

---

---

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

---

**FORM 8-K**

---

**CURRENT REPORT**  
**Pursuant to Section 13 or 15(d) of**  
**the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): September 2, 2015**

---

**DIODES INCORPORATED**

(Exact name of Registrant as Specified in Its Charter)

---

**Delaware**  
(State or Other Jurisdiction  
of Incorporation)

**002-25577**  
(Commission  
File Number)

**95-2039518**  
(IRS Employer  
Identification No.)

**4949 Hedgcoxe Road, Suite 200,**  
**Plano, TX**  
(Address of Principal Executive Offices)

**75024**  
(Zip Code)

**Registrant's Telephone Number, Including Area Code: (972) 987-3900**

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

---

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instructions A.2. below):

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

---

**Item 1.01. Entry into a Material Definitive Agreement.****Agreement and Plan of Merger**

On September 2, 2015, Diodes Incorporated (the “Company”) entered into an Agreement and Plan of Merger (the “Merger Agreement”) with Pericom Semiconductor Corporation, a California corporation (“PSEM”), and PSI Merger Sub, Inc., a California corporation and a wholly-owned subsidiary of the Company (“Merger Sub”), pursuant to which Merger Sub will be merged with and into PSEM, with PSEM continuing as the surviving corporation and a wholly-owned subsidiary of the Company (the “Merger”). Under the Merger Agreement and in accordance with the General Corporation Law of the State of California, at the effective time of the Merger, each outstanding share of common stock, without par value, of PSEM (the “Shares”), adjusted appropriately, other than shares owned by PSEM or certain of its affiliates or shares held by PSEM shareholders who have perfected their appraisal rights in accordance with applicable California law, will be automatically converted into the right to receive \$17.00 in cash per Share, without interest. The aggregate consideration will be approximately \$400 million. The acquisition is expected to be funded by the Company’s drawings on the Credit Facility (as defined below) and cash on the Company’s balance sheet. The merger is currently expected to close in the fourth quarter of 2015.

Consummation of the Merger is subject to various conditions, including (i) obtaining requisite approval of the Merger from PSEM’s shareholders, (ii) the absence of any final and nonappealable law or order issued by certain specified governmental entities making illegal or permanently enjoining or prohibiting the Merger, (iii) the accuracy of the representations and warranties made by the parties, except, unless any inaccuracies would not have had or reasonably be expected to have a “material adverse effect” on the applicable party (as “material adverse effect” is defined in the Merger Agreement with respect to each party) and the performance by the parties in all material respects of their covenants and agreements under the Merger Agreement, (iv) the expiration or early termination of the waiting period applicable to the Merger under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended and (v) the absence of a material adverse effect on either party that is continuing.

PSEM’s directors, upon the terms and subject to the conditions of the Merger Agreement, have agreed to unanimously recommend that PSEM’s shareholders vote in favor of the Merger. Nevertheless, at any time prior to receipt of the PSEM shareholder approval, the board of directors of PSEM, directly or indirectly through any representative, may, subject to certain conditions of the Merger Agreement, participate in negotiations or discussions concerning an alternative proposal regarding the acquisition of PSEM with, and only with, a third party (or such third party’s representatives) that has made (and not withdrawn) such an alternative acquisition proposal in writing that the board of directors of PSEM believes in good faith, after consultation with outside legal counsel and PSEM’s financial advisor, constitutes or could reasonably be expected to result in an offer that is superior to the Company’s acquisition proposal set forth in the Merger Agreement.

The Company has received undertakings to vote in favor of the Merger from directors and certain officers of PSEM. These undertakings are irrevocable except in specified circumstances. PSEM has agreed to pay the Company a fee of \$15 million in certain circumstances, including in the event PSEM’s board of directors authorizes PSEM to enter into an agreement in respect of a superior acquisition proposal. The Merger Agreement sets forth, among other things, various matters in relation to the implementation of the Merger, cooperation in relation to the Merger, the conduct of PSEM’s business prior to the closing of the merger and solicitation of competing proposals.

