and liabilities are recognized based on the present value of future minimum lease payments over the lease term at commencement date, using our incremental borrowing rate because the rate implicit in each lease is not readily determinable. We have certain contracts for real estate that may contain lease and non-lease components which we have elected to treat as a single lease component. Lease expense for operating leases is recognized on a straight-line basis over the lease term. Variable lease expense is recognized in the period in which the obligation for those payments is incurred. Lease expense is reported in rent and purchased transportation on the consolidated statements of income.

The following table presents balance sheet and other operating lease information (dollars in thousands):

		December 31,	
		2022	2021
<b>Balance Sheet</b>			
<b>Classification</b>			
	December 31,		December 31,
	2023		2023
Right-of-use assets (recorded in other non-current assets)	Right-of-use assets (recorded in other non-current assets)	\$40,963	\$28,458

Current lease liabilities (recorded in other current liabilities)	Current lease liabilities (recorded in other current liabilities)	\$ 9,396	\$ 6,380
Long-term lease liabilities (recorded in other long-term liabilities)	Long-term lease liabilities (recorded in other long-term liabilities)	32,897	22,634
Total operating lease liabilities	Total operating lease liabilities	\$42,293	\$29,014
<b>Other Information</b>			
Weighted-average remaining lease term for operating leases	Weighted-average remaining lease term for operating leases	6.43 years	7.63 years
Weighted-average discount rate for operating leases	Weighted-average discount rate for operating leases	3.6 %	2.7 %
	Weighted-average remaining lease term for operating leases	6.15 years	6.43 years
	Weighted-average discount rate for operating leases	3.6 %	3.3 %

The following table presents the maturities of operating lease liabilities as of December 31, 2022 December 31, 2023 (in thousands):

Maturity of Lease Liabilities		
2023		\$ 10,595
2024	2024	9,502
2025	2025	7,441
2026	2026	5,700
2027	2027	3,887
2028		
Thereafter	Thereafter	9,429
Total undiscounted operating lease payments	Total undiscounted operating lease payments	\$ 46,554
Less: Imputed interest	Less: Imputed interest	(4,261)
Present value of operating lease liabilities	Present value of operating lease liabilities	\$ 42,293

#### Cash Flows

During the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020, 2021, right-of-use assets of \$14.7 million \$4.7 million, \$8.2 million \$14.7 million, and \$2.8 million \$8.2 million, respectively, were recognized as non-cash asset additions that resulted from new operating lease liabilities, and we acquired right-of-use assets of \$8.3 million and \$15.6 million as a result of our business acquisitions during the years ended December 31, 2022 and 2021, respectively. Cash paid for amounts included in the present value of operating lease liabilities was \$8.5 million \$11.1 million, \$4.6 million \$8.5 million, and \$3.9 million \$4.6 million during the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020, 2021, respectively, and are included in operating cash flows.

#### Operating Lease Expense

Operating lease expense was \$22.1 million \$22.5 million, \$15.7 million \$22.1 million, and \$10.1 \$15.7 million during the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020, 2021, respectively. This expense included \$9.4 million \$11.5 million, \$4.8 million \$9.4 million, and \$3.8 million \$4.8 million for long-term operating leases for the years ended December 31, 2022 December 31, 2023, 2021, 2022, and 2020, 2021, respectively, with the remainder for variable and short-term lease expense.

#### Lessor Operating Leases

We are the lessor of tractors and trailers under operating leases with initial terms of 2 to 10 years. We recognize revenue for such leases on a straight-line basis over the term of the lease. Revenues for the years ended December 31, 2022 December 31, 2023, 2022, and 2021 and 2020 were \$10.9 million, \$10.7 million, \$11.7 million, and \$12.6 million \$11.7 million, respectively. The following table presents information about the maturities of these operating leases as of December 31, 2022 December 31, 2023 (in thousands):

2023		\$ 7,244
2024	2024	575
2025	2025	287
2026	2026	295
2027	2027	74
2028		
Thereafter	Thereafter	—
Total	Total	\$ 8,475

#### (6) FAIR VALUE

##### Fair Value Measurement — Definition and Hierarchy

ASC 820-10, *Fair Value Measurement*, defines fair value as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in an orderly transaction between market participants at the measurement date.

ASC 820-10 establishes a hierarchy for inputs used in measuring fair value that maximizes the use of observable inputs and minimizes the use of unobservable inputs by requiring that the most observable inputs be used when available. Observable inputs reflect the assumptions market participants would use in pricing the asset or liability, developed based on market data obtained from sources independent of the Company. Unobservable inputs reflect our own assumptions about the assumptions market participants would use in pricing the asset or liability, developed based on the best information available in the circumstances.

The fair value hierarchy prioritizes the inputs to valuation techniques used to measure fair value into three broad levels, as follows:

Level 1 — Quoted prices (unadjusted) in active markets for identical assets or liabilities that we have the ability to access.

Level 2 — Inputs other than quoted prices included in Level 1 that are observable for the asset or liability, either directly or indirectly. Such inputs include quoted prices in markets that are not active, quoted prices for similar assets and liabilities in active and inactive markets, inputs other than quoted prices that are observable for the asset or liability and inputs that are derived principally from or corroborated by observable market data by correlation or other means.

Level 3 — Unobservable inputs for the asset or liability, where there is little, if any, observable market activity or data for the asset or liability.

In general, and where applicable, we use quoted prices in active markets for identical assets or liabilities to determine fair value. This pricing methodology applies to our Level 1 assets and liabilities. If quoted prices in active markets for identical assets and liabilities are not available to determine fair value, then we use quoted prices for similar assets and liabilities or inputs other than the quoted prices that are observable, either directly or indirectly. This pricing methodology would apply to Level 2 assets and liabilities.

The following table presents the Company's fair value hierarchy for our assets and liabilities measured at fair value on a recurring basis (in thousands):

	Level in Fair Value Hierarchy	Fair Value		
		December 31,		2021
		2022	2021	
<b>Assets:</b>				
Other non-current assets:				
Equity securities (1)	1	\$ 723	\$ 17,166	
<b>Liabilities:</b>				
Other long-term liabilities:				
Contingent consideration associated with acquisitions	3	13,400	2,500	

	Level in Fair	Fair Value	
		December 31,	

	Value Hierarchy	2023	2022
<b>Assets:</b>			
Other non-current assets:			
Equity securities <sup>(1)</sup>	1	\$ 310	\$ 723
<b>Liabilities:</b>			
Other long-term liabilities:			
Contingent consideration associated with acquisitions	3	\$ 8,896	\$ 13,400

<sup>(1)</sup> Represents our investments in autonomous technology companies. For additional information regarding the valuation of these equity securities, see Note 7 – Investments.

The following table presents changes in the fair value of our contingent consideration earnout liabilities for the years ended December 31, 2022 December 31, 2023 and 2021 2022 (in thousands):

Balance as of December 31, 2020	\$	—
Contingent consideration associated with the acquisition of NEHDS <sup>(1)</sup>		2,500
Balance as of December 31, 2021	\$	2,500
Contingent consideration associated with the acquisition of Baylor <sup>(1)</sup>		8,400
Contingent consideration associated with the acquisition of ReedTMS <sup>(2)</sup>		5,000
Change in fair value <sup>(2) (1)</sup>		(2,500)
Balance as of December 31, 2022		13,400
Measurement period adjustment associated with the acquisition of ReedTMS <sup>(2)</sup>		(800)
Payment for contingent consideration <sup>(3)</sup>		(1,500)
Change in fair value <sup>(4)</sup>		(2,204)
Balance as of December 31, 2023	\$	13,400 8,896

<sup>(1)</sup> The estimated fair value of our contingent consideration arrangements were based upon probability-adjusted inputs for each acquired entity. For additional information regarding our contingent consideration arrangements, see Note 2 – Business Acquisitions.

<sup>(2)</sup> The contingent earnout period related to the NEHDS acquisition ended on December, 31, 2022 December 31, 2022 and did not result in any additional cash payments, as the financial performance goals were not achieved.

<sup>(3)</sup> The measurement period adjustment was recorded in goodwill on the consolidated balance sheet.

<sup>(4)</sup> The contingent earnout period related to the ReedTMS acquisition ended on December 31, 2023 and resulted in an additional cash payment, as certain financial performance goals were achieved.

<sup>(4)</sup> Includes a net favorable change in of \$2.7 million to the contingent earnout liability related to the ReedTMS acquisition for the year ended December 31, 2023.

The estimated fair values of our contingent consideration arrangements are based upon probability-adjusted inputs for each acquired entity. Additionally, as the liability is stated at present value, the passage of time alone will increase the estimated fair value of the liability each reporting period. Change in fair value is recorded in other operating expense expenses on the consolidated statements of income.

**Our** We have ownership interests in investments, primarily Mastery Logistics Systems, Inc. ("MLSI") and Fleet Defender, Inc., which do not have readily determinable fair values and are accounted for using the measurement alternative in ASC 321, Investments - Equity Securities. Our ownership interest in Autotech Fund III, L.P. ("Autotech Fund III") is accounted for under ASC 323, "Investments - Equity Method and Joint Ventures." For additional information regarding the valuation of these investments, see Note 7 – Investments.

#### Fair Value of Financial Instruments Not Recorded at Fair Value

Cash and cash equivalents, accounts receivable trade, and accounts payable are short-term in nature and accordingly are carried at amounts that approximate fair value. These financial instruments are recorded at or near their respective transaction prices and historically have been settled or converted to cash at approximately that value (categorized as Level 2 of the fair value hierarchy).

The carrying amount of our fixed-rate debt not measured at fair value on a recurring basis was \$93.8 million \$88.8 million and \$97.5 \$93.8 million as of December 31, 2022 December 31, 2023 and 2021, 2022, respectively. The estimated fair value of our fixed-rate debt using the income approach, based on its net present value, discounted at our current borrowing rate, was \$86.7 million and \$87.2 million as of December 31, 2022 December 31, 2023 and 2022, respectively (categorized as Level 2 of the fair value hierarchy) and approximated the carrying value as of December 31, 2021. The carrying amount of our variable-rate long-term debt approximates fair value due to the duration of our credit arrangement and the variable interest rate (categorized as Level 2 of the fair value hierarchy).

#### (7) INVESTMENTS

#### Equity Investments without Readily Determinable Fair Values

Our strategic equity investments without readily determinable fair values include primarily consists of our investment in MLSI, a transportation management systems company, and Fleet Defender, Inc., a platform cybersecurity company for fleet owners. MLSI is developing a cloud-based transportation management system using MLSI's SaaS technology which we have agreed to license. These investments are being accounted for under ASC 321 using the measurement alternative, and are recorded in other noncurrent assets on the consolidated balance sheets. We record changes in the values of these investments based on events that occur that would indicate the values have changed, in gain or loss (gain) on investments in equity securities on the consolidated statements of income. As of December 31, 2022 December 31, 2023 and 2021, 2022, the value of our investment in MLSI was \$86.8 million \$89.8 million and \$38.2 million \$86.8 million, respectively, and the value of our investment in Fleet Defender, Inc. other equity investments without readily determinable fair values was \$316 thousand and \$250 thousand, as of December 31, 2022, respectively.

The following table summarizes the activity related to our equity investments without readily determinable fair values during the periods presented, presented (in thousands):

		Years Ended December 31,		
		2022	2021	2020
		Years Ended December 31,		
		2023	2023	2022
Investment in equity securities	Investment in equity securities	\$20,250	\$5,000	\$5,000
Upward adjustments	Upward adjustments	(1)	(1)	—
		28,638	28,151	—

(a) During 2022 and 2021, investments by third-parties third parties resulted in the remeasurements of our investment in MLSI. Our updated investment values were based upon the prices paid by third parties.

As of December 31, 2022 December 31, 2023, cumulative upward adjustments on our equity securities without readily determinable fair values totaled \$56.8 million.

#### Equity Investments with Readily Determinable Fair Values

We own strategic minority equity investments in autonomous technology companies, which are being accounted for under ASC 321 and are recorded in other noncurrent assets on the consolidated balance sheets. We record changes in the value of these investments, based on the share prices reported by Nasdaq, in gain or loss (gain) on investments in equity securities on the consolidated statements of income. As of December 31, 2022 December 31, 2023 and 2021, 2022, the value of these investments were was \$0.3 million and \$0.7 million and \$17.2 million, respectively. We recognized a net unrealized loss of \$16.4 million and a net unrealized gain of \$12.1 million on these investments for the years ended December 31, 2022 and 2021, respectively. For additional information regarding the fair value of these equity investments, see Note 6 – Fair Value.

The following table summarizes the activity related to our equity investments with readily determinable fair values during the periods presented (in thousands):

	Years Ended December 31,		
	2023	2022	2021
Loss (gain) on investments in equity securities, net	\$ 278	\$ 16,443	\$ (12,166)
Portion of unrealized loss (gain) for the period related to equity securities still held at the reporting date	\$ 270	\$ 16,443	\$ (12,166)

#### Equity Method Investment

In January 2023, we committed to make a \$20.0 million investment in Autotech Fund III (the "Fund") pursuant to a limited partnership agreement. The Fund is managed by Autotech Ventures, a venture capital firm focused on ground transportation technology. Our interest, which represents an ownership percentage of less than 20%, is being accounted for under ASC 323, "Investments - Equity Method and Joint Ventures." As a limited partner, we will make periodic capital contributions toward this total commitment amount. We contributed \$3.4 million to the Fund during the year ended December 31, 2023. As of December 31, 2023, the value of our investment in the Fund was \$2.3 million and is recorded in other noncurrent assets on the consolidated balance sheets. The carrying amount of the Fund as of December 31, 2023 approximates its fair value as of September 30, 2023, as this is the most recent information available to us at this time. We recognized a loss of \$1.0 million from the Fund for the year ended December 31, 2023, which is reported in loss from equity method investment on the consolidated statements of income.

#### (8) DEBT AND CREDIT FACILITIES

On December 20, 2022, we entered into a \$1.075 billion unsecured credit facility with a group of lenders (the "2022 Credit Agreement"), replacing our previous unsecured credit facility with BMO Harris Bank N.A. ("BMO Harris"), dated May 14, 2019, as amended, (the "BMO Line of Credit"), and the credit agreement with Wells Fargo Bank, National Association, ("Wells Fargo"), dated March 25, 2022 (the "Wells Credit Agreement"). The BMO Line of Credit and Wells Credit Agreement are described below. The 2022 Credit Agreement is scheduled to mature on December 20, 2027 and has a \$100.0 million maximum limit for the aggregate amount of letters of credit issued. The proceeds of the 2022 Credit Agreement may be used for working capital and other general corporate purposes, including the financing of acquisitions and other investments permitted under the agreement.

Revolving credit loans drawn under the 2022 Credit Agreement bear interest, at our option, at (i) the Base Rate (the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50%, or (c) the one-month Term SOFR plus 1.10%), plus a margin ranging between 0.125% and 0.750%, or (ii) Term SOFR plus 0.10% and a margin ranging between 1.125% and 1.750%. Swingline loans drawn under the 2022 Credit Agreement bear interest at the Base Rate, as defined above, plus a margin ranging between 0.125% and 0.750%. The 2022 Credit Agreement also requires us to pay quarterly (i) a letter of credit commission on the daily amount available to be drawn under such standby letters of credit at rates ranging between 1.125% and 1.750% per annum and (ii) a nonrefundable commitment fee on the average daily unused amount of the commitment at rates ranging between

0.125% and 0.250% per annum. The margin, letter of credit commission, and commitment fee rates are based on our ratio of net funded debt to earnings before interest, income taxes, depreciation and amortization ("EBITDA"). There are no scheduled principal payments due on the 2022 Credit Agreement until the maturity date, and interest is payable in arrears at periodic intervals not to exceed three months.

On March 25, 2022, In July 2023, we entered into the Wells Credit Agreement and a second amendment to the BMO Line of Credit. The Wells Credit Agreement replaced our previous credit agreement with Wells Fargo dated May 14, 2019, as amended. The Wells Credit Agreement provided four additional variable-for-fixed interest rate swap agreements for a \$300.0 million unsecured revolving line of credit ("Wells Line of Credit"), with a \$75.0 million maximum limit for the aggregate notional amount of letters \$130.0 million to further limit our exposure to increases in interest rates on a portion of credit issued, and was scheduled to expire on May 14, 2024. The Wells Credit Agreement also provided for an unsecured term loan commitment not to exceed a principal amount of \$100.0 million ("Wells Term Loan"). The Wells Term Loan was fully funded on March 25, 2022 and there were no principal payments required prior to its scheduled maturity on May 14, 2024. Amounts drawn under the Wells Line of Credit and the outstanding principal balance of the Wells Term Loan bore interest either, at our option, at a variable or fixed interest rate based on SOFR plus a SOFR rate adjustment and a margin rate based on our ratio of total funded debt to EBITDA, payable monthly. The second amendment to the BMO Line of Credit increased the borrowing capacity from \$200.0 million to \$300.0 million and changed the variable interest rate calculation by replacing the LIBOR with the SOFR. Amounts drawn under the BMO Line of Credit bore interest, for a selected interest period, at a variable rate based on the SOFR plus a SOFR rate adjustment and a margin rate based on our ratio of total funded debt to EBITDA, payable at the end of the applicable interest period. On December 20, 2022, we paid off and terminated the Wells Line of Credit and Wells Term Loan under the Wells Credit Agreement and the BMO Line of Credit using the proceeds from the 2022 Credit Agreement discussed above. variable-rate indebtedness.

On June 30, 2021, we entered into a \$100.0 million unsecured fixed-rate term loan commitment with BMO Harris, with quarterly principal payments of \$1.25 million, which began on September 30, 2021, and a final payment of principal and interest due and payable on May 14, 2024 ("BMO Term Loan"). We are currently planning to repay the remaining outstanding principal balance under the BMO Term Loan in May 2024 using proceeds from the 2022 Credit Agreement. The outstanding principal balance of the BMO Term Loan bears interest at a fixed rate of 1.28%, payable quarterly in arrears.

As of December 31, 2022 December 31, 2023 and 2021, our outstanding debt totaled \$693.8 million \$648.8 million and \$427.5 million \$693.8 million, respectively. As of December 31, 2022 December 31, 2023, we had an outstanding revolving credit loan balance of \$600.0 \$560.0 million under the 2022 Credit Agreement, including (i) \$450.0 million \$280.0 million at a variable interest rate of 5.67% and 6.73%, (ii) \$150.0 million which is effectively fixed at 2.78% 2.88% with two interest rate swap agreements through May 14, 2024, (iii) \$40.0 million which is effectively fixed at 6.20% with interest rate swap agreements through July 2025, and (iv) \$90.0 million which is effectively fixed at 5.87% with interest rate swap agreements through July 2026. Our total available borrowing capacity under the 2022 Credit Agreement was \$463.9 million as of December 31, 2023, after considering \$51.1 million in stand-by letters of credit under which we are obligated. In addition, as of December 31, 2022 December 31, 2023, we had \$93.8 million \$88.8 million outstanding under the BMO Term Loan at a fixed interest rate of 1.28%. The \$1.075 billion of borrowing capacity under our 2022 Credit Agreement at December 31, 2022, is further reduced by \$58.8 million in stand-by letters of credit under which we are obligated.

Availability of such funds under the current debt agreements is conditional upon various customary terms and covenants. Such covenants include, among other things, two financial covenants requiring us (i) not to exceed a maximum ratio of net funded debt to EBITDA and (ii) to exceed a minimum ratio of EBITDA to interest expense. As of December 31, 2022 December 31, 2023 we were in compliance with these covenants.

At December 31, 2022 December 31, 2023, the aggregate future maturities of long-term debt by year are as follows (in thousands):

2023		\$	6,250
2024	2024		87,500
2025	2025		—
2026	2026		—
2027	2027		600,000
Total	Total	\$	693,750
Total			
Total			

#### (9) NOTES RECEIVABLE

We provide financing to some individuals who want to become independent contractors by purchasing a tractor from us and leasing their services to us. We maintain a primary security interest in the tractor until the independent contractor pays the note balance in full. Independent contractor notes receivable are included in other current assets and other non-current assets in the consolidated balance sheets. At December 31, notes receivable consisted of the following (in thousands):

	December 31,	
	2022	2021
Independent contractor notes receivable	\$ 8,287	\$ 7,358
Other notes receivable	7,921	10,665
Notes receivable	16,208	18,023
Less current portion	2,691	3,386
Notes receivable – non-current	\$ 13,517	\$ 14,637

We also provide financing to some individuals who attended our driver training schools. The student notes receivable are included in other receivables and other non-current assets in the consolidated balance sheets. At December 31, student notes receivable consisted of the following (in thousands):

	December 31,	
	2022	2021
Student notes receivable	\$ 63,351	\$ 62,791

Allowance for doubtful student notes receivable		(23,491)	(22,911)
Total student notes receivable, net of allowance		39,860	39,880
Less current portion, net of allowance		12,574	13,416
Student notes receivable – non-current	\$	27,286	\$ 26,464

**Subsequent Event - MLSI Subordinated Promissory Note**

On January 24, 2023, we purchased a \$25.0 million subordinated promissory note from MLSI with a maturity date of January 24, 2030. The proceeds of the promissory note may be used by MLSI for working capital and general business purposes, including a limited amount for possible repayment of certain advances. There are no scheduled principal payments due on the promissory note until the maturity date, and interest accrues at 7.5% compounded annually, with the first accrued interest payment due on January 24, 2028, and at the end of each calendar year thereafter. The independent contractor notes receivable, MLSI subordinated promissory note, and other notes receivable are included in other current assets and other non-current assets in the consolidated balance sheets. The following table presents our notes receivable (in thousands):

	December 31,	
	2023	2022
Independent contractor notes receivable	\$ 6,864	\$ 8,287
MLSI subordinated promissory note	25,000	—
Other notes receivable	7,231	7,921
Notes receivable	39,095	16,208
Less current portion	2,208	2,691
Notes receivable – non-current	\$ 36,887	\$ 13,517

We also provide financing to some individuals who attended our driver training schools. The student notes receivable is included in other receivables and other non-current assets in the consolidated balance sheets. The following table presents our student notes receivable (in thousands):

	December 31,	
	2023	2022
Student notes receivable	\$ 64,956	\$ 63,351
Allowance for doubtful student notes receivable	(22,702)	(23,491)
Total student notes receivable, net of allowance	42,254	39,860
Less current portion, net of allowance	13,705	12,574
Student notes receivable – non-current	\$ 28,549	\$ 27,286

**(10) INCOME TAXES**

Income tax expense consisted of the following (in thousands):

	Years Ended December 31,			Years Ended December 31,	2022	2021
	2022	2021	2020			
Current: Current:						
Federal	Federal	\$ 23,741	\$ 42,049	\$ 53,297		
Federal						
State	State	12,423	12,787	12,106		
Foreign	Foreign	489	213	446		
		36,653	55,049	65,849		
	27,338					
Deferred: Deferred:						
Federal	Federal	38,521	27,593	(8,988)		
Federal						
Federal						
State	State	4,032	1,895	(1,245)		
		42,553	29,488	(10,233)		
	8,153					

Total	Total		
income tax expense	income tax expense	\$79,206	\$84,537
		<u>      </u>	<u>      </u>
		\$55,616	

The effective income tax rate differs from the federal corporate tax rate of 21% in 2023, 2022, 2021, and 2020 as follows (in thousands):

	Years Ended December 31,			Years Ended December 31,		
	2022 2021 2020			2023 2022 2021		
	Tax at statutory rate	Tax at statutory rate	Tax at statutory rate	2023	2022	2021
State income taxes, net of federal tax benefits	State income taxes, net of federal tax benefits	State income taxes, net of federal tax benefits	State income taxes, net of federal tax benefits	\$68,205	\$72,663	\$47,186
Other, net	Other, net	Other, net	Other, net	12,999	11,599	8,580
Total income tax expense	Total income tax expense	Total income tax expense	Total income tax expense	<u>      </u>	<u>      </u>	<u>      </u>
				(1,998)	275	(150)
				\$79,206	\$84,537	\$55,616

At December 31,

The following table presents our deferred income tax assets and liabilities consisted of the following (in thousands):

	December 31,		December 31,		2022
	2022	2021	2023	2022	
Deferred income tax assets:	Deferred income tax assets:				
Insurance and claims accruals					
Insurance and claims accruals					
Insurance and claims accruals	Insurance and claims accruals	Insurance and claims accruals	\$ 59,275	\$ 55,233	
Compensation- related accruals	Compensation- related accruals	10,767	12,203		
Allowance for uncollectible accounts	Allowance for uncollectible accounts	3,218	3,958		
Operating lease liabilities	Operating lease liabilities	10,324	7,033		
Other	Other	981	1,644		
Gross deferred income tax assets	Gross deferred income tax assets	84,565	80,071		
Deferred income tax liabilities:	Deferred income tax liabilities:				
Property and equipment	Property and equipment	344,896	305,002		
Property and equipment					
Property and equipment					

Investments in equity securities	Investments in equity securities	12,818	10,985
Prepaid expenses	Prepaid expenses	7,526	7,269
Operating lease right-of-use assets	Operating lease right-of-use assets	10,056	6,955
Investment in partnership	Investment in partnership	19,745	17,076
Other	Other	2,802	1,283
Gross deferred income tax liabilities	Gross deferred income tax liabilities	397,843	348,570
Net deferred income tax liability	Net deferred income tax liability	<u>\$313,278</u>	<u>\$268,499</u>

Deferred income tax assets are more likely than not to be realized as a result of the reversal of deferred income tax liabilities.

We recognized a \$201 thousand decrease, a \$54 thousand increase, and a \$49 thousand increase in the net liability for unrecognized tax benefits for the years ended December 31, 2022, December 31, 2023, 2022, and 2021, respectively. We recognized net interest expense of \$70 thousand, \$42 thousand, and \$10 thousand during 2023, 2022, and \$3 thousand during 2022, 2021, and 2020, respectively. If recognized, \$1.7 million, \$2.0 million, and \$1.9 million of unrecognized tax benefits as of December 31, 2022 December 31, 2023, 2022 and 2021, respectively, would impact our effective tax rate. Interest of \$0.5 million and \$0.4 million as of December 31, 2022 December 31, 2023 and 2021, respectively, 2022 has been reflected as a component of the total liability. We expect no other significant increases or decreases for uncertain tax positions during the next 12 months. The reconciliations of beginning and ending gross balances of unrecognized tax benefits for 2022 and 2021 are shown below (in thousands).

	December 31,		December 31,		
	2022	2021	2023	2022	2021
Unrecognized tax benefits, beginning balance	Unrecognized tax benefits, beginning balance	\$2,425	\$2,363		
Gross increases – tax positions in prior period	Gross increases – tax positions in prior period	99	65		
Gross increases – current period tax positions	Gross increases – current period tax positions	320	320		
Settlements	Settlements	(349)	(323)		
Unrecognized tax benefits, ending balance	Unrecognized tax benefits, ending balance	<u>\$2,495</u>	<u>\$2,425</u>		

We file U.S. federal income tax returns, as well as income tax returns in various states and several foreign jurisdictions. The years 2019 2020 and forward are open for examination by the U.S. Internal Revenue Service ("IRS"), and various years are open for examination by state and foreign tax authorities. State and foreign jurisdictional statutes of limitations generally range from three to four years.

## (11) EQUITY COMPENSATION AND EMPLOYEE BENEFIT PLANS

### Equity Compensation Plan

The Werner Enterprises, Inc. Amended and Restated Equity 2023 Long-term Incentive Plan (the "Equity Plan"), approved by the Company's shareholders in 2013, 2023, provides for grants to employees, and non-employee directors, and consultants of the Company in the form of nonqualified stock options, restricted stock and units ("restricted awards"), unrestricted stock awards, performance awards, and stock appreciation rights. The Board of Directors or the Compensation Committee of our Board of Directors determines the

terms of each award, including the type, recipients, number of shares subject to and vesting conditions of each award. No awards of stock options, unrestricted stock, and stock appreciation rights have been issued under the Equity Plan to date. The maximum number of shares of common stock that may be awarded under the Equity Plan is 20,000,000 4,000,000 shares. The maximum aggregate number of shares that may be awarded to any one person in any one calendar year under the Equity Plan is 500,000. As of December 31, 2022 December 31, 2023, there were 6,273,659 3,791,411 shares available for granting additional awards.

Equity compensation expense is included in salaries, wages and benefits within the consolidated statements of income. As of December 31, 2022 December 31, 2023, the total unrecognized compensation cost related to non-vested equity compensation awards was approximately \$14.9 million \$10.2 million and is expected to be recognized over a weighted average period of 2.4 years. The following table summarizes the equity compensation expense and related income tax benefit recognized in the consolidated statements of income (in thousands):

Restricted awards:	Restricted awards:	Years Ended December 31,			Years Ended December 31,		
		2022 2021 2020			2023 2022 2021		
		Pre-tax compensation expense					
Restricted stock expense, net of tax	Restricted stock expense, net of tax	\$7,803	\$6,349	\$5,409	1,954	1,587	1,379
Performance awards:	Performance awards:				\$5,849	\$4,762	\$4,030
Performance award expense, net of tax	Performance award expense, net of tax	\$4,690	\$4,452	\$3,503	1,174	1,113	893
					\$3,516	\$3,339	\$2,610

We do not have a formal policy for issuing shares upon vesting of restricted and performance awards. Such shares are generally issued from treasury stock. From time to time, we repurchase shares of our common stock, the timing and amount of which depends on market and other factors. Historically, the shares acquired from such repurchases have provided us with sufficient quantities of stock to issue for equity compensation. Based on current treasury stock levels, we do not expect to repurchase additional shares specifically for equity compensation during 2023.

#### Stock Options

Stock options are granted at prices equal to the market value of the common stock on the date the option award is granted. No stock option awards were outstanding as of December 31, 2022 or 2021, and there were no stock option awards granted or exercised during the years ended December 31, 2022, 2021, or 2020.

2024.

#### Restricted Awards

Restricted stock entitles the holder to shares of common stock when the award vests. Restricted stock units entitle the holder to a combination of cash or stock equal to the value of common stock when the unit vests. The value of these shares may fluctuate according to market conditions and other factors. Restricted awards currently outstanding vest over periods ranging from 12 to 60 months from the grant date of the award. The restricted awards do not confer any voting or dividend rights to recipients until such shares vest and do not have any post-vesting sales restrictions. The following table summarizes restricted award activity for the year ended December 31, 2022 December 31, 2023:

Number of Restricted Awards (in thousands)	Weighted-Average Date Fair Value (\$)

		Number of Restricted Awards (in thousands)		Number of Restricted Awards (in thousands)		Weighted- Average Grant Date Fair Value (\$)
Nonvested at beginning of period	Nonvested at beginning of period	356	\$ 39.27			
Granted	Granted	313	42.27			
Vested	Vested	(169)	38.46			
Forfeited	Forfeited	(8)	41.86			
Nonvested at end of period	Nonvested at end of period	492	41.42			

We estimate the fair value of restricted awards based upon the market price of the underlying common stock on the date of grant, reduced by the present value of estimated future dividends because the awards are not entitled to receive dividends prior to vesting. Our estimate of future dividends is based on the most recent quarterly dividend rate at the time of grant, adjusted for any known future changes in the dividend rate. Cash settled restricted stock units are recorded as a liability within the consolidated balance sheets and are adjusted to fair value each reporting period.

The weighted-average grant date fair value of restricted awards granted during the years ended December 31, 2022 December 31, 2023, 2022, and 2021 was \$44.17, \$42.27, and 2020 was \$42.27, \$42.69, and \$38.73, respectively. The total fair value of previously granted restricted awards vested during the years ended December 31, 2022 December 31, 2023, 2022, and 2021 and 2020 was \$10.4 million, \$7.3 million, \$6.8 million, and \$5.4 million \$6.8 million, respectively. We withheld shares based on the closing stock price on the vesting date to settle the employees' statutory obligation for the applicable income and other employment taxes. The shares withheld to satisfy the tax withholding obligations were recorded as treasury stock.

#### Performance Awards

Performance awards entitle the recipient to shares of common stock upon attainment of performance objectives as pre-established by the Compensation Committee. If the performance objectives are achieved, performance awards currently outstanding vest, subject to continued employment, 36 months after the grant date of the award. The performance awards do not confer any voting or dividend rights to recipients until such shares vest and do not have any post-vesting sales restrictions. The following table summarizes performance award activity for the year ended December 31, 2022 December 31, 2023:

		Number of Performance Awards (in thousands)	Weighted- Average Grant Date Fair Value (\$)			Number of Performance Awards (in thousands)	Weighted- Average Grant Date Fair Value (\$)
Nonvested at beginning of period	Nonvested at beginning of period	229	\$ 34.77				
Granted	Granted	128	39.28				
Vested	Vested	(68)	32.88				
Forfeited	Forfeited	—	—				
Nonvested at end of period	Nonvested at end of period	289	37.21				

The 2023 performance awards are earned based upon the level of attainment by the Company of specified performance objectives related to cumulative diluted earnings per share for the two-year period from January 1, 2023 to December 31, 2024. Shares earned based on cumulative diluted earnings per share may increase or decrease by 25% based on the Company's total shareholder return during the three-year period ended December 31, 2025, relative to the total shareholder return of a peer group of companies for the same period. The 2022 performance awards are earned based upon the level of attainment by the Company of specified performance objectives related to cumulative diluted earnings per share for the two-year period from January 1, 2022 to December 31, 2023. Shares earned based on cumulative diluted earnings per share may be capped based on the Company's total shareholder return during the three-year period ended December 31, 2024, relative to the total shareholder return of a peer group of companies for the same period. The 2021 2023 and 2022 performance awards are earned based upon will vest in one installment on the level of attainment by third anniversary from the Company of specified respective grant dates. In January 2024, the Compensation Committee determined the 2021 fiscal year performance objectives related to cumulative diluted earnings per share for were achieved at a level above the two-year period from January 1, 2021 to December 31, 2022. Shares target level; although, shares earned based on cumulative diluted earnings per share may be were capped based on the Company's total shareholder return during the three-year period ended December 31, 2023, relative to the total shareholder return of a peer group of companies for the same period. The 2022 and 2021 performance awards will vest in one installment on the third anniversary from the respective grant dates. In

January 2023, the Compensation Committee determined the 2020 fiscal year performance objectives were achieved at a level above the target level, and the additional shares earned above the target are included in the granted shares in the activity table above.

We estimate the fair value of performance awards based upon the market price of the underlying common stock on the date of grant, reduced by the present value of estimated future dividends because the awards are not entitled to receive dividends prior to vesting. Our estimate of future dividends is based on the most recent quarterly dividend rate at the time of grant, adjusted for any known future changes in the dividend rate.

The weighted-average grant date fair value of performance awards granted during the years ended December 31, 2022 December 31, 2023, 2022, and 2021 was \$45.07, \$39.28, and 2020 was \$39.28, \$38.48, and \$32.96, respectively. The vesting date fair value of performance awards that vested during the years ended December 31, 2022 December 31, 2023, 2022, or 2021 or 2020 was \$3.0 million \$5.9 million, \$4.1 million \$3.0 million and \$5.8 million \$4.1 million, respectively. We withheld shares based on the closing stock price on the vesting date to settle the employees' statutory obligation for the applicable income and other employment taxes. The shares withheld to satisfy the tax withholding obligations were recorded as treasury stock.

#### Employee Stock Purchase Plan

Employee associates that meet certain eligibility requirements may participate in our Employee Stock Purchase Plan (the "Purchase Plan"). Eligible participants designate the amount of regular payroll deductions and/or a single annual payment (each subject to a yearly maximum amount) that is used to purchase shares of our common stock on the over-the-counter market. The maximum annual contribution amount is currently \$20,000. These purchases are subject to the terms of the Purchase Plan. We contribute an amount equal to 15% of each participant's contributions under the Purchase Plan. Interest accrues on Purchase Plan contributions at a rate of 5.25% until the purchase is made. We pay the trading commissions and administrative charges related to purchases of common stock under the Purchase Plan. Our contributions for the Purchase Plan were as follows (in thousands):

2023			
2022	2022	\$	309
2021	2021		297
2020			283

#### 401(k) Retirement Savings Plan

We have an Employees' 401(k) Retirement Savings Plan (the "401(k) Plan"). Associates are eligible to participate in the 401(k) Plan if they have been continuously employed with us or one of our subsidiaries for six months or more. We match a portion of each associate's 401(k) Plan elective deferrals. Salaries, wages and benefits expense in the accompanying consolidated statements of income includes our 401(k) Plan contributions and administrative expenses, which were as follows (in thousands):

2023			
2022	2022	\$	5,921
2021	2021		4,904
2020			4,748

#### Nonqualified Deferred Compensation Plan

The Executive Nonqualified Excess Plan (the "Excess Plan") is our nonqualified deferred compensation plan for the benefit of eligible key managerial associates whose 401(k) Plan contributions are limited because of IRS regulations affecting highly compensated associates. Under the terms of the Excess Plan, participants may elect to defer compensation on a pre-tax basis within annual dollar limits we establish. At December 31, 2022 December 31, 2023, there were 4449 participants in the Excess Plan. Although our current intention is not to do so, we may also make matching credits and/or profit sharing profit-sharing credits to participants' accounts as we so determine each year. Each participant is fully vested in all deferred compensation and earnings; however, these amounts are subject to general creditor claims until distributed to the participant. Under current federal tax law, we are not allowed a current income tax deduction for the compensation deferred by participants, but we are allowed a tax deduction when a distribution payment is made to a participant from the Excess Plan. The accumulated benefit obligation is included in other long-term liabilities in the consolidated balance sheets. We purchased life insurance policies to fund the future liability. The aggregate market value of the life insurance policies is included in other non-current assets in the consolidated balance sheets.

The accumulated benefit obligation and aggregate market value of the life insurance policies were as follows (in thousands):

	December 31,		December 31,	
	2022	2021	2023	2022
Accumulated benefit obligation	Accumulated benefit obligation			
Aggregate market value	Aggregate market value			
	\$10,883	\$12,755		
	8,509	10,621		

#### (12) COMMITMENTS AND CONTINGENCIES

We have committed to property and equipment purchases of approximately \$278.6 million \$107.9 million at December 31, 2022 December 31, 2023.

We are involved in certain claims and pending litigation, including those described herein, arising in the ordinary course of business. The majority of these claims relate to bodily injury, property damage, cargo and workers' compensation incurred in the transportation of freight, as well as certain class action litigation related to personnel and employment matters. We accrue for the uninsured portion of contingent losses from these and other pending claims when it is both probable that a liability has been incurred and the amount of the loss can be reasonably estimated. Based on the knowledge of the facts, management believes the resolution of claims and pending litigation, taking into account existing reserves, will not have a material adverse effect on our consolidated financial statements. Moreover, the results of complex legal proceedings are difficult to predict, and our view of these matters may change in the future as the litigation and related events unfold.

On May 17, 2018, in Harris County District Court in Houston, Texas, a jury rendered an adverse verdict against the Company in a lawsuit arising from a December 30, 2014 accident between a Werner tractor-trailer and a passenger vehicle. On July 30, 2018, the court entered a final judgment against Werner for \$92.0 million, including pre-judgment interest.

The Company has premium-based liability insurance to cover the potential outcome from this jury verdict. Under the Company's insurance policies in effect on the date of this accident, the Company's maximum liability for this accident is \$10.0 million (plus pre-judgment and post-judgment interest) with premium-based coverage that exceeds the jury verdict amount. As a result of this jury verdict, the Company had recorded a liability of \$34.1 million \$39.8 million and \$28.8 million \$34.1 million as of December 31, 2022 December 31, 2023 and 2021, 2022, respectively. Under the terms of the Company's insurance policies, the Company is the primary obligor of the verdict, and as such, the Company has also recorded a \$79.2 million receivable from its third-party insurance providers in other non-current assets and a corresponding liability of the same amount in the long-term portion of insurance and claims accruals in the consolidated balance sheets as of December 31, 2022 December 31, 2023 and 2021, 2022.

The Company is pursuing pursued an appeal of this verdict verdict, and on May 18, 2023, the Texas Court of Appeals overruled Werner's appeal and affirmed the trial court's judgment. The Company has since filed a Petition for Review with the Texas Supreme Court,

seeking further review of the Texas Court of Appeals decision. No assurances can be given regarding whether the Texas Supreme Court will accept the Company's petition to review or the outcome of any such appeal review.

We have been involved in class action litigation in the U.S. District Court for the District of Nebraska, in which the plaintiffs allege that we owe drivers for unpaid wages under the Fair Labor Standards Act ("FLSA") and the Nebraska Wage Payment and Collection Act and that we failed to pay minimum wage per hour for drivers in our Career Track Program, related to short break time and sleeper berth time. The period covered by this class action suit is August 2008 through March 2014. The case was tried to a jury in May 2017, resulting in a verdict of \$0.8 million in plaintiffs' favor on the short break matter and a verdict in our favor on the sleeper berth matter. As a result of various post-trial motions, the court awarded \$0.5 million to the plaintiffs for attorney fees and costs. Plaintiffs appealed the post-verdict amounts awarded by the trial court for fees, costs and liquidated damages, and the Company filed a cross appeal on the verdict that was in plaintiffs' favor. The United States Court of Appeals for the Eighth Circuit denied Plaintiffs' appeal and granted Werner's appeal, vacating the judgment in favor of the plaintiffs. The appellate court sent the case back to the trial court for proceedings consistent with the appellate court's opinion. On June 22, 2020, the trial court denied Plaintiffs' request for a new trial and entered judgment in favor of the Company, dismissing the case with prejudice. On July 21, 2020, Plaintiffs' counsel filed a notice of appeal of that dismissal. On August 3, 2022, the Eighth Circuit Court of Appeals vacated the district court's judgment and remanded the case, for the trial court to determine whether the plaintiffs should be granted a new trial on the short break claim. On January 10, 2023, the trial court denied Plaintiff's motion for a new trial and entered judgment in Werner's favor on all claims. Plaintiffs again have appealed the case to the Eighth Circuit Court of Appeals. As of December 31, 2022 December 31, 2023, we have an accrual for the jury's award, attorney fees and costs in the short break matter and had not accrued for the sleeper berth matter.

We are also involved in certain class action litigation in which the plaintiffs allege claims for failure to provide meal and rest breaks, unpaid wages, unauthorized deductions and other items. Based on the knowledge of the facts, management does not currently believe the outcome of these class actions is likely to have a material adverse effect on our financial position or results of operations. However, the final disposition of these matters and the impact of such final dispositions cannot be determined at this time.

### (13) SEGMENT INFORMATION

We have two reportable segments – Truckload Transportation Services and Werner Logistics.

The TTS segment consists of two operating units, Dedicated and One-Way Truckload. These units are aggregated because they have similar economic characteristics and meet the other aggregation criteria described in the accounting guidance for segment reporting. Dedicated provides truckload services dedicated to a specific customer, generally for a retail distribution center or manufacturing facility, utilizing either dry van or specialized trailers. One-Way Truckload is comprised of the following operating fleets: (i) the medium-to-long-haul van ("Van") fleet transports a variety of consumer nondurable products and other commodities in truckload quantities over irregular routes using dry van trailers, including Mexico cross-border routes; (ii) the expedited ("Expedited") fleet provides time-sensitive truckload services utilizing driver teams; (iii) the regional short-haul ("Regional") fleet provides comparable truckload van service within geographic regions across the United States; and (iv) the Temperature Controlled fleet provides truckload services for temperature sensitive products over irregular routes utilizing temperature-controlled trailers. Revenues for the TTS segment include a small amount of non-trucking revenues which consist primarily of the intra-Mexico portion of cross-border shipments delivered to or from Mexico where we utilize a third-party capacity provider.

The Werner Logistics segment is a non-asset based non-asset-based transportation and logistics provider. Werner Logistics provides services throughout North America and generates the majority of our non-trucking revenues through three operating units. These three Werner Logistics operating units are as follows: (i) Truckload Logistics, which uses contracted carriers to complete shipments for brokerage customers and freight management customers for which we offer a full range of single-source logistics management services and solutions; (ii) the Intermodal ("Intermodal") unit offers rail transportation through alliances with rail and drayage providers as an alternative to truck transportation; and (iii) Werner Final Mile ("Final Mile") offers residential and commercial deliveries of large or heavy items using third-party agents, independent contractors, and Company employees with two-person delivery teams operating a liftgate straight truck. In first quarter 2021, we completed the sale of the Werner Global Logistics ("WGL") freight forwarding services for international ocean and air shipments to Scan Global Logistics Group, and we realized a \$1.0 million gain when the transaction closed on February 26, 2021. Prior to the sale of WGL, Werner Logistics provided international services throughout Asia, with additional coverage throughout Australia, Europe, South America, and Africa.

We generate other revenues from our driver training schools, transportation-related activities such as third-party equipment maintenance and equipment leasing, and other business activities. None of these operations meets the quantitative reporting thresholds. As a result, these operations are grouped in "Other" in the tables below. "Corporate" includes revenues and expenses that are incidental to our activities and are not attributable to any of our operating segments, including gains and losses on sales of property and equipment not attributable to our operating segments.

We do not prepare separate balance sheets by segment and, as a result, assets are not separately identifiable by segment. Based on our operations, certain revenue-generating assets (primarily tractors and trailers) are interchangeable between segments. Depreciation for these interchangeable assets is allocated to segments based on the actual number of units utilized by the segment during the period. Other depreciation and amortization is allocated to segments based on specific identification or as a percentage of a metric such as average number of tractors. Inter-segment eliminations represent transactions between reporting segments that are eliminated in consolidation.