The foregoing description of the Merger Agreement and the transactions contemplated thereby does not purport to be complete and is qualified in its entirety by reference to the Merger Agreement, a copy of which is filed as Exhibit 2.1 hereto and is hereby incorporated into this report by reference. The Merger Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company. In particular, the assertions embodied in the representations and warranties contained in the Merger Agreement are subject to qualifications and limitations agreed to by the respective parties in connection with negotiating the terms of the Merger Agreement, including information contained in a confidential disclosure schedule provided by the Company and Merger Sub to PSEM in connection with the signing of the Merger Agreement. The confidential disclosure schedule contains information that modifies, qualifies and creates exceptions to the representations and warranties set forth in the Merger Agreement. Moreover, certain representations and warranties in the Merger Agreement were used for the purpose of allocating risk between the Company and PSEM rather than establishing matters as facts. Accordingly, you should not rely on the representations and warranties in the Merger Agreement as characterizations of the actual state of facts about the Company.

**Credit Agreement Amendment**

On September 2, 2015, the Company and Diodes International B.V. (the “Foreign Borrower” and, collectively with the Company, the “Borrowers”), and certain subsidiaries of the Company as guarantors, entered into an Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent (the “Amendment”) with Bank of America, N.A., as Administrative Agent, and the lenders party to the Amendment (collectively, the “Lenders”), which amends the Credit Agreement dated January 8, 2013 (as previously amended by Amendment No. 1 to Credit Agreement and Limited Waiver dated as of November 1, 2013 and Amendment No. 2 to Credit Agreement and Amendment No. 1 to Collateral Agreement dated as of June 19, 2015) (as previously amended and as amended by the Amendment, the “Credit Agreement”). Certain capitalized terms used in this description of the Amendment have the meanings given to them in the Amendment or in the Credit Agreement.

---

The following summary does not purport to be a complete summary of the Amendment and is qualified in its entirety by reference to the Amendment, a copy of which is filed herewith as [Exhibit 10.1](#) and is incorporated by reference herein. The other material terms of the Credit Agreement remain unchanged and are described in the Current Report on Form 8-K filed with the Securities and Exchange Commission (the “SEC”) on January 11, 2013 and the Current Report on Form 8-K filed with the SEC on June 24, 2015.

The Amendment increases the Company’s existing senior credit facilities to a \$400,000,000 revolving senior credit facility (the “Revolver”), which includes a \$10,000,000 swing line sublimit, a \$10,000,000 letter of credit sublimit, and a \$20,000,000 alternative currency sublimit, and a \$100,000,000 term loan facility (the “Term Loan Facility”). The Borrowers may from time to time request additional increases in the aggregate commitments under the Credit Agreement of up to \$200,000,000, subject to the Lenders electing to increase their commitments or by means of the addition of new Lenders, and subject to at least half of each increase in aggregate commitments being in the form of term loans, with the remaining amount of each increase being an increase in the amount of the Revolver.

The Revolver and the Term Loan Facility mature on January 8, 2018 (the “Maturity Date”). The Company plans to use a portion of the proceeds available under the Revolver and the Term Loan Facility to finance a portion of the purchase price for the PSEM acquisition described above, with the remaining proceeds available for working capital, for capital expenditures, and for general corporate purposes, including financing other permitted acquisitions.

The Credit Agreement as amended contains certain financial and non-financial covenants, including, but not limited to, a maximum Consolidated Leverage Ratio, a minimum Consolidated Fixed Charge Coverage Ratio, and restrictions on liens, indebtedness, investments, fundamental changes, dispositions, and restricted payments (including dividends).

Under the Amendment, Lenders waive any requirement that PSEM pledge or grant any security interest in equity interests in its foreign subsidiaries in existence on the 2015 Incremental Term Draw Date (as defined in the Amendment). Lenders also consent to Foreign Borrower’s transfer of all of its equity interests of a direct subsidiary, Diodes Hong Kong Limited, to Diodes Hong Kong Holding Company Limited, subject to the terms and conditions of a previously executed Share Charge, dated August 14, 2013.