The following tables summarize our segment information (in thousands):

Years Ended December 31,			Years Ended December 31,		
Years Ended December 31,			Years Ended December 31,		
	2022	2021	2020	2023	2022
<u>Revenues by Segment</u>	<u>Revenues by Segment</u>				2021
Truckload Transportation Services					
Truckload Transportation Services					
Truckload Transportation Services					
Werner Logistics	793,492	622,461	469,791		
Other	71,185	66,108	57,276		
Corporate	1,833	1,629	2,009		
<b>Subtotal</b>	<b>3,295,196</b>	<b>2,735,271</b>	<b>2,372,285</b>		
Inter-segment eliminations	(5,218)	(899)	(107)		
<b>Total</b>	<b>\$3,289,978</b>	<b>\$2,734,372</b>	<b>\$2,372,178</b>		

Years Ended December 31,			Years Ended December 31,		
Years Ended December 31,			Years Ended December 31,		
	2022	2021	2020	2023	2022
<u>Operating Income (Loss) by Segment</u>	<u>Operating Income (Loss) by Segment</u>				2021
Truckload Transportation Services					
Truckload Transportation Services					
Truckload Transportation Services					
Werner Logistics	36,184	27,873	6,005		
Other	(2,604)	4,947	3,839		
Corporate	(5,059)	(5,497)	(4,413)		
<b>Total</b>	<b>\$323,076</b>	<b>\$309,146</b>	<b>\$227,438</b>		
Years Ended December 31,			Years Ended December 31,		
2022 2021 2020			2023 2022 2021		
Years Ended December 31,			Years Ended December 31,		
2023			2023		2021

<u>Depreciation and Amortization by Segment</u>				
Truckload Transportation Services				
Truckload Transportation Services				
Truckload Services	Transportation Services	\$256,768	\$245,169	\$239,858
Werner Logistics	Werner Logistics	9,989	8,833	7,712
Other	Other	11,258	10,786	11,705
Corporate	Corporate	1,908	2,912	4,011
Total	Total	\$279,923	\$267,700	\$263,286

Information about the geographic areas in which we conduct business is summarized below (in thousands) as of and for the years ended December 31, 2022, 2021, and 2020. Operating revenues for foreign countries include revenues for (i) shipments with an origin or destination in that country and (ii) other services provided in that country. If both the origin and destination are in a foreign country, the revenues are attributed to the country of origin.

		2022	2021	2020	Years Ended December 31,		
		Years Ended December 31,		2023	2022	2021	
<b>Revenues</b>	<b>Revenues</b>						
United States	United States	\$3,051,788	\$2,532,720	\$2,144,105			
United States	United States						
Foreign countries	Foreign countries						
Mexico	Mexico						
Mexico	Mexico	191,126	156,405	149,438			
Other	Other	47,064	45,247	78,635			
Total foreign countries	Total foreign countries	238,190	201,652	228,073			
Total	Total	\$3,289,978	\$2,734,372	\$2,372,178			

<u>Long-lived Assets</u>					
United States	United States	\$1,795,337	\$1,583,766	\$1,506,862	
Foreign countries	Foreign countries				
Mexico	Mexico	29,819	29,421	36,222	
Mexico	Mexico				
Other	Other	120	56	174	
Total foreign countries	Total foreign countries	29,939	29,477	36,396	

Total	Total	\$1,825,276	\$1,613,243	\$1,543,258
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We generate substantially all of our revenues within the United States or from North American shipments with origins or destinations in the United States. Our largest customer, Dollar General, accounted for 14% in 2023 and 10% in 2022 and 2021, and 14% in 2022 and 2021, and 12% in 2020. Revenues generated by Dollar General are reported in both of our reportable operating segments.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

No disclosure under this item was required within the two most recent fiscal years ended December 31, 2022 December 31, 2023, or any subsequent period, involving a change of accountants or disagreements on accounting and financial disclosure.

**ITEM 9A. CONTROLS AND PROCEDURES**

**Evaluation of Disclosure Controls and Procedures**

As of the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Exchange Act Rule 15d-15(e). Our disclosure controls and procedures are designed to provide reasonable assurance of achieving the desired control objectives. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures are effective at a reasonable assurance level in enabling us to record, process, summarize and report information required to be included in our periodic filings with the Securities and Exchange Commission within the required time period and that such information is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure.

We have confidence in our internal controls and procedures. Nevertheless, our management, including the Chief Executive Officer and Chief Financial Officer, does not expect that the internal controls or disclosure procedures and controls will prevent all errors or intentional fraud. An internal control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of such internal controls are met. Further, the design of an internal control system must reflect that resource constraints exist, and the benefits of controls must be evaluated relative to their costs. Because of the inherent limitations in all internal control systems, no evaluation of controls can provide absolute assurance that all control issues, misstatements and instances of fraud, if any, have been prevented or detected.

**Management's Report on Internal Control over Financial Reporting**

Management is responsible for establishing and maintaining adequate internal control over our financial reporting. Internal control over financial reporting is a process designed to provide reasonable assurance to our management and Board of Directors regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. generally accepted accounting principles. Internal control over financial reporting includes (i) maintaining records that in reasonable detail accurately and fairly reflect our transactions; (ii) providing reasonable assurance that transactions are recorded as necessary for preparation of our financial statements; (iii) providing reasonable assurance that receipts and expenditures of company assets are made in accordance with management authorization; and (iv) providing reasonable assurance that unauthorized acquisition, use or disposition of company assets that could have a material effect on our financial statements would be prevented or detected on a timely basis.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because (i) changes in conditions may occur or (ii) the degree of compliance with the policies or procedures may deteriorate.

Management assessed the effectiveness of our internal control over financial reporting as of December 31, 2022 December 31, 2023. This assessment is based on the criteria for effective internal control described in *Internal Control – Integrated Framework* (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on its assessment, management concluded that our internal control over financial reporting was effective as of December 31, 2022. Securities and Exchange Commission guidance permits companies to exclude acquisitions from their assessment of internal control over financial reporting for the fiscal year in which the acquisition occurred. Management's assessment of internal control over financial reporting as of December 31, 2022 excludes internal control over financial reporting related to Baylor (acquired October 1, 2022), which accounted for approximately \$105.6 million of consolidated total assets and \$21.6 million of consolidated operating revenues as of and for the year ended December 31, 2022 and ReedTMS (acquired November 5, 2022), which accounted for approximately \$160.5 million of consolidated total assets and \$51.8 million of consolidated operating revenues as of and for the year ended December 31, 2022 December 31, 2023.

Management has engaged KPMG LLP ("KPMG"), the independent registered public accounting firm that audited the consolidated financial statements included in this Form 10-K, to attest to and report on the effectiveness of our internal control over financial reporting. KPMG's report is included herein.

**Report of Independent Registered Public Accounting Firm**

To the Stockholders and Board of Directors  
Werner Enterprises, Inc.:

*Opinion on Internal Control Over Financial Reporting*

We have audited Werner Enterprises, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2022 December 31, 2023, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022 December 31, 2023, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2022 December 31, 2023 and 2021, 2022, the related consolidated statements of income, comprehensive income, stockholders' equity and temporary equity - redeemable noncontrolling interest, and cash flows for each of the years in the three-year period ended December 31, 2022 December 31, 2023, and the related notes and financial statement schedule II valuation and qualifying accounts (collectively, the consolidated financial statements), and our report dated February 27, 2023 February 26, 2024 expressed an unqualified opinion on those consolidated financial statements.

The Company acquired Baylor Trucking, Inc., Reed Transport Services, Inc. and RTS-TMS, Inc. during 2022, and management excluded from its assessment of the effectiveness of the Company's internal control over financial reporting as of December 31, 2022, Baylor Trucking, Inc., Reed Transport Services, Inc. and RTS-TMS, Inc.'s internal control over financial reporting associated with total assets of \$266 million and total revenues of \$73 million included in the consolidated financial statements of the Company as of and for the year ended December 31, 2022. Our audit of internal control over financial reporting of the Company also excluded an evaluation of the internal control over financial reporting of Baylor Trucking, Inc., Reed Transport Services, Inc. and RTS-TMS, Inc.

#### *Basis for Opinion*

The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying *Management's Report on Internal Control over Financial Reporting*. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

#### *Definition and Limitations of Internal Control Over Financial Reporting*

A company's internal control over financial reporting is a process designed 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. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/ KPMG LLP

Omaha, Nebraska

February 27, 2023 February 26, 2024

#### **Changes in Internal Control over Financial Reporting**

Management, under the supervision and with the participation of our Chief Executive Officer and Chief Financial Officer, concluded that no changes in our internal control over financial reporting occurred during the quarter ended December 31, 2022 December 31, 2023 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

#### **ITEM 9B. OTHER INFORMATION**

During fourth quarter 2022, 2023, no information was required to be disclosed in a report on Form 8-K, but not reported.

#### **Director and Officer Trading Arrangements**

During fourth quarter 2023, no Company director or officer adopted or terminated a "Rule 10b5-1 trading arrangement" or "non-Rule 10b5-1 trading arrangement," as such terms are defined in Item 408(a) of Regulation S-K.

**ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS**

Not applicable

**PART III**

Certain information required by Part III is omitted from this Form 10-K because we will file a definitive proxy statement pursuant to Regulation 14A (the "Proxy Statement") not later than 120 days after the end of the fiscal year covered by this Form 10-K, and certain information included therein is incorporated herein by reference. Only those sections of the Proxy Statement which specifically address the items set forth herein are incorporated by reference.

**ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE**

The information required by this Item, with the exception of the Code of Corporate Conduct discussed below, is incorporated herein by reference to our Proxy Statement.

**Code of Corporate Conduct**

We adopted our Code of Corporate Conduct, which is our code of ethics, that applies to our principal executive officer, principal financial officer, principal accounting officer and all other officers, employee associates, and directors. The Code of Corporate Conduct is available on our website, [www.werner.com](http://www.werner.com) in the "Investors" section. We will post on our website any amendment to, or waiver from, any provision of our Code of Corporate Conduct that applies to our Chief Executive Officer, Chief Financial Officer or Chief Accounting Officer (if any) within four business days of any such event.

**ITEM 11. EXECUTIVE COMPENSATION**

The information required by this Item is incorporated herein by reference to our Proxy Statement.

**ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS**

The information required by this Item, with the exception of the equity compensation plan information presented below, is incorporated herein by reference to our Proxy Statement.

**Equity Compensation Plan Information**

The following table summarizes, as of **December 31, 2022** **December 31, 2023**, information about compensation plans under which our equity securities are authorized for issuance:

Plan Category	(a)	(b)	Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
			(c)
Equity compensation plans approved by stockholders	781,978,687,932 <sup>(1)</sup>	\$0.00 <sup>(2)</sup>	6,273,659,3,791,411

<sup>(1)</sup> Includes 781,563,687,484 shares to be issued upon vesting of outstanding restricted stock awards.

<sup>(2)</sup> As of **December 31, 2022** **December 31, 2023**, we do not have any outstanding stock options.

We do not have any equity compensation plans that were not approved by stockholders.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE**

The information required by this Item is incorporated herein by reference to our Proxy Statement.

**ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES**

Our independent registered public accounting firm is KPMG LLP, Omaha, NE, Auditor Firm ID:185.

The information required by this Item is incorporated herein by reference to our Proxy Statement.

**PART IV**

**ITEM 15. EXHIBIT AND FINANCIAL STATEMENT SCHEDULES**

(a) Financial Statements and Schedules.

(1) Financial Statements: See Part II, Item 8 hereof.

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Consolidated Statements of Stockholders' Equity and Temporary Equity - Redeemable Noncontrolling Interest	33
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(2) Financial Statement Schedules: The consolidated financial statement schedule set forth under the following caption is included herein. The page reference is to the consecutively numbered pages of this report on Form 10-K.

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Schedule II—Valuation and Qualifying Accounts	63 62

Schedules not listed above have been omitted because they are not applicable or are not required or the information required to be set forth therein is included in the Consolidated Financial Statements or Notes thereto.

(3) Exhibits: The Company has attached or incorporated by reference herein certain exhibits as specified below pursuant to Rule 12b-32 under the Exchange Act.

<u>Exhibit Number</u>	<u>Description</u>	<u>Incorporated by Reference to:</u>
3(i)	<a href="#">Restated Articles of Incorporation of Werner Enterprises, Inc.</a>	<a href="#">Exhibit 3(i) to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2007</a>
3(ii)	<a href="#">Revised and Restated By-Laws of Werner Enterprises, Inc.</a>	<a href="#">Exhibit 3.1 to the Company's Current Report on Form 8-K dated August 14, 2018</a>
4.1	<a href="#">Description of Common Stock</a>	<a href="#">Exhibit 4.1 to the Company's Annual Report on Form 10-K for the year ended December 31, 2019</a>
10.1	<a href="#">Werner Enterprises, Inc. 2023 Long-Term Incentive Plan</a>	<a href="#">Exhibit 10.1 to the Company's Current Report on Form 8-K dated May 9, 2023</a>
10.2	<a href="#">Werner Enterprises, Inc. Amended and Restated Equity Plan</a>	<a href="#">Exhibit 10.2 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021</a>
10.2 10.3	<a href="#">Non-Employee Director Compensation</a>	<a href="#">Exhibit 10.1 to Exhibit 10.2 of the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2020; Item 8.01 of the Company's Current Report on Form 8-K dated May 12, 2020; Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022 March 31, 2023</a>
10.3 10.4	<a href="#">The Executive Nonqualified Excess Plan of Werner Enterprises, Inc., restated</a>	<a href="#">Exhibit 10.3 to the Company's Annual Report on Form 10-K for the year ended December 31, 2017</a>
10.4 10.5	<a href="#">Named Executive Officer Compensation</a>	<a href="#">Item 5.02 of the Company's Current Report on Form 8-K dated February 13, 2020 Company; Item 5.02 of the Company's Current Report on Form 8-K dated April 15, 2020; Item 5.02 of the Company's Current Report on Form 8-K dated February 11, 2021; Item 5.02 of the Company's Current Report on Form 8-K dated February 7, 2022; Item 5.02 of the Company's Current Report on Form 8-K dated February 10, 2023; Item 5.02 of the Company's Current Report on Form 8-K dated February 23, 2023; Item 5.02 of the Company's Current Report on Form 8-K dated February 10, 2023 2024</a>
10.5	<a href="#">Form of Notice of Grant of Nonqualified Stock Option Compensation Letter Agreement, dated February 7, 2023, between Christopher Wikoff and Werner Enterprises, Inc.</a>	<a href="#">Exhibit 10.1 to the Company's Current Report on Form 8-K dated November 29, 2007 February 23, 2023</a>
10.6	<a href="#">Form of Restricted Stock Award Agreement</a>	<a href="#">Exhibit 10.1 to the Company's Current Report on Form 8-K dated December 1, 2009</a>
10.7 8	<a href="#">Form of Performance-Based Restricted Stock Award Agreement, Agreement, effective February 10, 2014 May 9, 2023</a>	<a href="#">Exhibit 10.1 10.2 to the Company's Current Quarterly Report on Form 8-K dated February 10, 2014 10-Q for the quarter ended June 30, 2023</a>
10.8 10.9	<a href="#">Form of Performance-Based Restricted Stock Award Agreement, effective February 7, 2022</a>	<a href="#">Exhibit 10.1 to the Company's Current Report on Form 8-K dated February 7, 2022</a>
10.10 19.0	<a href="#">Werner Enterprises, Inc. Change in Control Severance Plan</a>	<a href="#">Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2021</a>
10.10	<a href="#">Credit Agreement, dated May 14, 2019 between Werner Enterprises, Inc. and Wells Fargo Bank, National Association</a>	<a href="#">Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2019</a>
10.11	<a href="#">Facility Letter Consulting Services Agreement dated May 14, 2019 July 1, 2023, between John J. Steele and Werner Enterprises, Inc. and BMO Harris Bank N.A.</a>	<a href="#">Exhibit 10.2 10.1 to the Company's Quarterly Current Report on Form 10-Q for the quarter ended June 30, 2019 8-K dated July 1, 2023</a>
10.12	<a href="#">First Amendment to Credit Agreement, dated October 20, 2020 between Werner Enterprises, Inc. and Wells Fargo Bank, National Association</a>	<a href="#">Exhibit 10.12 to the Company's Annual Report on Form 10-K for the year ended December 31, 2020</a>
10.13	<a href="#">Facility Letter and Promissory Note Agreement, dated June 30, 2021 between Werner Enterprises, Inc. and BMO Harris Bank N.A.</a>	<a href="#">Exhibit 10.1 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2021</a>
10.14 3	<a href="#">First Amendment to Term Loan Facility Letter, Agreement, dated June 30, 2021 December 20, 2022 between Werner Enterprises, Inc. and BMO Harris Bank N.A.</a>	<a href="#">Exhibit 10.2 10.21 to the Company's Quarterly Company's Annual Report on Form 10-Q 10-K for the quarter year ended June 30, 2021 December 31, 2022</a>

<u>Exhibit</u> <u>Number</u>	<u>Description</u>	<u>Incorporated by Reference to:</u>
<a href="#">10.154</a>	<a href="#">Second Amendment to Credit Agreement, dated June 29, 2021 between Werner Enterprises, Inc. and Wells Fargo Bank, National Association</a>	<a href="#">Exhibit 10.3 to the Company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2021</a>
<a href="#">10.16</a>	<a href="#">Credit Agreement, dated March 25, 2022 between Werner Enterprises, Inc. and Wells Fargo Bank, National Association</a>	<a href="#">Exhibit 10.4 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022</a>
<a href="#">10.17</a>	<a href="#">Revolving Line of Credit Note, dated March 25, 2022 between Werner Enterprises, Inc. and Wells Fargo Bank, National Association</a>	<a href="#">Exhibit 10.5 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022</a>
<a href="#">10.18</a>	<a href="#">Term Note, dated March 25, 2022 between Werner Enterprises, Inc. and Wells Fargo Bank, National Association</a>	<a href="#">Exhibit 10.6 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022</a>
<a href="#">10.19</a>	<a href="#">Second Amendment to Facility Letter Agreement, dated March 25, 2022 between Werner Enterprises, Inc. and BMO Harris Bank N.A.</a>	<a href="#">Exhibit 10.7 to the Company's Quarterly Report on Form 10-Q for the quarter ended March 31, 2022</a>
<a href="#">10.20</a>	<a href="#">Credit Agreement, dated December 20, 2022 by and among Werner Enterprises, Inc., the lenders thereto, Wells Fargo Bank, National Association as Administrative Agent, Swingline Lender, and Issuing Lender, and BMO Harris Bank N.A. as Syndication Agent</a>	<a href="#">Filed herewith</a> <a href="#">Exhibit 10.20 to the Company's Annual Report on Form 10-K for the year ended December 31, 2022</a>
<a href="#">10.21</a>	<a href="#">First Amendment to Term Loan Facility Letter, dated December 20, 2022 between Werner Enterprises, Inc. and BMO Harris Bank N.A.</a>	<a href="#">Filed herewith</a>
<u>Exhibit</u> <u>Number</u>	<u>Description</u>	<u>Incorporated by Reference to:</u>
<a href="#">21</a>	<a href="#">Subsidiaries of the Registrant</a>	<a href="#">Filed herewith</a>
<a href="#">23.1</a>	<a href="#">Consent of KPMG LLP</a>	<a href="#">Filed herewith</a>
<a href="#">31.1</a>	<a href="#">Certification of the Chief Executive Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934 (Section 302 of the Sarbanes-Oxley Act of 2002)</a>	<a href="#">Filed herewith</a>
<a href="#">31.2</a>	<a href="#">Certification of the Chief Financial Officer pursuant to Rules 13a-14(a) and 15d-14(a) of the Securities Exchange Act of 1934 (Section 302 of the Sarbanes-Oxley Act of 2002)</a>	<a href="#">Filed herewith</a>
<a href="#">32.1</a>	<a href="#">Certification of the Chief Executive Officer pursuant to 18 U.S.C. Section 1350 (Section 906 of the Sarbanes-Oxley Act of 2002)</a>	<a href="#">Furnished herewith</a>
<a href="#">32.2</a>	<a href="#">Certification of the Chief Financial Officer pursuant to 18 U.S.C. Section 1350 (Section 906 of the Sarbanes-Oxley Act of 2002)</a>	<a href="#">Furnished herewith</a>
<a href="#">97</a>	<a href="#">Werner Enterprises, Inc. Clawback Policy, effective as of December 1, 2023</a>	
		<a href="#">Filed herewith</a>

**Exhibit****Number****Description****Incorporated by Reference to:**

101	The following audited financial information from Werner Enterprises' Annual Report on Form 10-K for the year ended <b>December 31, 2022</b> <b>December 31, 2023</b> , formatted in iXBRL (Inline Extensible Business Reporting Language) includes: (i) Consolidated Statements of Income for the years ended <b>December 31, 2022</b> <b>December 31, 2023, 2021</b> <b>2022</b> and <b>2020, 2021</b> , (ii) Consolidated Statements of Comprehensive Income for the years ended <b>December 31, 2022</b> <b>December 31, 2023, 2021</b> <b>2022</b> and <b>2020, 2021</b> , (iii) Consolidated Balance Sheets as of <b>December 31, 2022</b> <b>December 31, 2023</b> and <b>2021, 2022</b> , (iv) Consolidated Statements of Cash Flows for the years ended <b>December 31, 2022</b> <b>December 31, 2023, 2021</b> <b>2022</b> and <b>2020, 2021</b> , (v) Consolidated Statements of Stockholders' Equity and Temporary Equity - Redeemable Noncontrolling Interest for the years ended <b>December 31, 2022</b> <b>December 31, 2023, 2021</b> <b>2022</b> and <b>2020, 2021</b> , and (vi) the Notes to Consolidated Financial Statements as of <b>December 31, 2022</b> <b>December 31, 2023</b> .
104	The cover page from this Annual Report on Form 10-K for the year ended <b>December 31, 2022</b> <b>December 31, 2023</b> , formatted in Inline XBRL (included as Exhibit 101).

**ITEM 16. FORM 10-K SUMMARY**

Not applicable

**SIGNATURES**

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on the **27th 26th** day of February, **2023, 2024**.

WERNER ENTERPRISES, INC.

By: **By:** \_\_\_\_\_ /s/ Derek J. Leathers  
Derek J. Leathers  
Chairman, President and Chief Executive Officer and Director  
(Principal Executive Officer)

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and indicated on the dates indicated. this 26th day of February, 2024.

<u>Signature</u>	<u>Position</u>	<u>Date</u>
/s/ Derek J. Leathers	Chairman, President, Chief Executive Officer and Director (Principal Executive Officer)	February 27, 2023
Derek J. Leathers		
/s/ Scott C. Arves		February 27, 2023
Scott C. Arves	Director	Vikram Mansharamani, Ph.D.
/s/ Kenneth M. Bird, Ed.D.	Director	February 27, 2023
		Director

Kenneth M. Bird, Ed.D.

Director

February 27,

2023 /s/ Carmen A.

Tapio

/s/ Diane K. Duren

Diane K. Duren

Director

Director

Carmen A. Tapio

/s/ Michelle D. Greene

Michelle D. Greene

Director

/s/ Alexi A. Wellman

Alexi A. Wellman

Director

/s/ Jack A. Holmes

Director

February 27,

2023 /s/ Christopher

D. Wikoff

Jack A. Holmes

Christopher D.

Wikoff

February 27, 2023

/s/ Michelle D. Livingstone

Director

February 27, 2023

Michelle D. Livingstone

/s/ Vikram Mansharamani, Ph.D.

Director

February 27, 2023

Vikram Mansharamani, Ph.D.

/s/ Carmen A. Tapio

Director

February 27, 2023

Carmen A. Tapio

/s/ Alexi A. Wellman

Director

February 27, 2023

Alexi A. Wellman

/s/ John J. Steele

Executive Vice President, Treasurer

February 27, 2023

John J. Steele

and Chief Financial Officer (Principal Financial Officer)

/s/ Michelle D. Livingstone

/s/ James L. Johnson

Executive  
Vice  
President,  
Chief  
Accounting  
Officer

February 27,  
2023

Michelle D. Livingstone

James L. Johnson

Executive Vice President and Corporate Secretary (Principal Chief  
Accounting Officer  
(Principal Accounting Officer)

		Write-offs									
(In thousands)	(In thousands)	Balance at Beginning of Period	Charged to Costs and Expenses	(Recoveries) of Doubtful Accounts	Balance at End of Period	(In thousands)	Balance at Beginning of Period	Charged to Costs and Expenses	(Recoveries) of Doubtful Accounts	(In thousands)	Balance at End of Period
<b>Year ended December 31, 2023:</b>											
Allowance for doubtful accounts											
Allowance for doubtful accounts											
Allowance for doubtful accounts											
<b>Year ended December 31, 2022:</b>	<b>Year ended December 31, 2022:</b>										
Allowance for doubtful accounts											
Allowance for doubtful accounts											
Allowance for doubtful accounts	Allowance for doubtful accounts	\$ 9,169	\$ 1,956	\$ 854	\$ 10,271						
<b>Year ended December 31, 2021:</b>	<b>Year ended December 31, 2021:</b>										
Allowance for doubtful accounts											
Allowance for doubtful accounts											
Allowance for doubtful accounts	Allowance for doubtful accounts	\$ 8,686	\$ 845	\$ 362	\$ 9,169						
<b>Year ended December 31, 2020:</b>	<b>Year ended December 31, 2020:</b>										
Allowance for doubtful accounts											
Allowance for doubtful accounts											
Allowance for doubtful accounts	Allowance for doubtful accounts	\$ 7,921	\$ 2,261	\$ 1,496	\$ 8,686						
Allowance for doubtful accounts											
		Write-offs									
(In thousands)	(In thousands)	Balance at Beginning of Period	Charged to Costs and Expenses	(Recoveries) of Doubtful Accounts	Balance at End of Period	(In thousands)	Balance at Beginning of Period	Charged to Costs and Expenses	(Recoveries) of Doubtful Accounts	(In thousands)	Balance at End of Period
<b>Year ended December 31, 2023:</b>											
Allowance for doubtful student notes											
Allowance for doubtful student notes											
Allowance for doubtful student notes											

Year ended	Year ended
December 31, 2022:	December 31, 2022:
Allowance for doubtful student notes	
notes	notes
	\$ 22,911
	\$ 20,301
	\$ 19,721
	\$ 23,491
Year ended	Year ended
December 31, 2021:	December 31, 2021:
Allowance for doubtful student notes	
Allowance for doubtful student notes	
Allowance for doubtful student notes	
notes	notes
	\$ 19,448
	\$ 18,659
	\$ 15,196
	\$ 22,911
Year ended	Year ended
December 31, 2020:	December 31, 2020:
Allowance for doubtful student notes	
Allowance for doubtful student notes	
Allowance for doubtful student notes	
notes	notes
	\$ 21,317
	\$ 16,529
	\$ 18,398
	\$ 19,448
Allowance for doubtful student notes	

See report of independent registered public accounting firm.

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Exhibit 10.20

Execution Version

\$1,075,000,000

**CREDIT AGREEMENT**

dated as of December 20, 2022 by and among  
**WERNER ENTERPRISES, INC.**,

as Borrower,

the Lenders referred to herein, as Lenders,

and

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
 as Administrative Agent,  
 Swingline Lender and Issuing Lender

**WELLS FARGO SECURITIES, LLC**  
and  
**BMO CAPITAL MARKETS CORP.**  
as Joint Lead Arrangers and Joint Bookrunners

**BMO HARRIS BANK N.A.**,  
as Syndication Agent

**THE TORONTO-DOMINION BANK, NEW YORK BRANCH**,  
as Documentation Agent

**THE HUNTINGTON NATIONAL BANK**,  
as Co-Agent

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## EXHIBITS

- Exhibit A-1 Form of Revolving Credit
- Exhibit A-2 Form of Swingline Note
- Exhibit B Form of Notice of Borrowing
- Exhibit C Form of Notice of Account Designation
- Exhibit D Form of Notice of Prepayment
- Exhibit E Form of Notice of Conversion/Continuation
- Exhibit F Form of Compliance Certificate
- Exhibit G Form of Assignment and Assumption
- Exhibit H-1 Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Lenders)
- Exhibit H-2 Form of U.S. Tax Compliance Certificate (Non-Partnership Foreign Participants)
- Exhibit H-3 Form of U.S. Tax Compliance Certificate (Foreign Participant Partnerships)
- Exhibit H-4 Form of U.S. Tax Compliance Certificate (Foreign Lender Partnerships)

## SCHEDULES

- Schedule 1.1(a) Revolving Credit Commitments and Commitment Percentages
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- Schedule 8.7 Transactions with Affiliates

CREDIT AGREEMENT, dated as of December 20, 2022, by and among Werner Enterprises, Inc., a Nebraska corporation, as Borrower, the lenders who are party to this Agreement and the lenders who may become a party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent for the Lenders.

### STATEMENT OF PURPOSE

WHEREAS, the Borrower has requested, and subject to the terms and conditions set forth in this Agreement, the Administrative Agent and the Lenders have agreed to extend, certain credit facilities to the Borrower.

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

**ARTICLE I.**  
**DEFINITIONS**

**Section 1.1 Definitions.** The following terms when used in this Agreement shall have the meanings assigned to them below:

**"Acquired EBITDA"** means, with respect to any Person or business acquired pursuant to an Acquisition for any period, the amount for such period of Consolidated EBITDA of any such Person or business so acquired (determined using such definitions as if references to the Borrower and its Subsidiaries therein were to such Person or business), as calculated by the Borrower in good faith and which shall be factually supported by historical financial statements; provided, that, notwithstanding the foregoing to the contrary, in determining Acquired EBITDA for any Person or business that does not have historical financial accounting periods which coincide with that of the financial accounting periods of the Borrower and its Subsidiaries (a) references to Reference Period in any applicable definitions shall be deemed to mean the same relevant period as the applicable period of determination for the Borrower and its Subsidiaries and (b) to the extent the commencement of any such Reference Period shall occur during a fiscal quarter of such acquired Person or business (such that only a portion of such fiscal quarter shall be included in such Reference Period), Acquired EBITDA for the portion of such fiscal quarter so included in such Reference Period shall be deemed to be an amount equal to (x) Acquired EBITDA otherwise attributable to the entire fiscal quarter (determined in a manner consistent with the terms set forth above) multiplied by (y) a fraction, the numerator of which shall be the number of months of such fiscal quarter included in the relevant Reference Period and the denominator of which shall be actual months in such fiscal quarter.

**"Acquisition"** means any acquisition, or any series of related acquisitions, consummated on or after the date of this Agreement, by which the Borrower or any of its Subsidiaries (a) acquires any business or all or substantially all of the assets of any Person, or business unit, line of business or division thereof, whether through purchase of assets, exchange, issuance of stock or other equity or debt securities, merger, reorganization, amalgamation, division or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of members of the board of directors or the equivalent governing body (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

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

**"Administrative Agent"** means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 10.6.

**"Administrative Agent's Office"** means the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 11.1(c).

**"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 through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

**"Agent Parties"** has the meaning assigned thereto in Section 11.1(e).

**"Agreement"** means this Credit Agreement.

**"Anti-Corruption Laws"** means all laws, rules, and regulations of any jurisdiction from time to time concerning or relating to bribery or corruption, including the United States Foreign Corrupt Practices Act of 1977 and the rules and regulations thereunder and the U.K. Bribery Act 2010 and the rules and regulations thereunder.

**"Anti-Money Laundering Laws"** means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules related to terrorism financing, money laundering, any predicate crime to money laundering or any financial record keeping, including any applicable provision of the PATRIOT Act 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 Law"** means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, official interpretations and binding orders of Governmental Authorities and all binding orders and decrees of all courts and arbitrators.

**"Applicable Margin"** means the corresponding percentages per annum as set forth below based on the Consolidated Total Net Leverage Ratio:

<b>Pricing Level</b>	<b>Consolidated Total Net Leverage Ratio</b>	<b>Commitment Fee</b>	<b>Adjusted Term SOFR +</b>	<b>Base Rate +</b>
I	Less than 0.50 to 1.00	0.125%	1.125%	0.125%

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II	Greater than or equal to 0.50 to 1.00, but less than 1.25 to 1.00	0.150%	1.250%	0.250%
III	Greater than or equal to 1.25 to 1.00, but less than 1.75 to 1.00	0.175%	1.500%	0.500%
IV	Greater than or equal to 1.75 to 1.00, but less than 2.25 to 1.00	0.200%	1.625%	0.625%
V	Greater than or equal to 2.25 to 1.00	0.250%	1.750%	0.750%

The Applicable Margin shall be determined and adjusted quarterly on the date five (5) Business Days after the day on which the Borrower provides a Compliance Certificate pursuant to Section 7.2(a) for the most recently completed fiscal quarter of the Borrower (each such date, a "Calculation Date"); provided that (a) the Applicable Margin shall be based on Pricing Level II until the Calculation Date for the fiscal quarter ending March 31, 2023 (unless such financial statements and the Compliance Certificate for the fiscal quarter ending December 31, 2022 demonstrate that Pricing Level III, Pricing Level IV or Pricing Level V should have been applicable, in which case, such other Pricing Level shall be deemed to be applicable from the Calculation Date for the fiscal quarter ending December 31, 2022 until the Calculation Date for the fiscal quarter ending March 31, 2023) and, thereafter the Pricing Level shall be determined by reference to the Consolidated Total Net Leverage Ratio as of the last day of the most recently completed fiscal quarter of the Borrower preceding the applicable Calculation Date, and (b) if the Borrower fails to provide a Compliance Certificate when due as required by Section 7.2(a) for the most recently completed fiscal quarter of the Borrower preceding the applicable Calculation Date, the Applicable Margin from the date on which such Compliance Certificate was required to have been delivered shall be based on Pricing Level V until such time as such Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Consolidated Total Net Leverage Ratio as of the last day of the most recently completed fiscal quarter of the

Borrower preceding such Calculation Date. The applicable Pricing Level shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Pricing Level shall be applicable to all Extensions of Credit then existing or subsequently made or issued.

Notwithstanding the foregoing but subject to Section 11.2(d), at any time prior to the Revolving Credit Maturity Date, if the loan spread pricing in the market significantly declines, the Borrower shall be permitted to renegotiate the Applicable Margin with the Lenders.

Notwithstanding the foregoing, in the event that any financial statement or Compliance Certificate delivered pursuant to Section 7.1 or 7.2(a) is shown to be inaccurate (regardless of whether (i) this Agreement is in effect, (ii) any Commitments are in effect, or (iii) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an "Applicable Period") than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall promptly (and in any case within five (5) Business Days) deliver to the Administrative Agent a corrected Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Total Net Leverage Ratio in the corrected Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall promptly (and in any case within five (5) Business Days) and retroactively be obligated to pay to the Administrative

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Agent the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be *promptly* applied by the Administrative Agent in accordance with Section 4.4. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Sections 4.1(b) and 9.2 nor any of their other rights under this Agreement or any other Loan Document. The Borrower's obligations under this paragraph shall survive the termination of the Commitments and the repayment of all other Obligations hereunder.

**"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, Wells Fargo Securities, LLC and BMO Capital Markets Corp., in their respective capacity as joint lead arrangers and joint bookrunners.

**"Asset Disposition"** means the sale, transfer, license, lease or other disposition of any Property (including any sale and leaseback transaction, division, merger or disposition of Equity Interests), whether in a single transaction or a series of related transactions, by the Borrower or any Subsidiary thereof, and any issuance of Equity Interests by any Subsidiary of the Borrower to any Person that is not the Borrower or any Subsidiary thereof. **"Dispose"** has a meaning correlative thereto.

**"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 11.9), and accepted by the Administrative Agent, in substantially the form attached as **Exhibit G** or any other form approved by the Administrative Agent.

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

**"Available Tenor"** means, as of any date of determination and with respect to the then-current Benchmark, as applicable, (a) if such Benchmark is a term rate, any tenor for such Benchmark (or component thereof) that is or may be used for determining the length of an interest period pursuant to this Agreement or (b) otherwise, any payment period for interest calculated with reference to such Benchmark (or component thereof) that is or may be used for determining any frequency of making payments of interest calculated with reference to such Benchmark, in each case, as of such date and not including, for the avoidance of doubt, any tenor for such Benchmark that is then-removed from the definition of "Interest Period" pursuant to Section 4.8(c)(iv).

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

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

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**"Bankruptcy Code"** means 11 U.S.C. §§ 101 et seq.

**"Base Rate"** means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c) Adjusted Term SOFR for a one-month tenor in effect on such day plus 1.00%; each change in the Base Rate shall take effect simultaneously with the corresponding change or changes in the Prime Rate, the Federal Funds Rate or Adjusted Term SOFR, as applicable (provided that clause (c) shall not be applicable during any period in which Adjusted Term SOFR is unavailable or unascertainable). Notwithstanding the foregoing, in no event shall the Base Rate be less than the Floor.

**"Base Rate Loan"** means any Loan bearing interest at a rate based upon the Base Rate as provided in Section 4.1(a).

**"Benchmark"** means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then "Benchmark" means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 4.8(c)(i).

**"Benchmark Replacement"** means, with respect to any Benchmark Transition Event, the sum of:

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

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

**"Benchmark Replacement Date"** means the earliest to occur of the following events with respect to the then-current Benchmark:

- (a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and  
(ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or
- (b) in the case of clause (c) of the definition of "Benchmark Transition Event," the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by the regulatory supervisor for the

administrator of such Benchmark (or such component thereof) to be non-representative; provided that such non-

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representativeness will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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

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

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

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

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

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

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

"Benchmark Unavailability Period" means the period (if any) (x) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with

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Section 4.8(c)(i) and (y) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark for all purposes hereunder and under any Loan Document in accordance with Section 4.8(c)(i).

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

"Beneficial Ownership Regulation" means 31 CFR § 1010.230.

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

"Borrower" means Werner Enterprises, Inc., a Nebraska corporation.

"Borrower Materials" has the meaning assigned thereto in Section 7.2.

"Business Day" means any day that (a) is not a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is closed and (b) is not a day on which commercial banks in Charlotte, North Carolina are closed.

"Calculation Date" has the meaning assigned thereto in the definition of Applicable Margin.

"Capital Lease Obligations" of any Person means, subject to Section 1.3(b), the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Collateralize" means, to pledge and deposit with, or deliver to the Administrative Agent, or directly to the applicable Issuing Lender (with notice thereof to the Administrative Agent), for the benefit of one or more of the Issuing Lenders, the Swingline Lender or the Lenders, as collateral for L/C Obligations or obligations of the Lenders to fund participations in respect of L/C Obligations or Swingline Loans, cash or deposit account balances or, if the Administrative Agent and the applicable Issuing Lender and the Swingline Lender shall agree, in their sole discretion, other credit support, in each case pursuant to documentation in form and substance reasonably satisfactory to the Administrative Agent, such Issuing Lender and the Swingline Lender, as applicable. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Collateralized Letter of Credit" has the meaning assigned thereto in Section 3.12(d).

"Cash Equivalents" means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof to the extent such obligations are backed by the full faith and credit of the United States, in each case maturing within one (1) year from the date of acquisition thereof, (b) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having one of the two highest ratings obtainable from either S&P or Moody's (or, if at any time either S&P or Moody's are not rating such fund, an equivalent rating from another nationally recognized statistical rating agency), (c) investments in certificates of deposit, banker's acceptances, money market deposits and time deposits maturing within one (1) year from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any United States federal or state chartered commercial bank, or a commercial bank organized under the laws of any other

country which is a member of the Organization for Economic Cooperation and Development, or a political subdivision of such country, acting through a branch or agency, which bank has a combined capital and surplus and undivided profits of not less than \$500,000,000 and having a long-term debt rating of "A" or better by S&P or "A2" or better from Moody's (or, if at any time either S&P or Moody's are not rating the debt of

such bank, an equivalent rating from another nationally recognized statistical rating agency), (d) investments in any money market fund or money market mutual fund that has (i) substantially all of its assets invested in the types of investments referred to in clauses (a) through (c) above, (ii) net assets of not less than \$250,000,000 and (iii) a rating of at least A-2 from S&P or at least P-2 from Moody's (or, if at any time either S&P or Moody's are not rating such fund, an equivalent rating from another nationally recognized statistical rating agency) and (e) other investments made in accordance with the investment policy of the Borrower as in effect on the Closing Date.

**"Cash Management Agreement"** means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables and purchasing cards), electronic funds transfer and other cash management arrangements.

**"Change in Control"** means an event or series of events by which (i) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of such person or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13d- 3 and 13d-5 under the Exchange Act, except that a "person" or "group" shall be deemed to have "beneficial ownership" of all Equity Interests that such "person" or "group" has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an "option right")), directly or indirectly, of more than twenty-five percent (25%) of the then outstanding Equity Interests of the Borrower entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Borrower or (ii) a majority of the members of the board of directors (or other equivalent governing body) of the Borrower shall not constitute Continuing Directors.

Notwithstanding the preceding or any provision of Section 13d-3 or 13d-5 of the Exchange Act, a "person" or "group" shall not be deemed to beneficially own Equity Interests subject to a stock or asset purchase agreement, merger agreement, option agreement, warrant agreement or similar agreement (or voting or option or similar agreement related thereto) until the consummation of the acquisition of the Equity Interests in connection with the transactions contemplated by such agreement.

**"Change in Law"** means the occurrence, after the date of this Agreement, of any of the following:

(a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith or in implementation thereof and (ii) all requests, rules, guidelines, requirements 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, implemented or issued.

**"Class"** means, when used in reference to any Loan, whether such Loan is a Revolving Credit Loan or Swingline Loan.

**"Closing Date"** means the date of this Agreement.

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**"Code"** means the Internal Revenue Code of 1986, and the rules and regulations promulgated thereunder.

**"Commitment Fee"** has the meaning assigned thereto in Section 4.3(a).

**"Commitment Percentage"** means, as to any Lender, such Lender's Revolving Credit Commitment Percentage.

**"Commitments"** means, collectively, as to all Lenders, the Revolving Credit Commitments of such Lenders.

**"Commodity Exchange Act"** means the Commodity Exchange Act (7 U.S.C. § 1 et seq.).

**"Compliance Certificate"** means a certificate of the chief financial officer or the treasurer of the Borrower substantially in the form attached as **Exhibit F**.

**"Conforming Changes"** means, with respect to either the use or administration of Term SOFR or the use, administration, adoption or implementation of any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Base Rate," the definition of "Business Day," the definition of "U.S. Government Securities Business Day," the definition of "Interest Period" or any similar or analogous definition (or the addition of a concept of "interest period"), timing and frequency of determining rates and making payments of interest, timing of borrowing requests or prepayment, conversion or continuation notices, the applicability and length of lookback periods, the applicability of **Section 4.9** and other technical, administrative or operational matters) that the Administrative Agent decides in consultation with the Borrower may be appropriate to reflect the adoption and implementation of any such rate or to permit the use and administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of any such rate exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement and the other Loan Documents).

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

**"Consolidated"** means, when used with reference to financial statements or financial statement items of any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

**"Consolidated EBITDA"** means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries:

(a) Consolidated Net Income for such period **plus**

(b) the sum of the following, without duplication, to the extent deducted in determining Consolidated Net Income (other than as set forth in clause (b)(vii)(B)) for such period:

(i) Consolidated Interest Expense;

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(ii) expense for Taxes measured by net income, profits or capital (or any similar measures), paid or accrued, including federal and state and local income Taxes, foreign income Taxes and franchise Taxes;

(iii) depreciation, amortization and other non-cash charges, losses or expenses, excluding any non-cash charge or expense that represents an accrual for a cash expense to be taken in a future period;

(iv) [reserved];

(v) all transaction fees, charges and other amounts related to the transactions contemplated hereby and any amendment or other modification to the Loan Documents, in each case to the extent paid within six (6) months of the Closing Date or the effectiveness of such amendment or other modification;

(vi) all transaction fees, charges and other amounts (including any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith) in connection with any Acquisition, Investment, Asset Disposition, issuance or repurchase of Equity Interests, or the incurrence, amendment or waiver of Indebtedness in each case permitted hereunder, recapitalization or breakage of any Hedge Agreements, in each case, whether or not consummated, in each case to the extent paid within six

(6) months of the closing or effectiveness of such event or the termination or abandonment of such transaction, as the case may be; provided that any amounts described in this clause (b)(vi) with respect to transactions that are not consummated shall not exceed \$25,000,000 for the applicable period;

(vii) (A) other unusual and non-recurring cash expenses, losses or charges (including losses from discontinued operations) (for the avoidance of doubt, losses from Asset Dispositions permitted pursuant to Section 8.5(a) shall not be added back to Consolidated EBITDA under this clause (b)(vii)) and (B) the amount of any "run rate" synergies, operating expense reductions and other net cost savings and integration costs, in each case projected by the Borrower in connection with Permitted Acquisitions (including, for the avoidance of doubt, Acquisitions occurring prior to the Closing Date), Asset Dispositions (including the termination or discontinuance of activities constituting such business) and/or other operating improvement, restructuring, cost savings initiative or other similar initiative taken after the Closing Date that have been consummated during the applicable Reference Period (calculated on a Pro Forma Basis as though such synergies, expense reductions and cost savings had been realized on the first day of the period for which Consolidated EBITDA is being determined), net of the amount of actual benefits realized during such period from such actions; provided that (i) such synergies, expense reductions and cost savings are reasonably identifiable, factually supportable, reasonably expected to have a continuing impact on the operations of the Borrower and its Subsidiaries and have been determined by the Borrower in good faith to be reasonably anticipated to be realizable within eighteen (18) months following any such action as set forth in reasonable detail on a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent, (ii) no such amounts shall be added pursuant to this clause to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment, the definition of Pro Forma Basis or otherwise and (iii) the aggregate amount added pursuant to this clause (b)(vii) for any Reference Period shall in no event exceed twelve and a half percent (12.5%) of Consolidated EBITDA for such period (calculated prior to any such add-backs pursuant to this clause (b)(vii));

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(viii) expenses, charges and losses in the form of earn-out obligations and other contingent consideration obligations (including to the extent accounted for as performance and retention bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with any Permitted Acquisitions or other Investments permitted hereunder, whether consummated prior to or after the Closing Date;

(ix) charges, losses or expenses to the extent subject to indemnity or reimbursement by a third party to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is (A) not denied by the applicable indemnitor or reimbursing party in writing; and (B) in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period of any amount so added back to the extent not so indemnified or reimbursed within such 365 day period);

(x) the amount of any expenses paid on behalf of any member of the board of directors or reimbursable to such member of the board of directors; and

(xi) proceeds of business interruption insurance received, in cash, to the extent not taken into account in the calculation of Consolidated Net Income; less

(c) the sum of the following, without duplication, to the extent included in determining Consolidated Net Income for such period:

(i) interest income,

(ii) federal, state, local and foreign income Tax credits of the Borrower and its Subsidiaries for such period (to the extent not netted from income Tax expense);

(iii) any unusual and non-recurring gains, including gains from discontinued operations (for the avoidance of doubt, gains from Asset Dispositions permitted pursuant to Section 8.5(a) shall not be deducted from Consolidated EBITDA under this clause (c)(iii));

(iv) non-cash gains or non-cash items; and

(v) any cash expense made during such period which represents the reversal of any non-cash expense that was added in a prior period pursuant to clause (b)(iii) above subsequent to the fiscal quarter in which the relevant non-cash expenses, charges or losses were incurred.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Borrower and its Subsidiaries on a Consolidated basis, the sum of, without duplication, (a) all obligations for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person, (b) all purchase money Indebtedness, (c) all obligations to pay the deferred purchase price of property or services of any such Person (including all payment obligations under non- competition, earn-out or similar agreements, solely to the extent any such payment obligation under non- competition, earn-out or similar agreements becomes due and payable and is, or would be, required to be classified as indebtedness on the Borrower’s consolidated balance sheet prepared in accordance with GAAP), except trade payables arising in the ordinary course of business not more than one hundred eighty (180) days past due, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person,

(d) the Attributable Indebtedness of such Person with respect to such Person’s Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP), (e) all drawn and

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unreimbursed obligations, contingent or otherwise, of any such Person relative to letters of credit, including any Reimbursement Obligation, and banker’s acceptances issued for the account of any such Person, (f) all obligations of any such Person in respect of Disqualified Equity Interests which shall be valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends that are past due, (g) all Guarantees of any such Person with respect to any of the foregoing and (h) all Indebtedness of the types referred to in clauses (a) through (g) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person.

“Consolidated Interest Coverage Ratio” means, as of any date of determination, the ratio of

(a) Consolidated EBITDA for the most recently completed Reference Period to (b) Consolidated Interest Expense for the most recently completed Reference Period.

“Consolidated Interest Expense” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP, interest expense (including interest expense attributable to Capital Lease Obligations and all net payment obligations pursuant to Hedge Agreements) for such period.

“Consolidated Net Income” means, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period, determined on a Consolidated basis, without duplication, in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Borrower and its Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (c) below), in which the Borrower or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Borrower or any of its Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or any of its Subsidiaries or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person’s assets are acquired by the Borrower or any of its Subsidiaries except to the extent included pursuant to the foregoing clause (a),

(c) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrower or any of its Subsidiaries of such net income

(i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or (ii) would be subject to any taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or taxes, (d) the net income (or loss) of any Subsidiary that is not a Wholly-Owned Subsidiary to the extent such net income (or loss) is attributable to the minority interest in such Subsidiary and (e) any gain or loss from Asset Dispositions during such period.

**"Consolidated Net Tangible Assets"** means, as of any date of determination, for the Borrower and its Subsidiaries, on a consolidated basis, the total amount of assets less the sum of (1) the goodwill and other intangible assets, and (2) all current liabilities, in each case, except as specifically set forth herein, reflected on the most recent consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the most recently ended fiscal quarter for which financial statements have been or are required to have been delivered pursuant to Section 7.1(a) or (b). Consolidated Net Tangible Assets shall be determined on a Pro Forma Basis.

**"Consolidated Total Assets"** means, at any date, total assets of the Borrower and its Subsidiaries calculated in accordance with GAAP on a consolidated basis as of such date.

**"Consolidated Total Net Leverage Ratio"** means, as of any date of determination, the ratio of (a)

(i) Consolidated Funded Indebtedness on such date minus (ii) Unrestricted Cash and Cash Equivalents on

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such date in an aggregate amount not to exceed \$75,000,000 to (b) Consolidated EBITDA for the most recently completed Reference Period.

**"Continuing Directors"** means the directors (or equivalent governing body) of the Borrower on the Closing Date and each other director (or equivalent) of the Borrower, if, in each case, such other Person's nomination for election to the board of directors (or equivalent governing body) of the Borrower is approved by at least 51% of the then Continuing Directors.

**"Control"** means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. **"Controlling"** and **"Controlled"** have meanings correlative thereto.

**"Covered Party"** has the meaning assigned thereto in Section 11.23(a).

**"Credit Facility"** means, collectively, the Revolving Credit Facility, the Swingline Facility and the L/C Facility.

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

**"Default"** means any of the events specified in Section 9.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.

**"Defaulting Lender"** means, subject to Section 4.15(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans required to be funded by it hereunder within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of participations in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any Issuing Lender or the Swingline 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 the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the FDIC 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

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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 4.15(b)) upon delivery of written notice of such determination to the Borrower, each Issuing Lender, the Swingline Lender and each Lender.

**"Disposed EBITDA"** means, with respect to any Person or business that is sold or Disposed of in an Asset Disposition during any period, the amount for such period of Consolidated EBITDA of any such Person or business subject to such Asset Disposition (determined using such definitions as if references to the Borrower and its Subsidiaries therein were to such Person or business), as calculated by the Borrower in good faith.

**"Disqualified Equity Interests"** means, with respect to any Person, any Equity Interests of such Person that, by their terms (or by the terms of any security or other Equity Interest into which they are convertible or for which they are exchangeable) or upon the happening of any event or condition, (a) mature or are mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full in cash of the Loans and all other Obligations (other than contingent indemnification obligations not then due) and the termination of the Commitments)), (b) are redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests) (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full in cash of the Loans and all other Obligations (other than contingent indemnification obligations not then due) and the termination of the Commitments)), in whole or in part, (c) provide for the scheduled payment of dividends in cash or (d) are or become 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), prior to the date that is 91 days after the latest scheduled maturity date of the Loans and Commitments; provided that if such Equity Interests are issued pursuant to a plan for the benefit of the Borrower or its Subsidiaries or by any such plan to such officers or employees, such Equity Interests shall not constitute Disqualified Equity Interests solely because they may be required to be repurchased by the Borrower or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations.

**"Dollars"** or **"\$"** means, unless otherwise qualified, dollars in lawful currency of the United States.

**"Domestic Subsidiary"** means any Subsidiary organized under the laws of any state of the United States or the District of Columbia.

**"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.

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**"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 credit institution or investment firm established in any EEA Member Country.

**"Electronic Record"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

**"Electronic Signature"** has the meaning assigned to that term in, and shall be interpreted in accordance with, 15 U.S.C. 7006.

**"Eligible Assignee"** means any Person that meets the requirements to be an assignee under Section 11.9(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.9(b)(iii)).

**"Employee Benefit Plan"** means (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of the Borrower or any ERISA Affiliate or (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding five (5) years been maintained, funded or administered for the employees of the Borrower or any current or former ERISA Affiliate.

**"Environmental Claims"** means any and all administrative, regulatory or judicial actions, suits, demands, demand letters, claims, liens, written allegations, notices of noncompliance or violation, investigations (other than internal reports prepared by any Person in the ordinary course of business and not in response to any third party action or request of any kind) or proceedings relating in any way to any actual or alleged violation of or liability under any Environmental Law or relating to any permit issued, or any approval given, under any such Environmental Law, including any and all claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Materials or arising from alleged injury or threat of injury to public health or the environment.

**"Environmental Laws"** means any and all federal, foreign, state, provincial and local laws, statutes, ordinances, codes, rules, standards and regulations, permits, licenses, written approvals, official interpretations and binding orders of courts or Governmental Authorities, relating to the protection of public health or the environment, including, but not limited to, requirements pertaining to the manufacture, processing, distribution, use, treatment, storage, disposal, transportation, handling, reporting, licensing, permitting, investigation or remediation of Hazardous Materials.

**"Equity Interests"** means (a) in the case of a corporation, capital stock, (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of capital stock, (c) in the case of a partnership, partnership interests (whether general or limited), (d) in the case of a limited liability company, membership interests, (e) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person and (f) any and all warrants, rights or options to purchase any of the foregoing.

**"ERISA"** means the Employee Retirement Income Security Act of 1974, and the rules and regulations thereunder.

**"ERISA Affiliate"** means any Person who together with the Borrower or any of its Subsidiaries is treated as a single employer within the meaning of Section 414(b), (c), (m) or (o) of the Code or Section 4001(b) of ERISA.

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**"Erroneous Payment"** has the meaning assigned thereto in Section 10.10(a).

**"Erroneous Payment Deficiency Assignment"** has the meaning assigned thereto in Section 10.10(d).

**"Erroneous Payment Impacted Class"** has the meaning assigned thereto in Section 10.10(d).

**"Erroneous Payment Return Deficiency"** has the meaning assigned thereto in Section 10.10(d).

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

**"Event of Default"** means any of the events specified in Section 9.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.

**"Exchange Act"** means the Securities Exchange Act of 1934 (15 U.S.C. § 77 et seq.).

**"Excluded Taxes"** means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 4.12(b)) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 4.11, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 4.11(g) and (d) any United States federal withholding Taxes imposed under FATCA.

**"Existing BMO Credit Agreement"** means that certain Term Loan Facility Letter, dated as of June 30, 2021, by and among the Borrower and BMO Harris Bank N.A., as amended or otherwise modified from time to time.

**"Existing Letters of Credit"** means those letters of credit existing on the Closing Date and identified on Schedule 1.1(c).

**"Extended Letter of Credit"** has the meaning assigned thereto in Section 3.1(b).

**"Extensions of Credit"** means, as to any Lender at any time, (a) an amount equal to the sum of (i) the aggregate principal amount of all Revolving Credit Loans made by such Lender then outstanding, (ii) such Lender's Revolving Credit Commitment Percentage of the L/C Obligations then outstanding and (iii) such Lender's Revolving Credit Commitment Percentage of the Swingline Loans then outstanding, or (b) the making of any Loan or participation in any Letter of Credit by such Lender, as the context requires.

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

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

**"FDIC"** means the Federal Deposit Insurance Corporation.

**"Federal Funds Rate"** means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of

recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

**"Fee Letters"** means (a) the separate fee letter agreement dated November 9, 2022 among the Borrower, Wells Fargo and Wells Fargo Securities, LLC and (b) the separate fee letter agreement dated November 9, 2022 among the Borrower, BMO Harris Bank N.A. and BMO Capital Markets Corp.

**"Fiscal Year"** means the fiscal year of the Borrower and its Subsidiaries ending on December 31.

**"Floor"** means a rate of interest equal to zero.

**"Foreign Lender"** means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

**"Foreign Subsidiary"** means any Subsidiary that is not a Domestic Subsidiary.

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

**"Fronting Exposure"** means, at any time there is a Defaulting Lender, (a) with respect to any Issuing Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such Issuing Lender, other than such L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof and (b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of outstanding Swingline Loans other than Swingline Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

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

**"GAAP"** means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or

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such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

**"Governmental Approvals"** means all authorizations, consents, approvals, permits, licenses and exemptions of, and all registrations and filings with or issued by, any Governmental Authorities.

**"Governmental Authority"** means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions 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 or other obligation 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 advance or supply funds for the purchase or payment of) such Indebtedness or other obligation 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 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, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (e) for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (whether in whole or in part); provided that the term "Guarantee" shall not include endorsements for collection or deposit, in each case, in the ordinary course of business, or customary and reasonable indemnity obligations in connection with any Asset Disposition permitted under this Agreement (other than any such obligations with respect to Indebtedness).

**"Hazardous Materials"** means any substances or materials (a) which are or become defined as hazardous wastes, hazardous substances, pollutants, contaminants, chemical substances or mixtures or toxic substances under any Environmental Law, (b) which are toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic or otherwise harmful to public health or the environment and are or become regulated by any Governmental Authority, (c) the presence of which require investigation or remediation under any Environmental Law, (d) the discharge or emission or release of which requires a permit or license under any Environmental Law or other Governmental Approval, (e) which are deemed by a Governmental Authority to pose a health or safety hazard to Persons or neighboring properties, or (f) which contain, without limitation, asbestos, polychlorinated biphenyls, urea formaldehyde foam insulation, petroleum hydrocarbons, petroleum derived substances or waste, crude oil, nuclear fuel, natural gas or synthetic gas.

**"Hedge Agreement"** means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and

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Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement.

**"Hedge Termination Value"** means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements,

(a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

**"Increase Effective Date"** has the meaning assigned thereto in Section 4.13(c).

**"Incremental Amendment"** has the meaning assigned thereto in Section 4.13(f).

**"Incremental Facilities Limit"** means the greater of (x) \$600,000,000 and (y) one hundred percent (100%) of Consolidated EBITDA for the most recently completed Reference Period prior to the incurrence of such additional Indebtedness less the total aggregate initial principal amount (as of the date of incurrence thereof) of all previously incurred Incremental Increases.

**"Incremental Increase"** has the meaning assigned thereto in Section 4.13(a).

**"Incremental Lender"** has the meaning assigned thereto in Section 4.13(b).

**"Incremental Revolving Credit Facility Increase"** has the meaning assigned thereto in Section 4.13(a).

"Incremental Term Loan" has the meaning assigned thereto in Section 4.13(a).

"Incremental Term Loan Commitment" has the meaning assigned thereto in Section 4.13(a).

"Indebtedness" means, with respect to any Person at any date and without duplication, the sum of the following:

(a) all obligations of such Person for borrowed money, including obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, of such Person;

(b) all obligations of such Person to pay the deferred purchase price of property or services of such Person (including all payment obligations under non-competition, earn-out or similar agreements, solely to the extent any such payment obligation under non-competition, earn-out or similar agreements becomes due and payable and is, or would be, required to be classified as indebtedness on such Person's consolidated balance sheet prepared in accordance with GAAP), except trade payables arising in the ordinary course of business not more than one hundred eighty

(180) days past due, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person;

(c) the Attributable Indebtedness of such Person with respect to such Person's Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP);

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(d) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person to the extent of the value of such property (other than customary reservations or retentions of title under agreements with suppliers entered into in the ordinary course of business);

(e) all obligations of any other Person secured by a Lien on any asset owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements except trade payables arising in the ordinary course of business), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;

(f) all obligations, contingent or otherwise, of such Person relative to the face amount of letters of credit, whether or not drawn, including any Reimbursement Obligation, and banker's acceptances issued for the account of such Person;

(g) all obligations of such Person in respect of Disqualified Equity Interests;

(h) all net obligations of such Person under any Hedge Agreements; and

(i) all Guarantees of such Person with respect to any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. In respect of Indebtedness of another Person secured by a Lien on the assets of the specified Person, if such Indebtedness shall not have been assumed by such Person or is limited in recourse to the assets securing such Lien, the amount of such Indebtedness as of any date of determination will be the lesser of (x) the fair market value of such assets as of such date (as determined in good faith by the Borrower) and (y) the amount of such Indebtedness as of such date. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date. The amount of obligations in respect of any Disqualified Equity Interests shall be valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends that are past due.

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

**"Indemnitee"** has the meaning assigned thereto in Section 11.3(b).

**"Information"** has the meaning assigned thereto in Section 11.10.

**"Interest Period"** means, as to any SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending on the date one (1), three (3) or six (6) months thereafter, in each case as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation and subject to availability; provided that:

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

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(b) if any Interest Period would otherwise expire on a day that is not a Business Day, such Interest Period shall expire on the next succeeding Business Day; provided that if any Interest Period would otherwise expire on a day that is not a Business Day but is a day of the month after which no further Business Day occurs in such month, such Interest Period shall expire on the immediately preceding Business Day;

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

(d) no Interest Period shall extend beyond the Revolving Credit Maturity Date;

(e) there shall be no more than ten (10) Interest Periods in effect at any time; and

(f) no tenor that has been removed from this definition pursuant to Section 4.8(c)(iv) shall be available for specification in any Notice of Borrowing or Notice of Conversion/Continuation.

**"Interstate Commerce Act"** means the body of law commonly known as the Interstate Commerce Act (49 U.S.C. App. § 1 et seq.).

**"Investment"** means, with respect to any Person, that such Person (a) purchases, owns, invests in or otherwise acquires (in one transaction or a series of transactions), by division or otherwise, directly or indirectly, any Equity Interests, interests in any partnership or joint venture (including the creation or capitalization of any Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other investment or interest whatsoever in any other Person, (b) makes any Acquisition or (c) makes or holds, directly or indirectly, any loans, advances or extensions of credit to, or any investment in cash or by delivery of Property in, any Person.

**"Investment Company Act"** means the Investment Company Act of 1940 (15 U.S.C. § 80(a)(1), et seq.).

**"IRS"** means the United States Internal Revenue Service.

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

**"Issuing Lender"** means (a) with respect to Letters of Credit issued hereunder on or after the Closing Date, (i) Wells Fargo and (ii) BMO Harris Bank N.A. and (b) with respect to the Existing Letters of Credit, Wells Fargo, in its capacity as issuer thereof.

**"LCA Test Date"** has the meaning assigned thereto in [Section 1.12\(a\)](#).

**"L/C Commitment"** means, as to any Issuing Lender, the obligation of such Issuing Lender to issue Letters of Credit for the account of the Borrower or one or more of its Subsidiaries from time to time in an aggregate amount equal to, for each of the Issuing Lenders, the amount set forth opposite the name of each such Issuing Lender on [Schedule 1.1\(b\)](#), any such amount may be changed after the Closing Date in a written agreement between the Borrower and such Issuing Lender (which such agreement shall be promptly delivered to the Administrative Agent upon execution).

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**"L/C Facility"** means the letter of credit facility established pursuant to [Article III](#).

**"L/C Obligations"** means at any time, an amount equal to the sum of (a) the aggregate undrawn and unexpired amount of the then outstanding Letters of Credit and (b) the aggregate amount of drawings under Letters of Credit which have not then been reimbursed pursuant to [Section 3.5](#).

**"L/C Participants"** means, with respect to any Letter of Credit, the collective reference to all the Revolving Credit Lenders other than the applicable Issuing Lender.

**"L/C Sublimit"** means the lesser of (a) \$100,000,000 and (b) the aggregate amount of the Revolving Credit Commitments.

**"Lender"** means each Person executing this Agreement as a Lender on the Closing Date and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and Assumption or pursuant to [Section 4.13](#), other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term "Lenders" includes the Swingline Lender.

**"Lending Office"** means, with respect to any Lender, the office of such Lender maintaining such Lender's Extensions of Credit, which office may, to the extent the applicable Lender notifies the Administrative Agent in writing, include an office of any Affiliate of such Lender or any domestic or foreign branch of such Lender or Affiliate.

**"Letter of Credit Application"** means an application requesting the applicable Issuing Lender to issue a Letter of Credit in the form specified by the applicable Issuing Lender from time to time.

**"Letter of Credit Documents"** means with respect to any Letter of Credit, such Letter of Credit, the Letter of Credit Application, a letter of credit agreement or reimbursement agreement and any other document, agreement and instrument required by the applicable Issuing Lender and relating to such Letter of Credit, in each case in the form specified by the applicable Issuing Lender from time to time.

**"Letters of Credit"** means the collective reference to letters of credit issued pursuant to [Section 3.1](#) and the Existing Letters of Credit.

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

**"Limited Condition Acquisition"** means any Acquisition that (a) is not prohibited hereunder, (b) is not conditioned on the availability of, or on obtaining, third-party financing and (c) is completed within six (6) months after the execution of the definitive purchase agreement for such Acquisition or other Investment.

**"Loan Documents"** means, collectively, this Agreement, each Note, the Letter of Credit Documents, the Fee Letters, and each other document, instrument, certificate and agreement executed and delivered by the Borrower or any of its Subsidiaries in favor of or provided to the Administrative Agent or any Lender in connection with this Agreement or otherwise referred to herein or contemplated hereby.

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**"Loans"** means the collective reference to the Revolving Credit Loans and the Swingline Loans, and **"Loan"** means any of such Loans.

**"Material Adverse Effect"** means, with respect to the Borrower and its Subsidiaries, (a) a material adverse effect on the operations, business, assets, properties, prospects, liabilities (actual or contingent) or condition (financial or otherwise) of such Persons, taken as a whole, (b) a material impairment of the ability of any such Person to perform its obligations under the Loan Documents to which it is a party, (c) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document or (d) an impairment of the legality, validity, binding effect or enforceability against the Borrower of any Loan Document to which it is a party.

**"Material Subsidiary"** means each direct or indirect Subsidiary of Borrower which (i) owned as of the end of the most recently completed Reference Period (or, in the case of an acquired Subsidiary, on a Pro Forma Basis would have owned) assets that represent in excess of 5% of the Consolidated Total Assets of Borrower and its Subsidiaries as of the end of such Reference Period or (ii) generated (or, in the case of an acquired Subsidiary, on a Pro Forma Basis would have generated) gross revenues in excess of 5% of the Consolidated total gross revenues for Borrower and its Subsidiaries for the most recently completed Fiscal Year.

**"Minimum Collateral Amount"** means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 102% of the Fronting Exposure of each of the Issuing Lenders with respect to Letters of Credit issued by it and outstanding at such time, (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 9.2(b), an amount equal to 102% of the aggregate outstanding amount of all L/C Obligations and (c) otherwise, an amount determined by the Administrative Agent and each of the applicable Issuing Lenders that is entitled to Cash Collateral hereunder at such time in their sole discretion.

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

**"Multiemployer Plan"** means a "multiemployer plan" as defined in Section 4001(a)(3) of ERISA to which the Borrower or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding five (5) years, or to which the Borrower or any ERISA Affiliate has any liability (contingent or otherwise).

**"Non-Consenting Lender"** means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.2 and (b) has been approved by the Required Lenders.

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

**"Non-Wholly-Owned Subsidiary"** means any Subsidiary of the Borrower that is not Wholly-Owned.

**"Notes"** means the collective reference to the Revolving Credit Notes and the Swingline Note.

**"Notice of Account Designation"** has the meaning assigned thereto in Section 2.3(b).

**"Notice of Borrowing"** has the meaning assigned thereto in Section 2.3(a).

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"Notice of Conversion/Continuation" has the meaning assigned thereto in Section 4.2.

"Notice of Prepayment" has the meaning assigned thereto in Section 2.4(g).

"Obligations" means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations and (c) all other fees and commissions (including attorneys' fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Borrower to the Lenders, the Issuing Lenders or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against the Borrower 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.

"OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.

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

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

"Other Taxes" means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 4.12).

"Overnight Rate" means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

"Participant" has the meaning assigned thereto in Section 11.9(d).

"Participant Register" has the meaning assigned thereto in Section 11.9(d).

"PATRIOT Act" means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

"Payment Recipient" has the meaning assigned thereto in Section 10.10(a).

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

**"Pension Plan"** means any Employee Benefit Plan, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained, funded or administered for the employees of the Borrower or any ERISA Affiliate, (b) has at any time within the preceding five (5) years been maintained, funded or administered for the employees of the Borrower or any current or former ERISA Affiliates or (c) the Borrower or any ERISA Affiliate has any liability (contingent or otherwise).

**"Permitted Acquisition"** means any Acquisition, including a Limited Condition Acquisition, that meets all of the following requirements; provided, that, in the case of a Limited Condition Acquisition, such requirements shall be subject to the qualifications and conditions set forth in Section 1.12:

- (a) Solely to the extent such Acquisition has a purchase price which exceeds \$250,000,000, as soon as available, but not less than five (5) days prior to such Acquisition, the Borrower has provided the Administrative Agent (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Administrative Agent including pro forma financial statements and statements of cash flow;
- (b) the board of directors or other similar governing body of the Person to be acquired shall have approved such Acquisition (and, if requested, the Administrative Agent shall have received evidence, in form and substance reasonably satisfactory to the Administrative Agent, of such approval);
- (c) the Person or business to be acquired shall be in a line of business permitted pursuant to Section 8.9 or, in the case of an Acquisition of assets, the assets acquired are useful in the business of the Borrower and its Subsidiaries as conducted immediately prior to such Acquisition or permitted pursuant to Section 8.9;
- (d) if such Acquisition is a merger or consolidation, the Borrower or a Subsidiary of the Borrower shall be the surviving Person, and no Change in Control shall have been effected thereby;
- (e) the Borrower shall be in compliance on a Pro Forma Basis (based on the most recently completed Reference Period) with each covenant contained in Section 8.10; and
- (f) no Default or Event of Default shall have occurred and be continuing both before and after giving effect to such Acquisition and any Indebtedness incurred in connection therewith.

**"Permitted Liens"** means the Liens permitted pursuant to Section 8.2.

**"Permitted Refinancing Indebtedness"** means any Indebtedness (the "Refinancing Indebtedness"), the proceeds of which are used to refinance, refund, renew, extend or replace outstanding Indebtedness (such outstanding Indebtedness, the "Refinanced Indebtedness"); provided that (a) the principal amount (or accredited value, if applicable) of such Refinancing Indebtedness (including any unused commitments thereunder) is not greater than the principal amount (or accredited value, if applicable) of the Refinanced Indebtedness at the time of such refinancing, refunding, renewal, extension or replacement, except by an amount equal to any original issue discount thereon and the amount of unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with

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such refinancing, refunding, renewal, extension or replacement, and by an amount equal to any existing commitments thereunder that have not been utilized at the time of such refinancing, refunding, renewal, extension or replacement; (b) the final stated maturity and Weighted Average Life to Maturity of such Refinancing Indebtedness shall not be prior to or shorter than that applicable to the Refinanced Indebtedness and such Refinancing Indebtedness does not require any scheduled payment of principal, mandatory repayment, redemption or repurchase that is more favorable to the holders of the Refinancing Indebtedness than the corresponding terms (if any) of the Refinanced Indebtedness (including by virtue of such Refinancing Indebtedness participating on a greater basis in any mandatory repayment, redemption or repurchase as compared

to the Refinanced Indebtedness, but excluding any scheduled payment of principal, mandatory repayment, redemption or repurchase occurring on or after the date that is 91 days after the latest scheduled maturity date of the Loans and Commitments); (c) such Refinancing Indebtedness shall not be secured by (i) Liens on assets other than assets securing the Refinanced Indebtedness at the time of such refinancing, refunding, renewal, extension or replacement or (ii) Liens having a higher priority than the Liens, if any, securing the Refinanced Indebtedness at the time of such refinancing, refunding, renewal, extension or replacement; (d) such Refinancing Indebtedness shall not be guaranteed by or otherwise recourse to any Person other than the Person(s) to whom the Refinanced Indebtedness is recourse or by whom it is guaranteed, in each case as of the time of such refinancing, refunding, renewal, extension or replacement; (e) to the extent such Refinanced Indebtedness is subordinated in right of payment to the Obligations, such refinancing, refunding, renewal, extension or replacement is subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders as those contained in the documentation governing such Refinanced Indebtedness or otherwise reasonably acceptable to the Administrative Agent; (f) the covenants with respect to such Refinancing Indebtedness, when taken as a whole, are not materially more restrictive to the Borrower and its Subsidiaries than those in the Refinanced Indebtedness (taken as a whole); (g) in the event that the Refinancing Indebtedness is unsecured Indebtedness such Refinancing Indebtedness does not include cross-defaults (but may include cross- payment defaults and cross-defaults at the final stated maturity thereof and cross-acceleration); and (h) no Default or Event of Default shall have occurred and be continuing at the time of, or would result from, such refinancing, refunding, renewal, extension or replacement.

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

**"Platform"** means Debt Domain, Intralinks, SyndTrak or a substantially similar electronic transmission system.

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

**"Priority Indebtedness"** means, without duplication, (a) any Indebtedness of any Subsidiaries of the Borrower (whether or not any such Indebtedness is secured by any Liens), and (b) any Indebtedness of the Borrower that is secured by any Lien.

**"Pro Forma Basis"** means:

(a) for purposes of calculating Consolidated EBITDA for any period during which one or more Specified Transactions occurs, that (i) such Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) shall be deemed to have occurred as of the first day of the applicable period of measurement, (ii) there shall be included in

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determining Consolidated EBITDA for such period, without duplication, the Acquired EBITDA of any Person or business, or attributable to any property or asset, acquired by the Borrower or any Subsidiary during such period (but not the Acquired EBITDA of any related Person or business or any Acquired EBITDA attributable to any assets or property, in each case to the extent not so acquired) in connection with a Permitted Acquisition to the extent not subsequently sold, transferred, abandoned or otherwise disposed of by the Borrower or such Subsidiary during such period, based on the actual Acquired EBITDA of such acquired entity or business for such period (including the portion thereof occurring prior to such acquisition) and (iii) there shall be excluded in determining Consolidated EBITDA for such period, without duplication, the Disposed EBITDA of any Person or business, or attributable to any property or asset, disposed of by the Borrower or any Subsidiary during such period in connection with a Specified Disposition or discontinuation of operations (for the avoidance of any doubt, an Asset Disposition permitted by Section 8.5(a) shall not be considered a Specified Disposition for purposes of calculating Consolidated EBITDA), based on the Disposed EBITDA of such disposed entity or business or discontinued operations for such period (including the portion thereof occurring prior to such disposition or discontinuation); provided that the foregoing amounts shall be without duplication of any adjustments that are already included in the calculation of Consolidated EBITDA; and

(b) in the event that the Borrower or any Subsidiary thereof incurs (including by assumption or guarantees) or repays (including by redemption, repayment, retirement, discharge, defeasance or extinguishment) any Indebtedness included in the calculations of any financial ratio or test (in each case, other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable measurement period or (ii) subsequent to the end of the applicable measurement period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then such financial ratio or test shall be calculated giving proforma effect to such incurrence or repayment of Indebtedness, to the extent required, as if the same had occurred on the first day of the applicable measurement period and any such Indebtedness that is incurred (including by assumption or guarantee) that has a floating or formula rate of interest shall have an implied rate of interest for the applicable period determined by utilizing the rate which is or would be in effect with respect to such Indebtedness as of the relevant date of determination.

**"Property"** means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including Equity Interests.

**"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 Lenders"** has the meaning assigned thereto in Section 7.2.

**"Qualified Equity Interests"** means any Equity Interests that are not Disqualified Equity Interests.

**"Recipient"** means (a) the Administrative Agent, (b) any Lender or (c) any Issuing Lender, as applicable.

**"Reference Period"** means, as of any date of determination, the period of four (4) consecutive fiscal quarters ended on or immediately prior to such date for which financial statements of the Borrower and its Subsidiaries have been delivered to the Administrative Agent hereunder.

**"Register"** has the meaning assigned thereto in Section 11.9(c).

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**"Reimbursement Obligation"** means the obligation of the Borrower to reimburse any Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit issued by such Issuing Lender.

**"Reinstated Letter of Credit"** has the meaning assigned thereto in Section 3.12(e).

**"Related Parties"** means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

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

**"Removal Effective Date"** has the meaning assigned thereto in Section 10.6(b).

**"Required Lenders"** means, at any time, Lenders having Total Credit Exposure representing more than fifty percent (50%) of the Total Credit Exposure of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

**"Resignation Effective Date"** has the meaning assigned thereto in Section 10.6(a).

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

**"Responsible Officer"** means, as to any Person, the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of such Person or any other officer of such Person designated in writing by the Borrower or such Person and reasonably acceptable to the Administrative Agent; provided that, to the extent requested thereby, the Administrative Agent shall have received a certificate of such Person certifying as to the incumbency and genuineness of the signature of each such officer. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, limited liability company, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

**"Revenue Equipment"** means, trucks, trailers, containers and all accessories and parts attached thereto, owned by Borrower and its Subsidiaries.

**"Revolving Credit Commitment"** means (a) as to any Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Credit Loans to, and to purchase participations in L/C Obligations and Swingline Loans for the account of, the Borrower hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on the Register, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including Section 4.13) and (b) as to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Credit Loans, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including Section 4.13). The aggregate Revolving Credit Commitment of all the Revolving Credit Lenders on the Closing Date shall be \$1,075,000,000. The Revolving Credit Commitment of each Revolving Credit Lender on the Closing Date is set forth opposite the name of such Lender on Schedule 1.1(a).

**"Revolving Credit Commitment Percentage"** means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders

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represented by such Revolving Credit Lender's Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments. The Revolving Credit Commitment Percentage of each Revolving Credit Lender on the Closing Date is set forth opposite the name of such Lender on Schedule 1.1(a).

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

**"Revolving Credit Facility"** means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility pursuant to Section 4.13).

**"Revolving Credit Lenders"** means, collectively, all of the Lenders with a Revolving Credit Commitment or if the Revolving Credit Commitment has been terminated, all Lenders having Revolving Credit Exposure.

**"Revolving Credit Loan"** means any revolving loan made to the Borrower pursuant to Section 2.1, and all such revolving loans collectively as the context requires.

**"Revolving Credit Maturity Date"** means the earliest to occur of (a) December 20, 2027, (b) the date of termination of the entire Revolving Credit Commitment by the Borrower pursuant to Section 2.5, and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 9.2(a).

**"Revolving Credit Note"** means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing the Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form attached as ***Exhibit A-1***, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

**"Revolving Credit Outstanding"** means the sum of (a) with respect to Revolving Credit Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; plus (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving effect to any Extensions of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

**"S&P"** means Standard & Poor's Rating Service, a division of S&P Global Inc. and any successor thereto.

**"Sanctioned Country"** means at any time, a country, region or territory which is itself (or whose government is) the subject or target of any Sanctions (including, as of the Closing Date, the Crimea Region of Ukraine, the so-called Donetsk People's Republic or Luhansk People's Republic regions of Ukraine, Cuba, Iran, North Korea and Syria).

**"Sanctioned Person"** means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including OFAC's Specially Designated Nationals and Blocked Persons List and OFAC's Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, any European member state, His Majesty's Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country, (c)

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any Person owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s) or (d) any Person otherwise a target of Sanctions, including vessels and aircraft, that are designated under any Sanctions program.

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

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

**"Securities Act"** means the Securities Act of 1933 (15 U.S.C. § 77 et seq.).

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

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

**"SOFR Loan"** means any Loan bearing interest at a rate based on Adjusted Term SOFR as provided in Section 4.1(a).

**"Solvent"** and **"Solvency"** mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the Property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature,

(d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. For purposes of this definition, the amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

**"Specified Acquisition"** means any Acquisition having a purchase price in excess of the greater of (x) \$50,000,000 and (y) eight percent (8%) of Consolidated EBITDA for the most recently completed Reference Period.

**"Specified Disposition"** means any Asset Disposition having gross sales proceeds in excess of the greater of (x) \$50,000,000 and (y) eight percent (8%) of Consolidated EBITDA for the most recently completed Reference Period.

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**"Specified Representations"** shall mean the representations and warranties set forth in Sections 6.1, 6.3, 6.4(a), 6.4(b) (in the case of any tranche of Loans with respect to which such Specified Representations are made, limited to the incurrence of such tranche of Loans), 6.4(e), 6.10, 6.11, 6.15 and 6.18.

**"Specified Transactions"** means (a) any Specified Disposition, (b) any Specified Acquisition and (c) the transactions contemplated by this Agreement.

**"Subsidiary"** means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any contingency). Unless otherwise qualified, references to "Subsidiary" or "Subsidiaries" herein shall refer to those of the Borrower.

**"Swingline Commitment"** means the lesser of (a) \$100,000,000 and (b) the aggregate amount of the Revolving Credit Commitments.

**"Swingline Facility"** means the swingline facility established pursuant to Section 2.2.

**"Swingline Lender"** means Wells Fargo in its capacity as swingline lender hereunder or any successor thereto.

**"Swingline Loan"** means any swingline loan made by the Swingline Lender to the Borrower pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

**"Swingline Note"** means a promissory note made by the Borrower in favor of the Swingline Lender evidencing the Swingline Loans made by the Swingline Lender, substantially in the form attached as **Exhibit A-2**, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

**"Swingline Participation Amount"** has the meaning assigned thereto in Section 2.2(b)(iii).

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

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

"Term SOFR" means,

(a) for any calculation with respect to a SOFR Loan, the Term SOFR Reference Rate for a tenor comparable to the applicable Interest Period on the day (such day, the "Periodic TermSOFR Determination Day") that is two (2) U.S. Government Securities Business Days prior to the first day of such Interest Period, as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (Eastern time) on any Periodic Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published

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by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Periodic Term SOFR Determination Day, and

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

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

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

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

"Termination Event" means the occurrence of any of the following which, individually or in the aggregate, has resulted or could reasonably be expected to result in liability of the Borrower in an aggregate amount in excess of the Threshold Amount: (a) a "Reportable Event" described in Section 4043 of ERISA, or (b) the withdrawal of the Borrower or any ERISA Affiliate from a Pension Plan 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 that is treated as such a withdrawal under Section 4062(e) of ERISA, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303 of ERISA, or (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or plan in endangered or critical status within the meaning of Sections 430, 431 or 432 of the Code or Sections 303, 304 or 305 of ERISA or (h) the partial or complete withdrawal of the Borrower or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or (i) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Section 4245 of ERISA, or (j) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA, or (k) the imposition of any liability under Title IV of ERISA, other than for

PBGC premiums due but not delinquent under Section 4007 of ERISA, upon the Borrower or any ERISA Affiliate.

**"Threshold Amount"** means the greater of (x) \$60,000,000 and (y) ten percent (10%) of Consolidated EBITDA for the most recently completed Reference Period.

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

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

**"Unrestricted Cash and Cash Equivalents"** means, as of any date of determination, 100% of all cash and Cash Equivalents of the Borrower and its Domestic Subsidiaries that are held in bank accounts or securities accounts located in the United States, in each case that are unrestricted and not subject to any Liens (other than Liens permitted under Section 8.2(a) and (k)); provided that the proceeds of any Indebtedness incurred substantially concurrently with the determination of such amount shall be excluded.

**"U.S. Government Securities Business Day"** means any day except for (a) a Saturday, (b) a Sunday or (c) a day on which the Securities Industry and Financial Markets Association recommends that the fixed income departments of its members be closed for the entire day for purposes of trading in United States government securities; provided, that for purposes of notice requirements in Sections 2.3(a), 2.4(c) and 4.2, in each case, such day is also a Business Day.

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

**"U.S. Tax Compliance Certificate"** has the meaning assigned thereto in Section 4.11(g).

**"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, in each case of clauses (a) and (b), without giving effect to the application of any prior prepayment to such installment, sinking fund, serial maturity or other required payment of principal.

**"Wells Fargo"** means Wells Fargo Bank, National Association, a national banking association.

**"Wholly-Owned"** means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly- Owned Subsidiaries (except for directors' qualifying shares or other shares required by Applicable Law to be owned by a Person other than the Borrower and/or one or more of its Wholly-Owned Subsidiaries).

**"Withholding Agent"** means the Borrower and the Administrative Agent.

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

**Section 1.2 Other Definitions and Provisions.** With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation", (d) the word "will" shall be construed to have the same meaning and effect as the word "shall", (e) any reference herein to any Person shall be construed to include such Person's successors and assigns, (f) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (i) the term "documents" includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and (j) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including;" the words "to" and "until" each mean "to but excluding;" and the word "through" means "to and including".

### **Section 1.3 Accounting Terms.**

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 5.1(d) and Section 7.1(a), except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower 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) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required

Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders);

provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP; provided, further that (A) all obligations of any Person that are or would have been treated as operating leases for purposes of GAAP prior to the effectiveness of FASB ASC 842 shall continue to be accounted for as operating leases for purposes of all financial definitions and calculations for purposes of this Agreement (whether or not such operating lease obligations were in effect on such date) notwithstanding the fact that such obligations are required in accordance with FASB ASC 842 (on a prospective or retroactive basis or otherwise) to be treated as Capital Lease Obligations in the financial statements and (B) upon reasonable written request by the Administrative Agent the Borrower shall promptly provide a schedule showing the modifications necessary to reconcile the adjustments made pursuant to clause (A) above with such financial statements.

(c) Each Specified Transaction, by the Borrower and its Subsidiaries that is consummated during any Reference Period shall, for purposes of determining compliance with the financial covenants set forth in [Section 8.10](#) and for purposes of determining the Applicable Margin, be given effect on a Pro Forma Basis as of the first day of such Reference Period.

**Section 1.4 UCC Terms.** Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term "UCC" refers, as of any date of determination, to the UCC then in effect.

**Section 1.5 Rounding.** Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

**Section 1.6 References to Agreement and Laws.** Unless otherwise expressly provided herein, (a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including Anti-Corruption Laws, Anti-Money Laundering Laws, the Bankruptcy Code, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the PATRIOT Act, the Securities Act, the UCC, the Investment Company Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

**Section 1.7 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

**Section 1.8 Guarantees/Earn-Outs.** Unless otherwise specified, (a) the amount of any Guarantee shall be the lesser of the amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument

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embodying such Guarantee and (b) the amount of any earn-out or similar obligation shall be the amount of such obligation, solely to the extent such obligation becomes due and payable and is, or would be, required to be classified as indebtedness, on the balance sheet of such Person in accordance with GAAP.

**Section 1.9 Covenant Compliance Generally.** For purposes of determining compliance under [Sections 8.1, 8.2, 8.3](#) and [8.5](#), any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating Consolidated Net Income in the most recent annual financial statements of the Borrower and its Subsidiaries delivered pursuant to [Section 7.1\(a\)](#) or [Section 5.1\(d\)](#), as applicable. Notwithstanding the foregoing, for purposes of determining compliance with [Sections 8.1, 8.2](#) and [8.3](#), with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no breach of any basket contained in such sections shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided

that for the avoidance of doubt, the foregoing provisions of this Section 1.9 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

**Section 1.10 Rates.** The Administrative Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any component definition thereof or rates referred to in the definition thereof, or with respect to any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement), as it may or may not be adjusted pursuant to Section 4.8(c), will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its Affiliates or other related entities may engage in transactions that affect the calculation of the Term SOFR Reference Rate, Adjusted Term SOFR, Term SOFR, any alternative, successor or replacement rate (including any Benchmark Replacement) or any relevant adjustments thereto and such transactions may be adverse to the Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, or any other Benchmark, any component definition thereof or rates referred to in the definition thereof, in each case pursuant to the terms of this Agreement, and shall have no liability to the Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

**Section 1.11 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 1.12 Limited Condition Acquisitions.** In the event that the Borrower notifies the Administrative Agent in writing that any proposed Acquisition is a Limited Condition Acquisition and that the Borrower wishes to test the conditions to such Acquisition and the Indebtedness that is to be used to finance such Acquisition in accordance with this Section 1.12, then, so long as agreed to by the Administrative Agent and the lenders providing such Indebtedness, the following provisions shall apply:

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(a) any condition to such Limited Condition Acquisition or such Indebtedness that requires that no Default or Event of Default shall have occurred and be continuing at the time of such Limited Condition Acquisition or the incurrence of such Indebtedness, shall be satisfied if (i) no Default or Event of Default shall have occurred and be continuing at the time of the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Limited Condition Acquisition (the "LCA Test Date") and (ii) no Event of Default under any of Section 9.1(a), 9.1(b), 9.1(h) or 9.1(i) shall have occurred and be continuing both immediately before and immediately after giving effect to such Limited Condition Acquisition and any Indebtedness incurred in connection therewith (including any such additional Indebtedness);

(b) any condition to such Limited Condition Acquisition or such Indebtedness that the representations and warranties in this Agreement and the other Loan Documents shall be true and correct at the time of consummation of such Limited Condition Acquisition or the incurrence of such Indebtedness shall be deemed satisfied if (i) all representations and warranties in this Agreement and the other Loan Documents are true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects) as of the LCA Test Date, or if such representation speaks as of an earlier date, as of such earlier date and (ii) as of the date of consummation of such Limited Condition Acquisition, (A) the representations and warranties under the relevant definitive agreement governing such Limited Condition Acquisition as are material to the lenders providing such Indebtedness shall be true and correct, but only to the extent that the Borrower or its applicable Subsidiary has the right to terminate its obligations under such agreement or otherwise decline to close such Limited Condition Acquisition as a result of a breach of such representations and warranties or the failure of those representations and

warranties to be true and correct and (B) the Specified Representations shall be true and correct in all material respects (except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects);

(c) any financial ratio test or condition to be tested in connection with such Limited Condition Acquisition and the availability of such Indebtedness will be tested as of the LCA Test Date, in each case, after giving effect to the relevant Limited Condition Acquisition and related incurrence of Indebtedness, on a Pro Forma Basis where applicable, and, for the avoidance of doubt,

(i) such ratios and baskets shall not be tested at the time of consummation of such Limited Condition Acquisition and (ii) if any of such ratios are exceeded or conditions are not met following the LCA Test Date, but prior to the closing of such Limited Condition Acquisition, as a result of fluctuations in such ratio or amount (including due to fluctuations in Consolidated EBITDA of the Borrower and its Subsidiaries or the Person subject to such Limited Condition Acquisition), at or prior to the consummation of the relevant transaction or action, such ratios will not be deemed to have been exceeded and such conditions will not be deemed unmet as a result of such fluctuations solely for purposes of determining whether the relevant transaction or action is permitted to be consummated or taken; and

(d) except as provided in the next sentence, in connection with any subsequent calculation of any ratio or basket on or following the relevant LCA Test Date and prior to the earlier of the date on which such Limited Condition Acquisition is consummated and the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be calculated

(i) on a Pro Forma Basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have been consummated and (ii) assuming such Limited Condition Acquisition and other transactions in

connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated. Notwithstanding the foregoing, any calculation of a ratio in connection with determining the Applicable Margin and determining whether or not the Borrower is in compliance with the financial covenants set forth in Section 8.10 shall, in each case be calculated assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated.