The Amendment shall be effective upon satisfaction of certain conditions, including execution of the Amendment, credit notes, certificates, resolutions, and other relevant documents, procurement of various counsel opinions, provide necessary financial data, forecasts and statements, pro forma Consolidated Leverage Ratio taking into account certain matters, including the PSEM acquisition described above and the drawing of the Term Loan Facility, no greater than 2.75 to 1.00, payments of all reasonable fees, charges, disbursements, and engagement letter fee, and completion of all necessary due diligence investigations, with certain post-closing covenants.

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

The disclosure set forth above under the title “Credit Agreement Amendment” in Item 1.01 hereby is incorporated by reference into this Item 2.03.

**Item 3.03. Material Modification to Rights of Security Holders.**

The Credit Agreement (as amended by the Amendment) contains a covenant that, among other things, restricts the Company’s and its subsidiaries’ and certain of its affiliates’ ability to, among other things, pay dividends with respect to its capital stock. The disclosure set forth above under the title “Credit Agreement Amendment” in Item 1.01 hereby is incorporated by reference into this Item 3.03.

**Item 7.01. Regulation FD Disclosure.**

On September 3, 2015, the Company and PSEM issued a joint press release announcing that the Company and PSEM had entered into the Merger Agreement. A copy of the press release is attached as [Exhibit 99.1](#) to this Report.

The Company will hold a conference call to discuss the Merger on September 3, 2015 at 12:00 p.m. Central Time (1:00 p.m. Eastern Time). For further information concerning the conference call, see the press release attached as [Exhibit 99.1](#) to this Report. A recording of the conference call will be posted on the Company’s website at [www.diodes.com](http://www.diodes.com) shortly after the call. A copy of the script for the call, together with the presentation slides, is attached as [Exhibit 99.2](#) to this Report.

The information in this Item 7.01, including Exhibits 99.1 and 99.2, will not be treated as filed for the purposes of Section 18 of the Securities Exchange Act of 1934 (the “Exchange Act”) or otherwise subject to the liabilities of that section. This information will not be incorporated by reference into a filing under the Securities Act of 1933, or into another filing under the Exchange Act, unless that filing expressly refers to specific information in this Report. The furnishing of the information in this Item 7.01 is not intended to, and does not, constitute a representation that such furnishing is required by Regulation FD or that the information in this Item 7.01 is material information that is not otherwise publicly available.

#### **Cautionary Information Regarding Forward-Looking Statements**

Except for the historical and factual information contained in the press release and script attached as Exhibits 99.1 and 99.2, the matters set forth in this Report, the press release and the script (including statements as to: the expected benefits of the acquisition, including the acquisition being immediately accretive; the efficiencies, cost savings, revenues, and enhanced product offerings, market position, and design and manufacturing capabilities of the Company after the acquisition; and other statements identified by words such as “estimates,” “expects,” “projects,” “plans,” “will” and similar expressions) are forward-looking statements within the meaning of the “safe harbor” provisions of the Private Securities Litigation Reform Act of 1995. These forward-looking statements are subject to risks and uncertainties that may cause actual results to differ materially, including: the possibility that the transaction may not be consummated, including as a result of any of the conditions precedent; the risk of superior acquisition proposals from other parties; the risk of the Company being unable to obtain sufficient financing from Lenders to complete the acquisition; the risk of global market downturn conditions and volatilities impacting the completion of the acquisition or the funding contemplated by the Amendment; the risk that PSEM’s business will not be integrated successfully into the Company’s; the risk that the expected benefits of the acquisition may not be realized, including the realization of the accretive effect of the acquisition; the risk that PSEM’s standards, procedures and controls will not be brought into conformance within the Company’s operation; difficulties coordinating the Company’s and PSEM’s new product and process development, hiring additional management and other critical personnel, and increasing the scope, geographic diversity and complexity of the Company’s operations; difficulties in consolidating facilities and transferring processes and know-how; difficulties in reducing the costs of PSEM’s business; the diversion of our management’s attention from the management of our business; Diodes may not be able to maintain its current growth strategy or continue to maintain its current performance, costs and loadings in its manufacturing facilities; risks of domestic and foreign operations, including excessive operation costs, labor shortages, higher tax rates and Diodes’ joint venture prospects; unfavorable currency exchange rates; and the impact of competition and other risk factors relating to our industry and business as detailed from time to time in the Company’s reports filed with the Securities and Exchange Commission. You should not place undue reliance on these forward-looking statements, which speak only as of the date of the press release. The Company undertakes no obligation to update publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