The foregoing provisions shall apply with similar effect during the pendency of multiple Limited Condition Acquisitions such that each of the possible scenarios is separately tested.

## ARTICLE II. REVOLVING CREDIT FACILITY

**Section 2.1 Revolving Credit Loans.** Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Revolving Credit Lender severally agrees to make Revolving Credit Loans in Dollars to the Borrower from time to time from the Closing Date to, but not including, the Revolving Credit Maturity Date as requested by the Borrower in accordance with the terms of Section 2.3; provided, that (a) the Revolving Credit Outstanding shall not exceed the Revolving Credit Commitment and (b) the Revolving Credit Exposure of any Revolving Credit Lender shall not at any time exceed such Revolving Credit Lender's Revolving Credit Commitment. Each Revolving Credit Loan by a Revolving Credit Lender shall be in a principal amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate principal amount of Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Revolving Credit Loans hereunder until the Revolving Credit Maturity Date.

### Section 2.2 Swingline Loans.

(a) **Availability.** Subject to the terms and conditions of this Agreement and the other Loan Documents and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, the Swingline Lender may, in its sole discretion, make Swingline Loans in Dollars to the Borrower from time to time from the Closing Date to, but not including, the Revolving

Credit Maturity Date; provided, that (i) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (ii) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested) shall not exceed the Swingline Commitment.

(b) Refunding.

(i) The Swingline Lender, at any time and from time to time in its sole and absolute discretion may, on behalf of the Borrower (which hereby irrevocably directs the Swingline Lender to act on its behalf), by written notice given no later than 11:00 a.m. on any Business Day request each Revolving Credit Lender to make, and each Revolving Credit Lender hereby agrees to make, a Revolving Credit Loan as a Base Rate Loan in an amount equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate amount of the Swingline Loans outstanding on the date of such notice, to repay the Swingline Lender. Each Revolving Credit Lender shall make the amount of such Revolving Credit Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the day specified in such notice. The proceeds of such Revolving Credit Loans shall be

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immediately made available by the Administrative Agent to the Swingline Lender for application by the Swingline Lender to the repayment of the Swingline Loans. No Revolving Credit Lender's obligation to fund its respective Revolving Credit Commitment Percentage of a Swingline Loan shall be affected by any other Revolving Credit Lender's failure to fund its Revolving Credit Commitment Percentage of a Swingline Loan, nor shall any Revolving Credit Lender's Revolving Credit Commitment Percentage be increased as a result of any such failure of any other Revolving Credit Lender to fund its Revolving Credit Commitment Percentage of a Swingline Loan.

(ii) The Borrower shall pay to the Swingline Lender on demand, and in any event on the Revolving Credit Maturity Date, in immediately available funds the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrower irrevocably authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages.

(iii) If for any reason any Swingline Loan cannot be refinanced with a Revolving Credit Loan pursuant to Section 2.2(b)(i), each Revolving Credit Lender shall, on the date such Revolving Credit Loan was to have been made pursuant to the notice referred to in Section 2.2(b)(i), purchase for cash an undivided participating interest in the then outstanding Swingline Loans by paying to the Swingline Lender an amount (the "Swingline Participation Amount") equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate principal amount of Swingline Loans then outstanding. Each Revolving Credit Lender will immediately transfer to the Swingline Lender, in immediately available funds, the amount of its Swingline Participation Amount. Whenever, at any time after the Swingline Lender has received from any Revolving Credit Lender such Revolving Credit Lender's Swingline Participation Amount, the Swingline Lender receives any payment on account of the Swingline Loans, the Swingline Lender will distribute to such Revolving Credit Lender its Swingline Participation Amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Lender's participating interest was outstanding and funded and, in the case of principal and interest payments, to reflect such Revolving Credit Lender's pro rata portion of such payment if such payment is not sufficient to pay the principal of and interest on all Swingline Loans then due); provided that in the event that such payment received by the Swingline Lender is required to be returned, such Revolving Credit Lender will return to the Swingline Lender any portion thereof previously distributed to it by the Swingline Lender.

(iv) Each Revolving Credit Lender's obligation to make the Revolving Credit Loans referred to in Section 2.2(b)(i) and to purchase participating interests pursuant to Section 2.2(b)(iii) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender or the Borrower may have against the Swingline Lender.

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the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article V, (C) any adverse change in the condition (financial or otherwise) of the Borrower, (D) any breach of this Agreement or any other Loan Document by the Borrower or any other Revolving Credit Lender or (E) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

(v) If any Revolving Credit Lender fails to make available to the Administrative Agent, for the account of the Swingline Lender, any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.2(b) by the time specified in Section 2.2(b)(i) or 2.2(b)(iii), as applicable, the Swingline Lender shall be entitled to recover from such Revolving Credit 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 the Swingline Lender at a rate per annum equal to the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Swingline Lender in connection with the foregoing. If such Revolving Credit Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Revolving Credit Lender's Revolving Credit Loan or Swingline Participation Amount, as the case may be. A certificate of the Swingline Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (v) shall be conclusive absent manifest error.

(c) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 4.14 and Section 4.15.

### **Section 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans.**

(a) Requests for Borrowing. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of **Exhibit B** (a "Notice of Borrowing") not later than 11:00 a.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan and (ii) at least three (3) U.S. Government Securities Business Days before each SOFR Loan, of its intention to borrow, specifying (A) the date of such borrowing, which shall be a Business Day, (B) the amount of such borrowing, which shall be, (x) with respect to Base Rate Loans (other than Swingline Loans) in an aggregate principal amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof, (y) with respect to SOFR Loans in an aggregate principal amount of \$2,000,000 or a whole multiple of \$1,000,000 in excess thereof and (z) with respect to Swingline Loans in an aggregate principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof (or, in each case, the remaining amount of the Revolving Credit Commitment or the Swingline Commitment, as applicable), (C) whether such Loan is to be a Revolving Credit Loan or Swingline Loan, (D) in the case of a Revolving Credit Loan whether such Revolving Credit Loan is to be a SOFR Loan or a Base Rate Loan, and (E) in the case of a SOFR Loan, the duration of the Interest Period applicable thereto. If the Borrower fails to specify a type of Loan in a Notice of Borrowing, then the applicable Loans shall be made as Base Rate Loans. If the Borrower requests a borrowing of a SOFR Loan 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. A Notice of Borrowing received after 11:00 a.m. shall be deemed received on the next Business Day or U.S. Government Securities Business Day, as applicable. The Administrative Agent shall promptly notify the Revolving Credit Lenders of each Notice of Borrowing.

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(b) **Disbursement of Revolving Credit and Swingline Loans.** Not later than 1:00 p.m. on the proposed borrowing date, (i) each Revolving Credit Lender will make available to the Administrative Agent, for the account of the Borrower, at the Administrative Agent's Office in funds immediately available to the Administrative Agent, such Revolving Credit Lender's Revolving Credit Commitment Percentage of the Revolving Credit Loans to be made on such borrowing date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrower, at the Administrative Agent's Office in funds immediately available to the Administrative Agent, the Swingline Loans to be made on such borrowing date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section in immediately available funds by crediting or wiring such proceeds to the deposit account of the Borrower identified in the most recent notice substantially in the form attached as **Exhibit C** (a "Notice of Account Designation") delivered by the Borrower to the Administrative Agent or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time. Subject to Section 4.7 hereof, the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Loan requested pursuant to this Section to the extent that any Revolving Credit Lender has not made available to the Administrative Agent its Revolving Credit Commitment Percentage of such Loan. Revolving Credit Loans to be made for the purpose of refunding Swingline Loans shall be made by the Revolving Credit Lenders as provided in Section 2.2(b).

#### **Section 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans.**

(a) **Repayment on Termination Date.** The Borrower hereby agrees to repay the outstanding principal amount of (i) all Revolving Credit Loans in full on the Revolving Credit Maturity Date, and (ii) all Swingline Loans in accordance with Section 2.2(b) (but, in any event, no later than the Revolving Credit Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) **Mandatory Prepayments.** If at any time the Revolving Credit Outstandings exceed the Revolving Credit Commitment, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans and third, with respect to any Letters of Credit then outstanding, as a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to such excess (such Cash Collateral to be applied in accordance with Section 9.2(b)).

(c) **Optional Prepayments.** The Borrower may at any time and from time to time prepay Revolving Credit Loans and Swingline Loans, in whole or in part, without premium or penalty, with irrevocable prior written notice to the Administrative Agent substantially in the form attached as **Exhibit D** (a "Notice of Prepayment") given not later than 11:00 a.m. (i) on the same Business Day as prepayment of each Base Rate Loan and each Swingline Loan and (ii) at least three (3) U.S. Government Securities Business Days before prepayment of each SOFR Loan, specifying the date and amount of prepayment and whether the prepayment is of SOFR Loans, Base Rate Loans, Swingline Loans or a combination thereof, and, if of a combination thereof, the amount allocable to each. Upon receipt of such notice, the Administrative Agent shall promptly notify each Revolving Credit Lender. If any such notice is given, the amount specified in such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate amount of \$1,000,000 or a whole multiple of \$500,000 in excess thereof with respect to Base Rate Loans (other than Swingline Loans), \$2,000,000 or a whole multiple of \$1,000,000 in

excess thereof with respect to SOFR Loans and \$100,000 or a whole multiple of \$100,000 in excess thereof with respect to Swingline Loans (or, if less, the remaining outstanding principal amount of any such Loan). A Notice of Prepayment received after 11:00 a.m. shall be deemed received on the next Business Day or U.S. Government Securities Business Day, as applicable. Each such repayment shall be accompanied by any amount required to be paid pursuant to Section 4.9 hereof. Notwithstanding the foregoing, any Notice of Prepayment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any

incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such other identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 4.9).

(d) Limitation on Prepayment of SOFR Loans. The Borrower may not prepay any SOFR Loan on any day other than on the last day of the Interest Period applicable thereto unless such prepayment is accompanied by any amount required to be paid pursuant to Section 4.9 hereof.

(e) Hedge Agreements. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the Borrower's obligations under any Hedge Agreement entered into with respect to the Loans.

#### **Section 2.5 Permanent Reduction of the Revolving Credit Commitment.**

(a) Voluntary Reduction. The Borrower shall have the right at any time and from time to time, upon at least five (5) Business Days prior irrevocable written notice to the Administrative Agent, to permanently reduce, without premium or penalty, (i) the entire Revolving Credit Commitment at any time or (ii) portions of the Revolving Credit Commitment, from time to time, in an aggregate principal amount not less than \$1,000,000 or any whole multiple of \$1,000,000 in excess thereof. Any reduction of the Revolving Credit Commitment shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Revolving Credit Commitment Percentage. All Commitment Fees accrued until the effective date of any termination of the Revolving Credit Commitment shall be paid on the effective date of such termination. Notwithstanding the foregoing, any notice to reduce the Revolving Credit Commitment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such identifiable event or condition and may be revoked by the Borrower in the event such contingency is not met (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 4.9).

(b) Corresponding Payment. Each permanent reduction permitted pursuant to this Section shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans and L/C Obligations, as applicable, after such reduction to the Revolving Credit Commitment as so reduced, and if the aggregate amount of all outstanding Letters of Credit exceeds the Revolving Credit Commitment as so reduced, the Borrower shall be required to deposit Cash Collateral in a Cash Collateral account opened by the Administrative Agent in an amount equal to such excess. Such Cash Collateral shall be applied in accordance with Section 9.2(b). Any reduction of the Revolving Credit Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of Cash Collateral satisfactory to the Administrative Agent for all L/C Obligations or other arrangements satisfactory to the respective Issuing Lenders) and shall result in the termination

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of the Revolving Credit Commitment and the Swingline Commitment and the Revolving Credit Facility. If the reduction of the Revolving Credit Commitment requires the repayment of any SOFR Loan, such repayment shall be accompanied by any amount required to be paid pursuant to Section 4.9 hereof.

**Section 2.6 Termination of Revolving Credit Facility.** The Revolving Credit Facility and the Revolving Credit Commitments shall terminate on the Revolving Credit Maturity Date.

#### **ARTICLE III.**

#### **LETTER OF CREDIT FACILITY**

##### **Section 3.1 L/C Facility.**

(a) **Availability.** Subject to the terms and conditions hereof, each Issuing Lender, in reliance on the agreements of the Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby Letters of Credit in an aggregate amount not to exceed its L/C Commitment for the account of the Borrower or, subject to Section 3.10, any Subsidiary thereof. Letters of Credit may be issued on any Business Day from the Closing Date to, but not including the fifteenth (15<sup>th</sup>) Business Day prior to the Revolving Credit Maturity Date in such form as may be approved from time to time by the applicable Issuing Lender; **provided**, that no Issuing Lender shall issue any Letter of Credit if, after giving effect to such issuance, (i) the aggregate amount of the outstanding Letters of Credit issued by such Issuing Lender would exceed its L/C Commitment, (ii) the L/C Obligations would exceed the L/C Sublimit or (iii) the Revolving Credit Outstandings would exceed the Revolving Credit Commitment. Letters of Credit issued hereunder shall constitute utilization of the Revolving Credit Commitments.

(b) **Terms of Letters of Credit.** Each Letter of Credit shall (i) be denominated in Dollars in a minimum amount of \$10,000, or such lesser amount as agreed to by the applicable Issuing Lender and the Administrative Agent, (ii) expire on a date no more than twelve (12) months after the date of issuance or last renewal or extension of such Letter of Credit (subject to automatic renewal or extension for additional one (1) year periods (but not to a date later than the date set forth below) pursuant to the terms of the Letter of Credit Documents or other documentation acceptable to the applicable Issuing Lender), which date shall be no later than the fifth (5th) Business Day prior to the Revolving Credit Maturity Date; **provided** that any Letter of Credit may expire after such date (each such Letter of Credit, an "Extended Letter of Credit") with the consent of the applicable Issuing Lender and subject to the requirements of Section 3.12, and (iii) unless otherwise expressly agreed by the applicable Issuing Lender and the Borrower when a Letter of Credit is issued by it (including any such agreement applicable to an Existing Letter of Credit), be subject to the ISP as set forth in the Letter of Credit Documents or as determined by the applicable Issuing Lender and, to the extent not inconsistent therewith, the laws of the State of New York. No Issuing Lender shall at any time be obligated to issue any Letter of Credit hereunder 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 request that such Issuing Lender refrain from, or any Applicable Law applicable to such Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Lender shall prohibit, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Lender with respect to letters of credit generally or such Letter of Credit in particular any restriction or reserve or capital requirement (for which such Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or any unreimbursed loss, cost or expense that was not applicable, in effect or known

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to such Issuing Lender as of the Closing Date and that such Issuing Lender in good faith deems material to it, (B) the conditions set forth in Section 5.2 are not satisfied, (C) the issuance of such Letter of Credit would violate one or more policies of such Issuing Lender applicable to letters of credit generally, (D) the proceeds of which would be made available to any Person (x) to fund any activity or business of or with any Sanctioned Person, or in any Sanctioned Country or (y) in any manner that would result in a violation of any Sanctions by any party to this Agreement or (E) any Revolving Credit Lender is at that time a Defaulting Lender, unless such Issuing Lender has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Lender (in its sole discretion) with the Borrower or such Lender to eliminate such Issuing Lender's actual or potential Fronting Exposure (after giving effect to Section 4.15(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such Issuing Lender has actual or potential Fronting Exposure, as it may elect in its sole discretion. An Issuing Lender shall be under no obligation to amend any Letter of Credit if (x) such Issuing Lender would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof or (y) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit. References herein to "issue" and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires. As of the Closing Date, each of the Existing Letters of Credit shall constitute, for all purposes of this Agreement and the other Loan Documents, a Letter of Credit issued and outstanding hereunder.

(c) **Defaulting Lenders.** Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 4.14 and Section 4.15.

### **Section 3.2 Procedure for Issuance and Disbursement of Letters of Credit.**

(a) The Borrower may from time to time request that any Issuing Lender issue, amend, renew or extend a Letter of Credit by delivering to such Issuing Lender at its applicable office (with a copy to the Administrative Agent at the Administrative Agent's Office) a Letter of Credit Application therefor, completed to the satisfaction of such Issuing Lender, and such other certificates, documents and other Letter of Credit Documents and information as such Issuing Lender or the Administrative Agent may request, not later than 11:00 a.m. at least two (2) Business Days (or such later date and time as the Administrative Agent and such Issuing Lender may agree in their sole discretion) prior to the proposed date of issuance, amendment, renewal or extension, as the case may be. Such notice shall specify (i) the requested date of issuance, amendment, renewal or extension (which shall be a Business Day), (ii) the date on which such Letter of Credit is to expire (which shall comply with Section 3.1(b)), (iii) the amount of such Letter of Credit, (iv) the name and address of the beneficiary thereof, (v) the purpose and nature of such Letter of Credit and (vi) such other information as shall be necessary to issue, amend, renew or extend such Letter of Credit. Upon receipt of any Letter of Credit Application, the applicable Issuing Lender shall process such Letter of Credit Application and the certificates, documents and other Letter of Credit Documents and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article V, promptly issue, amend, renew or extend the Letter of Credit requested thereby (subject to the timing requirements set forth in this Section 3.2) by issuing the original of such Letter of Credit to the beneficiary thereof or as otherwise may be agreed by such Issuing Lender and the Borrower. Additionally, the Borrower shall furnish to the applicable Issuing Lender and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, renewal or extension, including any Letter of Credit Documents, as the applicable Issuing Lender or the Administrative Agent may require. The applicable Issuing Lender shall promptly furnish to the

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Borrower and the Administrative Agent a copy of such Letter of Credit and the related Letter of Credit Documents and the Administrative Agent shall promptly notify each Revolving Credit Lender of the issuance and upon request by any Revolving Credit Lender, furnish to such Revolving Credit Lender a copy of such Letter of Credit and the amount of such Revolving Credit Lender's participation therein.

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

### **Section 3.3 Commissions and Other Charges.**

(a) **Letter of Credit Commissions.** Subject to Section 4.15(a)(iii)(B), the Borrower shall pay to the Administrative Agent, for the account of the applicable Issuing Lender and the L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such standby Letters of Credit times the Applicable Margin with respect to Revolving Credit Loans that are SOFR Loans (determined, in each case, on a per annum basis). Such commission shall be payable quarterly in arrears on the last Business Day of each calendar quarter (commencing with the first such date to occur after the issuance of such Letter of Credit), on the Revolving Credit Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the applicable Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Revolving Credit Commitment Percentages.

(b) **Issuance Fee.** In addition to the foregoing commission, the Borrower shall pay directly to the applicable Issuing Lender, for its own account, an issuance fee with respect to each Letter of Credit issued by such Issuing Lender in such amount as set forth in the applicable Fee Letter or as otherwise agreed upon between such Issuing Lender and the Borrower. Such issuance fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Revolving Credit Maturity Date and thereafter on demand of the applicable Issuing Lender. For the avoidance of doubt, such issuance fee shall be applicable to and paid upon each of the Existing Letters of Credit.

(c) **Other Fees, Costs, Charges and Expenses.** In addition to the foregoing fees and commissions, the Borrower shall pay or reimburse each Issuing Lender for such normal and customary fees, costs, charges and expenses as are incurred or charged by such Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit issued by it. Such customary fees, costs, charges and expenses are due and payable on demand and are nonrefundable.

#### **Section 3.4 L/C Participations.**

(a) Each Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce each Issuing Lender to issue Letters of Credit hereunder, each L/C

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Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from each Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant's own account and risk an undivided interest equal to such L/C Participant's Revolving Credit Commitment Percentage in each Issuing Lender's obligations and rights under and in respect of each Letter of Credit issued by it hereunder and the amount of each draft paid by such Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with each Issuing Lender that, if a draft is paid under any Letter of Credit issued by such Issuing Lender for which such Issuing Lender is not reimbursed in full by the Borrower through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to such Issuing Lender upon demand at such Issuing Lender's address for notices specified herein an amount equal to such L/C Participant's Revolving Credit Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(b) Upon becoming aware of any amount required to be paid by any L/C Participant to any Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by such Issuing Lender under any Letter of Credit, issued by it, such Issuing Lender shall notify the Administrative Agent of such unreimbursed amount and the Administrative Agent shall notify each L/C Participant (with a copy to the applicable Issuing Lender) of the amount and due date of such required payment and such L/C Participant shall pay to the Administrative Agent (which, in turn shall pay such Issuing Lender) the amount specified on the applicable due date. If any such amount is paid to such Issuing Lender after the date such payment is due, such L/C Participant shall pay to the Administrative Agent, which in turn shall pay such Issuing Lender on demand, in addition to such amount, the product of (i) such amount, times (ii) the Overnight Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to such Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360, plus any administrative, processing or similar fees customarily charged by such Issuing Lender in connection with the foregoing. A certificate of such Issuing Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error. With respect to payment to such Issuing Lender of the unreimbursed amounts described in this Section, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(c) Whenever, at any time after any Issuing Lender has made payment under any Letter of Credit issued by it and has received from any L/C Participant its Revolving Credit Commitment Percentage of such payment in accordance with this Section, such Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Administrative Agent or otherwise), or any payment of interest on account thereof, such Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, that in the event that any such payment received by such Issuing Lender shall be required to be returned by such Issuing Lender, such L/C Participant shall return to the Administrative Agent, which shall in turn pay to such Issuing Lender, the portion thereof previously distributed by such Issuing Lender to it.

(d) Each L/C Participant's obligation to make the Revolving Credit Loans and to purchase participating interests pursuant to this Section 3.4 or Section 3.5, as applicable, shall be absolute and unconditional and shall not be affected by any circumstance, including (i) any setoff, counterclaim, recoupment, defense or other right that such Revolving Credit Lender or the Borrower may have against the

Issuing Lender, the Borrower or any other Person for any reason whatsoever, (ii) the occurrence or continuance of a Default or an Event of Default or the failure to satisfy any of the other conditions specified in Article V, (iii) any adverse change in the condition

(financial or otherwise) of the Borrower, (iv) any breach of this Agreement or any other Loan Document by the Borrower or any other Revolving Credit Lender or (v) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing.

**Section 3.5 Reimbursement.** In the event of any drawing under any Letter of Credit, the Borrower agrees to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section or with funds from other sources), in same day funds, the applicable Issuing Lender by paying to the Administrative Agent the amount of such drawing not later than 12:00 noon on (i) the Business Day that the Borrower receives notice of such drawing, if such notice is received by the Borrower prior to 10:00 a.m., or (ii) the Business Day immediately following the day that the Borrower receives such notice, if such notice is not received prior to such time, for the amount of (x) such draft so paid and (y) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment (to the extent invoices therefor have been provided by the applicable Issuing Lender to the Borrower). Unless the Borrower shall immediately notify the Administrative Agent and such Issuing Lender that the Borrower intends to reimburse such Issuing Lender for such drawing from other sources or funds, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Revolving Credit Lenders make a Revolving Credit Loan as a Base Rate Loan on the applicable repayment date in the amount (without regard to the minimum and multiples specified in Section 2.3(a)) of (i) such draft so paid and (ii) any amounts referred to in Section 3.3(c) incurred by such Issuing Lender in connection with such payment, and the Revolving Credit Lenders shall make a Revolving Credit Loan as a Base Rate Loan in such amount, the proceeds of which shall be applied to reimburse such Issuing Lender for the amount of the related drawing and such fees and expenses (to the extent invoices therefor have been provided by the applicable Issuing Lender to the Borrower). Each Revolving Credit Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section to reimburse such Issuing Lender for any draft paid under a Letter of Credit issued by it is absolute and unconditional and shall not be affected by any circumstance whatsoever, including non-satisfaction of the conditions set forth in Section 2.3(a) or Article V. If the Borrower has elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse such Issuing Lender as provided above, or if the amount of such drawing is not fully refunded through a Base Rate Loan as provided above, the unreimbursed amount of such drawing shall bear interest at the rate which would be payable on any outstanding Base Rate Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until paid in full.

#### **Section 3.6 Obligations Absolute.**

(a) The Borrower's obligations under this Article III (including the Reimbursement Obligation) shall be absolute, unconditional and irrevocable under any and all circumstances whatsoever, and shall be performed strictly in accordance with the terms of this Agreement, and irrespective of:

- (i) any lack of validity or enforceability of any Letter of Credit, any Letter of Credit Document or this Agreement, or any term or provision therein or herein;
- (ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower may have or have had against the applicable Issuing Lender or any beneficiary of a Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the applicable 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 any unrelated transaction;

(iii) the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent, forged or insufficient in any respect or any statement in such draft or other document being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) any payment by the Issuing Lender under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit;

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

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

(b) The Borrower also agrees that the applicable Issuing Lender and the L/C Participants shall not be responsible for, and the Borrower's Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. The applicable Issuing Lender, the L/C Participants and their respective Related Parties shall not have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit, or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Lender; provided that the foregoing shall not be construed to excuse an Issuing Lender from liability to the Borrower to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by the Borrower to the extent permitted by Applicable Law) suffered by the Borrower that are caused by such Issuing Lender's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, bad faith or willful misconduct on the part of the applicable Issuing Lender (as finally determined by a court of competent jurisdiction), such Issuing Lender shall be deemed to have exercised care in each such determination.

(c) In furtherance of the foregoing and without limiting the generality thereof, the parties agree that (i) with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Lender may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit, (ii) an Issuing Lender may act upon any instruction or request relative to

a Letter of Credit or requested Letter of Credit that such Issuing Lender in good faith believes to have been given by a Person authorized to give such instruction or request and (iii) an Issuing Lender may replace a purportedly lost, stolen, or destroyed original Letter of Credit or missing amendment thereto with a certified true copy marked as such or waive a requirement for its presentation. The responsibility of any Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit issued by it shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including

each draft) delivered under such Letter of Credit in connection with such presentment substantially conforms to the requirements under such Letter of Credit.

(d) Notwithstanding anything to the contrary herein, no Issuing Lender shall be responsible to the Borrower for, and such Issuing Lender's rights and remedies against the Borrower shall not be impaired by, any action or inaction of such Issuing Lender required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including the Applicable Laws or any order of a jurisdiction in which such Issuing Lender or the beneficiary is located, the practice stated in the ISP or in the decisions, opinions, practice statements or official commentary of the International Chamber of Commerce Banking Commission, the Banker's Association for Finance and Trade (BAFT) or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such laws or practice rules.

**Section 3.7 Effect of Letter of Credit Documents.** To the extent that any provision of any Letter of Credit Document related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

#### **Section 3.8 Removal and Resignation of Issuing Lenders.**

(a) The Borrower may at any time remove any Lender from its role as an Issuing Lender hereunder upon not less than thirty (30) days' prior written notice to such Issuing Lender and the Administrative Agent (or such shorter period of time as may be acceptable to such Issuing Lender and the Administrative Agent).

(b) Any Issuing Lender may resign at any time by giving 30 days' prior notice to the Administrative Agent, the Lenders and the Borrower. After the resignation of an Issuing Lender hereunder, the retiring Issuing Lender shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Lender under this Agreement and the other Loan Documents with respect to Letters of Credit issued by it prior to such resignation, but shall not be required to issue additional Letters of Credit or to extend, renew or increase the outstanding Letter of Credit.

(c) Any removed or resigning Issuing Lender shall retain all the rights, powers, privileges and duties of an Issuing Lender hereunder with respect to all Letters of Credit issued by it that are outstanding as of the effective date of its removal or resignation as an Issuing Lender and all L/C Obligations with respect thereto (including the right to require the Revolving Credit Lenders to take such actions as are required under Section 3.4). Without limiting the foregoing, upon the removal or resignation of a Lender as an Issuing Lender hereunder, the Borrower may, or at the request of such removed or resigned Issuing Lender the Borrower shall, use commercially reasonable efforts to, arrange for one or more of the other Issuing Lenders to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such removed or resigned Issuing Lender and outstanding at the time of such removal or resignation, or make other arrangements satisfactory to the removed or resigned Issuing Lender to effectively cause another

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Issuing Lender to assume the obligations of the removed or resigned Issuing Lender with respect to any such Letters of Credit.

**Section 3.9 Reporting of Letter of Credit Information and L/C Commitment.** At any time that there is an Issuing Lender that is not also the financial institution acting as Administrative Agent, then

(a) no later than the fifth Business Day following the last day of each calendar month, (b) on each date that a Letter of Credit is amended, terminated or otherwise expires, (c) on each date that a Letter of Credit is issued or the expiry date of a Letter of Credit is extended, and (d) upon the request of the Administrative Agent, each Issuing Lender (or, in the case of clauses (b), (c) or (d) of this Section, the applicable Issuing Lender) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information (including any reimbursement, Cash Collateral, or termination in respect of Letters of Credit issued by such Issuing Lender) with respect to each Letter of Credit issued by such Issuing Lender that is outstanding hereunder. In addition, each Issuing Lender shall provide notice to the Administrative Agent of its L/C Commitment, or any change thereto, promptly upon it becoming an Issuing Lender or making any change to its L/C Commitment. No failure on the part of any Issuing Lender to provide such information pursuant to this Section 3.9 shall limit the obligations of the Borrower or any Revolving Credit Lender hereunder with respect to its reimbursement and participation obligations hereunder.

**Section 3.10 Letters of Credit Issued for Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, or states that a Subsidiary is the "account party," "applicant," "customer," "instructing party," or the like of or for such Letter of Credit, and without derogating from any rights of the applicable Issuing Lender (whether arising by contract, at law, in equity or otherwise) against such Subsidiary in respect of such Letter of Credit, the Borrower (a) shall be obligated to reimburse, or to cause the applicable Subsidiary to reimburse, the applicable Issuing Lender hereunder for any and all drawings under such Letter of Credit as if such Letter of Credit had been issued solely for the account of the Borrower and (b) irrevocably waives any and all defenses that might otherwise be available to it as a guarantor or surety of any or all of the obligations of such Subsidiary in respect of such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any of its Subsidiaries inures to the benefit of the Borrower and that the Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

**Section 3.11 Letter of Credit Amounts.** Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Documents therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Documents and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

**Section 3.12 Cash Collateral for Extended Letters of Credit.**

(a) **Cash Collateralization.** The Borrower shall provide Cash Collateral to each applicable Issuing Lender with respect to each Extended Letter of Credit issued by such Issuing Lender (in an amount equal to 102% of the maximum face amount of each Extended Letter of Credit, calculated in accordance with Section 1.8) by a date that is no later than 30 days prior to the Revolving Credit Maturity Date by depositing such amount in immediately available funds, in Dollars, into a cash collateral account maintained at the applicable Issuing Lender and shall enter into a cash collateral agreement in form and substance satisfactory to such Issuing Lender and such other documentation as such Issuing Lender or the Administrative Agent may reasonably request;

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provided that if the Borrower fails to provide Cash Collateral with respect to any such Extended Letter of Credit by such time, such event shall be treated as a drawing under such Extended Letter of Credit in an amount equal to 102% of the maximum face amount of each such Letter of Credit, calculated in accordance with Section 1.8, which shall be reimbursed (or participations therein funded) in accordance with this Article III, with the proceeds of Revolving Credit Loans (or funded participations) being utilized to provide Cash Collateral for such Letter of Credit (provided that for purposes of determining the usage of the Revolving Credit Commitment any such Extended Letter of Credit that has been, or will concurrently be, Cash Collateralized with proceeds of a Revolving Credit Loan, the portion of such Extended Letter of Credit that has been (or will concurrently be) so Cash Collateralized will not be deemed to be utilization of the Revolving Credit Commitment).

(b) **Grant of Security Interest.** The Borrower, and to the extent provided by the L/C Participants, each of such L/C Participants, hereby grants to the applicable Issuing Lender of each Extended Letter of Credit, and agrees to maintain, a first priority security interest in, all Cash Collateral required to be provided by this Section 3.12 as security for such Issuing Lender's obligation to fund draws under such Extended Letters of Credit, to be applied pursuant to subsection

(c) below. If at any time the applicable Issuing Lender determines that the Cash Collateral is subject to any right or claim of any Person other than such Issuing Lender as herein provided, or that the total amount of such Cash Collateral is less than the amount required pursuant to subsection (a) above, the Borrower will, promptly upon demand by such Issuing Lender, pay or provide to such Issuing Lender additional Cash Collateral in an amount sufficient to eliminate such deficiency.

(c) **Application.** Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, Cash Collateral provided under this Section 3.12 in respect of Extended Letters of Credit shall be applied to reimburse the applicable Issuing Lender for all drawings made under such Extended Letters of Credit and any and all fees, expenses and charges incurred in connection therewith, prior to any other application of such property as may otherwise be provided for herein.

(d) **Cash Collateralized Letters of Credit.** Subject to clause (e) below, if the Borrower has fully Cash Collateralized the applicable Issuing Lender with respect to any Extended Letter of Credit issued by such Issuing Lender in accordance with subsections (a) through (c) above and the Borrower and the applicable Issuing Lender have made arrangements between them with respect to the pricing and fees associated therewith (each such Extended Letter of Credit, a "Cash Collateralized Letter of Credit"), then after the date of notice to the Administrative Agent thereof by the applicable Issuing Lender and for so long as such Cash Collateral remains in place (i) such Cash Collateralized Letter of Credit shall cease to be a "Letter of Credit" hereunder, (ii) such Cash Collateralized Letter of Credit shall not constitute utilization of the Revolving Credit Commitment, (iii) no Revolving Credit Lender shall have any further obligation to fund participations or Revolving Credit Loans to reimburse any drawing under any such Cash Collateralized Letter of Credit, (iv) no Letter of Credit commissions under Section 3.3(a) shall be due or payable to the Revolving Credit Lenders, or any of them, hereunder with respect to such Cash Collateralized Letter of Credit, and (v) any fronting fee, issuance fee or other fee with respect to such Cash Collateralized Letter of Credit shall be as agreed separately between the Borrower and such Issuing Lender.

(e) **Reinstatement.** The Borrower and each Revolving Credit Lender agree that, if any payment or deposit made by the Borrower or any other Person applied to the Cash Collateral required under this Section 3.12 is at any time avoided, annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or is repaid in whole or in part pursuant to a good faith settlement of a pending or threatened (in writing)

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avoidance claim, or the proceeds of any such Cash Collateral are required to be refunded by the applicable Issuing Lender to the Borrower or any Revolving Credit Lender or its respective estate, trustee, receiver or any other Person, under any Applicable Law or equitable cause, then, to the extent of such payment or repayment, (i) the applicable Extended Letter of Credit shall automatically be a "Letter of Credit" hereunder in a face amount equal to such payment or repayment (each such Letter of Credit, a "Reinstated Letter of Credit"), (ii) such Reinstated Letter of Credit shall no longer be deemed to be Cash Collateralized hereunder and shall constitute a utilization of the Revolving Credit Commitment, (iii) each Revolving Credit Lender shall be obligated to fund participations or Revolving Credit Loans to reimburse any drawing under such Reinstated Letter of Credit, (iv) Letter of Credit commissions under Section 3.3(a) shall accrue and be due and payable to the Revolving Credit Lenders with respect to such Reinstated Letter of Credit and (v) the Borrower's and each Revolving Credit Lender's liability hereunder (and any Guarantee, Lien or Collateral guaranteeing or securing such liability) shall be and remain in full force and effect, as fully as if such payment or deposit had never been made, and, if prior thereto, this Agreement shall have been canceled, terminated, paid in full or otherwise extinguished, the provisions of this Article III and all other rights and duties of the applicable Issuing Lender, the L/C Participants and the Borrower with respect to such Reinstated Letter of Credit shall be reinstated in full force and effect, and such prior cancellation, termination, payment or extinguishment shall not diminish, release, discharge, impair or otherwise affect the obligations of such Persons in respect of such Reinstated Letter of Credit.

(f) **Survival.** With respect to any Extended Letter of Credit, each party's obligations under this Article III and all other rights and duties of the applicable Issuing Lender of such Extended Letter of Credit, the L/C Participants and the Borrower with respect to such Extended Letter of Credit shall survive the resignation or replacement of the applicable Issuing Lender or any assignment of rights by the applicable Issuing Lender, the termination of the Commitments and the repayment, satisfaction or discharge of the Obligations.

## ARTICLE IV. GENERAL LOAN PROVISIONS

### Section 4.1 Interest.

(a) **Interest Rate Options.** Subject to the provisions of this Section, at the election of the Borrower, (i) Revolving Credit Loans shall bear interest at (A) the Base Rate plus the Applicable Margin or (B) Adjusted Term SOFR plus the Applicable Margin (provided that Adjusted Term SOFR shall not be available until three (3) U.S. Government Securities Business Days after the Closing Date unless the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 4.9 of this Agreement) and (ii) any Swingline Loan shall bear interest at the Base Rate plus the Applicable Margin. The Borrower shall select the rate of interest and Interest Period, if any, applicable to any Loan at the time a Notice of Borrowing is given or at the time a Notice of Conversion/Continuation is given pursuant to Section 4.2.

(b) Default Rate. Subject to Section 9.3, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 9.1(a), (b), (h) or (i), or (ii) at the election of the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), upon the occurrence and during the continuance of any other Event of Default, (A) the Borrower shall no longer have the option to request SOFR Loans, Swingline Loans or Letters of Credit, (B) all outstanding SOFR Loans shall bear interest at a rate per annum of two percent (2%)

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in excess of the rate (including the Applicable Margin) then applicable to SOFR Loans until the end of the applicable Interest Period and thereafter at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans, (C) all outstanding Base Rate Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans or such other Obligations arising hereunder or under any other Loan Document and (D) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(c) Interest Payment and Computation. Interest on each Base Rate Loan shall be due and payable in arrears on the last Business Day of each calendar quarter commencing December 31, 2022 and interest on each SOFR Loan shall be due and payable in arrears on the last day of each Interest Period applicable thereto, and if such Interest Period extends over three (3) months, at the end of each three (3) month interval during such Interest Period; provided that (i) in the event of any repayment or prepayment of any SOFR Loan, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (ii) in the event of any conversion of any SOFR Loan prior to the end of the Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion. All computations of interest for Base Rate Loans shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year).

(d) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent's option (i) promptly refund to the Borrower any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations. It is the intent hereof that the Borrower not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrower under Applicable Law.

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

**Section 4.2 Notice and Manner of Conversion or Continuation of Loans.** Provided that no Default or Event of Default has occurred and is then continuing, the Borrower shall have the option to  
(a) convert at any time following the third U.S. Government Securities Business Day after the Closing Date, subject to the notice requirements herein, all or any portion of any outstanding Base Rate Loans (other than Swingline Loans) in a principal amount equal to \$2,000,000 or any whole multiple of \$1,000,000 in excess

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thereof (or such lesser amount as shall represent all of the Base Rate Loans then outstanding) into one or more SOFR Loans and (b) upon the expiration of any Interest Period therefor, (i) convert all or any part of any outstanding SOFR Loans in a principal amount equal to \$1,000,000 or a whole multiple of \$500,000 in excess thereof (or such lesser amount as shall represent all of the SOFR Loans then outstanding) into Base Rate Loans (other than Swingline Loans) or (ii) continue any such SOFR Loans as SOFR Loans. Whenever the Borrower desires to convert or continue Loans as provided above, the Borrower shall give the Administrative Agent irrevocable prior written notice in the form attached as **Exhibit E** (a "Notice of Conversion/Continuation") not later than 11:00 a.m. three (3) U.S. Government Securities Business Days before the day on which a proposed conversion or continuation of such Loan is to be effective specifying (A) the Loans to be converted or continued, and, in the case of any SOFR Loan to be converted or continued, the last day of the Interest Period therefor, (B) the effective date of such conversion or continuation (which shall be a Business Day), (C) the principal amount of such Loans to be converted or continued, and (D) the Interest Period to be applicable to such converted or continued SOFR Loan. If the Borrower fails to deliver a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any SOFR Loan, then the applicable SOFR Loan shall be automatically converted to a Base Rate Loan. Any such automatic conversion to a Base Rate Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable SOFR Loan. If the Borrower requests a conversion to, or continuation of, a SOFR Loan, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a SOFR Loan. The Administrative Agent shall promptly notify the affected Lenders of such Notice of Conversion/Continuation.

#### **Section 4.3 Fees.**

(a) **Commitment Fee.** Commencing on the Closing Date, subject to Section 4.15(a)(iii)(A), the Borrower shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee (the "Commitment Fee") at a rate per annum equal to the applicable amount for Commitment Fees as set forth in the definition of Applicable Margin on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); provided, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing December 31, 2022 and ending on the date upon which all Obligations (other than contingent indemnification obligations not then due and payable) arising under the Revolving Credit Facility shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or have been Cash Collateralized) and the Revolving Credit Commitment has been terminated. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) *prorata* in accordance with such Revolving Credit Lenders' respective Revolving Credit Commitment Percentages.

(b) **Other Fees.** The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in their Fee Letter. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

**Section 4.4 Manner of Payment.** Each payment by the Borrower on account of the principal of or interest on the Loans or of any fee, commission or other amounts (including the Reimbursement Obligation) payable to the Lenders under this Agreement shall be made not later than 1:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent's Office for the account of the Lenders entitled to such payment in Dollars, in immediately available funds

and shall be made without any setoff, counterclaim or deduction whatsoever. Any payment received after such time but before 2:00 p.m. on such day shall be deemed a payment on such date for the purposes of Section 9.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender at its address for notices set forth herein its Commitment Percentage in respect of the relevant Credit Facility (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal or interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of any Issuing Lender's fees or L/C Participants' commissions shall be made in like manner, but for the account of such Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent's fees or expenses shall be made for the account of the Administrative Agent and any amount payable to any Lender under Sections 4.9, 4.10, 4.11 or 11.3 shall be paid to the Administrative Agent for the account of the applicable Lender. Subject to the definition of Interest Period, if any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment. Notwithstanding the foregoing, if there exists a Defaulting Lender each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with Section 4.15(a)(ii).

#### **Section 4.5 Evidence of Indebtedness.**

(a) Extensions of Credit. The Extensions of Credit made by each Lender and each Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or such Issuing Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender or the applicable Issuing Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders or such Issuing Lender to the Borrower and its Subsidiaries and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender or any Issuing 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. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Credit Note and/or Swingline Note, as applicable, which shall evidence such Lender's Revolving Credit Loans and/or Swingline Loans, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

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

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**Section 4.6 Sharing of Payments by Lenders.** If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal 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 (other than pursuant to Sections 4.9, 4.10, 4.11 or 11.3) 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:

(ii) 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

(iii) the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 3.12 or Section 4.14 or (C) any payment obtained by a Lender as consideration for the assignment of, or sale of, a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply).

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

#### **Section 4.7 Administrative Agent's Clawback.**

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 12:00 noon on the date of any proposed borrowing and (ii) otherwise, prior to the proposed date 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 each Lender has made its respective share of such borrowing available on such date in accordance with Sections 2.3(b) and 4.2 and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent, without duplication, forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any

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

(b) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders, the Issuing Lenders or the Swingline Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the Issuing Lenders or the Swingline Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, the Issuing Lenders or the Swingline Lender, as the case maybe, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, Issuing Lender or the Swingline 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 Overnight Rate.

(c) Nature of Obligations of Lenders. The obligations of the Lenders under this Agreement to make the Loans, to issue or participate in Letters of Credit and to make payments under this Section, Section 4.11(e), Section 10.10, Section 11.3(c) or Section 11.7, as applicable, are several and are not joint or joint and several. The failure of any Lender to make available its Commitment Percentage of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Commitment Percentage of such Loan available on the borrowing date.

#### **Section 4.8 Changed Circumstances.**

(a) **Circumstances Affecting Benchmark Availability.** Subject to clause (c) below, in connection with any request for a SOFR Loan or a conversion to or continuation thereof or otherwise, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for ascertaining Adjusted Term SOFR for the applicable Interest Period with respect to a proposed SOFR Loan on or prior to the first day of such Interest Period or (ii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that Adjusted Term SOFR does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period and, in the case of clause (ii), the Required Lenders have provided notice of such determination to the Administrative Agent, then, in each case, the Administrative Agent shall promptly give notice thereof to the Borrower. Upon notice thereof by the Administrative Agent to the Borrower, any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to convert any Loan to or continue any Loan as a SOFR Loan, shall be suspended (to the extent of the affected SOFR Loans or the affected Interest Periods) until the Administrative Agent (with respect to clause (ii), at the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, (A) the Borrower may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans or the affected Interest Periods) or, failing that, the Borrower will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans in the amount specified therein and (B) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans at the end of the applicable Interest Period. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 4.9.

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(b) **Laws Affecting SOFR Availability.** If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any SOFR Loan, or to determine or charge interest based upon SOFR, the Term SOFR Reference Rate, Adjusted Term SOFR or Term SOFR, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders (an "Illegality Notice"). Thereafter, until each affected Lender notifies the Administrative Agent and the Administrative Agent notifies the Borrower that the circumstances giving rise to such determination no longer exist, (i) any obligation of the Lenders to make SOFR Loans, and any right of the Borrower to convert any Loan to a SOFR Loan or continue any Loan as a SOFR Loan, shall be suspended and (ii) if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate". Upon receipt of an Illegality Notice, the Borrower shall, if necessary to avoid such illegality, upon demand from any Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans to Base Rate Loans (in each case, if necessary to avoid such illegality, the Administrative Agent shall compute the Base Rate without reference to clause (c) of the definition of "Base Rate"), on the last day of the Interest Period therefor, if all affected Lenders may lawfully continue to maintain such SOFR Loans to such day, or immediately, if any Lender may not lawfully continue to maintain such SOFR Loans to such day. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted, together with any additional amounts required pursuant to Section 4.9.

(c) **Benchmark Replacement Setting.**

(ii) **Benchmark Replacement.**

(A) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event, the Administrative Agent and the Borrower may amend this Agreement to replace the then-current Benchmark with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5<sup>th</sup>) Business Day after the Administrative Agent has posted such proposed

amendment to all affected Lenders and the Borrower so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. No replacement of a Benchmark with a Benchmark Replacement pursuant to this Section 4.8(c)(i)(A) will occur prior to the applicable Benchmark Transition Start Date.

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

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(iv) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 4.8(c)(iv). Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 4.8(c), 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 4.8(c).

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

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

**Section 4.9 Indemnity.** The Borrower hereby indemnifies each of the Lenders against any loss, cost or expense (including any loss, cost or expense arising from the liquidation or reemployment of funds or from any fees payable) which may arise, be attributable to or result due to or as a consequence of (a) any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a SOFR Loan, (b) any failure of the Borrower to borrow or continue a SOFR Loan or convert to a

SOFR Loan on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation,

(c) any failure of the Borrower to prepay any SOFR Loan on a date specified therefor in any Notice of Prepayment (regardless of whether any such Notice of Prepayment may be revoked under Section 2.4(c) and is revoked in accordance therewith), (d) any payment, prepayment or conversion of any SOFR Loan on a date other than the last day of the Interest Period therefor (including as a result of an Event of Default) or (e) the assignment of any SOFR Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrower pursuant to Section 4.12(b). A certificate of such Lender setting forth in reasonable detail the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error. All of the obligations of the Borrower under this Section

4.9 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

#### **Section 4.10 Increased Costs.**

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

(ii) impose, modify or deem applicable any reserve (including pursuant to regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, special, supplemental or other marginal reserve requirement) with respect to eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D of the FRB, as amended and in effect from time to time)), special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender or any Issuing Lender;

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

(vi) impose on any Lender or any Issuing Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or 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, any Issuing Lender or such other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, such Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, such Issuing Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, such Issuing Lender or other Recipient, the Borrower shall promptly pay to any such Lender, such Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered. Any demand for compensation pursuant to this Section 4.10(a) shall be made only to the extent such Lender, Issuing Lender or other Recipient is making similar demand with respect to its similarly situated commercial borrowers generally where such Lender, Issuing Lender, or other Recipient has the legal right to make such demand.

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

(c) Certificates for Reimbursement. A certificate of a Lender, or an Issuing Lender or such other Recipient setting forth, in reasonable detail, the amount or amounts necessary to compensate such Lender or such Issuing Lender, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or such Issuing Lender or such other Recipient, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Delay in Requests. Failure or delay on the part of any Lender or any Issuing Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's or such Issuing Lender's or such other Recipient's right to demand such compensation; provided that the Borrower shall not be required to compensate any Lender or an Issuing Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than six (6) months prior to the date that such Lender or such Issuing Lender or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender's or such Issuing Lender's or such other Recipient's intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Survival. All of the obligations of the Borrower under this Section 4.10 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

#### **Section 4.11 Taxes.**

(a) Defined Terms. For purposes of this Section 4.11, the term "Lender" includes any Issuing Lender and the term "Applicable Law" includes FATCA.

(b) Payments Free of Taxes. Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any

Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the Borrower shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

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

(d) Indemnification by the Borrower. The Borrower shall indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) Indemnification by the Lenders. Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 11.9(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to setoff and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower to a Governmental Authority pursuant to this Section 4.11, the Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) Status of Lenders.

(ii) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed

documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 4.11(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(iii) Without limiting the generality of the foregoing:

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the

reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

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

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

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

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

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under

FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

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

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 4.11 (including by the payment of additional amounts pursuant to this Section 4.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any

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penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party's obligations under this Section 4.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

#### **Section 4.12 Mitigation Obligations; Replacement of Lenders.**

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 4.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.11, then such Lender shall, at the request of the Borrower, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 4.10 or Section 4.11, 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. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 4.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 4.11, and, in each case, such Lender has declined or is unable to designate a different Lending Office in accordance with Section 4.12(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.9), all of its interests, rights (other than its existing rights to payments pursuant to Section 4.10 or Section 4.11) 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:

(ii) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.9;

(iii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and funded participations in Letters of Credit and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under

Section 4.9) 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);

(iv) in the case of any such assignment resulting from a claim for compensation under Section 4.10 or payments required to be made pursuant to Section 4.11, such assignment will result in a reduction in such compensation or payments thereafter;

(v) such assignment does not conflict with Applicable Law; and

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

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

Each party hereto agrees that (x) an assignment required pursuant to this Section 4.12 may be effected pursuant to an Assignment and Assumption executed by the Borrower, the Administrative Agent and the assignee and (y) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender or the Administrative Agent, provided, further that any such documents shall be without recourse to or warranty by the parties thereto.

(c) Selection of Lending Office. Subject to Section 4.12(a), each Lender may make any Loan to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligations of the Borrower to repay the Loan in accordance with the terms of this Agreement or otherwise alter the rights of the parties hereto.

#### **Section 4.13 Incremental Increases**

(a) Request for Incremental Increase. At any time after the Closing Date, upon written notice to the Administrative Agent, the Borrower may, from time to time, request (i) one or more incremental term loan commitments (an "Incremental Term Loan Commitment") to make one or more term loans (any such additional term loan, an "Incremental Term Loan") and/or (ii) one or more increases in the Revolving Credit Commitments (each, a "Incremental Revolving CreditFacility Increase" and, together with the Incremental Term Loan Commitments and Incremental Term Loans, the "Incremental Increases"); provided that (A) the aggregate initial principal amount of such requested Incremental Increase shall not exceed the Incremental Facilities Limit, (B) any such Incremental Increase shall be in a minimum amount of \$50,000,000 (or such lesser amount as agreed to by the Administrative Agent) or, if less, the remaining amount of the Incremental Facilities Limit, (C) no Lender will be required otherwise obligated to provide any portion of such Incremental Increase and (D) no more than ten (10) Incremental Increases shall be permitted to be requested during the term of this Agreement.

(b) Incremental Lenders. Each notice from the Borrower pursuant to this Section 4.13 shall set forth the requested amount and proposed terms of the relevant Incremental Increase. Incremental Increases may be provided by any existing Lender or by any other Persons (each such

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Lender or other Person, an "Incremental Lender"); provided that the Administrative Agent, each Issuing Lender and/or the Swingline Lender, as applicable, shall have consented (not to be unreasonably withheld, conditioned or delayed) to such Incremental Lender's providing such Incremental Increases to the extent any such consent would be required under Section 11.9(b) for an assignment of Loans or Commitments, as applicable, to such Incremental Lender. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each proposed Incremental Lender is requested to respond, which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the proposed Incremental Lenders (or such shorter period as agreed to by the Administrative Agent). Each proposed Incremental Lender may elect or decline, in its sole discretion, and shall notify the Administrative Agent within such time period whether it agrees, to provide an Incremental Increase and, if so, whether by an amount equal to, greater than or less than requested. Any Person not responding within such time period shall be deemed to have declined to provide an Incremental Increase.

(c) Increase Effective Date and Allocations. The Administrative Agent and the Borrower shall determine the effective date (the "Increase Effective Date") and the final allocation of such Incremental Increase (limited in the case of the Incremental Lenders to their own respective allocations thereof). The Administrative Agent shall promptly notify the Borrower and the Incremental Lenders of the final allocation of such Incremental Increases and the Increase Effective Date.

(d) Terms of Incremental Increases. The terms of each Incremental Increase (which shall be set forth in the relevant Incremental Amendment) shall be determined by the Borrower and the applicable Incremental Lenders; provided that:

(ii) in the case of each Incremental Term Loan:

(A) the maturity of any such Incremental Term Loan shall not be earlier than the latest scheduled maturity date of the Loans and Commitments in effect as of the Increase Effective Date;

(B) all fees and the pricing grid, if applicable, for such Incremental Term Loan shall be determined by the Administrative Agent, the applicable Incremental Lenders and the Borrower on the applicable Increase Effective Date; and

(C) except as provided above, all other terms and conditions applicable to any Incremental Term Loan shall not be more favorable in any material respect (as reasonably determined by the Borrower and the Administrative Agent) to the Lenders under any Incremental Term Loans than such other terms and conditions, taken as a whole, under the Revolving Credit Facility (except for covenants or other provisions applicable only to the periods after the later of the Revolving Credit Maturity Date or any maturity date applicable to any Incremental Term Loan existing at the time such Incremental Term Loan is incurred); and

(iii) in the case of each Incremental Revolving Credit Facility Increase:

(A) each such Incremental Revolving Credit Facility Increase shall have the same terms, including maturity, Applicable Margin and Commitment Fees, as the Revolving Credit Facility; provided that any upfront fees payable by

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the Borrower to the Lenders under any Incremental Revolving Credit Facility Increases may differ from those payable under the then existing Revolving Credit Commitments; and

(B) the outstanding Revolving Credit Loans and Revolving Credit Commitment Percentages of Swingline Loans and L/C Obligations will be reallocated by the Administrative Agent on the applicable Increase Effective Date among the Revolving Credit Lenders (including the Incremental Lenders providing such Incremental Revolving Credit Facility Increase) in accordance with their revised Revolving Credit Commitment Percentages (and the Revolving Credit Lenders (including the Incremental Lenders providing such Incremental Revolving Credit Facility Increase) agree to make all payments and adjustments necessary to effect such reallocation and the Borrower shall pay any and all costs required pursuant to Section 4.9 in connection with such reallocation as if such reallocation were a repayment).

(e) Conditions to Effectiveness of Incremental Increases. Any Incremental Increase shall become effective as of such Increase Effective Date and shall be subject to the following conditions precedent, which, in the case of an Incremental Term Loan incurred solely to finance a substantially concurrent Limited Condition Acquisition, shall be subject to Section 1.12:

(ii) no Default or Event of Default shall exist on such Increase Effective Date immediately prior to or after giving effect to (A) such Incremental Increase or (B) the making of the initial Extensions of Credit pursuant thereto;

(iii) all of the representations and warranties set forth in Article VI shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such Increase Effective Date, or if such representation speaks as of an earlier date, as of such earlier date;

(iv) the Administrative Agent shall have received from the Borrower, a Compliance Certificate demonstrating that the Borrower is in compliance with the financial covenants set forth in Section 8.10 based on the financial statements for the most recently completed Reference Period, both before and after giving effect on a Pro Forma Basis to the incurrence of any such Incremental Increase (and assuming that any such Incremental Revolving Credit Facility Increase is fully drawn) and any Permitted Acquisition, refinancing of Indebtedness or other event consummated in connection therewith giving rise to a Pro Forma Basis adjustment;

(v) the Borrower shall have executed an Incremental Amendment in form and substance reasonably acceptable to the Borrower and the applicable Incremental Lenders; and

(vi) the Administrative Agent shall have received from the Borrower, any customary legal opinions or other documents (including a resolution duly adopted by the board of directors (or equivalent governing body) of the Borrower authorizing such Incremental Increase) reasonably requested by Administrative Agent in connection with such Incremental Increase.

(f) Incremental Amendments. Each such Incremental Increase shall be effected pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate,

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the other Loan Documents, executed by the Borrower, the Administrative Agent and the applicable Incremental Lenders, which Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 4.13.

(g) Use of Proceeds. The proceeds of any Incremental Increase may be used by the Borrower and its Subsidiaries for working capital and other general corporate purposes, including the financing of Permitted Acquisitions and other Investments permitted hereunder and any other use not prohibited by this Agreement.

**Section 4.14 Cash Collateral.** At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent, any Issuing Lender (with a copy to the Administrative Agent) or the Swingline Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Fronting Exposure of such Issuing Lender and/or the Swingline Lender, as

applicable, with respect to such Defaulting Lender (determined after giving effect to Section 4.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of each Issuing Lender and the Swingline Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans, to be applied pursuant to subsection (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, each Issuing Lender and the Swingline Lender as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement or any other Loan Document, Cash Collateral provided under this Section 4.14 or Section 4.15 in respect of Letters of Credit and Swingline Loans shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of L/C Obligations and Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of any Issuing Lender and/or the Swingline Lender, as applicable, shall no longer be required to be held as Cash Collateral pursuant to this Section 4.14 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, the Issuing Lenders and the Swingline Lender that there exists excess Cash Collateral; provided that, subject to Section 4.15, the Person providing Cash Collateral, the Issuing Lenders and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations, but so long as no Default or Event of Default then exists and is continuing, any Cash Collateral no longer required to be so held as Cash Collateral shall, upon written request of the Borrower, be returned to the Borrower.

## **Section 4.15 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:

(ii) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.2.

(iii) 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 IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.4 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 Lenders or the Swingline Lender hereunder; *third*, to Cash Collateralize the Fronting Exposure of the Issuing Lenders and the Swingline Lender with respect to such Defaulting Lender in accordance with Section 4.14; *fourth*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan or funded participation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released prorata in order to

(A) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lenders' future Fronting Exposure with respect to such Defaulting Lender with

respect to future Letters of Credit issued under this Agreement, in accordance with Section 4.14; sixth, to the payment of any amounts owing to the Lenders, the Issuing Lenders or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Lender or the Swingline 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 the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or funded participations in Letters of Credit or Swingline Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit or Swingline Loans were issued at a time when the conditions set forth in Section 5.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Letters of Credit or Swingline Loans owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Letters of Credit or Swingline Loans owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders prorata in accordance with the Revolving Credit Commitments under the applicable Revolving Credit Facility without giving effect to Section 4.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts

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owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 4.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iv) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee 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).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 4.14.

(C) With respect to any Commitment Fee or Letter of Credit commission not required to be paid to any Defaulting Lender pursuant to clause

(A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to each applicable Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Lender's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(v) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to Section 11.22, 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.

(vi) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first,

repay Swingline Loans in an amount equal to the Swingline Lenders' Fronting Exposure and (y) second, Cash Collateralize the Issuing Lenders' Fronting Exposure in accordance with the procedures set forth in Section 4.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Issuing Lenders and the Swingline Lender 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 Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Commitments under the applicable Credit Facility (without giving effect to Section 4.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Non-Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## ARTICLE V.

### CONDITIONS OF CLOSING AND BORROWING

**Section 5.1 Conditions to Closing and Initial Extensions of Credit.** The obligation of the Lenders to close this Agreement and to make the initial Loans or issue or participate in the initial Letter of Credit, if any, is subject to the satisfaction of each of the following conditions:

(a) Executed Loan Documents. This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Swingline Note in favor of the Swingline Lender (in each case, if requested thereby), together with any other applicable Loan Documents, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto, shall be in full force and effect and no Default or Event of Default shall have occurred and be continuing.

(b) Closing Certificates; Etc. The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) Officer's Certificate. A certificate from a Responsible Officer of the Borrower to the effect that (A) all representations and warranties of the Borrower contained in this Agreement and the other Loan Documents are true, correct and complete in all material respects (except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects); (B) the Borrower is not in violation of any of the covenants contained in this Agreement and the other Loan Documents; (C) after giving effect to the transactions contemplated hereby, no Default or Event of Default has occurred and is continuing; (D) since December 31, 2021, no event has occurred or condition arisen, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; and (E) the Borrower has satisfied each of the conditions set forth in Section 5.1 and Section 5.2.

(ii) Certificate of Secretary of the Borrower. A certificate of a Responsible Officer of the Borrower certifying as to the incumbency and genuineness of the signature of each officer of the Borrower executing Loan Documents to which it is a party and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation (or equivalent), as applicable, of the Borrower and all amendments thereto, certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation, organization or formation (or equivalent), as

applicable, (B) the bylaws or governing documents of the Borrower as in effect on the Closing Date, (C) resolutions duly adopted by the board of directors (or other governing body) of the Borrower authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party, and (D) each certificate required to be delivered pursuant to Section 5.1(b)(iii).

(iii) **Certificates of Good Standing.** Certificates as of a recent date of the good standing of the Borrower under the laws of its jurisdiction of incorporation, organization or formation (or equivalent), as applicable.

(iv) **Opinions of Counsel.** Opinions of counsel to the Borrower, including opinions of special counsel and local counsel as may be reasonably requested by the Administrative Agent, addressed to the Administrative Agent and the Lenders with respect to the Borrower, the Loan Documents and such other matters as the Administrative Agent shall request.

(c) **Consents; Defaults.**

(ii) **Governmental and Third Party Approvals.** The Borrower shall have received all material governmental, shareholder and third party consents and approvals necessary (or any other material consents as determined in the reasonable discretion of the Administrative Agent) in connection with the transactions contemplated hereby, which shall be in full force and effect.

(iii) **No Injunction, Etc.** No action, suit, proceeding or investigation shall be pending or, to the actual knowledge of the Borrower, threatened in writing in any court or before any arbitrator or any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(d) **Financial Matters.**

(ii) **Financial Statements.** The Administrative Agent shall have received (A) the audited Consolidated balance sheet of the Borrower and its Subsidiaries as of December 31, 2021 and the related audited statements of income and retained earnings and cash flows for the Fiscal Year then ended and (B) unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of September 30, 2022 and related unaudited interim statements of income and retained earnings.

(iii) **Solvency Certificate.** The Borrower shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by the chief financial officer of the Borrower, that after giving effect to the transactions contemplated by this Agreement, the Borrower and its Subsidiaries (on a consolidated basis) are Solvent.

(iv) **Payment at Closing.** The Borrower shall have paid or made arrangements to pay contemporaneously with closing (A) to the Administrative Agent, the Arrangers and the Lenders the fees set forth or referenced in Section 4.3 and any other accrued and unpaid fees or commissions due hereunder, (B) all reasonable and documented fees, charges and disbursements of outside counsel to the Administrative Agent (directly to such outside counsel if requested by the Administrative Agent) to the extent accrued and unpaid prior

to or on the Closing Date and to the extent invoices therefor are provided to the Borrower at least one (1) Business Day prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent) and (C) to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents.

(e) Miscellaneous.

(ii) Notice of Account Designation. The Administrative Agent shall have received a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(iii) Existing Indebtedness.

(A) All existing Indebtedness of the Borrower and its Subsidiaries (excluding Indebtedness permitted pursuant to Section 8.1) shall be repaid in full, all commitments (if any) in respect thereof shall have been terminated and all guarantees therefor and security therefor shall be released, and the Administrative Agent shall have received pay-off letters in form and substance reasonably satisfactory to it evidencing such repayment, termination and release; and

(B) The Administrative Agent shall have received evidence that the Existing BMO Credit Agreement shall have been amended to contain covenants no more restrictive than those contained in this Agreement and to permit incurrence of the Obligations.

(iv) PATRIOT Act, etc.

(A) The Administrative Agent and the Lenders shall have received, at least five (5) Business Days prior to the Closing Date, all documentation and other information requested by the Administrative Agent or any Lender or required by regulatory authorities in order for the Administrative Agent and the Lenders to comply with requirements of any Anti-Money Laundering Laws, including the PATRIOT Act and any applicable "know your customer" rules and regulations.

(B) The Borrower shall have delivered to the Administrative Agent, and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to it (or a certification that such Borrower qualifies for an express exclusion from the "legal entity customer" definition under the Beneficial Ownership Regulations), in each case at least five (5) Business Days prior to the Closing Date.

(v) Other Documents. All opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Administrative Agent. The Administrative Agent shall have received copies of all other documents, certificates and instruments reasonably requested thereby, with respect to the transactions contemplated by this Agreement.

Without limiting the generality of the provisions of Section 10.3(c) and Section 10.4, for purposes of determining compliance with the conditions specified in this Section 5.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**Section 5.2 Conditions to All Extensions of Credit.** Subject to Section 4.13 and Section 1.12 solely with respect to any Incremental Term Loan incurred to finance a substantially concurrent Limited Condition Acquisition, the obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit) and/or any Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, issuance or extension date:

- (a) **Continuation of Representations and Warranties.** The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, on and as of such borrowing, issuance or extension date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date).
- (b) **No Existing Default.** No Default or Event of Default shall have occurred and be continuing (i) on the borrowing date with respect to such Loan or after giving effect to the Loans to be made on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.
- (c) **Notices.** The Administrative Agent shall have received a Notice of Borrowing or Letter of Credit Application, as applicable, from the Borrower in accordance with Section 2.3(a) or Section 3.2, as applicable.
- (d) **New Swingline Loans/Letters of Credit.** So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lenders shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

Each Notice of Borrowing or Letter of Credit Application, as applicable, submitted by the Borrower shall be deemed to be a representation and warranty that the conditions specified in Sections 5.2(a) and (b) have been satisfied on and as of the date of the applicable Extension of Credit.

## ARTICLE VI.

### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Borrower hereby represents and warrants to the Administrative Agent and the Lenders both before and after giving effect to the transactions contemplated hereunder, which

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representations and warranties shall be deemed made on the Closing Date and as otherwise set forth in Section 5.2, that:

**Section 6.1 Organization; Power; Qualification.** The Borrower and each Subsidiary thereof

(a) is duly organized, validly existing and in good standing (to the extent the concept is applicable in such jurisdiction) under the laws of the jurisdiction of its incorporation or formation, (b) has the power and authority to own its Properties and to carry on its business as now being and hereafter proposed to be conducted, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, and (c) is duly qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification and authorization except in jurisdictions where the failure to be so qualified or in good standing could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect. Neither the Borrower nor any Subsidiary thereof is an Affected Financial Institution or a Covered Party.

**Section 6.2 Ownership.** Each Subsidiary of the Borrower as of the Closing Date is listed on Schedule 6.2.

**Section 6.3 Authorization; Enforceability.** The Borrower has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement and each of the other Loan Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents have been duly executed and delivered by the duly authorized officers of the Borrower, and each such document constitutes the legal, valid and binding obligation of the Borrower, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies.

**Section 6.4 Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc.** The execution, delivery and performance by the Borrower of the Loan Documents, in accordance with their respective terms, the Extensions of Credit hereunder and the transactions contemplated hereby or thereby do not and will not, by the passage of time, the giving of notice or otherwise, (a) require any Governmental Approval or violate any Applicable Law relating to the Borrower where the failure to obtain such Governmental Approvals or such violation, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, (b) conflict with, result in a breach of or constitute a default under the Organizational Documents of the Borrower, (c) conflict with, result in a breach of or constitute a default under any indenture, agreement or other instrument to which the Borrower is a party or by which any of its properties may be bound or any Governmental Approval relating to the Borrower, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by the Borrower other than Permitted Liens or (e) require any consent or authorization of, filing with, or other act in respect of, an arbitrator or Governmental Authority and no consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement other than consents, authorizations, filings or other acts or consents for which the failure to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 6.5 Compliance with Law; Governmental Approvals.** The Borrower and each Subsidiary thereof (a) has all Governmental Approvals required by any Applicable Law for it to conduct its business, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to its actual knowledge, threatened in writing attack by direct or collateral proceeding, (b) is in compliance with each Governmental Approval applicable to it and in compliance with

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all other Applicable Laws relating to it or any of its respective properties and (c) has timely filed all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law, except in each case of clauses (a), (b) or (c) where the failure to have, comply or file could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 6.6 Tax Returns and Payments.** The Borrower and each Subsidiary thereof has duly filed or caused to be filed all federal income tax returns and all other material tax returns (federal, state, local and foreign) required by Applicable Law to be filed, and has paid, or made adequate provision for the payment of, all material federal, state, local and other taxes, assessments and governmental charges or levies upon it and its property, income, profits and assets which are due and payable (other than any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the Borrower). Such returns accurately reflect in all material respects all liability for taxes of the Borrower or any Subsidiary thereof for the periods covered thereby. There is no ongoing audit or examination or, to the actual knowledge of each of Borrower and each Subsidiary thereof, other investigation by any Governmental Authority of the tax liability of the Borrower or any Subsidiary thereof. No Governmental Authority has asserted any Lien or other claim against the Borrower or any Subsidiary thereof with respect to unpaid taxes which has not been discharged or resolved (other than (a) any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the Borrower and (b) Permitted Liens). The charges, accruals and reserves on the books of the Borrower and each Subsidiary thereof in respect of material federal, state, local and other taxes for all Fiscal Years and portions thereof since the organization of the Borrower or any Subsidiary thereof are in the judgment of the Borrower adequate, and the Borrower does not anticipate any additional taxes or assessments for any of such years.

**Section 6.7 Intellectual Property Matters.** The Borrower and each Subsidiary thereof owns or possesses rights to use all material franchises, licenses, copyrights, copyright applications, patents, patent rights or licenses, patent applications, trademarks, trademark rights, service mark, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing which are reasonably necessary to conduct its business except where the failure to own or possess such rights could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights, and neither the Borrower nor any Subsidiary thereof is liable to any Person for infringement under Applicable Law with respect to any such rights as a result of its business operations.

**Section 6.8 Environmental Matters.** Except as could, individually or in the aggregate, not reasonably be expected to result in a Material Adverse Effect:

(a) To Borrower's actual knowledge, the properties owned, leased or operated by the Borrower and each Subsidiary thereof now or in the past do not contain, and to their actual knowledge have not previously contained, any Hazardous Materials in amounts or concentrations which constitute or constituted a violation of applicable Environmental Laws;

(b) To its knowledge, the Borrower and each Subsidiary thereof and such properties and all operations conducted in connection therewith are in compliance, in all material respects, and have been in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about such properties or such operations which could interfere with the continued operation of such properties or impair the fair saleable value thereof;

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(c) Neither the Borrower nor any Subsidiary thereof has received any written notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters, Hazardous Materials, or compliance with Environmental Laws, nor does the Borrower or any Subsidiary thereof have actual knowledge or reason to believe that any such notice will be received or is being threatened;

(d) To its knowledge, Hazardous Materials have not been transported or disposed of to or from the properties owned, leased or operated by the Borrower or any Subsidiary thereof in violation of, or in a manner or to a location which could give rise to liability under, Environmental Laws, nor have any Hazardous Materials been generated, treated, stored or disposed of at, on or under any of such properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Laws;

(e) No judicial proceedings or governmental or administrative action is pending, or, to the actual knowledge of the Borrower, threatened, under any Environmental Law to which the Borrower or any Subsidiary thereof is or will be named as a potentially responsible party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any applicable Environmental Law with respect to the Borrower, any Subsidiary thereof, with respect to any real property owned, leased or operated by the Borrower or any Subsidiary thereof or operations conducted in connection therewith; and

(f) There has been no release, or to its knowledge, threat of release, of Hazardous Materials at or from properties owned, leased or operated by the Borrower or any Subsidiary, now or in the past, in violation of or in amounts or in a manner that could give rise to liability under applicable Environmental Laws.

**Section 6.9 Employee Benefit Matters.**

(a) As of the Closing Date, neither the Borrower nor any ERISA Affiliate maintains or contributes to, or has any obligation under, any Employee Benefit Plans other than those identified on Schedule 6.9;

(b) The Borrower and each ERISA Affiliate is in compliance, in all material respects, with all applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except where a

failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Employee Benefit Plan that is intended to be qualified under Section 401(a) of the Code has been determined by the IRS to be so qualified, and each trust related to such plan has been determined to be exempt under Section 501(a) of the Code except for such plans that have not yet received determination letters but for which the remedial amendment period for submitting a determination letter has not yet expired. No liability has been incurred by the Borrower or any ERISA Affiliate which remains unsatisfied for any taxes or penalties assessed with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect;

(c) As of the Closing Date, no Pension Plan has been terminated, nor has any Pension Plan become subject to funding based upon benefit restrictions under Section 436 of the Code, nor has any funding waiver from the IRS been received or requested with respect to any Pension Plan;

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nor has the Borrower or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Sections 412 or 430 of the Code, Section 302 of ERISA or the terms of any Pension Plan on or prior to the due dates of such contributions under Sections 412 or 430 of the Code or Section 302 of ERISA, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan;

(d) Except where the failure of any of the following representations to be correct could not, individually or in the aggregate, reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, the Borrower nor any ERISA Affiliate has: (i) engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code, (ii) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (iii) failed to make a required contribution or payment to a Multiemployer Plan, or (iv) failed to make a required installment or other required payment under Sections 412 or 430 of the Code;

(e) No Termination Event has occurred or is reasonably expected to occur;

(f) Except where the failure of any of the following representations to be correct could not, individually or in the aggregate, reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit and/or investigation is existing or, to its knowledge, threatened concerning or involving (i) any employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by the Borrower or any ERISA Affiliate, (ii) any Pension Plan or (iii) any Multiemployer Plan;

(g) Neither the Borrower nor any Subsidiary thereof is a party to any contract, agreement or arrangement that could, solely as a result of the delivery of this Agreement or the consummation of transactions contemplated hereby, result in the payment of any "excess parachute payment" within the meaning of Section 280G of the Code; and

(h) As of the Closing Date the Borrower is not nor will be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

**Section 6.10 Margin Stock.** Neither the Borrower nor any Subsidiary thereof is engaged principally or as one of its activities in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" (as each such term is defined or used, directly or indirectly, in Regulation U of the FRB). Following the application of the proceeds of each Extension of Credit, not more than twenty- five percent (25%) of the value of the assets (either of the Borrower only or of the Borrower and its Subsidiaries on a Consolidated basis) subject to the provisions of Section 8.2 or Section 8.5 or subject to any restriction contained in any agreement or instrument between the Borrower and any Lender or any Affiliate of any Lender relating to Indebtedness in excess of the Threshold Amount will be "margin stock".

**Section 6.11 Government Regulation.** Neither the Borrower nor any Subsidiary thereof is an "investment company" or a company "controlled" by an "investment company" (as each such term is defined or used in the Investment Company Act) and neither the Borrower nor

any Subsidiary thereof is, or after giving effect to any Extension of Credit will be, subject to regulation under the Interstate Commerce Act, or any other Applicable Law which limits its ability to incur or consummate the transactions contemplated hereby.

**Section 6.12 Employee Relations.** As of the Closing Date, neither the Borrower nor any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 6.12. The Borrower knows of no pending, threatened (in writing) or contemplated strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

**Section 6.13 Financial Statements.** The audited and unaudited financial statements delivered pursuant to Section 5.1(d)(i) are complete and correct and fairly present on a Consolidated basis the assets, liabilities and financial position of the Borrower and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods then ended (other than customary year-end adjustments for unaudited financial statements and the absence of footnotes from unaudited financial statements). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP. Such financial statements show all material indebtedness and other material liabilities, direct or contingent, of the Borrower and its Subsidiaries as of the date thereof, including material liabilities for taxes, material commitments, and Indebtedness, in each case, to the extent required to be disclosed under GAAP.

**Section 6.14 No Material Adverse Change.** Since December 31, 2021, there has been no material adverse change in the properties, business, operations, prospects, or condition (financial or otherwise) of the Borrower and its Subsidiaries and no event has occurred or condition arisen, either individually or in the aggregate, that could reasonably be expected to have a Material Adverse Effect.

**Section 6.15 Solvency.** The Borrower and its Subsidiaries, on a Consolidated basis, are Solvent.

**Section 6.16 Title to Properties.** The Borrower and each Subsidiary thereof has such title to the real property owned or leased by it as is necessary to the conduct of its business and valid and legal title to all of its personal property and assets, except (a) those which have been Disposed of by the Borrower and its Subsidiaries subsequent to such date which Dispositions have been in the ordinary course of business or as otherwise expressly permitted hereunder and (b) for such defects of title that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

**Section 6.17 Litigation.** There are no actions, suits or proceedings pending nor, to its actual knowledge, threatened in writing against or in any other way relating adversely to or affecting the Borrower or any Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

**Section 6.18 Anti-Corruption Laws; Anti-Money Laundering Laws and Sanctions.**

- (a) None of (i) the Borrower, any Subsidiary or, to the actual knowledge of the Borrower or such Subsidiary, any of their respective directors, officers, employees or Affiliates, or
- (ii) to the actual knowledge of the Borrower, any agent or representative of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the Credit Facility, (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) is, as of the Closing Date, under administrative, civil or criminal investigation for an alleged violation of, or received written notice from or made a voluntary disclosure to any governmental entity regarding a possible violation of, Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions by a governmental authority that enforces Sanctions or any Anti-Corruption Laws or Anti-Money Laundering Laws, or (D) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons.

(b) Each of the Borrower and its Subsidiaries has implemented and maintains in effect policies and procedures designed to ensure compliance by the Borrower and its Subsidiaries and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(c) Each of the Borrower and its Subsidiaries, and to the actual knowledge of the Borrower, director, officer, employee, agent and Affiliate of Borrower and each such Subsidiary, is in compliance with all Anti-Corruption Laws, Anti-Money Laundering Laws in all material respects and applicable Sanctions.

(d) No proceeds of any Extension of Credit have been used, directly or indirectly, by the Borrower, any of its Subsidiaries or any of its or their respective directors, officers, employees and agents in violation of Section 7.13(c).

**Section 6.19 Absence of Defaults.** No event has occurred or is continuing which constitutes a Default or an Event of Default.

**Section 6.20 Disclosure.** The Borrower and/or its Subsidiaries have disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which the Borrower and any Subsidiary thereof are subject, and all other matters known to them, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No financial statement, material report, material certificate or other material information furnished (whether in writing or orally) by or on behalf of the Borrower or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken together as a whole, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed to be reasonable at the time (it being recognized by the Lenders that projections are not to be viewed as facts and that the actual results during the period or periods covered by such projections may vary from such projections). As of the Closing Date, all of the information included in the Beneficial Ownership Certification is true and correct.

## ARTICLE VII. AFFIRMATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification obligations not then due and payable) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, the Borrower will, and will cause each of its Subsidiaries to:

**Section 7.1 Financial Statements.** Deliver to the Administrative Agent, in form and detail reasonably satisfactory to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) **Annual Financial Statements.** As soon as practicable and in any event within sixty (60) days (or, if earlier, on the date of any required public filing thereof after giving effect to any applicable extensions) after the end of each Fiscal Year (commencing with the Fiscal Year ended December 31, 2022), an audited Consolidated balance sheet of the Borrower and its Subsidiaries

as of the close of such Fiscal Year and audited Consolidated statements of income, retained earnings and cash flows including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of

operations of any change in the application of accounting principles and practices during the year. Such annual financial statements shall be audited by an independent certified public accounting firm of recognized national standing reasonably acceptable to the Administrative Agent, and accompanied by a report and opinion thereon by such certified public accountants prepared in accordance with generally accepted auditing standards that is not subject to any "going concern" or similar qualification or exception or any qualification (other than a qualification, with respect to, or expressly resulting solely from the impending maturity of the Obligations within one year from the time such report and opinion are delivered) as to the scope of such audit or with respect to accounting principles followed by the Borrower or any of its Subsidiaries not in accordance with GAAP.

(b) **Quarterly Financial Statements.** As soon as practicable and in any event within forty (40) days (or, if earlier, on the date of any required public filing thereof after giving effect to any applicable extensions) after the end of the first three fiscal quarters of each Fiscal Year (commencing with the fiscal quarter ended March 31, 2023), an unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such fiscal quarter and unaudited Consolidated statements of income, retained earnings and cash flows for the fiscal quarter then ended and that portion of the Fiscal Year then ended, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Borrower in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the chief financial officer of the Borrower to present fairly in all material respects the financial condition of the Borrower and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes.

**Section 7.2 Certificates; Other Reports.** Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) at each time financial statements are delivered pursuant to Sections 7.1(a) or (b), a duly completed Compliance Certificate that, among other things, (i) states that no Default or Event of Default is continuing as of the date of delivery of such Compliance Certificate or, if a Default or Event of Default is continuing, states the nature thereof and the action that the Borrower proposes to take with respect thereto and (ii) demonstrates compliance with the financial covenants set forth in Section 8.10 as of the last day of the applicable Reference Period ending on the last day of the Reference Period covered by such financial statements, together with a report containing management's discussion and analysis of the Borrower's material quarterly and annual operating results, as applicable, and a report containing management's discussion and analysis of such financial statements;

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

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(c) promptly upon the written request thereof, such other information and documentation required under applicable "know your customer" rules and regulations, the PATRIOT Act or any applicable Anti-Money Laundering Laws or Anti-Corruption Laws, in each case as from time to time reasonably requested by the Administrative Agent or any Lender; and

(d) such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary thereof as the Administrative Agent or any Lender may reasonably request (excluding any information subject to attorney client privilege or other privilege and any information subject to a binding confidentiality agreement with a third party entered into in good faith).

Documents required to be delivered pursuant to Section 7.1(a) or (b) or Section 7.2(b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which such materials are publicly available as posted on the Electronic Data Gathering, Analysis and Retrieval system (EDGAR); or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that:

(i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions of such documents, if requested. Notwithstanding anything contained herein, in every instance the Borrower shall be required to provide copies of the Compliance Certificates required by Section 7.2 to the Administrative Agent in accordance with the procedures set forth in Section

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

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Issuing Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on the Platform and (b) certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a "PublicLender"). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, means that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, the Arrangers, the Issuing Lenders and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.10); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Investor;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Investor."

**Section 7.3 Notice of Litigation and Other Matters.** Promptly (but in no event later than ten (10) days after any Responsible Officer of the Borrower obtains knowledge thereof) notify the

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Administrative Agent in writing of (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) the occurrence of any Default or Event of Default;

(b) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving the Borrower or any Subsidiary thereof or any of their respective properties, assets or businesses in each case that if adversely determined could reasonably be expected to result in a Material Adverse Effect; and

(c) any notice of any violation received by the Borrower or any Subsidiary thereof from any Governmental Authority including any written notice of violation of Environmental Laws which in any such case could reasonably be expected to have a Material Adverse Effect.

Each notice pursuant to Section 7.3 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 7.3(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**Section 7.4 Preservation of Corporate Existence and Related Matters.** Except as permitted by Section 8.4, preserve and maintain its separate corporate existence or equivalent form and all rights, franchises, licenses and privileges necessary to the conduct of its business, and

qualify and remain qualified as a foreign corporation or other entity and authorized to do business in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect.

#### **Section 7.5 Maintenance of Property and Licenses.**

(a) Protect and preserve all Properties necessary in and material to its business, including copyrights, patents, trade names, service marks and trademarks; maintain in good working order and condition, ordinary wear and tear excepted, all buildings, equipment and other tangible real and personal property; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such Property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner, in each case, except as such action or inaction could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

(b) Maintain, in full force and effect in all material respects, each and every material license, permit, certification, qualification, approval or franchise issued by any Governmental Authority required for each of them to conduct their respective businesses as presently conducted, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 7.6 Insurance.** Maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by Applicable Law (including hazard and business interruption insurance).

**Section 7.7 Accounting Methods and Financial Records.** Maintain a system of accounting, and keep proper books, records and accounts (which shall be accurate and complete in all material respects)

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as may be required or as may be necessary to permit the preparation of financial statements in accordance in all material respects with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction over it or any of its Properties.

**Section 7.8 Payment of Taxes and Other Obligations.** Pay and perform (a) all taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its Property and (b) all other Indebtedness, obligations and liabilities in accordance with customary trade practices, except where the failure to pay or perform such items described in clauses (a) or (b) of this Section could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 7.9 Compliance with Laws and Approvals.** Observe and remain in compliance with all Applicable Laws and maintain in full force and effect all Governmental Approvals, in each case applicable to the conduct of its business, except where the failure to do so could not, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

**Section 7.10 Environmental Laws.** In addition to and without limiting the generality of Section 7.9, (a) comply with, and use commercially reasonable efforts to ensure such compliance by all tenants and subtenants with all applicable Environmental Laws and obtain and comply with and maintain, and use commercially reasonable efforts to ensure that all tenants and subtenants, if any, obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws and (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws.

**Section 7.11 Compliance with ERISA.** In addition to and without limiting the generality of Section 7.9, (a) except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) comply with applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans, (ii) not take any action or fail to take action the result of which could reasonably be expected to result in a liability to the PBGC or to a Multiemployer Plan, (iii) not participate in any prohibited transaction that could result in any civil penalty under ERISA or tax under the Code and (iv) operate each Employee Benefit Plan in such a manner that will not incur any tax liability under Section 4980B of the Code or any liability to

any qualified beneficiary as defined in Section 4980B of the Code and (b) furnish to the Administrative Agent upon the Administrative Agent's request such additional information about any Employee Benefit Plan as may be reasonably requested by the Administrative Agent.

**Section 7.12 Visits and Inspections.** Permit representatives of the Administrative Agent or any Lender, from time to time upon prior reasonable notice and at such times during normal business hours, all at the expense of the Borrower, to visit and inspect, under guidance of officers or other agents of the Borrower, its properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects; provided that excluding any such visits and inspections during the continuation of an Event of Default, the Administrative Agent shall not exercise such rights more often than one (1) time during any calendar year at the Borrower's expense; provided further that upon the occurrence and during the continuance of an Event of Default, the Administrative Agent or any Lender may do any of the foregoing at the expense of the Borrower during regular business hours without advance notice.

**Section 7.13 Use of Proceeds.**

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- (a) Use the proceeds of the Extensions of Credit (i) to refinance certain existing Indebtedness, (ii) to pay fees, commissions and expenses in connection with the transactions contemplated hereby, and (iii) for working capital and general corporate purposes of the Borrower and its Subsidiaries; provided that no part of the proceeds of any of the Loans or Letters of Credit shall be used for purchasing or carrying margin stock (within the meaning of Regulation T, U or X of the FRB) or for any purpose which violates the provisions of Regulation T, U or X of the FRB. If requested by the Administrative Agent or any Lender (through the Administrative Agent), the Borrower shall promptly furnish to the Administrative Agent and each requesting Lender a statement in conformity with the requirements of Form G-3 or Form U-1, as applicable, under Regulation U of the FRB.
- (b) Use the proceeds of any Incremental Term Loan and any Incremental Revolving Credit Facility Increase as permitted pursuant to Section 4.13, as applicable.
- (c) Not request any Extension of Credit, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Extension of Credit, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

**Section 7.14 Compliance with Anti-Corruption Laws; Beneficial Ownership Regulation; Anti-Money Laundering Laws and Sanctions.** (a) Maintain in effect and enforce policies and procedures reasonably designed to promote and achieve compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification (or a certification that the Borrower qualifies for an express exclusion to the "legal entity customer" definition under the Beneficial Ownership Regulation) of any change in the information provided in the Beneficial Ownership Certification that would result in a material change to the list of beneficial owners identified therein (or, if applicable, the Borrower ceasing to fall within an express exclusion to the definition of "legal entity customer" under the Beneficial Ownership Regulation) and (c) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or directly to such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

**Section 7.15 Further Assurances.** Execute any and all further documents, agreements and instruments, and take all such further actions, which may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents.

**ARTICLE VIII.**

## NEGATIVE COVENANTS

Until all of the Obligations (other than contingent, indemnification obligations not then due and payable) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Commitments terminated, the Borrower will not, and will not permit any of its Subsidiaries to:

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**Section 8.1 Indebtedness**. Create, incur, assume or suffer to exist any Indebtedness except:

- (a) the Obligations;
- (b) Indebtedness (i) owing under Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes and (ii) in respect of Cash Management Agreements entered into in the ordinary course of business;
- (c) Indebtedness existing on the Closing Date and listed on Schedule 8.1, and any Permitted Refinancing Indebtedness in respect thereof;
- (d) Attributable Indebtedness with respect to Capital Lease Obligations and Indebtedness incurred in connection with purchase money Indebtedness and, in each case, any Permitted Refinancing Indebtedness in respect thereof in an aggregate principal amount not to exceed an amount equal to thirty percent (30%) of Consolidated EBITDA at any time outstanding;
- (e) unsecured intercompany Indebtedness (i) owed by the Borrower to any Subsidiary (provided that such Indebtedness shall be subordinated to the Obligations in a manner reasonably satisfactory to the Administrative Agent, if requested) and (ii) owed by any Subsidiary to any other Subsidiary;
- (f) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;
- (g) Indebtedness of the Borrower pursuant to the Existing BMO Credit Agreement in an aggregate principal amount not to exceed \$93,750,000;
- (h) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing;
- (i) other unsecured Indebtedness of the Borrower so long as at the time of and immediately after giving effect (including giving effect on a Pro Forma Basis) to the incurrence, issuance or assumption of such Indebtedness, the Borrower is in compliance with the financial covenants contained in Section 8.10;
- (j) Priority Indebtedness; provided that, after giving effect to the incurrence of such Indebtedness and the application of the proceeds thereof, the aggregate outstanding amount of Priority Indebtedness incurred pursuant to this clause (j) would not exceed fifteen percent (15%) of Consolidated Net Tangible Assets;
- (k) (i) Indebtedness in the form of any indemnification, adjustment of purchase price, earn-out, non-compete, consulting, deferred compensation and similar obligations of the Borrower or its Subsidiaries and (ii) Indebtedness incurred by the Borrower or any of its Subsidiaries under agreements providing for earn-outs or the adjustment of the purchase price or similar adjustments, in each case, in connection with any Permitted Acquisition, other Investment or Disposition, in each case permitted under this Agreement;

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(l) Indebtedness in respect of letters of credit or bonds backing obligations under insurance policies or related to self-insurance obligations or consisting of the financing of insurance premiums, incurred in the ordinary course of business;

(m) Indebtedness incurred in the ordinary course of business to finance take-or-pay obligations contained in supply arrangements;

(n) (i) Indebtedness representing severance, pension and health and welfare retirement benefits or the equivalent thereof to current and former officers, employees, consultants and directors of the Borrower or its Subsidiaries incurred in the ordinary course of business and (ii) Indebtedness representing deferred compensation or equity-based compensation to current and former officers, employees, consultants and directors of the Borrower and its Subsidiaries;

(o) (i) Indebtedness representing guarantees made by the Borrower or any of its Subsidiaries of obligations (not constituting debt for borrowed money) of the Borrower or any of its Subsidiaries owing to vendors, suppliers and other third parties incurred in the ordinary course of business and (ii) Indebtedness of the Borrower or any of its Subsidiaries as an account party in respect of trade letters of credit issued in the ordinary course of business; and

(p) Indebtedness of any Person that becomes a Subsidiary after the Closing Date in connection with a Permitted Acquisition in an aggregate principal amount not to exceed \$100,000,000 at any time outstanding; provided that such Indebtedness exists at the time such Person becomes a Subsidiary and is not created in contemplation of or in connection with such Person becoming a Subsidiary.

**Section 8.2 Liens.** Create, incur, assume or suffer to exist, any Lien on or with respect to any of its Property, whether now owned or hereafter acquired, except:

(a) Liens created pursuant to the Loan Documents (including Liens in favor of the Swingline Lender and/or the Issuing Lenders, as applicable, on Cash Collateral granted pursuant to the Loan Documents);

(b) Liens in existence on the Closing Date and described on Schedule 8.2, and the replacement, renewal or extension thereof (including Liens incurred, assumed or suffered to exist in connection with any Permitted Refinancing Indebtedness permitted pursuant to Section 8.1(c) (solely to the extent that such Liens were in existence on the Closing Date and described on Schedule 8.2)); provided that the scope of any such Lien shall not be increased, or otherwise expanded, to cover any additional property or type of asset, as applicable, beyond that in existence on the Closing Date, except for products and proceeds of the foregoing;

(c) Liens for taxes, assessments and other governmental charges or levies (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) (i) not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

(d) the claims of materialmen, mechanics, carriers, warehousemen, processors or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which (i) are not overdue for a period of more than thirty (30) days, or if more than thirty (30) days overdue, no action has been taken to enforce such Liens and such Liens are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by

GAAP and (ii) do not, individually or in the aggregate, materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries;

(e) deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers' compensation, unemployment insurance and other types of social security or similar legislation, or to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(f) encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not substantial in amount and which do not, in any case, detract from the value of such property or materially impair the use thereof in the ordinary conduct of business;

(g) Liens arising from the filing of precautionary UCC financing statements relating solely to personal property leased pursuant to operating leases entered into in the ordinary course of business;

(h) Liens securing Indebtedness permitted under Section 8.1(d); provided that (i) such Liens shall be created within one hundred eighty (180) days of the acquisition, repair, construction, improvement or lease, as applicable, of the related Property, (ii) such Liens do not at any time encumber any property other than the Property financed or improved by such Indebtedness (other than the proceeds thereof), (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original price for the purchase, repair, construction, improvement or lease amount (as applicable) of such Property at the time of purchase, repair, construction, improvement or lease (as applicable);

(i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.1(l) or securing appeal or other surety bonds relating to such judgments;

(j) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction, (ii) Liens of any depositary bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit account of the Borrower or any Subsidiary thereof and (iii) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of any assets or property in the ordinary course of business;

(k) (i) Liens of landlords arising in the ordinary course of business to the extent relating to the property and assets relating to any lease agreements with such landlord, and (ii) Liens of suppliers (including sellers of goods) or customers arising in the ordinary course of business to the extent limited to the property or assets relating to such contract;

(l) (i) leases, licenses, subleases or sublicenses granted to others which do not (A) interfere in any material respect with the business of the Borrower or its Subsidiaries or materially detract from the value of the relevant assets of the Borrower or its Subsidiaries or (B) secure any Indebtedness and (ii) any interest or title of a licensor, sub-licensor, lessor or sub- lessor under leases, licenses, subleases or sublicenses entered into by any of the Borrower and its Subsidiaries as licensee, sub-licensee, lessee or sub-lessee in the ordinary course of business or any

customary restriction or encumbrance with respect to the Property subject to any such lease, license, sublease or sublicense;

(m) (i) Liens on Equity Interests of joint ventures securing capital contributions thereto and (ii) customary rights of first refusal and tag, drag and similar rights in joint venture agreements and agreements with respect to Non-Wholly-Owned Subsidiaries;

(n) Liens securing Priority Indebtedness permitted under Section 8.1(j);

(o) Liens on Property (i) of a Person that becomes a Subsidiary existing at the time that such Person becomes a Subsidiary in connection with a Permitted Acquisition and (ii) of the Borrower or any of its Subsidiaries existing at the time such Property is purchased or otherwise acquired by the Borrower or such Subsidiary pursuant to a transaction permitted hereunder and, in each case any modification, replacement, renewal and extension thereof; provided that, with respect to each of the foregoing clauses (i) and (ii), (A) such Liens are not incurred in connection with, or in anticipation of, such Permitted Acquisition, Investment, purchase or other acquisition, (B) such Liens do not encumber any Property other than Property encumbered at the time of such acquisition or such Person becoming a Subsidiary and the proceeds and products thereof, (C) such Liens do not attach to any other Property of the Borrower or any of its Subsidiaries, (D) such Liens will secure only those obligations which it secures at the time such acquisition or purchase occurs (and any Permitted Refinancing Indebtedness thereof) and (E) the aggregate principal amount of Indebtedness secured by such Liens shall not exceed \$100,000,000 in the aggregate at any one time outstanding;

(p) Liens on insurance policies and the proceeds thereof (whether accrued or not) and rights or claims against an insurer, in each case securing insurance premium financings permitted under Section 8.1 and made in the ordinary course of business;

(q) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in connection with a Permitted Acquisition or other Investment permitted hereunder;

(r) deposits made in the ordinary course of business to secure liability to insurance carriers;

(s) customary Liens granted in favor of a trustee to secure fees and other amounts owing to such trustee under an indenture or other agreement pursuant to which Indebtedness not prohibited hereunder and by the indenture is issued;

(t) utility and similar deposits in the ordinary course of business; and

(u) Liens on cash and Cash Equivalents held in escrow for the benefit of the holders of debt securities or other Indebtedness (or the underwriters or arrangers thereof) in anticipation of the repayment, repurchase or redemption of such debt securities or other Indebtedness to the extent such repayment, repurchase or redemption is permitted hereunder.

**Section 8.3 Investments.** Make, hold or otherwise permit to exist any Investment, except:

(a) Investments existing on the Closing Date (other than Investments in Subsidiaries existing on the Closing Date) and described on Schedule 8.3 and any modification, replacement,

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renewal or extension thereof so long as such modification, renewal or extension thereof does not increase the amount of such Investment except as otherwise permitted by this Section 8.3;

(b) Investments (i) existing on the Closing Date in Subsidiaries existing on the Closing Date, (ii) made after the Closing Date by any Subsidiary in the Borrower and (iv) made after the Closing Date by any Subsidiary in any other Subsidiary;

(c) Investments in cash and Cash Equivalents;

(d) deposits made in the ordinary course of business to secure the performance of leases or other obligations as permitted by Section 8.2;

(e) Hedge Agreements permitted pursuant to Section 8.1;

(f) purchases of assets in the ordinary course of business;

(g) Guarantees permitted pursuant to Section 8.1;

(h) non-cash consideration received in connection with Asset Dispositions expressly permitted by Section 8.5;

(i) Permitted Acquisitions;

(j) other investments (other than Acquisitions), loans, advances or Guarantees so long as at the time of making such investment, loan, advance or Guarantee and immediately after giving effect (including giving effect on a Pro Forma Basis) thereto, (i) no Event of Default then exists or would result therefrom and (ii) the Borrower is in compliance with the financial covenants contained in Section 8.10;

(k) Investments in the form of loans and advances to officers, directors and employees in the ordinary course of business in an aggregate amount not to exceed at any time outstanding

\$5,000,000 (determined without regard to any write-downs or write-offs of such loans or advances);

(l) (i) loans or advances to employees, partners, officers and directors of the Borrower or any Subsidiary in connection with such Person's purchase of Equity Interests of Borrower in an aggregate amount not to exceed at any time outstanding \$5,000,000 (determined without regard to any write-downs or write-offs of such loans or advances) and (ii) promissory notes received from stockholders of Borrower in connection with the exercise of stock options in respect of the Equity Interests of Borrower;

(m) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with, customers and suppliers, or upon the foreclosure with respect to any secured Investment or other transfer of title with respect to any secured Investment;

(n) Investments in any Person existing at the time such Person becomes a Subsidiary or consolidates, amalgamates or merges with the Borrower or any Subsidiary (including in connection with a Permitted Acquisition or other Investment permitted hereunder); provided that such Investment was not made in contemplation of such Person becoming a Subsidiary or such consolidation or merger;

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(o) Investments consisting of cash earnest money deposits in connection with a Permitted Acquisition or other Investment permitted hereunder; and

(p) Investments consisting of endorsements for collection or deposit in the ordinary course of business.

For purposes of determining the amount of any Investment outstanding for purposes of this Section 8.3, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

**Section 8.4 Fundamental Changes.** Merge, consolidate, amalgamate or enter into any similar combination with (including by division), or enter into any Asset Disposition of all or substantially all of its assets (whether in a single transaction or a series of transactions) with, any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

(a) any Wholly-Owned Subsidiary of the Borrower may be merged, amalgamated, liquidated, dissolved, wound up or consolidated with or into the Borrower (provided that the Borrower shall be the continuing or surviving entity);

(b) (i) any Foreign Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Subsidiary and (ii) any Domestic Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Domestic Subsidiary;

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up, division or otherwise) to the Borrower; provided that, the consideration for such Disposition shall not exceed the fair value of such assets;

(d) (i) any Foreign Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up, division or otherwise) to any other Subsidiary and  
(ii) any Domestic Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any other Domestic Subsidiary; and

(e) Asset Dispositions permitted by Section 8.5 (other than clause (b) thereof);

(f) any Wholly-Owned Subsidiary of the Borrower may merge with or into the Person such Wholly-Owned Subsidiary was formed to acquire in connection with any Acquisition or Investment permitted hereunder (including any Permitted Acquisition permitted pursuant to Section 8.3(i)); and

(g) any Person may merge with or into the Borrower or any of its Wholly-Owned Subsidiaries in connection with an Acquisition or Investment permitted hereunder (including any Permitted Acquisition permitted pursuant to Section 8.3(i)); provided that (i) in the case of a merger involving the Borrower, the continuing or surviving Person shall be the Borrower and (ii) the continuing or surviving Person shall be the Borrower or a Wholly-Owned Subsidiary of the Borrower.

**Section 8.5 Asset Dispositions.** Make any Asset Disposition except:

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(a) the sale of inventory in the ordinary course of business and the sale, transfer, license, lease (as lessor) or other disposition of Property and equipment (including, but not limited to Revenue Equipment) in the ordinary course of business and consistent with prior practice;

(b) the Disposition of assets to the Borrower or any of its Subsidiaries pursuant to any transaction permitted pursuant to Section 8.4;

(c) the write-off, discount, sale or other Disposition of defaulted or past-due receivables and similar obligations in the ordinary course of business and not undertaken as part of an accounts receivable financing transaction;

(d) the Disposition, termination or unwinding of any Hedge Agreement;

(e) Dispositions of cash and Cash Equivalents;

(f) the sale or other Disposition of obsolete, worn-out or surplus assets no longer used or useful in the business of the Borrower or any of its Subsidiaries;

(g) non-exclusive licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering, individually or in the aggregate, in any material respect with the business of the Borrower and its Subsidiaries;

(h) leases, subleases, licenses or sublicenses of real or personal property granted by the Borrower or any of its Subsidiaries to others in the ordinary course of business not detracting from the value of such real or personal property or interfering in any material respect with the business of the Borrower or any of its Subsidiaries; and

(i) Asset Dispositions of property in the form of an Investment permitted pursuant to Section 8.3 (other than clause (h) thereof);

(j) Asset Dispositions not otherwise permitted pursuant to this Section; provided that (i) at the time of such Asset Disposition, no Default or Event of Default shall exist or would result from such Asset Disposition, (ii) such Asset Disposition is made for fair market value as determined in good faith by the Borrower and the consideration received shall be no less than seventy-five percent (75%) in cash and Cash Equivalents, and (iii) the aggregate fair market value of all property disposed of in reliance on this clause (j) shall not in any Fiscal Year exceed an amount equal to fifteen percent (15%) of Consolidated Total Assets as of the last day of the most recently completed Reference Period;

(k) the abandonment or lapse of intellectual property that is no longer material to the business of Borrower and its Subsidiaries, whether such intellectual property is now or hereafter owned or leased or acquired in connection with a Permitted Acquisition or other permitted Investment, or expiration of intellectual property in accordance with its statutory term (provided that such term is not renewable);

(l) the Disposition of non-core assets acquired in connection with any Permitted Acquisition or other permitted Investment; and

(m) (i) converting any intercompany Indebtedness to Equity Interests, (ii) transferring any intercompany Indebtedness solely between the Borrower and any Subsidiaries, (iii) settling, discounting, writing off, forgiving or canceling any intercompany Indebtedness or other obligation

owing by Borrower or any Subsidiary, (iv) settling, discounting, writing off, forgiving or cancelling any Indebtedness owing by any present or former consultants, directors, officers or employees of the Borrower or any Subsidiary or any of their successors or assigns, or (v) surrendering or waiving contractual rights and settling or waiving contractual or litigation claims, in each case of this clause

(m) in the ordinary course of business.

**Section 8.6 Sale Leasebacks.** Except as permitted by Section 8.1(d) and Section 8.5, directly or indirectly become or remain liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease, a finance lease or a capital lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which the Borrower or any Subsidiary thereof has sold or transferred or is to sell or transfer to a Person which is not the Borrower or a Subsidiary of the Borrower or (b) which the Borrower or any Subsidiary of the Borrower intends to use for substantially the same purpose as any other Property that has been sold or is to be sold or transferred by the Borrower or such Subsidiary to another Person which is not the Borrower or a Subsidiary of the Borrower in connection with such lease.

**Section 8.7 Transactions with Affiliates.** Directly or indirectly enter into any transaction, including any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with (a) any officer, director, holder of ten percent (10%) or more Equity Interests in, or other Affiliate of, the Borrower or any of its Subsidiaries or (b) any Affiliate of any such officer, director or holder, involving aggregate payments or consideration in excess of \$1,000,000, other than:

(ii) transactions permitted by Sections 8.1, 8.3, 8.4 and 8.5;

(iii) transactions existing on the Closing Date and described on Schedule 8.7;

(iv) other transactions in the ordinary course of business on terms at least as favorable to the Borrower and its Subsidiaries as would be obtained by it on a comparable arm's-length transaction with an independent, unrelated third party as determined in good faith by the board of directors (or equivalent governing body) of the Borrower;

(v) employment, severance and other similar compensation arrangements (including equity incentive plans and employee benefit plans and arrangements) with their respective officers and employees in the ordinary course of business; and

(vi) payment of customary fees and reasonable out of pocket costs to, and indemnities for the benefit of, directors, officers and employees of the Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership

or operation of the Borrower and its Subsidiaries.

#### **Section 8.8 No Further Negative Pledges; Restrictive Agreements.**

(a) Enter into, assume or be subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 8.1(d) (provided that any such restriction contained therein relates only to the asset or assets financed thereby), (iii) pursuant to the Existing BMO Credit Agreements; provided that any such restriction contained therein is no more restrictive than the covenants contained in this Agreement,

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(iv) customary restrictions contained in the organizational documents of any Subsidiary as of the Closing Date, (v) customary restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (vi) any covenants contained in any agreements that exist on the Closing Date, (vii) customary provisions in leases, subleases, licenses or sublicenses and other contracts restricting the right of assignment thereof, (viii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures that are applicable solely to such joint venture, (ix) restrictions imposed by Applicable Law, (x) customary restrictions and conditions contained in agreements relating to any sale of assets or Equity Interests pending such sale, provided such restrictions and conditions apply only to the Person or property that is to be sold, (xi) contractual obligations binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary, so long as such contractual obligations were not entered into solely in contemplation of such Person becoming a Subsidiary, (xii) negative pledges and restrictions on Liens in favor of any holder of Indebtedness for borrowed money entered into after the Closing Date and otherwise permitted under Section 8.1 and which are determined by the Borrower in good faith to be customary for the relevant type of Indebtedness, (xiii) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business and (xiv) any Lien permitted pursuant to Section 8.2 or any restrictions pursuant to document or instrument governing such Lien, provided that any such restriction contained therein relates only to the asset or assets subject to such Lien.

(b) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of the Borrower or any Subsidiary thereof to  
(i) pay dividends or make any other distributions to the Borrower or any Subsidiary on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to the Borrower or (iii) make loans or advances to the Borrower, except in each case for such encumbrances or restrictions existing under or by reason of  
(A) this Agreement and the other Loan Documents and (B) Applicable Law.

(c) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or consensual restriction on the ability of the Borrower or any Subsidiary thereof to  
(i) sell, lease or transfer any of its properties or assets to the Borrower or any Subsidiary or (ii) act as the Borrower pursuant to the Loan Documents or any renewals, refinancings, exchanges, refundings or extension thereof, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) Applicable Law, (C) any document or instrument governing Indebtedness incurred pursuant to Section 8.1(d) (provided that any such restriction contained therein relates only to the asset or assets acquired in connection therewith), (D) any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (E) obligations that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such obligations are not entered into in contemplation of such Person becoming a Subsidiary, (F) customary restrictions contained in an agreement related to the sale of Property (to the extent such sale is permitted pursuant to Section 8.5) that limit the transfer of such Property pending the consummation of such sale, (G) customary restrictions in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such restrictions relate only to the assets subject thereto and (H) customary provisions restricting assignment of any agreement entered into in the ordinary course of business.

**Section 8.9 Nature of Business.** Engage in any material line of business substantially different from the businesses conducted by the Borrower and its Subsidiaries as of the Closing Date and businesses

and business activities reasonably related, ancillary, similar or incidental thereto or that are reasonable extensions thereof.

**Section 8.10 Financial Covenants.**

(a) Consolidated Total Net Leverage Ratio. As of the last day of any fiscal quarter, permit the Consolidated Total Net Leverage Ratio to be greater than 3.00 to 1.00.

(b) Consolidated Interest Coverage Ratio. As of the last day of any fiscal quarter, permit the Consolidated Interest Coverage Ratio to be less than 3.00 to 1.00.

**ARTICLE IX.  
DEFAULT AND REMEDIES**

**Section 9.1 Events of Default.** Each of the following shall constitute an Event of Default:

(a) Default in Payment of Principal of Loans and Reimbursement Obligations. The Borrower shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise) or fail to provide Cash Collateral pursuant to Section 2.4(b), Section 2.5(d), Section 3.1, Section 3.12, Section 4.14 or Section 4.15(a)(v).

(b) Other Payment Default. The Borrower shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation, and such default shall continue for a period of three (3) Business Days.

(c) Misrepresentation. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any Subsidiary thereof in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any Subsidiary thereof in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made.

(d) Default in Performance of Certain Covenants. The Borrower or any Subsidiary thereof shall default in the performance or observance of any covenant or agreement contained in Sections 7.3(a), 7.4 (with respect to the Borrower's existence), 7.13 or 7.14 or Article VIII.

(e) Default in Performance of Other Covenants and Conditions. The Borrower or any Subsidiary thereof shall default in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than as specifically provided for in this Section 9.1) or any other Loan Document and such default shall continue for a period of (i) five (5) days after the earlier of (x) the Administrative Agent's delivery of written notice thereof to the Borrower and (y) a Responsible Officer of the Borrower having obtained knowledge thereof if such breach relates to terms or provisions of Section 7.1(a) or (b) or 7.2(a) or (ii) thirty (30) days after the earlier of (x) the Administrative Agent's delivery of written notice thereof to the Borrower and (y) a Responsible Officer of the Borrower having obtained knowledge thereof.

(f) **Indebtedness Cross-Default.** The Borrower or any Subsidiary thereof shall (i) default in the payment of any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount beyond the period of grace if any, provided in the instrument or agreement under which such Indebtedness was created, or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice and/or lapse of time, if required, any such Indebtedness to (A) become due, or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity (any applicable grace period having expired) or (B) be cash collateralized.

(g) **Change in Control.** Any Change in Control shall occur.

(h) **Voluntary Bankruptcy Proceeding.** The Borrower or any Material Subsidiary thereof shall (i) commence a voluntary case under any Debtor Relief Laws, (ii) file a petition seeking to take advantage of any Debtor Relief Laws, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Laws, (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign, (v) admit in writing its inability to pay its debts as they become due, (vi) make a general assignment for the benefit of creditors, or (vii) take any corporate action for the purpose of authorizing any of the foregoing.

(i) **Involuntary Bankruptcy Proceeding.** A case or other proceeding shall be commenced against the Borrower or any Material Subsidiary thereof in any court of competent jurisdiction seeking (i) relief under any Debtor Relief Laws, or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for the Borrower or any Material Subsidiary thereof or for all or any substantial part of its assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding under such Debtor Relief Laws shall be entered.

(j) **Failure of Agreements.** Any material provision of this Agreement or any material provision of any other Loan Document shall for any reason cease to be valid and binding on the Borrower or any such Person shall so state in writing, in each case other than in accordance with the express terms hereof or thereof.

(k) **ERISA Events.** The occurrence of any of the following events: (i) the Borrower or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or Sections 412 or 430 of the Code, the Borrower or any ERISA Affiliate is required to pay as contributions thereto and such unpaid amounts are in excess of the Threshold Amount, (ii) a Termination Event or (iii) the Borrower or any ERISA Affiliate makes a complete or partial withdrawal from any Multiemployer Plan and the Multiemployer Plan notifies the Borrower or ERISA Affiliate that such entity has incurred a withdrawal liability requiring payments in an amount exceeding the Threshold Amount.

(l) **Judgment.** One or more judgments, orders or decrees shall be entered against the Borrower or any Subsidiary thereof by any court and continues without having been discharged, vacated or stayed for a period of forty-five (45) consecutive days after the entry

thereof and such judgments, orders or decrees (i) in the case of the payment of money, are individually or in the aggregate (to the extent not paid or covered by insurance as to which the relevant insurance company has acknowledged the claim and has not disputed coverage), in excess of the Threshold Amount or (ii) in the case of injunctive or other non-monetary relief, could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

**Section 9.2 Remedies.** Upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower:

(a) Acceleration; Termination of Credit Facility. Terminate the Commitments and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents (including all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all other Obligations, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any right of the Borrower to request borrowings or Letters of Credit thereunder; provided, that upon the occurrence of an Event of Default specified in Section 9.1(h) or (i), the Credit Facility shall be automatically terminated and all Obligations shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by the Borrower, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(b) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, demand that the Borrower shall at such time deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to the Minimum Collateral Amount of the aggregate then undrawn and unexpired amount of such Letter of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Obligations in accordance with Section 9.4. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligation shall have been satisfied and all other Obligations shall have been paid in full, the balance, if any, in such Cash Collateral account shall be returned to the Borrower.

(c) General Remedies. Exercise on behalf of the Lenders all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Obligations.

**Section 9.3 Rights and Remedies Cumulative; Non-Waiver; Etc.**

(a) The enumeration of the rights and remedies of the Administrative Agent and the Lenders set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any

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other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between the Borrower, the Administrative Agent and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrower shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in

accordance with Section 9.2 for the benefit of all the Lenders and the Issuing Lenders; provided that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (iii) any Lender from exercising setoff rights in accordance with Section 12.4 (subject to the terms of Section 4.6), or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to the Borrower under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (A) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.2 and (B) in addition to the matters set forth in clauses (ii), (iii) and (iv) of the preceding proviso and subject to Section 4.6, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

**Section 9.4 Crediting of Payments and Proceeds.** In the event that the Obligations have been accelerated pursuant to Section 9.2 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Obligations and all net proceeds from the enforcement of the Obligations shall, subject to the provisions of Sections 3.12, 4.14 and 4.15, be applied by the Administrative Agent as follows:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees (other than Commitment Fees and Letter of Credit fees payable to the Revolving Credit Lenders), indemnities and other amounts (other than principal and interest) payable to the Lenders, the Issuing Lenders and the Swingline Lender under the Loan Documents, including attorney fees, ratably among the Lenders, the Issuing Lenders and the Swingline Lender in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Obligations constituting accrued and unpaid Commitment Fees, Letter of Credit fees payable to the Revolving Credit Lenders and interest on the Loans and Reimbursement Obligations, ratably among the Lenders, the Issuing Lenders and the Swingline Lender in proportion to the respective amounts described in this clause Third payable to them;

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Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans and Reimbursement Obligations and to Cash Collateralize any L/C Obligations then outstanding, ratably among the holders of such obligations in proportion to the respective amounts described in this clause Fourth payable to them; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Borrower or as otherwise required by Applicable Law.

**Section 9.5 Administrative Agent May File Proofs of Claim.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to the Borrower, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lenders and the Administrative Agent and their respective agents and outside counsel and all other amounts due the Lenders, the Issuing Lenders and the Administrative Agent under Sections 3.3,

4.3 and 11.3) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing 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 and the Issuing 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 outside counsel, and any other amounts due the Administrative Agent under Sections 3.3, 4.3 and 11.3.

## ARTICLE X.

### THE ADMINISTRATIVE AGENT

#### Section 10.1 Appointment and Authority.

(a) Each of the Lenders and each Issuing Lender hereby irrevocably appoints, designates and authorizes Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. Except as provided in Sections 10.6 and 10.9, the provisions of this Article are solely for the benefit of the Administrative Agent, the Arrangers, the Lenders, the Issuing Lenders and their respective Related Parties, and neither the Borrower nor any Subsidiary thereof shall have rights as a third- party beneficiary of any of such provisions.

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(b) It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

**Section 10.2 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, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of banking, trust, financial advisory, underwriting, capital markets or other business with the Borrower 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 or to provide notice to or consent of the Lenders with respect thereto.

#### Section 10.3 Exculpatory Provisions.

(a) The Administrative Agent, the Arrangers and their respective Related Parties shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent, the Arrangers and their respective Related Parties:

(ii) shall not be subject to any agency, trust, fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(iii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that 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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law;

(iv) shall not, have any duty to disclose, and shall not be liable for the failure to disclose to any Lender, any Issuing Lender or any other Person, any credit or other information relating concerning the business, prospects, operations, properties, assets, financial or other condition or creditworthiness of the Borrower or any of its Subsidiaries or Affiliates that is communicated to, obtained by or otherwise in the possession of the Person serving as the Administrative Agent, an Arranger or their respective Related Parties in any capacity, except for notices, reports and other documents that are required to be furnished by the Administrative Agent to the Lenders pursuant to the express provisions of this Agreement; and

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(v) shall not be required to account to any Lender or any Issuing Lender for any sum or profit received by the Administrative Agent for its own account.

(b) The Administrative Agent, the Arrangers and their respective Related Parties shall not be liable for any action taken or not taken by it under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby or thereby (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 the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 11.2 and Section 9.2) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a court of competent jurisdiction by final non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default and indicating that such notice is a "Notice of Default" is given to the Administrative Agent by the Borrower, a Lender or an Issuing Lender.

(c) The Administrative Agent, the Arrangers and their respective Related Parties shall not be responsible for or have any duty or obligations to any Lender or Participant or any other Person 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 (including any report provided to it by an Issuing Lender pursuant to Section 3.9), (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 or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vi) the utilization of any Issuing Lender's L/C Commitment (it being understood and agreed that each Issuing Lender shall monitor compliance with its own L/C Commitment without any further action by the Administrative Agent).

**Section 10.4 Reliance by the Administrative Agent.** The Administrative Agent shall be entitled to rely upon, shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, consent, communication, 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 be fully protected in relying and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. 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. Each Lender or Issuing Lender that has signed this Agreement or a signature page to an Assignment and Assumption or any other Loan Document pursuant to which it is to become a Lender or Issuing Lender hereunder shall be deemed to have

consented to, approved and accepted and shall be deemed satisfied with each document or other matter required thereunder to be consented to, approved or accepted by such Lender or Issuing Lender or that is to be acceptable or satisfactory to such Lender or Issuing Lender.

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**Section 10.5 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. 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 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence, bad faith or willful misconduct in the selection of such sub-agents.

**Section 10.6 Resignation of Administrative Agent.**

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower and subject to the consent (not to be unreasonably withheld or delayed) of the Borrower (provided no Event of Default has occurred and is continuing at the time of such resignation), to appoint a successor, which shall be a bank or financial institution reasonably experienced in serving as administrative agent on syndicated bank facilities with an office in the United States, or an Affiliate of any such bank or financial institution with an office in the United States. If no such successor shall have been so appointed by the Required Lenders (and, to the extent no Event of Default has occurred and is continuing at such time, consented to by the Borrower, to extent so required) and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) with the Borrower's prior written consent (provided no Event of Default has occurred or is continuing at such time), on behalf of the Lenders and the Issuing Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by,

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to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Lender directly, until such time, if any, as the Required Lenders (with the consent of the Borrower, to the extent so required) appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. 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 or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 11.3 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent or relating to its duties as Administrative Agent that are carried out following its retirement or removal, including any actions taken in connection with the transfer of agency to a replacement or successor Administrative Agent.

(d) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Lender and Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, if in its sole discretion it elects to, and Swingline Lender, (ii) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

**Section 10.7 Non-Reliance on Administrative Agent and Other Lenders.** Each Lender and each Issuing Lender expressly acknowledges that none of the Administrative Agent, any Arranger or any of their respective Related Parties has made any representations or warranties to it and that no act taken or failure to act by the Administrative Agent, any Arranger or any of their respective Related Parties, including any consent to, and acceptance of any assignment or review of the affairs of the Borrower and its Subsidiaries or Affiliates shall be deemed to constitute a representation or warranty of the Administrative Agent, any Arranger or any of their respective Related Parties to any Lender or any Issuing Lender as to any matter, including whether the Administrative Agent, any Arranger or any of their respective Related Parties have disclosed material information in their (or their respective Related Parties') possession. Each Lender and each Issuing Lender expressly acknowledges, represents and warrants to the Administrative Agent and each Arranger that (a) the Loan Documents set forth the terms of a commercial lending facility, (b) it is engaged in making, acquiring, purchasing or holding commercial loans in the ordinary course and is entering into this Agreement and the other Loan Documents to which it is a party as a Lender for the purpose of making, acquiring, purchasing and/or holding the commercial loans set forth herein as may be applicable to it, and not for the purpose of making, acquiring, purchasing or holding any other type of financial instrument, (c) it is sophisticated with respect to decisions to make, acquire, purchase or hold the commercial loans applicable to it and either it or the Person exercising discretion in making its decisions to make, acquire, purchase or hold such commercial loans is experienced in making, acquiring, purchasing or holding commercial loans, (d) it has, independently and without reliance upon the Administrative Agent,

any Arranger, any other Lender or any of their respective Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and appraisal of, and investigations into, the business, prospects, operations, property, assets, liabilities, financial and other condition and creditworthiness of the Borrower and its Subsidiaries, all applicable bank or other regulatory Applicable Laws relating to the transactions contemplated by this Agreement and the other Loan Documents and (e) it has made its own independent decision to enter into this Agreement and the other Loan Documents to which it is a party and to extend credit hereunder and thereunder. Each Lender and each Issuing Lender also acknowledges that (i) it will, independently and without reliance upon the Administrative

Agent, any Arranger or any other Lender or any of their respective Related Parties (A) continue to make its own credit analysis, appraisals and decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder based on such documents and information as it shall from time to time deem appropriate and its own independent investigations and (B) continue to make such investigations and inquiries as it deems necessary to inform itself as to the Borrower and its Subsidiaries and (ii) it will not assert any claim in contravention of this Section 10.7.

**Section 10.8 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, arrangers or bookrunners 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, a Lender or an Issuing Lender hereunder, but each such Person shall have the benefit of the indemnities and exculpatory provisions hereof.

**Section 10.9 Certain ERISA Matters.**

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, 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, each Arranger 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:

(ii) such Lender is not using "plan assets" (within the meaning of Section 3(42) of ERISA or otherwise for purposes of Title I of ERISA or Section 4975 of the Code) of one or more Benefit Plans with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Commitments or this Agreement;

(iii) the prohibited 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 so as to exempt from the prohibitions of Section 406 of ERISA and Section 4975 of the Code such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement;

(iv) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such

Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection

(a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement; or

(v) 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 either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or (2) a Lender has provided another representation, warranty and covenant in accordance with 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, each Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower, that none of the Administrative Agent, any Arranger and their respective Affiliates is a fiduciary with respect to

the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related hereto or thereto).

#### **Section 10.10 Erroneous Payments.**

(a) Each Lender, each Issuing Lender and any other party hereto hereby severally agrees that if (i) the Administrative Agent notifies (which such notice shall be conclusive absent manifest error) such Lender or Issuing Lender or any other Person that has received funds from the Administrative Agent or any of its Affiliates, either for its own account or on behalf of a Lender or Issuing Lender (each such recipient, a "Payment Recipient") that the Administrative Agent has determined in its sole discretion that any funds received by such Payment Recipient were erroneously transmitted to, or otherwise erroneously or mistakenly received by, such Payment Recipient (whether or not known to such Payment Recipient) or (ii) any Payment Recipient receives any payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, (y) that was not preceded or accompanied by a notice of payment, prepayment or repayment sent by the Administrative Agent (or any of its Affiliates) with respect to such payment, prepayment or repayment, as applicable, or (z) that such Payment Recipient otherwise becomes aware was transmitted or received in error or by mistake (in whole or in part) then, in each case, an error in payment shall be presumed to have been made (any such amounts specified in clauses (i) or (ii) of this Section 10.10(a), whether received as a payment, prepayment or repayment of principal, interest, fees, distribution or otherwise; individually and collectively, an "Erroneous Payment"), then, in each case, such Payment Recipient is deemed to have knowledge of such error at the time of its receipt of such Erroneous Payment; provided that nothing in this Section shall require the Administrative Agent to provide any of the notices specified in clauses (i) or (ii) above. Each Payment Recipient agrees that it shall not assert any right or claim to any Erroneous Payment, and hereby waives any claim.

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counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments, including without limitation waiver of any defense based on "discharge for value" or any similar doctrine.

(b) Without limiting the immediately preceding clause (a), each Payment Recipient agrees that, in the case of clause (a)(ii) above, it shall promptly notify the Administrative Agent in writing of such occurrence.

(c) In the case of either clause (a)(i) or (a)(ii) above, such Erroneous Payment shall at all times remain the property of the Administrative Agent and shall be segregated by the Payment Recipient and held in trust for the benefit of the Administrative Agent, and upon demand from the Administrative Agent such Payment Recipient shall (or, shall cause any Person who received any portion of an Erroneous Payment on its behalf to), promptly, but in all events no later than one Business Day thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds and in the currency so received, together with interest thereon in respect of each day from and including the date such Erroneous Payment (or portion thereof) was received by such Payment Recipient to the date such amount is repaid to the Administrative Agent at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect.

(d) In the event that an Erroneous Payment (or portion thereof) is not recovered by the Administrative Agent for any reason, after demand therefor by the Administrative Agent in accordance with immediately preceding clause (c), from any Lender that is a Payment Recipient or an Affiliate of a Payment Recipient (such unrecovered amount as to such Lender, an "Erroneous Payment Return Deficiency"), then at the sole discretion of the Administrative Agent and upon the Administrative Agent's written notice to such Lender (i) such Lender shall be deemed to have made a cashless assignment of the full face amount of the portion of its Loans (but not its Commitments) of the relevant Class with respect to which such Erroneous Payment was made (the "Erroneous Payment Impacted Class") to the Administrative Agent or, at the option of the Administrative Agent, the Administrative Agent's applicable lending affiliate in an amount that is equal to the Erroneous Payment Return Deficiency (or such lesser amount as the Administrative Agent may specify)

(such assignment of the Loans (but not Commitments) of the Erroneous Payment Impacted Class, the "Erroneous Payment Deficiency Assignment") plus any accrued and unpaid interest on such assigned amount, without further consent or approval of any party hereto and without any payment by the Administrative Agent or its applicable lending affiliate as the assignee of such Erroneous Payment Deficiency Assignment. The parties hereto acknowledge and agree that (1) any assignment contemplated in this clause (d) shall be made without any requirement for any payment or other consideration paid by the applicable assignee or received by the assignor, (2) the provisions of this clause (d) shall govern in the event of any conflict with the terms and conditions of Section 11.9 and (3) the Administrative Agent may reflect such assignments in the Register without further consent or action by any other Person.

(e) Each party hereto hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Payment Recipient that has received such Erroneous Payment (or portion thereof) for any reason, the Administrative Agent (1) shall be subrogated to all the rights of such Payment Recipient with respect to such amount and (2) is authorized to set off, net and apply any and all amounts at any time owing to such Payment Recipient under any Loan Document, or otherwise payable or distributable by the Administrative Agent to such Payment Recipient from any source, against any amount due to the Administrative Agent under this Section 10.10 or under the indemnification provisions of this Agreement, (y) the receipt of an

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Erroneous Payment by a Payment Recipient shall not for the purpose of this Agreement be treated as a payment, prepayment, repayment, discharge or other satisfaction of any Obligations owed by the Borrower, except, in each case, to the extent such Erroneous Payment is, and solely with respect to the amount of such Erroneous Payment that is, comprised of funds received by the Administrative Agent from the Borrower for the purpose of making a payment on the Obligations and (z) to the extent that an Erroneous Payment was in any way or at any time credited as payment or satisfaction of any of the Obligations, the Obligations or any part thereof that were so credited, and all rights of the Payment Recipient, as the case may be, shall be reinstated and continue in full force and effect as if such payment or satisfaction had never been received.

(f) Each party's obligations under this Section 10.10 shall survive the resignation or replacement of the Administrative Agent or any transfer of right or obligations by, or the replacement of, a Lender, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

(g) Nothing in this Section 10.10 will constitute a waiver or release of any claim of the Administrative Agent hereunder arising from any Payment Recipient's receipt of an Erroneous Payment.

## ARTICLE XI. MISCELLANEOUS

### Section 11.1 Notices.

(a) **Notices Generally.** Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by e-mail as follows:

If to the Borrower:

Werner Enterprises, Inc. 14507 Frontier Road  
Omaha, Nebraska 68138 Attention of: John J. Steele Telephone No.: (402)  
894-3036 E-mail: steele@werner.com

With copies to:

Koley Jessen P.C., L.L.O. 1125 S. 103<sup>rd</sup> Street, Suite 800  
Omaha, Nebraska 68124 Attention of: Marlon M. Lofgren Telephone No.: (402)  
343-3727

Wells Fargo Bank, National Association MAC D1109-019  
1525 West W.T. Harris Blvd. Charlotte, NC 28262  
Attention of: Syndication Agency Services Email: [Agencyservices.requests@wellsfargo.com](mailto:Agencyservices.requests@wellsfargo.com)

With copies to:

Wells Fargo Bank, National Association 13625 California St., Suite 200  
Omaha, NE 68154 Attention: Zack Breazeale Telephone: 402-498-5016  
E-mail: [Zackary.s.breazeale@wellsfargo.com](mailto:Zackary.s.breazeale@wellsfargo.com)

If to any Lender:

To the address of such Lender set forth on the Register with respect to deliveries of notices and other documentation that may contain material non-public information.

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 delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(b) Electronic Communications. Notices and other communications to the Lenders and the Issuing Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any Issuing Lender pursuant to Article II or III if such Lender or such Issuing Lender, as applicable, has notified the Administrative Agent that 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 acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(c) Administrative Agent's Office. The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrower and Lenders, as the Administrative

Agent's Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(d) Change of Address, Etc. Each of the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender may change its address or other contact information for notices and other communications hereunder by notice to the other parties hereto. Any Lender may change its address or e-mail address for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, each Issuing Lender and the Swingline Lender.

(e) Platform.

(ii) The Borrower, each Lender and each Issuing Lender agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lenders and the other Lenders by posting the Borrower Materials on the Platform.

(iii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third- party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. Although the Platform is secured pursuant to generally-applicable security procedures and policies implemented or modified by the Administrative Agent and its Related Parties, each of the Lenders, the Issuing Lenders and the Borrower acknowledges and agrees that distribution of information through an electronic means is not necessarily secure in all respects, the Administrative Agent, the Arrangers and their respective Related Parties (collectively, the "Agent Parties") are not responsible for approving or vetting the representatives, designees or contacts of any Lender or Issuing Lender that are provided access to the Platform and that there may be confidentiality and other risks associated with such form of distribution. Each of the Borrower, each Lender and each Issuing Lender party hereto understands and accepts such risks. In no event shall the Agent Parties have any liability to the Borrower, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Administrative Agent's transmission of communications through the Internet (including the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to the Borrower, any Lender, any Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

**Section 11.2 Amendments, Waivers and Consents.** Except as set forth below or as specifically provided in any Loan Document (including Section 4.8(c)), any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing and approved by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrower; provided, that no amendment, waiver or consent shall:

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(a) subordinate any of the Obligations in right of payment or otherwise adversely affect the priority of payment of any of such Obligations;

(b) increase or extend the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.2) or increase the amount of Loans of any Lender, in any case, without the written consent of such Lender;

(c) waive, extend or postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written

consent of each Lender directly and adversely affected thereby;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clauses (iv) and (viii) of the proviso set forth in the paragraph below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided that

(i) only the consent of the Required Lenders shall be necessary to waive any obligation of the Borrower to pay interest at the rate set forth in Section 4.1(b) during the continuance of an Event of Default and (ii) only the consent of the Required Lenders shall be necessary to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Obligation or to reduce any fee payable hereunder;

(e) change Section 4.6 or Section 9.4 (or amend any other term of the Loan Documents that would have the effect of changing Section 4.6 or Section 9.4) in a manner that would alter the prorata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;

(f) except as otherwise permitted by this Section 11.2 change any provision of this Section or reduce the percentages specified in the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly and adversely affected thereby; or

(g) consent to the assignment or transfer by the Borrower of the Borrower's rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 8.4), in each case, without the written consent of each Lender;

provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by each affected Issuing Lender in addition to the Lenders required above, affect the rights or duties of such Issuing Lender under this Agreement or any Letter of Credit Documents relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document or modify Section 11.1(e), Section 11.20 or Article X hereof; (iv) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (v) each Letter of Credit Document and each cash collateral agreement or other document entered into in connection with an Extended Letter of Credit may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Letter of Credit Document, cash collateral agreement or other

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document, as the case may be, shall be promptly delivered to the Administrative Agent upon such amendment or waiver, (vi) any waiver, amendment or modification of this Agreement that by its terms affects the rights or duties under this Agreement of Lenders holding Loans or Commitments of a particular Class (but not the Lenders holding Loans or Commitments of any other Class) may be effected by an agreement or agreements in writing entered into by the Borrower and the requisite percentage in interest of the affected Class of Lenders that would be required to consent thereto under this Section if such Class of Lenders were the only Class of Lenders hereunder at the time, (vii) the Administrative Agent and the Borrower shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error, ambiguity, defect or inconsistency or omission of a technical or immaterial nature in any such provision and (viii) the Administrative Agent (and, if applicable, the Borrower) may, without the consent of any Lender, enter into amendments or modifications to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents in order to implement any Benchmark Replacement or any Conforming Changes or otherwise effectuate the terms of Section 4.8(c) in accordance with the terms of Section 4.8(c). 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 (A) the Commitment of such Lender may not be increased or extended without the consent of such Lender, and (B) any amendment, waiver, or consent hereunder which requires the consent of all Lenders or each affected Lender that by its terms disproportionately and adversely affects any such Defaulting Lender relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent of any Lender (but with the consent of the Borrower and the Administrative Agent), to (x) amend and restate this Agreement and the other Loan Documents if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Commitments of such Lender shall have terminated, such Lender shall have no other commitment or other obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account under this Agreement and the other Loan Documents and (y) enter into amendments or modifications to this Agreement (including amendments to this Section 11.2) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 4.13 (including as applicable, (1) to permit the Incremental Increases to share ratably in the benefits of this Agreement and the other Loan Documents, (2) to include an Incremental Increase, as applicable, in any determination of (i) Required Lenders or (ii) similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender's Commitment or any increase in any Lender's Commitment Percentage, in each case, without the written consent of such affected Lender.

### **Section 11.3 Expenses; Indemnity.**

(a) **Costs and Expenses.** The Borrower, jointly and severally, shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, charges and disbursements of outside counsel for the Administrative Agent), in connection with the syndication of the Credit Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out of pocket expenses incurred by any Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any

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Lender or any Issuing Lender (including the fees, charges and disbursements of any outside counsel for the Administrative Agent, any Lender or any Issuing Lender), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each Issuing 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, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including any Environmental Claims), penalties, damages, liabilities and related expenses (including the fees, charges and disbursements of any outside counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower), arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by the Borrower or any Subsidiary thereof, or any Environmental Claim related in any way to the Borrower or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including reasonable attorneys and consultant's fees, provided that such indemnity shall

not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee, (B) result from a claim brought by the Borrower or any Subsidiary thereof against an Indemnitee for a material breach of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Subsidiary has obtained a final and non-appealable judgment in its favor on such claim as determined by a court of competent jurisdiction or (C) arise out of any action, suit, claim or other similar proceeding that does not involve an action or omission by the Borrower or its Subsidiaries and that is brought by one Indemnitee against any other Indemnitee, other than any claims against the Administrative Agent or any Arranger in its respective capacity or in fulfilling its role as such. This Section 11.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any Arranger, any Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), such Arranger, such Issuing Lender, the

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Swingline Lender or such Related Party, as the case may be, such Lender's prorata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the Total Credit Exposure at such time, or if the Total Credit Exposure has been reduced to zero, then based on such Lender's share of the Total Credit Exposure immediately prior to such reduction) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to any Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Credit Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Credit Lenders' Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Revolving Credit Commitment has been reduced to zero as of such time, determined immediately prior to such reduction); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), such Arranger, such Issuing Lender or the Swingline Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such Arranger, such Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 4.7.

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, no party hereto shall assert, and each party hereto hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof; provided, that nothing contained in this sentence shall limit the Borrower's indemnification obligations to the extent set forth hereinabove to the extent such indirect, consequential, special or punitive damages are included in any third party claim in connection with which such Indemnitee is entitled to indemnification hereunder, subject to any limitations set forth herein. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed 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, except to the extent arising from such Indemnitee's (or any of its Related Parties') gross negligence, bad faith or willful misconduct as determined by a final and non-appealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(f) Survival. Each party's obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

**Section 11.4 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, each Issuing Lender, the Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by

Applicable Law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender, such Issuing Lender or the Swingline Lender or

any of their respective Affiliates, irrespective of whether or not such Lender, such Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch or office of such Lender, such Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender or any Affiliate thereof shall exercise any such right of setoff, (x) all amounts so setoff shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 4.15 and, pending such payment, shall be segregated by such Defaulting Lender or Affiliate of a Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lenders, the Swingline Lender and the Lenders, and (y) the Defaulting Lender or its Affiliate shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or any of its Affiliates as to which such right of setoff was exercised. The rights of each Lender, each Issuing Lender, the Swingline Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each Lender, such Issuing Lender and the Swingline Lender agree to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

#### **Section 11.5 Governing Law; Jurisdiction, Etc.**

(a) **Governing Law.** This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(b) **Submission to Jurisdiction.** The Borrower irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Arranger, any Lender, any Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender, any Issuing Lender or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or its properties in the courts of any jurisdiction.

(c) **Waiver of Venue.** The Borrower irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

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(d) **Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 11.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

**Section 11.6 Waiver of Jury Trial.**

(a) 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 HERETO 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 11.7 Reversal of Payments.** To the extent the Borrower makes a payment or payments to the Administrative Agent for the ratable benefit of any of the Lenders or to any Lender directly or any Lender exercises its right of setoff, which payments or proceeds (including any proceeds of such setoff) or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent, and each Lender and each Issuing Lender severally agrees to pay to the Administrative Agent upon demand its (or its applicable Affiliate's) applicable ratable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent plus interest thereon at a per annum rate equal to the Overnight Rate from time to time in effect.

**Section 11.8 Injunctive Relief.** The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders' option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

**Section 11.9 Successors and Assigns; 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 the Borrower may not 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 assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns

permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Arrangers, the Related Parties of each of the Administrative Agent, the Arrangers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it); provided that, in each case with respect to any Credit Facility, any such assignment shall be subject to the following conditions:

(ii) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, 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, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have given its consent ten (10) Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Borrower prior to such tenth (10th) Business Day;

(iii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loan or the Commitment assigned;

(iv) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of

(i) the Revolving Credit Facility if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment or an Incremental Term Loan Commitment, as applicable, an Affiliate of such Lender or an Approved Fund with respect to such Lender or (ii) the Incremental Term Loans to a Person who is not a Lender, an Affiliate of a Lender or an Approved Fund; and

(C) the consents of the Issuing Lenders and the Swingline Lender (such consents not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(v) **Assignment and Assumption.** 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 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(vi) **No Assignment to Certain Persons.** No such assignment shall be made to (A) the Borrower or any of its Subsidiaries or Affiliates, (B) a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) or (C) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (v).

(vii) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lenders, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Credit Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by

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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 4.8, 4.9, 4.10, 4.11 and 11.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph 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 paragraph (d) of this Section (other than a purported assignment to a natural Person or the Borrower or any of the Borrower's Subsidiaries or Affiliates, which shall be null and void).

(c) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina, a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender (but only to the extent of entries in the Register that are applicable to such 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, the Borrower, the Administrative Agent, any Issuing Lender or the Swingline Lender, sell participations to any Person (other than a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person), or the Borrower or any of the Borrower's Subsidiaries or Affiliates) (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 Borrower, the Administrative Agent, each Issuing Lender, the Swingline Lender 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. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 11.3(c) with respect to any payments made by such Lender to its Participant(s).

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 Section 11.2(b), (c), (d) or (e) that directly and adversely affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 4.9, 4.10 and 4.11 (subject to the requirements and limitations therein, including the requirements under Section 4.11(g) (it being understood that the documentation required under Section 4.11(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the

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provisions of Section 4.12 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 4.10 or 4.11, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 4.12(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 4.6 and Section 11.4 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the United States Treasury Regulations (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) **Cashless Settlement.** Notwithstanding anything to the contrary contained in this Agreement, any Lender may exchange, continue or rollover all or a portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction

permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by the Borrower, the Administrative Agent and such Lender.

**Section 11.10 Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent, the Lenders and each Issuing Lender 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 Related Parties in connection with the Credit Facility, this Agreement, the transactions contemplated hereby or in connection with marketing of services by such Affiliate or Related Party to the Borrower or any of its Subsidiaries (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties (including any self- regulatory authority, such as the National Association of Insurance Commissioners) or in accordance with the Administrative Agent's, such Issuing Lender's or any Lender's regulatory compliance policy if the Administrative Agent, such Issuing Lender or such Lender, as applicable, deems such disclosure to be

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necessary for the mitigation of claims by those authorities against the Administrative Agent, such Issuing Lender or such Lender, as applicable, or any of its Related Parties (in which case, the Administrative Agent, such Issuing Lender or such Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent practicable and otherwise permitted by Applicable Law), (c) as to the extent required by Applicable Laws or regulations or in any legal, judicial, administrative proceeding or other compulsory process (in which case, the Administrative Agent, such Issuing Lender or such Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental bank regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent practicable and otherwise permitted by Applicable Law), (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document, or any action or proceeding relating to this Agreement or any other Loan Document, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement and, in each case, their respective financing sources, (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (iii) an investor or prospective investor in an Approved Fund that also agrees that Information shall be used solely for the purpose of evaluating an investment in such Approved Fund, (iv) a trustee, collateral manager, servicer, backup servicer, noteholder or secured party in an Approved Fund in connection with the administration, servicing and reporting on the assets serving as collateral for an Approved Fund, or (v) a nationally recognized rating agency that requires access to information regarding the Borrower and its Subsidiaries, the Loans and the Loan Documents in connection with ratings issued with respect to an Approved Fund, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Credit Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facility, (h) with the consent of the Borrower, (i) deal terms and other information customarily reported to Thomson Reuters, other bank market data collectors and similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of the Loan Documents, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, any Issuing Lender or any of their respective Affiliates from a third party that is not, to such Person's knowledge, subject to confidentiality obligations to the Borrower, (k) to the extent that such information is independently developed by such Person, (l) to the extent required by an insurance company in connection with providing insurance coverage or providing reimbursement pursuant to this Agreement or (m) for purposes of establishing a "due diligence" defense. For purposes of this Section, "Information" means all information received from the Borrower or any Subsidiary thereof relating to the Borrower or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or any Issuing Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary thereof; provided that, in the case of information received from the Borrower or any Subsidiary thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 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 11.11 Performance of Duties.** Each of the Borrower's obligations under this Agreement and each of the other Loan Documents shall be performed by the Borrower at its sole cost and expense.

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**Section 11.12 All Powers Coupled with Interest.** All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations remain unpaid or unsatisfied (other than contingent indemnification obligations not then due), any of the Commitments remain in effect or the Credit Facility has not been terminated.

**Section 11.13 Survival.**

(a) All representations and warranties set forth in Article VI and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XI and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

**Section 11.14 Titles and Captions.** Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

**Section 11.15 Severability of Provisions.** Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction. In the event that any provision is held to be so prohibited or unenforceable in any jurisdiction, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such provision to preserve the original intent thereof in such jurisdiction (subject to the approval of the Required Lenders).

**Section 11.16 Counterparts; Integration; Effectiveness; Electronic Execution.**

(a) Counterparts; Integration; 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 and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, any Issuing Lender, the Swingline Lender and/or any Arranger, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 5.1, 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

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facsimile or in electronic (i.e., "pdf" or "tif") format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) **Electronic Execution.** The words "execute," "execution," "signed," "signature," "delivery" and words of like import in or related to this Agreement, any other Loan Document or any document, amendment, approval, consent, waiver, modification, information, notice, certificate, report, statement, disclosure, or authorization to be signed or delivered in connection with this Agreement or any other Loan Document or the transactions contemplated hereby shall be deemed to include Electronic Signatures or execution in the form of an Electronic Record, and contract formations on electronic platforms approved by the Administrative Agent, 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 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. Each party hereto agrees that any Electronic Signature or execution in the form of an Electronic Record shall be valid and binding on itself and each of the other parties hereto to the same extent as a manual, original signature. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by the parties of a manually signed paper which has been converted into electronic form (such as scanned into PDF format), or an electronically signed paper converted into another format, for transmission, delivery and/or retention. Notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided that without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept such Electronic Signature from any party hereto, the Administrative Agent and the other parties hereto shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of the executing party without further verification and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by an original manually executed counterpart thereof. Without limiting the generality of the foregoing, each party hereto hereby (A) 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 Document (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 (B) 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.

**Section 11.17 Term of Agreement.** This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations (other than contingent indemnification obligations not then due) arising hereunder or under any other Loan Document shall have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized or otherwise satisfied in a manner acceptable to the applicable Issuing Lender) and the Commitments have been terminated. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

**Section 11.18 USA PATRIOT Act; Anti-Money Laundering Laws.** The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act or any other Anti-Money Laundering Laws, each of them is required to obtain, verify and record

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information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the PATRIOT Act or such Anti-Money Laundering Laws.

**Section 11.19 Independent Effect of Covenants.** The Borrower expressly acknowledges and agrees that each covenant contained in Articles VII or VIII hereof shall be given independent effect. Accordingly, the Borrower shall not engage in any transaction or other act otherwise

permitted under any covenant contained in Articles VII or VIII, before or after giving effect to such transaction or act, the Borrower shall or would be in breach of any other covenant contained in Articles VII or VIII.

**Section 11.20 No Advisory or Fiduciary Responsibility.**

(a) In connection with all aspects of each transaction contemplated hereby, the Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm's-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand, and the 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 hereof or thereof), (ii) in connection with the process leading to such transaction, each of the Administrative Agent, the Arrangers and the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Administrative Agent, the Arrangers or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the 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 such Arranger or such Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Administrative Agent, the Arrangers or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Administrative Agent, the Arrangers or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship and (v) the Administrative Agent, the Arrangers and the Lenders have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate.

(b) The Borrower acknowledges and agrees that each Lender, each Arranger and any Affiliate thereof may lend money to, invest in, and generally engage in any kind of business with, any of the Borrower, any Affiliate thereof or any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender, such Arranger or such Affiliate thereof were not a Lender or an Arranger or an Affiliate thereof (or an agent or any other person with any similar role under the Credit Facilities) and without any duty to account therefor to any other Lender, any Arranger, the Borrower or any Affiliate of the foregoing. Each Lender, each Arranger and any Affiliate thereof may accept fees and other consideration from the Borrower or any Affiliate thereof for services in connection with this Agreement, the Credit Facilities or

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otherwise without having to account for the same to any other Lender, any Arranger, the Borrower or any Affiliate of the foregoing.

**Section 11.21 Inconsistencies with Other Documents.** In the event there is a conflict or inconsistency between this Agreement and any other Loan Document, the terms of this Agreement shall control.

**Section 11.22 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:

(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 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

(iv) 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 11.23 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and, each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "CoveredParty") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding

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under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.23, the following terms have the following meanings:

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

"Covered Entity" means any of the following:

- (i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);
- (ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or
- (iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

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

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

[Signature pages to follow]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their duly authorized officers, all as of the day and year first written above.

WERNER ENTERPRISES, INC.,  
a Nebraska corporation, as Borrower

By: /s/ Derek J. Leathers  
Name: Derek J. Leathers  
Title: Chairman, President & Chief Executive Officer

By: /s/ John J. Steele  
Name: John J. Steele  
Title: Executive Vice President, Treasurer & Chief  
Financial Officer

CREDIT AGREEMENT WERNER  
ENTERPRISES, INC.

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AGENTS AND LENDERS:

WELLS FARGO BANK, NATIONAL  
ASSOCIATION, as Administrative Agent, Swingline Lender, Issuing Lender and Lender

By: /s/ Zack Breazeale  
Name: Zack Breazeale  
Title: Vice President

CREDIT AGREEMENT WERNER  
ENTERPRISES, INC.

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BMO HARRIS BANK N.A., as Issuing Lender and Lender

By: /s/ Kenneth Kramer

Name: Kenneth Kramer

Title: Managing Director

CREDIT AGREEMENT WERNER  
ENTERPRISES, INC.

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THE TORONTO-DOMINION BANK, NEW  
YORK BRANCH, as Lender

By: /s/ David Perlman

Name: David Perlman

Title: Authorized Signatory

CREDIT AGREEMENT WERNER  
ENTERPRISES, INC.

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THE HUNTINGTON NATIONAL BANK, as  
Lender

By: /s/ Brent Walser

Name: Brent Walser

Title: Managing Director - SVP

CREDIT AGREEMENT WERNER  
ENTERPRISES, INC.

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BANK OF AMERICA, N.A., as Lender

By: /s/ Daniel J. Ricke

Name: Daniel J. Ricke  
Title: Vice President

CREDIT AGREEMENT WERNER  
ENTERPRISES, INC.

FIRST NATIONAL BANK OF OMAHA, as  
Lender

By: */s/* Aaron Martens  
Name: Aaron Martens  
Title: Senior Director

CREDIT AGREEMENT WERNER  
ENTERPRISES, INC.

EXHIBIT A-1

FORM OF REVOLVING CREDIT NOTE

, 20

FOR VALUE RECEIVED, the undersigned (the "Borrower") hereby promises to pay to  
or its registered assigns (the "Lender"), at the place and times provided in the Credit Agreement referred to below, the unpaid principal amount  
of all Revolving Credit Loans made by the Lender from time to time pursuant to that certain Credit Agreement, dated as of December 20, 2022  
(as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the Borrower,  
the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline  
Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

The unpaid principal amount of this Revolving Credit Note from time to time outstanding is payable as provided in the Credit Agreement  
and shall bear interest as provided in the Credit Agreement. All payments of principal and interest on this Revolving Credit Note shall be payable  
in Dollars in immediately available funds as provided in the Credit Agreement.

This Revolving Credit Note is entitled to the benefits of, and evidences Obligations incurred under, the Credit Agreement, to which  
reference is made for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments and  
repayments of principal of the Obligations evidenced by this Revolving Credit Note and on which such Obligations may be declared to be  
immediately due and payable.

THIS REVOLVING CREDIT NOTE SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

The Borrower hereby waives all requirements as to diligence, presentment, demand of payment, protest and (except as required by the Credit Agreement) notice of any kind with respect to this Revolving Credit Note.

[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned has executed this Revolving Credit Note as of the day and year first above written.

WERNER ENTERPRISES, INC.,  
a Nebraska corporation

By: Name:  
Title:

By: Name:  
Title:

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#### EXHIBIT A-2

#### FORM OF SWINGLINE NOTE

, 20

FOR VALUE RECEIVED, the undersigned (the "Borrower") promises to pay to WELLS FARGO BANK, NATIONAL ASSOCIATION (the "Lender"), at the place and times provided in the Credit Agreement referred to below, the unpaid principal amount of all Swingline Loans made by the Lender from time to time pursuant to that certain Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among the Borrower, the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

The unpaid principal amount of this Swingline Note from time to time outstanding is payable as provided in the Credit Agreement and shall bear interest as provided in the Credit Agreement. Swingline Loans refunded as Revolving Credit Loans in accordance with Section 2.2(b) of the Credit Agreement shall be payable by the Borrower as Revolving Credit Loans pursuant to the terms of the Credit Agreement, and shall not be payable under this Swingline Note as Swingline Loans. All payments of principal and interest on this Swingline Note shall be payable in Dollars in immediately available funds as provided in the Credit Agreement.

This Swingline Note is entitled to the benefits of, and evidences Obligations incurred under, the Credit Agreement, to which reference is made for a statement of the terms and conditions on which the Borrower is permitted and required to make prepayments and repayments of principal of the Obligations evidenced by this Swingline Note and on which such Obligations may be declared to be immediately due and payable.

THIS SWINGLINE NOTE SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

The Borrower hereby waives all requirements as to diligence, presentment, demand of payment, protest and (except as required by the Credit Agreement) notice of any kind with respect to this Swingline Note.

[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned has executed this Swingline Note as of the day and year first above written.

WERNER ENTERPRISES, INC.,  
a Nebraska corporation

By: Name:  
Title:

By: Name:  
Title:

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EXHIBIT B

FORM OF NOTICE OF BORROWING

Dated as of:

Wells Fargo Bank, National Association, as Administrative Agent Ladies and Gentlemen:

This irrevocable Notice of Borrowing is delivered to you pursuant to Section 2.3 of the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

1. The Borrower hereby requests that [the Lenders make [a Revolving Credit Loan][an Incremental Term Loan]][the Swingline Lender makes a Swingline Loan] to the Borrower in the aggregate principal amount of \$.
2. The Borrower hereby requests that such Loan(s) be made on the following Business Day:  
[ ]
3. The Borrower hereby requests that such Loan(s) bear interest at the following interest rate, plus the Applicable Margin, as set forth below:

Component of Loan: Interest Rate

Interest Period (Adjusted Term  
SOFR only):<sup>2</sup>

[Base Rate or Adjusted Term SOFR]<sup>3</sup>

4. The aggregate principal amount of all Loans outstanding as of the date hereof (including the Loan(s) requested herein) does not exceed the maximum amount permitted to be outstanding pursuant to the terms of the Credit Agreement.

5. All of the conditions applicable to the Loan(s) requested herein as set forth in the Credit Agreement have been satisfied as of the date hereof and will remain satisfied to the date of such Loan.

[Signature Page Follows]

<sup>1</sup> Complete with the Dollar amount of that portion of the overall Loan requested that is to bear interest at the selected interest rate and/or Interest Period.

<sup>2</sup> Select either one, three or six months.

<sup>3</sup> Complete with (i) the Base Rate or SOFR for Revolving Credit Loans or (ii) the Base Rate for Swingline Loans.

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IN WITNESS WHEREOF, the undersigned has executed this Notice of Borrowing as of the day and year first above written.

WERNER ENTERPRISES, INC.,  
a Nebraska corporation

By: Name:  
Title:

By: Name:  
Title:

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#### EXHIBIT C

#### FORM OF NOTICE OF ACCOUNT DESIGNATION

Dated as of:

Wells Fargo Bank, National Association, as Administrative Agent Ladies and Gentlemen:

This Notice of Account Designation is delivered to you pursuant to Section 2.3(b) of the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National

Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

1. The Administrative Agent is hereby authorized to disburse all Loan proceeds into the following account(s):

ABA Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

2. This authorization shall remain in effect until revoked or until a subsequent Notice of Account Designation is provided to the Administrative Agent.

[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned has executed this Notice of Account Designation as of the day and year first above written.

WERNER ENTERPRISES, INC.,  
a Nebraska corporation

By: Name:  
Title:

By: Name:  
Title:

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#### EXHIBIT D

#### FORM OF NOTICE OF PREPAYMENT

Dated as of:

Wells Fargo Bank, National Association, as Administrative Agent Ladies and Gentlemen:

This Notice of Prepayment is delivered to you pursuant to Section 2.4(c) of the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

1. The Borrower hereby provides notice to the Administrative Agent that it shall repay the following [Base Rate Loans][SOFR Loans] [Swingline Loans]. (Complete with an amount in accordance with Section 2.4 of the Credit Agreement.)

2. The Loan(s) to be prepaid consist of:

a Swingline Loan

a Revolving Credit Loan

an Incremental Term Loan

3. The Borrower shall repay the above-referenced Loans on the following Business Day:

. (Complete with a date no earlier than (i) the same Business Day as of the date of this Notice of Prepayment with respect to any Swingline Loan or Base Rate Loan and (ii) three (3) U.S. Government Securities Business Days subsequent to date of this Notice of Prepayment with respect to any SOFR Loan.)

[4. This is a conditional Notice of Prepayment. Prepayment of the Loans in accordance with this Notice of Prepayment is conditional upon: [please describe relevant event in accordance with Section 2.4(c) of the Credit Agreement.]

[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned has executed this Notice of Prepayment as of the day and year first above written.

WERNER ENTERPRISES, INC.,  
a Nebraska corporation

By: Name:  
Title:

By: Name:  
Title:

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EXHIBIT E

FORM OF NOTICE OF CONVERSION/CONTINUATION

Dated as of:

Wells Fargo Bank, National Association, as Administrative Agent Ladies and Gentlemen:

This irrevocable Notice of Conversion/Continuation (this "Notice") is delivered to you pursuant to Section 4.2 of the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

1. The Loan to which this Notice relates is [an Incremental Term Loan] [a Revolving Credit

Loan].

2. This Notice is submitted for the purpose of: (Check one and complete applicable information in accordance with the Credit Agreement.)

Converting all or a portion of a Base Rate Loan into a SOFR Loan

Outstanding principal balance:	\$ _____
Principal amount to be converted:	\$ _____
Requested effective date of conversion:	_____
Requested new Interest Period:	_____

Converting all or a portion of a SOFR Loan into a Base Rate Loan

Outstanding principal balance:	\$ _____
Principal amount to be converted:	\$ _____
Last day of the current Interest Period:	_____
Requested effective date of conversion:	_____

Continuing all or a portion of a SOFR Loan as a SOFR Loan

Outstanding principal balance:	\$ _____
Principal amount to be continued:	\$ _____

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Last day of the current Interest Period:	_____
Requested effective date of continuation:	_____
Requested new Interest Period:	_____

3. The aggregate principal amount of all Loans outstanding as of the date hereof does not exceed the maximum amount permitted to be outstanding pursuant to the terms of the Credit Agreement.

[Signature Page Follows]

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IN WITNESS WHEREOF, the undersigned has executed this Notice of Conversion/Continuation as of the day and year first above written.

WERNER ENTERPRISES, INC.,

a Nebraska corporation

By:Name:

Title:

By:Name:

Title:

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**EXHIBIT F**

**FORM OF OFFICER'S COMPLIANCE CERTIFICATE**

Dated as of:

The undersigned, on behalf of Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), hereby certifies to the Administrative Agent and the Lenders, each as defined in the Credit Agreement referred to below, as follows:

1. This certificate is delivered to you pursuant to Section 7.2 of the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

[2.] I have reviewed the financial statements of the Borrower and its Subsidiaries dated as of and for the period[s] then ended and such statements fairly present in all material respects the financial condition of the Borrower and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes.]<sup>1</sup>

[2.] I have reviewed the terms of the Credit Agreement, and the related Loan Documents and have made, or caused to be made under my supervision, a review in reasonable detail of the transactions and the condition of the Borrower and its Subsidiaries during the accounting period covered by the financial statements [referred to in Paragraph 2 above][of the Borrower and its Subsidiaries dated as of and for the Fiscal Year]. Such review has not disclosed the existence during or at the end of such accounting period of any condition or event that constitutes a Default or an Event of Default, nor do I have any knowledge of the existence of any such condition or event as at the date of this certificate [except, if such condition or event existed or exists, describe the nature and period of existence thereof and what action the Borrower has taken, is taking and proposes to take with respect thereto].

[3.] As of the date of this certificate, the Borrower and its Subsidiaries are in compliance with the financial covenants contained in Section 8.10 of the Credit Agreement as shown on such Schedule 1 and the Borrower and its Subsidiaries are in compliance with the other covenants and restrictions contained in the Credit Agreement.

[4.] Attached hereto as Schedule 2 is a report containing management's discussion and analysis of the financial statements [referred to in Paragraph 2 above][of the Borrower and its Subsidiaries dated as of and for the Fiscal Year].

[Signature Page Follows]

<sup>1</sup> To be included with respect to unaudited quarterly financial statements delivered under Section 7.1(b) of the Credit Agreement only.

IN WITNESS WHEREOF, the undersigned has executed this Officer's Compliance Certificate as of the day and year first above written.

WERNER ENTERPRISES, INC.,  
a Nebraska corporation

By: Name:  
Title: [Chief Financial Officer][Treasurer]

### Schedule 1

Capitalized terms used but not defined herein have the meanings set forth in the Credit Agreement. In the event of conflict between the provisions and formulas set forth in this Schedule 1 and the provisions and formulas set forth in the Credit Agreement, the provisions and formulas of the Credit Agreement shall prevail.

#### **1. Consolidated Total Net Leverage Ratio**

- (a) Consolidated Funded Indebtedness on such date for the Borrower and its Subsidiaries on a Consolidated basis:
  - (i) all obligations and borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments \$
  - (ii) all purchase money Indebtedness \$
  - (iii) all obligations to pay the deferred purchase price of property or services of any such Person (including all payment obligations under non-competition, earn-out or similar agreements, solely to the extent any such payment obligation under non-competition, earn-out or similar agreements becomes due and payable and is, or would be, required to be classified as indebtedness on the Borrower's consolidated balance sheet prepared in accordance with GAAP), except trade payables arising in the ordinary course of business not more than one hundred eighty (180) days past due, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of such Person \$
  - (iv) Attributable Indebtedness with respect to Capital Lease Obligations and Synthetic Leases (regardless of whether accounted for as indebtedness under GAAP) \$
  - (v) all drawn and unreimbursed obligations, contingent or otherwise, relative to letters of credit, including any Reimbursement Obligation, and banker's acceptances issued for the account of any such Person \$

- (vi) all obligations in respect of Disqualified Equity Interests which shall be valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends that are past due \$
- (vii) all Guarantees with respect to any of the foregoing clauses 1(a)(i)-(vi) \$

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- (viii) all Indebtedness of the types referred to in clauses (i) through (vii) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to such Person \$
- (ix) Unrestricted Cash and Cash Equivalents \$ 1
- (x) Consolidated Total Net Funded Indebtedness  
[(a)(i) + (a)(ii) + (a)(iii) + (a)(iv) + (a)(v) + (a)(vi) + (a)(vii)  
+ (a)(viii) - (a)(ix)] \$

(b) Consolidated EBITDA for the most recently completed Reference Period calculated on a Pro Forma Basis:

- (i) Consolidated Net Income \$  
The following, without duplication, to the extent deducted in determining such Consolidated Net Income:  
(ii) Consolidated Interest Expense \$
- (iii) expense for Taxes measured by net income, profits or capital (or any similar measures), paid or accrued, including federal and state and local income Taxes, foreign income Taxes and franchise Taxes \$
- (iv) depreciation, amortization and other non-cash charges, losses or expenses, excluding any non-cash charge or expense that represents an accrual for a cash expense to be taken in a future period \$
- (v) all transaction fees, charges and other amounts related to the transactions contemplated hereby and any amendment or other modification to the Loan Documents, in each case to the extent paid within six (6) months of the Closing Date or the effectiveness of such amendment or other modification \$
- (vi) all transaction fees, charges and other amounts (including any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith) in connection with any Acquisition, Investment, Asset Disposition, issuance or repurchase of Equity Interests, or the incurrence, amendment or waiver of

<sup>1</sup> Not to exceed, in the aggregate, \$75,000,000.

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Indebtedness in each case permitted hereunder, recapitalization or breakage of any Hedge Agreements, in each case, whether or not consummated, in each case to the extent paid within six (6) months of the closing or effectiveness of such event or the termination or abandonment of such transaction, as the case may be

\$ \_\_\_\_\_<sup>2</sup>

(vii) other unusual and non-recurring cash expenses, losses or charges (including losses from discontinued operations) \$ \_\_\_\_\_<sup>3</sup>

(viii) the amount of any "run rate" synergies, operating expense reductions and other net cost savings and integration costs, in each case projected by the Borrower in connection with Permitted Acquisitions (including, for the avoidance of doubt, Acquisitions occurring prior to the Closing Date), Asset Dispositions (including the termination or discontinuance of activities constituting such business) and/or other operating improvement, restructuring, cost savings initiative or other similar initiative taken after the Closing Date that have been consummated during the applicable Reference Period (calculated on a Pro Forma Basis as though such synergies, expense reductions and cost savings had been realized on the first day of the period for which Consolidated

EBITDA is being determined), net of the amount of \$ \_\_\_\_\_<sup>4</sup> actual benefits realized during such period from such actions

(ix) expenses, charges and losses in the form of earn-out obligations and other contingent consideration obligations (including to the extent accounted for as performance and retention bonuses, compensation or otherwise) and adjustments thereof and purchase price adjustments, in each case in connection with any Permitted Acquisitions or other Investments permitted

<sup>2</sup> any amounts described in this clause (vi) with respect to transactions that are not consummated shall not exceed \$25,000,000 for the applicable period.

<sup>3</sup> for the avoidance of doubt, losses from Asset Dispositions permitted pursuant to Section 8.5(a) of the Credit Agreement shall not be added back to Consolidated EBITDA under this clause.

<sup>4</sup> ; provided that (i) such synergies, expense reductions and cost savings are reasonably identifiable, factually supportable, reasonably expected to have a continuing impact on the operations of the Borrower and its Subsidiaries and have been determined by the Borrower in good faith to be reasonably anticipated to be realizable within eighteen (18) months following any such action as set forth in reasonable detail on a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent, (ii) no such amounts shall be added pursuant to this clause to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment, the definition of Pro Forma Basis or otherwise and (iii) the aggregate amount added pursuant to this clause for any Reference Period shall in no event exceed twelve and a half percent (12.5%) of Consolidated EBITDA for such period (calculated prior to any such add-backs pursuant to this clause).

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hereunder, whether consummated prior to or after the  
Closing Date \$

- (x) charges, losses or expenses to the extent subject to indemnity or reimbursement by a third party to the extent actually reimbursed, or, so long as the Borrower has made a determination that a reasonable basis exists for indemnification or reimbursement and only to the extent that such amount is (A) not denied by the applicable indemnitor or reimbursing party in writing; and (B) in fact indemnified or reimbursed within 365 days of such determination (with a deduction in the applicable future period of any amount so added back to the extent not so indemnified or reimbursed within such 365 day period) \$
- (xi) the amount of any expenses paid on behalf of any member of the board of directors or reimbursable to such member of the board of directors \$
- (xii) proceeds of business interruption insurance received, in cash, to the extent not taken into account in the calculation of Consolidated Net Income \$

The following, without duplication, to the extent included in determining such Consolidated Net Income:

- (xiii) interest income \$
- (xiv) federal, state, local and foreign income Tax credits of the Borrower and its Subsidiaries for such period (to the extent not netted from income Tax expense) \$
- (xv) (iii) any unusual and non-recurring gains, including gains from discontinued operations \$ <sup>5</sup>
- (xvi) non-cash gains or non-cash items \$
- (xvii) any cash expense made during such period which represents the reversal of any non-cash expense that was added in a prior period pursuant to clause (b)(iii) above subsequent to the fiscal quarter in which the relevant non-cash expenses, charges or losses were incurred \$
- (xviii) Consolidated EBITDA  
[(b)(i) + (b)(ii) + (b)(iii) + (b)(iv) + (b)(v) + (b)(vi) +

<sup>5</sup> for the avoidance of doubt, gains from Asset Dispositions permitted pursuant to Section 8.5(a) of the Credit Agreement shall not be deducted from Consolidated EBITDA under this clause.

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(b)(vii) + (b)(viii) + (b)(ix) + (b)(x) + (b)(xi) + (b)(xii)

– (b)(xiii) – (b)(xiv) – (b)(xv) – (b)(xvi) – (b)(xvii)] \$

(c) Consolidated Total Net Leverage Ratio [(a)(x) / (b)(xviii)] \_\_\_\_\_:1.00

Compliance with Section 8.10(a) of the Credit Agreement (not to exceed 3.00:1.00): Y□ N□

**2. Consolidated Interest Coverage Ratio**

(a) Consolidated EBITDA for the most recently completed Reference Period calculated on a Pro Forma Basis  
[1(b)(xviii)]  
above] \$

(b) Consolidated Interest Expense for the most recently completed Reference Period  
\$

(c) Consolidated Interest Coverage Ratio [(a) / (b)] \_\_\_\_\_:1.00

Compliance with Section 8.10(b) of the Credit Agreement (not to exceed 3.00:1.00): Y□ N□

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**Schedule 2**

**Management's Discussion and Analysis**

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**EXHIBIT G**

**FORM OF ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (the "Assignment and Assumption") is dated as of the Effective Date set forth below and is entered into by and between [INSERT NAME OF ASSIGNOR] (the "Assignor") and [the] [each] <sup>1</sup> Assignee identified on the Schedules hereto as "Assignee" or as "Assignees" (collectively, the "Assignees" and each, an "Assignee"). [It is understood and agreed that the rights and obligations of the Assignees<sup>2</sup> hereunder are several and not joint.]<sup>3</sup> Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, restated, supplemented or otherwise modified, the "Credit Agreement"), receipt of a copy of which is hereby acknowledged by [the] [each] Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the [Assignee] [respective Assignees], and [the] [each] Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including without limitation any guarantees and swingline loans included in such facilities) and (ii) to the extent permitted to be assigned under Applicable Law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned to [the] [any] Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as, [the] [an] "Assigned Interest"). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor: [INSERT NAME OF ASSIGNOR]
2. Assignee(s): See Schedules attached hereto
3. Borrower: Werner Enterprises, Inc., a Nebraska corporation
4. Administrative Agent: Wells Fargo Bank, National Association, as the administrative agent under the Credit Agreement

<sup>1</sup> For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

<sup>2</sup> Select as appropriate.

<sup>3</sup> Include bracketed language if there are multiple Assignees.

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5. Credit Agreement: The Credit Agreement, dated as of December 20, 2022, by and among the Borrower, the Lenders from time to time party thereto and the Administrative Agent.
6. Assigned Interest: See Schedules attached hereto

[7. Trade Date: ]<sup>4</sup>

Effective Date: , 20[TO BE INSERTED BY THE ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR]

[Remainder of Page Intentionally Left Blank]

<sup>4</sup> To be completed if the Assignor and the Assignees intend that the minimum assignment amount is to be determined as of the Trade Date.

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The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR

[NAME OF ASSIGNOR]

By:Name:

Title:

ASSIGNEES

*See Schedules attached hereto*

[Consented to and] <sup>1</sup> Accepted:

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent, Issuing Lender and Swingline Lender

By:Name:

Title:

[Consented to:] <sup>2</sup>

WERNER ENTERPRISES, INC.,  
a Nebraska corporation

By:Name:

Title:

By:Name:

Title:

<sup>1</sup> To be added only if the consent of the Administrative Agent, the Issuing Lender and/or the Swingline Lender is required by the terms of the Credit Agreement. May also use a Master Consent.

<sup>2</sup> To be added only if the consent of the Borrower is required by the terms of the Credit Agreement. May also use a Master Consent.

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SCHEDULE 1  
To Assignment and Assumption

By its execution of this Schedule, the Assignee identified on the signature block below agrees to the terms set forth in the attached Assignment and Assumption.

**Assigned Interests:**

Facility Assigned <sup>1</sup>	Aggregate Amount of Commitment/ Loans for all Lenders <sup>2</sup>	Amount of Commitment/ Loans Assigned <sup>3</sup>	Percentage Assigned of Commitment/ Loans <sup>4</sup>	CUSIP Number
	\$	\$	%	
	\$	\$	%	
	\$	\$	%	

[NAME OF ASSIGNEE]<sup>5</sup>

[and is an Affiliate/Approved Fund of [identify Lender]<sup>6</sup>]

By: Name:

Title:

<sup>1</sup> Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Agreement (e.g. "Revolving Credit Commitment" or "Incremental Term Loan Commitment")

<sup>2</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>3</sup> Amount to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>4</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>5</sup> Add additional signature blocks, as needed.

<sup>6</sup> Select as appropriate.

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**ANNEX 1**  
to Assignment and Assumption

**STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION**

**1. Representations and Warranties.**

**1.1. Assignor.** The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the] [the relevant] Assigned Interest, (ii) [the] [such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

**1.2. Assignee[s].** [The] [Each] Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets the requirements of an Eligible Assignee under the Credit Agreement (subject to such consents, if any, as may be required under Section 11.9(b)(iii) of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the] [the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the] [such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and

has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 7.1 thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the] [such] Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the] [such] Assigned Interest, and (vii) if it is a Foreign Lender, attached to the Assignment and Assumption is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the] [such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, [the] [any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

**2. Payments.** From and after the Effective Date, the Administrative Agent shall make all payments in respect of [the] [each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the] [the relevant] Assignor for amounts which have accrued to but excluding the

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Effective Date and to [the] [the relevant] Assignee for amounts which have accrued from and after the Effective Date.

**3. General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York.

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#### EXHIBIT H-1

#### **FORM OF U.S. TAX COMPLIANCE CERTIFICATE** (For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

Pursuant to the provisions of Section 4.11 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent (10%) shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable). By executing this certificate, the undersigned agrees that (a) if the information provided on

this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent and (b) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

[NAME OF LENDER]

By: Name:

Title:

Date: , 20

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EXHIBIT H-2

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

Pursuant to the provisions of Section 4.11 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (b) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (c) it is not a ten percent (10%) shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (d) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable). By executing this certificate, the undersigned agrees that (a) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing and (b) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: Name:

Title:

Date: , 20

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EXHIBIT H-3

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

Pursuant to the provisions of Section 4.11 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the participation in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such participation,

(c) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent (10%) shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable) or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (ii) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

[NAME OF PARTICIPANT]

By: Name:

Title:

Date: , 20

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**EXHIBIT H-4**

**FORM OF U.S. TAX COMPLIANCE CERTIFICATE**  
(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement, dated as of December 20, 2022 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "Credit Agreement"), by and among Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), the Lenders from time to time party thereto and Wells Fargo Bank, National Association, as Administrative Agent, Issuing Lender and Swingline Lender. Capitalized terms used herein and not defined herein shall have the meanings assigned thereto in the Credit Agreement.

Pursuant to the provisions of Section 4.11 of the Credit Agreement, the undersigned hereby certifies that (a) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (b) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (c) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (d) none of its direct or indirect partners/members is a ten percent (10%) shareholder of the Borrower within the meaning of Section 881(c)(3)(B) of the Code and (e) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (a) an IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable) or (b) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN (or IRS Form W-8BEN-E, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (i) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent and (ii) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two (2) calendar years preceding such payments.

[NAME OF LENDER]

By:Name:

Title:

Date: , 20

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**Schedule 1.1(a)**

**Revolving Credit Commitments and Commitment Percentages**

Lender	Revolving Credit Commitment	Revolving Credit Commitment Percentage
Wells Fargo Bank, National Association	\$400,000,000.00	37.209302326%
BMO Harris Bank N.A.	\$300,000,000.00	27.906976744%
The Toronto-Dominion Bank, New York Branch	\$175,000,000.00	16.279069767%
The Huntington National Bank	\$100,000,000.00	9.302325581%
Bank of America, N.A.	\$50,000,000.00	4.651162791%
First National Bank of Omaha	\$50,000,000.00	4.651162791%
<b>TOTALS</b>	<b>\$1,075,000,000.00</b>	<b>100.000000000%</b>

**Schedule 1.1(b)**

**L/C Commitments**

Initial Issuing Lender	L/C Commitment
Wells Fargo Bank, National Association	\$50,000,000.00
BMO Harris Bank, N.A.	\$50,000,000.00

**Schedule 1.1(c) Existing Letters of Credit**

Instrument Ref #	Original Amount USD	Outstanding Balance - USD	Issue Date	Current Expiry Date	Customer Name	Beneficiary Name
NZS903486	905,000.00	43,280,706.00	09-May-2007	09-May-2023	WERNER ENTERPRISES, INC.	ACE AMERICAN INSURANCE COMPANY
IS000116150U	11,879,182.00	11,879,182.00	28-Jan-2020	31-Jan-2024	WERNER ENTERPRISES, INC.	PALMER TOWNSHIP
IS000224307U	1,309,319.00	1,583,622.00	05-Oct-2021	05-Oct-2023	WERNER ENTERPRISES, INC.	PROTECTIVE INSURANCE COMPANY
NZS483861	8,770,000.00	275,000.00	03-Jun-2003	03-Jun-2023	WERNER ENTERPRISES, INC.	THE TRAVELERS INDEMNITY COMPANY
IS000052297U	3,000.00	3,000.00	17-Aug-2018	13-Aug-2023	WERNER ENTERPRISES, INC.	WEST MEMPHIS UTILITY COMMISSION
IS000052299U	10,000.00	10,000.00	17-Aug-2018	13-Aug-2023	WERNER ENTERPRISES, INC.	WEST MEMPHIS UTILITY COMMISSION
NZS515447	3,217,012.00	349,500.00	05-Apr-2004	05-Apr-2023	WERNER ENTERPRISES, INC.	LIBERTY MUTUAL INSURANCE COMPANY
NZS497176	10,000.00	10,000.00	29-Sep-2003	29-Sep-2023	WERNER ENTERPRISES, INC.	NORFOLK SOUTHERN CREDIT DEPARTMENT
NZS487866	10,000.00	10,000.00	30-Jun-2003	30-Jun-2023	WERNER ENTERPRISES, INC.	WERNER ENTERPRISES, INC. ON BEHALF
NZS487874	1,000,000.00	1,000,000.00	30-Jun-2003	30-Jun-2023	WERNER ENTERPRISES, INC.	WERNER ENTERPRISES, INC. ON BEHALF
IS000305935U	40,000.00	40,000.00	09-Aug-2022	27-Jul-2023	CAREER PATH TRAINING CORP	PRIVATE OCCUPATIONAL SCHOOL STUDENT PROTECTION FUND
NZS904596	10,000.00	10,000.00	23-Jun-2008	30-Sep-2023	WERNER GLOGAL LOGISTICS U.S. LLC	SINGAPORE AIRLINES CARGO PTE LTD.
IS000333680U	345,000.00	345,000.00	05-Dec-2022	18-Nov-2023	WERNER ENTERPRISES, INC.	UNITED STATES FIRE INSURANCE COMPANY ATTN: DAVE GHEZZI

\*As of 12/12/22

**Schedule 6.2**  
**Ownership**

No.	Subsidiary Name	Jurisdiction of Organization
1	Werner Leasing LLC	Nebraska
2	Gra-Gar, LLC	Delaware
3	Werner Management, Inc.	Nebraska
4	Fleet Truck Sales, Inc.	Nebraska
5	Werner Global Logistics, Inc.	Nebraska
6	Werner Transportation, Inc.	Nebraska
7	Werner de Mexico, S. de R.L. de C.V.	Mexico
8	Werner Enterprises Canada Corporation	Canada
9	Werner Leasing de Mexico, S. de R.L. de C.V.	Mexico
10	Werner Global Logistics U.S., LLC	Nebraska
11	Werner Global Logistics (Barbados), SR	Barbados
12	Werner Global Logistics (Shanghai), Co., Ltd.	China
13	WECC, Inc.	Nebraska
14	Werner Global Logistics Mexico, S. de R.L. de C.V.	Mexico
15	American Institute of Trucking, Inc.	Arizona
16	CG&G, Inc.	Nebraska
17	CG&G II, Inc.	Nebraska
18	Career Path Training Corp.	Florida
19	Werner International Freight Forwarding (Shanghai), Co. Ltd.	China
20	American Consulting Services Corp.	Florida
21	ECM Associated, LLC	Delaware
22	NEHDS Logistics, LLC d/b/a Werner Final Mile	Connecticut
23	J T L Truck Driver Training, Inc.	Nebraska
24	ECM Transport, LLC	Pennsylvania
25	ECO Industries, LLC	Pennsylvania
26	MCS Equipment Leasing, LLC	Pennsylvania
27	MCS Terminals, LLC	Ohio
28	Motor Carrier Service, LLC	Ohio
29	Reed Transport Services, Inc.	Florida
30	Reed Freight Management, Inc.	Florida
31	RTS-TMS, Inc.	Florida

32	RTS Terminals, LLC	Florida
33	TMS Logistics, Inc.	Wisconsin
34	RTS Equipment Leasing, Inc.	Wisconsin
35	FAB9, Inc.	Indiana
36	Baylor Trucking, Inc.	Indiana
37	Baylor Leasing, Inc.	Indiana
38	Baylor Logistics, Inc.	Indiana
39	Baylor Realty, Inc.	Indiana
40	Roadmaster Drivers School, Inc.	Florida
41	Roadmaster Drivers School of Jacksonville, Inc.	Florida
42	Roadmaster Drivers School of Orlando, Inc.	Florida
43	Roadmaster Drivers School of San Antonio, Inc.	Florida
44	Roadmaster Drivers School of Ohio, Inc.	Florida
45	Roadmaster Drivers School of Fontana, Inc.	Florida
46	Roadmaster Drivers School of Tennessee, Inc.	Florida
47	Roadmaster Drivers School of North Carolina, Inc.	North Carolina
48	Roadmaster Drivers School of Pennsylvania, Inc.	Pennsylvania
49	Roadmaster Drivers School of Georgia, Inc.	Georgia
50	CDL Testing, Inc.	Florida

#### **Schedule 6.9 Employee Benefit Matters**

##### **Werner Enterprises, Inc.**

Highmark BCBS – Medical PPO (\$1,250/\$2,500 Deductible)  
 Highmark BCBS – Medical HDHP with HSA (\$2,000/\$4,000 Deductible) Highmark BCBS – Medical HDHP with HSA (\$3,000/\$6,000 Deductible) United Concordia – Enhanced Dental Plan (\$2,000 Annual Maximum) United Concordia – Basic Dental Plan (\$1,000 Annual Maximum)  
 Davis Vision – Enhanced Plan Davis Vision – Basic Plan  
 Health Care Flexible Spending Account Dependent Care Flexible Spending Account  
 Lincoln Financial Group – Employer Paid Life Insurance Lincoln Financial Group – Employee Paid Life Insurance  
 Lincoln Financial Group – Employer Paid Short Term Disability Insurance Lincoln Financial Group – Employee Paid Short Term Disability Insurance Allstate – Employee Paid Hospital Indemnity Insurance Coverage  
 Allstate – Employee Paid Accident Insurance Coverage Allstate – Employee Paid Critical Illness Insurance  
 Coverage Allstate – Employee Paid Met-Law Legal Plan Coverage Allstate – Employee Paid Identity Theft Plan  
 Coverage Employee Assistance Program  
 Wellness Plan  
 Werner Enterprises, Inc. 401(k) Plan Employee Stock Purchase Plan  
 Non-Qualified Deferred Compensation Plan Bereavement Leave  
 Jury Duty Leave  
 Paid Holidays and Paid Time Off

##### **ECM Transport, LLC and its Affiliated Entities**

Highmark BCBS – Performance Flex Blue PPO (\$3,000/\$6,000 Deductible) United Concordia – Basic Dental Plan (\$1,000 Annual Maximum)  
 VBA Vision Plan  
 United of Omaha Life Insurance Company – Group Life and AD&D  
 United of Omaha Life Insurance Company – Group Short-Term Disability Insurance Coverage Werner Enterprises, Inc. 401(k) Plan  
 Werner Enterprises Employee Stock Purchase Plan Bereavement Leave

Jury Duty Leave

Paid Holidays and Paid Time Off

<sup>1</sup> Health & Welfare Benefit Plans offered by ECM Transport, LLC will terminate on December 31, 2022 and employees will be eligible to participate in the Werner Enterprises, Inc. Employee Benefits Plan as of January 1, 2023.

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#### **NEHDS Logistics, LLC d/b/a Werner Final Mile<sup>2</sup>**

Highmark BCBS – Medical PPO (\$1,250/\$2,500 Deductible)

Highmark BCBS – Medical HDHP with HSA (\$2,000/\$4,000 Deductible) Highmark BCBS – Medical HDHP with HSA (\$3,000/\$6,000 Deductible) United Concordia – Enhanced Dental Plan (\$2,000 Annual Maximum) United Concordia – Basic Dental Plan (\$1,000 Annual Maximum)

Davis Vision – Enhanced Plan Davis Vision – Basic Plan

Werner Enterprises, Inc. 401(k) Plan

Werner Enterprises Employee Stock Purchase Plan Bereavement Leave

Jury Duty Leave

Paid Holidays and Paid Time Off

#### **Baylor Trucking, Inc.<sup>3</sup>**

Medical PPO (\$1,300/\$2,600 Deductible) Medical HDHP (\$2,800/\$5,600 Deductible) Anthem –

Dental (\$750 Annual Maximum) EyeMed – Vision

Anthem – Employer Paid Life Insurance Anthem – Employee Paid Life Insurance Drivers Legal Plan

Elect Rx International Mail Order Program Bereavement Leave

Jury Duty Leave

Paid Holidays and Paid Time Off

#### **ReedTMS Logistics<sup>4</sup>**

UMR Choice Health Plan - Low (\$2,000/\$4,000 Deductible) UMR Choice Health Plan – High (\$3,500/\$7,000

Deductible) Humana – Dental PPO (\$1,000 Annual Maximum)

Humana – Vision

Mutual of Omaha – Employer Paid Life Insurance Mutual of Omaha – Employee Paid Life Insurance

Mutual of Omaha – Employer Paid Short Term Disability Insurance Mutual of Omaha – Employer Paid Long Term Disability Insurance Mutual of Omaha – Employee Assistance Program

Mutual of Omaha – Travel Assistance Program Mutual of Omaha - Teladoc

<sup>2</sup> Health & Welfare Benefit Plans offered by NEHDS Logistics, LLC d/b/a Werner Final Mile will terminate on June 30, 2023 and employees will be eligible to participate in the Werner Enterprises, Inc. Employee Benefits Plan as of July 1, 2023.

<sup>3</sup>Employees of Baylor Trucking, Inc. will be eligible to participate in the Werner Enterprises, Inc. 401(k) Plan as of January 1, 2023.

<sup>4</sup>Employees of ReedTMS Logistics will be eligible to participate in the Werner Enterprises, Inc. 401(k) Plan as of January 1, 2023.

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Section 529 College Savings Plan Bereavement Leave

Jury Duty Leave Paid Holidays

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**Schedule 6.12**

**Employee Relations**

None.

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**Schedule 8.1**

**Existing Indebtedness**

None.

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**Schedule 8.2**

**Existing Liens**

None.

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**Schedule 8.3**

**Existing Loans, Advances and Investments**

**Notes:**

1. Promissory Note, dated as of April 11, 2018, as amended by that Promissory Note Modification Agreement, dated as of March 23, 2022, in the principal amount of \$8,300,000 executed by Bordentown Driver Training School, LLC in favor of Borrower.

**Investments:**

1. Borrower's 25,912.93 share ownership in Mastery Logistics Systems, Inc., a Delaware corporation
2. Borrower's 353,604 share ownership in TuSimple Holdings Inc. (formerly known as Tusimple (Cayman) Limited), a Delaware corporation
3. Borrower's 32,911 share ownership in Embark Technology, Inc., a Delaware corporation.
4. Borrower's 5,170,000 share ownership in Hercules Company/Hercules Logistics/Hager Logistics, an entity organized in the People's Republic of China.

**Investments – Security Agreements with Independent Contractors:**

Loan ID	O/O #	MAKER	Contract Date	Original Loan Amount
361	16801	MASTER H COMPANY LLC	3/1/2020	\$68,879.15
362	16802	DJF Express LLC	3/1/2020	\$73,730.85

368	16810	IZET KANTAREVIC	3/1/2020	\$57,239.49
371	16863	PEGASUS ENTERPRISES LLC	3/1/2020	\$50,246.20
372	16866	PEGASUS ENTERPRISES LLC	3/1/2020	\$72,045.89
374	16868	PEGASUS ENTERPRISES LLC	3/1/2020	\$69,000.91
378	16919	Yuto Transportation LLC	3/1/2020	\$85,530.52
381	16939	FREIGHTWAY EXPRESS LLC	3/1/2020	\$69,833.41
383	16943	Bruce Truck Lines LLC	3/1/2020	\$63,490.11
387	16947	MSL FREIGHT SERVICES LLC	3/1/2020	\$77,279.69
389	16951	SWEETEN LIFE TRANSPORTATION LL	3/1/2020	\$53,064.30
393	16967	ANTONIO DARNELL EARVIN JR	3/1/2020	\$73,242.97
396	16972	DOC LOGISTICS Inc.	3/1/2020	\$72,746.54
405	17018	PEGASUS ENTERPRISES LLC	3/1/2020	\$62,005.27
424	17053	EAGLE KMC LLC	3/1/2020	\$56,333.65
436	17071	EAGLE KMC LLC	3/1/2020	\$71,454.36
445	17080	EAGLE KMC LLC	3/1/2020	\$66,778.86
454	17130	PEGASUS ENTERPRISES LLC	3/1/2020	\$79,110.10
455	17131	PEGASUS ENTERPRISES LLC	3/1/2020	\$79,221.95
458	17134	PEGASUS ENTERPRISES LLC	3/1/2020	\$71,342.64
461	17162	EAGLE KMC LLC	3/1/2020	\$93,464.94
462	17163	EAGLE KMC LLC	3/1/2020	\$92,156.98

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463	17164	EAGLE KMC LLC	3/1/2020	\$94,232.62
465	17177	PEGASUS ENTERPRISES LLC	3/1/2020	\$85,754.30
468	17185	EAGLE KMC LLC	3/1/2020	\$91,752.85
471	17194	EAGLE KMC LLC	3/1/2020	\$74,401.25
472	17195	EAGLE KMC LLC	3/1/2020	\$80,979.56
474	17209	NEWELL TRANSPORT LLC	3/1/2020	\$81,755.44
478	17214	MOORE TRANSPORTATION LLC	3/1/2020	\$80,360.99
504	17279	R BIDDLE TRUCKING LLC	3/1/2020	\$79,127.81
507	17282	WJL LLC	3/1/2020	\$92,737.86
511	17320	PEGASUS ENTERPRISES LLC	3/1/2020	\$84,838.00
530	17323	PEGASUS ENTERPRISES LLC	3/31/2020	\$73,668.00
550	17339	PEGASUS ENTERPRISES LLC	5/27/2020	\$96,505.00
551	17291	CHRISTOPHER L JONES-ASGILL	5/29/2020	\$81,223.00
566	17344	EAGLE KMC LLC	7/8/2020	\$70,611.42
576	17350	EAGLE KMC LLC	8/4/2020	\$88,991.00
579	17351	EAGLE KMC LLC	8/24/2020	\$77,718.00
580	17349	EAGLE KMC LLC	9/1/2020	\$86,168.00
581	17422	DA KINE LLC	9/8/2020	\$91,250.00
587	17362	PEGASUS ENTERPRISES LLC	10/15/2020	\$62,598.00
611	BORD	Bordertown Driver Training School LLC.	10/1/2020	\$381,112.97
621	17365	PEGASUS ENTERPRISES LLC	12/1/2020	\$81,609.00

623	17366	PEGASUS ENTERPRISES LLC	12/1/2020	\$67,897.00
646	17332	EAGLE KMC LLC	1/19/2021	\$83,000.00
647	17463	SCOORY ENTERPRISES LLC	2/18/2021	\$50,656.00
648	17372	EAGLE KMC LLC	2/24/2021	\$76,932.00
649	17462	JEHOVAH'S ROADRUNNER LLC	3/5/2021	\$69,477.00
654	17380	PEGASUS ENTERPRISES LLC	3/26/2021	\$88,877.00
655	17381	PEGASUS ENTERPRISES LLC	3/26/2021	\$88,877.00
656	17382	PEGASUS ENTERPRISES LLC	3/26/2021	\$82,364.00
658	17470	WISHBONE TRUCKING LLC	4/6/2021	\$102,202.00
659	17379	J&K TRANSPORTATION SERVICES	4/6/2021	\$74,947.00
660	17383	PEGASUS ENTERPRISES LLC	4/23/2021	\$88,927.00
661	17570	K & J TRANSPORTATION SERVICES AND CONSULTING	5/4/2021	\$99,730.00
662	17571	K & J TRANSPORTATION SERVICES AND CONSULTING	5/4/2021	\$99,730.00
663	17561	K & J TRANSPORTATION SERVICES AND CONSULTING	5/4/2021	\$99,730.00
665	17569	K & J TRANSPORTATION SERVICES AND CONSULTING	5/12/2021	\$98,230.00
666	17572	K & J TRANSPORTATION SERVICES AND CONSULTING	5/18/2021	\$98,230.00

667	17573	K & J TRANSPORTATION SERVICES AND CONSULTING	5/18/2021	\$98,230.00
670	17387	PEGASUS ENTERPRISES LLC	5/11/2021	\$81,914.00
671	17384	PEGASUS ENTERPRISES LLC	5/11/2021	\$90,335.00
672	17385	PEGASUS ENTERPRISES LLC	5/11/2021	\$90,335.00
674	17476	Branstrim Trucking LLC	6/1/2021	\$93,690.00
675	75134	K & J TRANSPORTATION SERVICES AND CONSULTING	6/14/2021	\$79,640.00
676	17398	PEGASUS ENTERPRISES LLC	6/21/2021	\$94,822.00
679	17399	PEGASUS ENTERPRISES LLC	7/7/2021	\$97,791.00
680	17477	L E SCHAFER LOGISTICS LLC	7/8/2021	\$114,291.00
681	17574	K & J TRANSPORTATION SERVICES AND CONSULTING	7/8/2021	\$64,512.28
682	17559	K & J TRANSPORTATION SERVICES AND CONSULTING	7/8/2021	\$57,278.68
683	17563	K & J TRANSPORTATION SERVICES AND CONSULTING	7/13/2021	\$57,415.84
684	17575	K & J TRANSPORTATION SERVICES AND CONSULTING	7/20/2021	\$54,538.21
685	17568	K & J TRANSPORTATION SERVICES AND CONSULTING	7/27/2021	\$56,336.00
686	17504	PEGASUS ENTERPRISES LLC	7/30/2021	\$84,275.00
688	17560	K & J TRANSPORTATION SERVICES AND CONSULTING	8/11/2021	\$81,559.00
689	17503	PEGASUS ENTERPRISES LLC	8/12/2021	\$77,190.00
691	17502	PEGASUS ENTERPRISES LLC	8/12/2021	\$60,790.00
692	77004	K & J TRANSPORTATION SERVICES AND CONSULTING	8/26/2021	\$94,425.00
693	76930	K & J TRANSPORTATION SERVICES AND CONSULTING	8/26/2021	\$94,425.00
694	17508	J&K TRANSPORTATION SERVICES	8/27/2021	\$112,702.00
696	17507	PEGASUS ENTERPRISES LLC	9/8/2021	\$91,201.00
700	17512	PEGASUS ENTERPRISES LLC	9/17/2021	\$76,495.00
702	17334	EAGLE KMC LLC	10/1/2021	\$65,100.00
704	17514	PEGASUS ENTERPRISES LLC	10/5/2021	\$90,021.00

705	17510	PEGASUS ENTERPRISES LLC	10/5/2021	\$54,709.00
708	17480	MR 803 TRUCKING LLC	10/19/2021	\$101,891.00
710	17576	K & J TRANSPORTATION SERVICES AND CONSULTING	10/26/2021	\$94,425.00
711	17513	PEGASUS ENTERPRISES LLC	10/27/2021	\$90,021.00
712	EMPL3	Caleb Guern	10/8/2021	\$9,000.00
714	17517	PEGASUS ENTERPRISES LLC	11/19/2021	\$102,000.00
715	K & J 76167	K & J TRANSPORTATION SERVICES AND CONSULTING	11/29/2021	\$94,425.00
716	K & J 75744	K & J TRANSPORTATION SERVICES AND CONSULTING	12/7/2021	\$94,425.00

718	17518	PEGASUS ENTERPRISES LLC	12/8/2021	\$89,614.00
719	17483	CDI LOGISTICS INC	12/23/2021	\$74,575.00
720	17482	CDI LOGISTICS INC	12/23/2021	\$74,575.00
721	17481	CDI LOGISTICS INC	12/23/2021	\$74,575.00
722	17488	CDI LOGISTICS INC	12/23/2021	\$74,575.00
723	17487	COMMERCE & DISTRIBUTION INC	12/23/2021	\$74,575.00
724	17485	COMMERCE & DISTRIBUTION INC	12/23/2021	\$74,575.00
725	17484	COMMERCE & DISTRIBUTION INC	12/23/2021	\$74,575.00
729	17486	ALLEGIANT TRUCKING LLC	1/19/2022	\$90,000.00
731	17489	COMMERCE & DISTRIBUTION INC	1/26/2022	\$69,587.50
732	17492	COMMERCE & DISTRIBUTION INC	1/26/2022	\$69,587.50
733	17493	COMMERCE & DISTRIBUTION INC	1/26/2022	\$69,587.50
734	17491	COMMERCE & DISTRIBUTION INC	1/26/2022	\$69,587.50
735	17490	COMMERCE & DISTRIBUTION INC	1/26/2022	\$61,037.50
736	17522	PEGASUS ENTERPRISES LLC	1/25/2022	\$103,262.00
737	17521	PEGASUS ENTERPRISES LLC	1/25/2022	\$89,614.00
740	17527	PEGASUS ENTERPRISES LLC	2/4/2022	\$101,187.00
741	17532	EAGLE KMC LLC	2/7/2022	\$51,163.48
742	17494	BURTON TRUCKING LLC	2/14/2022	\$71,580.00
745	17495	HESS TRANSPORTATON LLC	2/22/2022	\$73,142.41
746	17531	PEGASUS ENTERPRISES LLC	2/22/2022	\$105,614.00
749	17530	PEGASUS ENTERPRISES LLC	2/22/2022	\$105,614.00
750	17499	FRANCOS FREIGHT SERVICES OF EL	3/7/2022	\$82,249.09
751	17600	TWENTY 4 SEVEN TRANSPORT LLC	3/8/2022	\$98,521.00
752	17533	EAGLE KMC LLC	3/22/2022	\$79,776.17
753	17577	K & J TRANSPORTATION SERVICES AND CONSULTING	3/22/2022	\$217,695.00
756	17534	JHM LOGISTICS LLC	4/4/2022	\$102,861.00
757	K & J 78484	K & J TRANSPORTATION SERVICES AND CONSULTING	4/14/2022	\$45,883.70
758	17605	Gypsy Rover LLC	4/18/2022	\$68,555.00
760	17606	ECKERTS TRUCK LINES LLC	5/24/2022	\$86,818.00
762	17539	J&K TRANSPORTATION SERVICES	5/24/2022	\$47,504.77
763	17541	J&K TRANSPORTATION SERVICES	5/24/2022	\$70,349.83
764	17607	MARCUS N LOVE	6/2/2022	\$109,439.00

765	17543	PEGASUS ENTERPRISES LLC	6/23/2022	\$98,112.00
766	17542	K & J TRANSPORTATION SERVICES AND CONSULTING	6/28/2022	\$63,971.53
767	17609	FALCON FREIGHT SERVICES LLC	7/7/2022	\$87,670.00
768	17544	PEGASUS ENTERPRISES LLC	7/14/2022	\$99,364.00
770	17545	K & J TRANSPORTATION SERVICES AND CONSULTING	7/13/2022	\$56,124.85
773	17549	EAGLE KMC LLC	8/18/2022	\$60,650.50

774	17615	COMMERCE & DISTRIBUTION INC	8/26/2022	\$93,005.00
775	17613	COMMERCE & DISTRIBUTION INC	8/26/2022	\$83,505.00
776	17616	COMMERCE & DISTRIBUTION INC	8/26/2022	\$85,880.00
777	17612	COMMERCE & DISTRIBUTION INC	8/26/2022	\$85,405.00
778	17611	COMMERCE & DISTRIBUTION INC	8/26/2022	\$83,505.00
779	17614	COMMERCE & DISTRIBUTION INC	8/26/2022	\$86,830.00
780	17552	PEGASUS ENTERPRISES LLC	8/30/2022	\$96,239.00
782	17551	PEGASUS ENTERPRISES LLC	8/30/2022	\$89,936.00
783	17610	Araujo Trucking	8/31/2022	\$120,834.00
784	17617	RUBIO FREIGHT LINES LLC	9/20/2022	\$104,929.00
785	17557	K & J TRANSPORTATION SERVICES AND CONSULTING	9/20/2022	\$40,143.53
786	K & J 57447	K & J TRANSPORTATION SERVICES AND CONSULTING	10/5/2022	\$31,500.00
787	K & J 57843	K & J TRANSPORTATION SERVICES AND CONSULTING	10/5/2022	\$35,500.00
789	K & J 62648	K & J TRANSPORTATION SERVICES AND CONSULTING	10/5/2022	\$38,500.00
790	17608	Joseph Clervin	10/19/2022	\$99,929.00
791	17562	PEGASUS ENTERPRISES LLC	10/19/2022	\$100,298.00
792	17619	CARLOS FLORES	10/20/2022	\$109,226.70

### Schedule 8.7

#### **Transactions with Affiliates**

1. Administrative and Management Services and Intellectual Property Protection Agreement between Borrower and Werner Management, Inc. dated December 29, 2000.
2. Technical Assistance Agreement between Borrower and Werner de Mexico dated December 1, 1999.
3. Memorandum of Understanding for exclusive use of real property between Borrower and Roadmaster Drivers School of North Carolina, Inc. dated June 8, 2021.
4. Property Lease between Borrower and American Institute of Trucking, Inc., dated February 1, 2017.
5. Commercial Lease Agreement between Borrower and Career Path Training Corp dba Roadmaster Drivers School, dated May 1, 2022.

6. Property Lease between Borrower and Roadmaster Drivers School of San Antonio, Inc. dba Roadmaster Drivers School, dated January 15, 2018.
7. Property Lease Agreement between Borrower and Roadmaster Drivers School of Fontana, Inc., dated December 6, 2009.
8. Vehicle Lease between Borrower and Roadmaster Drivers School dated October 7, 2021.
9. Management Agreement between Borrower and ECM Associated, LLC., dated July 1, 2021.

Exhibit 10.21

### First Amendment to Term Loan Facility Letter

This First Amendment to Term Loan Facility Letter (herein, the "Amendment") is entered into as of December 20, 2022, between Werner Enterprises, Inc., a Nebraska corporation (the "Borrower"), and BMO Harris Bank N.A. (the "Bank").

#### Preliminary Statements

A. Borrower and Bank are parties to that certain Term Loan Facility Letter, dated as of June 30, 2021 (as amended, restated, modified or otherwise supplemented from time to time, the "Facility Letter"). All capitalized terms used herein without definition shall have the same meanings herein as such terms have in the Facility Letter.

B. Borrower will concurrently herewith enter into a \$1,075,000,000 Credit Agreement dated as of the date hereof (the "Credit Agreement") with the Lenders referred to therein and Wells Fargo Bank, National Association, as Administrative Agent, Swingline Lender and Issuing Lender (the "Administrative Agent"), which Credit Agreement will refinance in full the Revolving Line Facility Letter.

C. Borrower has requested that the Facility Letter be amended to reference the Credit Agreement in lieu of the Revolving Line Facility Letter and Bank is willing to do so on under the terms and conditions set forth in this Amendment.

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.

Subject to the satisfaction of the conditions precedent set forth in Section 2 below, the Facility Letter shall be and hereby is amended as follows:

1.1. Section 9 of the Facility Letter shall be amended by replacing the address "111 West Monroe Street, Chicago, Illinois" with "320 South Canal Street, Chicago, Illinois".

1.2. Section 11 of the Facility Letter shall be amended and restated in its entirety to read as follows:

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11. *Representations, Warranties, and Covenants.* Borrower hereby represents and warrants to Bank that each of the representations and warranties set forth in Article VI of that certain Credit Agreement dated as of December 20, 2022, by and among Borrower, the Lenders referred to therein, and Wells Fargo Bank, National Association, as Administrative Agent, Swingline Lender and Issuing Lender (as amended, modified or restated from time to time, the "Credit Agreement"), which are hereby incorporated by

reference for the benefit of Bankherein as though set forth herein in their entirety (as modified as set forth below), are and remain true and correct (or, in the case of any representation or warranty not qualified as to materiality, true and correct in all material respects) as of the date hereof, except to the extent the same expressly relate to an earlier date, (and in such case shall be true and correct (or, in the case of any representation or warranty not qualified as to materiality, true and correct in all material respects) as of such earlier date). So long as any credit is available to or in use by Borrower hereunder, except to the extent compliance in any case or cases is waived in writing by Bank, Borrower hereby agrees to observe, perform, comply, in all material respects, with and be bound by each of its covenants, agreements, and obligations contained in Articles VII and VIII of the Credit Agreement, which are also hereby incorporated by reference for the benefit of Bank herein as though set forth herein in their entirety (as modified as set forth below). For purposes of this Agreement, Articles VI, VII and VIII of the Credit Agreement, together with related definitions, exhibits and ancillary provisions (including, without limitation, Section 11.19 thereof), are hereby incorporated herein by reference, mutatis mutandis, and will be deemed to continue in effect for the benefit of Bank until the Term Loan (both for principal and interest) and all other fees and other obligations payable under this Term Loan Facility Letter are paid and satisfied in full, irrespective of whether or not the Credit Agreement remains in effect or any credit extended thereunder remains outstanding, provided that: (a) each reference to this "Credit Agreement" or the "Note" or the like contained therein shall be deemed to be a reference to this Term Loan Facility Letter and the Note issued hereunder, and any reference to the "Loans" being advanced thereunder shall be deemed a reference to the Term Loan being advanced pursuant to this Term Loan Facility Letter, (b) each reference to "Administrative Agent" contained therein shall be deemed a reference to Bank hereunder, unless the context otherwise requires, (c) Liens shall not be permitted to secure the Obligations under the Credit Agreement (other than Liens in favor of the Swingline Lender and/or the Issuing Lenders, as applicable, on Cash Collateral granted pursuant to the Loan Documents as in effect on the date of the First Amendment to this Term Loan Facility Agreement), (d) any reference to an "Event of Default" therein shall be deemed to be reference to an Event of Default under this Term Loan Facility Letter, and (e) so long as Bank is a holder of the Loans under the Credit Agreement, any representation, warranty, covenant, agreement, or other obligation contained in Article VI, VII or VIII of the Credit Agreement that is amended, modified, or waived in writing by the Required Lenders (as such term is defined in the Credit Agreement) under the terms of the Credit Agreement shall be deemed an amendment, modification or waiver, as applicable, of the provisions of Article VI, VII or VIII of the Credit Agreement as incorporated by reference into this Term Loan Facility Letter.

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**1.3. Section 13 of the Facility Letter shall be amended and restated in its entirety to read as follows:**

**13. Default.** Borrower without notice or demand of any kind, shall be in default under this Facility Letter upon the occurrence of any of the following events (each an "Event of Default").

- (a) The Borrower fails to pay any principal of the Term Loan as and on the date when due; or
- (b) The Borrower fails to pay any interest on the Term Loan, or any fee due hereunder, or any portion thereof, within three (3) Business Days after the date when due; or the Borrower fails to pay any other fee or amount payable to the Lender under this Term Loan Facility Letter or the Note, or any portion thereof, within three (3) Business Days after the date due; or
- (c) The Borrower fails to comply with (i) any covenant or agreement incorporated herein by reference pursuant to Section 11 above, subject to any applicable grace period and/or notice requirement set forth in Section 9.1(d) of the Credit Agreement (it being understood and agreed that any such notice requirement shall be met by the Bank's giving the applicable notice to the Borrower hereunder) or (ii) any other provision of such Section 11; or
- (d) Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any Subsidiary (as defined in the Credit Agreement) thereof in this Term Loan Facility Letter or the Note, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect (as defined in the Credit Agreement) qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the Borrower or any Subsidiary (as defined in the Credit Agreement) thereof in this Agreement, in the Note, or in any document delivered in

connection herewith or therewith that is not subject to materiality or Material Adverse Effect (as defined in the Credit Agreement) qualifications, shall be incorrect or misleading in any material respect when made or deemed made; or

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(e) Any "Event of Default" specified in Section 9.1 of the Credit Agreement (including for purposes of this Section 13(e), so long as Bank is a holder of the Loans under the Credit Agreement, each "Event of Default" that is added to Section 9.1 of the Credit Agreement after the Closing Date (as defined in the Credit Agreement), as such "Event of Default" is in effect on the date so added, without giving effect to any subsequent amendment or other modification thereof) occurs and is continuing, without giving effect to any waiver or amendment thereof pursuant to the Credit Agreement, it being agreed that each such "Event of Default" shall survive any termination, cancellation, discharge or replacement of the Credit Agreement.

1.4. The reference to "or any guarantor" in Section 14(b) is hereby deleted.

1.5. Bank's notice address shall be amended and restated in its entirety to read as follows:

to Bank at:

BMO Harris Bank N.A.  
BMO Tower  
320 South Canal Street  
Chicago, Illinois 60606  
Attention: Ken Kramer  
Telephone: (630) 307-2848  
Email: [ken.kramer@bmo.com](mailto:ken.kramer@bmo.com)

## Section 2. Conditions Precedent.

The effectiveness of this Amendment is subject to the satisfaction of all of the following conditions precedent:

2.1. Borrower and Bank shall have executed and delivered this Amendment.

2.2. Legal matters incident to the execution and delivery of this Amendment shall be reasonably satisfactory to Bank and its counsel.

## Section 3. Representations.

In order to induce Bank to execute and deliver this Amendment, Borrower hereby represents to Bank that as of the date hereof the representations and warranties set forth in Section 11 of the Facility Letter (as amended hereby) are and shall be and remain true and correct and Borrower is in compliance with the terms and conditions of the Facility Letter, except where such non-compliance would not reasonably be likely to result in a Material Adverse Effect (as such term is defined in the Credit Agreement) and no Event of Default or event or circumstance which, with the giving of notice or lapse of time or both, would constitute an Event of Default has occurred and is continuing under the Facility Letter or shall result after giving effect to this Amendment.

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## Section 4. Miscellaneous.

4.1. Except as specifically amended herein, the Facility Letter shall continue in full force and effect in accordance with its original terms. Reference to this specific Amendment need not be made in the Facility Letter, the Note, or any other instrument or document executed in connection therewith, or in any certificate, letter or communication issued or made pursuant to or with respect to the Facility Letter, any reference in any of such items to the Facility Letter being sufficient to refer to the Facility Letter as amended hereby. This Amendment is not a novation nor is it to be construed as a release, waiver or modification of any of the terms, conditions, representations, warranties, covenants, rights or remedies set forth in the Facility Letter, except as specifically set forth herein. Without limiting the foregoing, Borrower agrees to comply, in all material respects, with all of the terms, conditions, and provisions of the Facility Letter except to the extent such compliance is irreconcilably inconsistent with the express provisions of this Amendment.

4.2. Borrower agrees to pay on demand all costs and expenses of or incurred by Bank in connection with the negotiation, preparation, execution and delivery of this Amendment, including the reasonable and documented out-of-pocket fees and expenses of outside counsel for Bank.

4.3. This Amendment may be executed in any number of counterparts, and by the different parties on different counterpart signature pages, all of which taken together shall constitute one and the same agreement. Any of the parties hereto may execute this Amendment by signing any such counterpart and each of such counterparts shall for all purposes be deemed to be an original. Delivery of a counterpart hereof by facsimile transmission or by e-mail transmission of a portable document format file (also known as a "PDF" file) shall be effective as delivery of a manually executed counterpart hereof. This Amendment shall be governed by, and construed in accordance with, the internal laws of the State of Illinois.

[Signature Page to Follow]

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This First Amendment to Term Loan Facility Letter is entered into as of the date and year first above written.

WERNER ENTERPRISES, INC.  
a Nebraska corporation, as Borrower

By: /s/ Derek J. Leathers  
Name: Derek J. Leathers  
Title: Chairman, President & Chief Executive Officer

By: /s/ John J. Steele  
Name: John J. Steele  
Title: Executive Vice President, Treasurer & Chief Financial Officer

Accepted and agreed to.

BMO HARRIS BANK N.A.

By: /s/ Kenneth J. Kramer  
Name: Kenneth J. Kramer  
Title: Manager Director

#### EXHIBIT 21

#### SUBSIDIARIES OF WERNER ENTERPRISES, INC.

JURISDICTION OF  
ORGANIZATION

<u>SUBSIDIARY</u>	<u>JURISDICTION OF ORGANIZATION</u>
1. Gra-Gar, LLC	Delaware
2. Werner Management, Inc.	Nebraska
3. Fleet Truck Sales, Inc., dba Werner Fleet Sales	Nebraska
4. Werner Global Logistics, Inc.	Nebraska
5. Werner Transportation, Inc.	Nebraska
6. Werner de Mexico, S. de R.L. de C.V.	Mexico
7. Werner Enterprises Canada Corporation	Canada
8. Werner Leasing de Mexico, S. de R.L. de C.V.	Mexico
9. Werner Global Logistics U.S., LLC	Nebraska
10. Werner Global Logistics (Barbados), SRL	Barbados
11. Werner Global Logistics (Shanghai) Co. Ltd.	China
12. WECC, Inc.	Nebraska
13. Werner Global Logistics Mexico, S. de R.L. de C.V.	Mexico
14. CG&G, Inc.	Nebraska
15. CG&G II, Inc.	Nebraska
16. American Institute of Trucking, Inc.	Arizona
17. Career Path Training Corp.	Florida
18. Werner Leasing, LLC	Nebraska
19. ECM Associated, LLC	Delaware
20. NEHDS Logistics, LLC	Connecticut
21. Fab9, Inc.	Indiana
22. Reed Transport Services, Inc.	Florida
23. RTS/TMS, Inc.	Florida

**EXHIBIT 23.1**

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the registration statements (No. 333-238879) on Form S-3 and the registration statements (Nos. 333-117896, 333-103467, 33-15894, 33-15895 and 33-15895 333-271755) on Form S-8 of our reports dated **February 27, 2023** **February 26, 2024**, with respect to the consolidated financial statements and financial statement schedule II listed in the Index in Item 15(a)(2) of Werner Enterprises, Inc. and the effectiveness of internal control over financial reporting.

/s/ KPMG LLP

Omaha, Nebraska

February 27, 2023 26, 2024

**EXHIBIT 31.1**

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
PURSUANT TO RULES 13a-14(a) AND 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934  
(SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)**

I, Derek J. Leathers, certify that:

1. I have reviewed this annual report on Form 10-K of Werner Enterprises, 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 officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) 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: February 27, 2023 26, 2024

/s/ Derek J. Leathers

Derek J. Leathers

Chairman ~~President~~ and Chief Executive Officer

**EXHIBIT 31.2**

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER  
PURSUANT TO RULES 13a-14(a) AND 15d-14(a) OF THE SECURITIES EXCHANGE ACT OF 1934  
(SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002)**

I, **John J. Steele, Christopher D. Wikoff**, certify that:

1. I have reviewed this annual report on Form 10-K of Werner Enterprises, 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 officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer(s) 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: February 27, 2023 26, 2024

/s/ **John J. Steele, Christopher D. Wikoff**

**John J. Steele, Christopher D. Wikoff**

Executive Vice President, Treasurer and Chief Financial Officer

**EXHIBIT 32.1**

**CERTIFICATION OF THE CHIEF EXECUTIVE OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Annual Report of Werner Enterprises, Inc. (the "Company") on Form 10-K for the period ending **December 31, 2022** **December 31, 2023** (the "Report"), filed with the Securities and Exchange Commission, I, **Derek J. Leathers, Chairman** **President** and Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350,

as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

February 27, 2023 26, 2024

/s/ Derek J. Leathers

Derek J. Leathers

Chairman ~~President~~ and Chief Executive Officer

#### EXHIBIT 32.2

**CERTIFICATION OF THE CHIEF FINANCIAL OFFICER  
PURSUANT TO 18 U.S.C. SECTION 1350  
(SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002)**

In connection with the Annual Report of Werner Enterprises, Inc. (the "Company") on Form 10-K for the period ending ~~December 31, 2022~~ December 31, 2023 (the "Report"), filed with the Securities and Exchange Commission, I, ~~John J. Steele, Christopher D. Wikoff~~, Executive Vice President, Treasurer and Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to the best of my knowledge:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

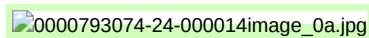
February 27, 2023 26, 2024

/s/ ~~John J. Steele~~ Christopher D. Wikoff

~~John J. Steele~~ Christopher D. Wikoff

Executive Vice President, Treasurer and  
Chief Financial Officer

Exhibit 97



#### **CLAWBACK POLICY**

This clawback policy (the "Policy") of Werner Enterprises, Inc. (the "Company"), effective as of December 1, 2023 (the "Effective Date"), is to further the Company's pay-for-performance compensation philosophy.

1. Interpretation. The Policy shall be interpreted to comply with the clawback listing standards ("Clawback Standards") of the Nasdaq, the securities exchange on which the Company has listed securities ("Exchange"). The U.S. Securities and Exchange Commission ("SEC") approved the Clawback Standards under Section 10D of the Securities and Exchange Act of 1934 and Rule 10D-1 of Chapter 17 of the Code of Federal Regulations. To the extent the Policy is in any manner deemed inconsistent with the Clawback Standards, it shall be treated as retroactively amended to be compliant therewith from the Effective Date.
2. Supplemental Effect. For so long as the Policy is in effect, it supplements any other Company clawback policies, whether adopted prior to or after the Effective Date. Except as otherwise determined by the Compensation Committee ("Committee") of the Company's Board of Directors, the Policy does not limit, and is intended to apply in addition to, any other clawback, recoupment, reimbursement, forfeiture or similar policies or provisions of the Company or its

affiliates, including without limitation those contained in any employment or award agreement or bonus, incentive, or equity plan or program, or those required under applicable law ("Other Recoupment Arrangements"). The remedies provided for herein are not exclusive and shall be in addition to every other right or remedy that may be available to the Company or an affiliate by law or in equity or under Other Recoupment Arrangements.

3. **Definitions.** The Clawback Standards pertain to and define "Incentive-Based Compensation" (compensation that is granted, earned, or vested based wholly or in part upon the attainment of a "Financial Reporting Measure"). For purposes of the Policy, these terms, and the terms "Executive Officer" and "Received," shall have the same meaning as in such standards.

4. **Application of the Policy.** The Policy shall only apply to Incentive-Based Compensation Received by an Executive Officer and only in the event that the Company is required to prepare an accounting restatement due to the material noncompliance of the Company with any financial reporting requirement under the securities laws, including any required accounting restatement to correct an error in previously issued financial statements that is material to the previously issued financial statements, or that would result in a material misstatement if the error were corrected in the current period or left uncorrected in the current period.

5. **Recovery Period.** The Policy applies to Incentive-Based Compensation Received by an Executive Officer during the three completed fiscal years immediately preceding the date that the Company is required to prepare an accounting restatement as described in Section 4, provided that

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such compensation was Received after beginning service as an Executive Officer and that such person served as an Executive Officer at any time during the performance period applicable to the Incentive-Based Compensation in question. For purposes of the Policy, the date that the Company is required to prepare an accounting restatement shall be determined pursuant to the Clawback Standards.

Notwithstanding the foregoing, the Policy shall only apply if the Incentive-Based Compensation is Received (1) while the Company has a class of securities listed on the Exchange and (2) on or after October 2, 2023. Under the Clawback Standards, the Policy applies, in the circumstances set forth therein, to Incentive-Based Compensation Received during a transition period arising due to a change in the Company's fiscal year.

6. **Erroneously Awarded Compensation.** The amount of Incentive-Based Compensation subject to the Policy ("Erroneously Awarded Compensation") is the amount of Incentive-Based Compensation Received by an Executive Officer that exceeds the amount of Incentive Based-Compensation that otherwise would have been Received had it been determined based on the restated amounts and shall be computed without regard to any taxes paid.

For Incentive-Based Compensation based on stock price or total shareholder return, where the amount of Erroneously Awarded Compensation is not subject to mathematical recalculation directly from the information in an accounting restatement: (1) the amount shall be based on a reasonable estimate of the effect of the accounting restatement on the stock price or total shareholder return upon which the Incentive-Based Compensation was Received; and (2) the Company must maintain documentation of the reasonable estimate determination and provide such documentation to the Exchange.

7. **Clawback Procedures.** The Company shall recover, reasonably promptly, any Erroneously Awarded Compensation except to the extent that the conditions of paragraphs (a), (b), or (c) below apply. The Committee shall determine, in its sole discretion, the recoupment, reimbursement and/or forfeiture method and schedule for each type and amount of Erroneously Awarded Compensation in a manner that complies with this "reasonably promptly" requirement. In making these and other determinations under the Policy, the Committee may consider, without limitation, applicable legal guidance from the SEC, judicial opinion, and federal and local employment, tax and other laws and regulations. The determination of "reasonably promptly" may vary from case to case.

The Committee is authorized to adopt additional rules for applying the Policy, including without limitation rules to further describe what recoupment, reimbursement or forfeiture methods or repayment schedules satisfy this requirement. Recoupment, reimbursement, and/or forfeiture methods may include, without limitation, any one or more of the following: requiring reimbursement of cash Erroneously Awarded Compensation previously paid; seeking recovery of any gain realized on the vesting, exercise, settlement, sale, transfer or other disposition of any equity-based awards; cancelling or rescinding some or all outstanding vested or unvested equity-based awards; adjusting or withholding from unpaid compensation or other set-off; cancelling or setting-off against planned future grants of equity-based awards; and/or any other method unless prohibited by applicable law.

Notwithstanding the foregoing, unless otherwise prohibited by applicable law, to the extent the Policy provides for recovery of Erroneously Awarded Compensation already recovered from the recipient by the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 or Other Recoupment Arrangements, the amount of Erroneously Awarded Compensation already recovered

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may be credited to the amount of Erroneously Awarded Compensation required to be recovered pursuant to the Policy from such person.

No recovery of compensation under the Policy will be an event giving rise to an Executive Officer's right to resign for "good reason" or to consider a termination to be "constructive" as such terms, or similar terms, are used in any agreement between the Company and any such person or in any Company policy, award or compensation program. Erroneously Awarded Compensation need not be recovered if the Committee has made a determination that recovery would be impracticable and if:

(a) the direct expense paid to a third party to assist in enforcing the Policy would exceed the amount to be recovered. Before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on expense of enforcement, the Company shall make a reasonable attempt to recover such Erroneously Awarded Compensation, document such reasonable attempt(s) to recover, and provide that documentation to the Exchange;

(b) recovery would violate home country law where that law was adopted prior to November 28, 2022. Before concluding that it would be impracticable to recover any amount of Erroneously Awarded Compensation based on violation of home country law, the Company shall obtain an opinion of home country counsel, acceptable to the Exchange, that recovery would result in such a violation and shall provide such opinion to the Exchange; or

(c) recovery would likely cause an otherwise tax-qualified retirement plan, under which benefits are broadly available to employees of the Company, to fail to meet the requirements of 26 U.S.C. 401(a)(13) or 26 U.S.C. 411(a) and regulations thereunder.

8. **Committee Decisions.** Decisions of the Committee with respect to the Policy shall be final, conclusive and binding on all Executive Officers. The Committee may consider the particular facts and circumstances applicable to the Company and each Executive Officer's particular compensation arrangement.

9. **No Indemnification.** Notwithstanding anything to the contrary in any other Company policy, any Company governing document, or any agreement between the Company and an Executive Officer, no Executive Officer shall be indemnified by the Company against the loss of any Erroneously Awarded Compensation.

10. **Policy Acknowledgement by Executive Officers.** The Committee shall take reasonable steps to inform Executive Officers of the Policy. It may obtain or require Executive Officer acknowledgements to the Policy, but receipt of acknowledgements is not a precondition to enforcement of the Policy. For so long as it is in effect, the Policy is automatically incorporated by reference into the terms and conditions of, and any and all agreements with respect to, Incentive-Based Compensation program.

11. **Amendment.** The Committee may modify, amend, supplement, rescind or replace all or any portion of the Policy at any time and from time to time and shall promptly amend the Policy as it deems necessary to comply with applicable law or the Clawback Standards.

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