#### **Additional Information and Where to Find It**

PSEM intends to file a proxy statement in connection with the merger. Investors and security holders are urged to read the proxy statement when it becomes available because it will contain important information about the transaction. Investors and security holders may obtain free copies of these documents (when they are available) and other documents filed with the SEC at the SEC’s web site at [www.sec.gov](http://www.sec.gov). The Company, PSEM and their directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of PSEM in connection with the merger. Information regarding the special interests of these directors and executive officers in the transaction will be included in the proxy statement described above. Additional information regarding the directors and executive officers of PSEM is also included in PSEM’s proxy statement for its 2014 annual meeting of shareholders, which was filed with the SEC on October 16, 2014. Additional information regarding the directors and executive officers of the Company is also included in the Company’s proxy statement for its 2015 annual meeting of stockholders, which was filed with the SEC on April 16, 2015. These documents are available free of charge at the SEC’s web site at [www.sec.gov](http://www.sec.gov) and as described above.

#### **Item 9.01 Financial Statements and Exhibits.**

##### **(d) Exhibits.**

<b>Exhibit Number</b>	<b>Description</b>
2.1*	Agreement and Plan of Merger, dated as of September 2, 2015, by and among Pericom Semiconductor Corporation, PSI Merger Sub, Inc., and Diodes Incorporated.
10.1**	Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent, dated September 2, 2015, by and among Diodes Incorporated, Diodes International B.V., Diodes Investment Company, Diodes FabTech Inc., Diodes Holdings UK Limited, Diodes Zetex Limited, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, and the other Lenders party thereto.

---

99.1 Press release dated September 3, 2015.

99.2 Conference call script, together with presentation slides.

\* Certain schedules and exhibits omitted pursuant to Item 601(b)(2) of Regulation S-K promulgated by the SEC. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

\*\* Confidential treatment has been requested with respect to the omitted portion of this Exhibit, which portion has been filed separately with the Securities and Exchange Commission.

---

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: September 3, 2015

DIODES INCORPORATED

By /s/ Richard D. White  
RICHARD D. WHITE  
Chief Financial Officer

---

## EXHIBIT INDEX

Exhibit Number	Description
2.1*	Agreement and Plan of Merger, dated as of September 2, 2015, by and among Pericom Semiconductor Corporation, PSI Merger Sub, Inc., and Diodes Incorporated
10.1**	Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent, dated September 2, 2015, by and among Diodes Incorporated, Diodes International B.V., Diodes Investment Company, Diodes FabTech Inc., Diodes Holdings UK Limited, Diodes Zetex Limited, Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer, and the other Lenders party thereto.
99.1	Press release dated September 3, 2015.
99.2	Conference call script, together with presentation slides.

\* Certain schedules and exhibits omitted pursuant to Item 601(b)(2) of Regulation S-K promulgated by the SEC. The Company agrees to furnish supplementally a copy of any omitted schedule or exhibit to the SEC upon request.

\*\* Confidential treatment has been requested with respect to the omitted portion of this Exhibit, which portion has been filed separately with the Securities and Exchange Commission.

**AGREEMENT AND PLAN OF MERGER**  
**BY AND AMONG**  
**DIODES INCORPORATED**  
**PSI MERGER SUB, INC.**  
**AND**  
**PERICOM SEMICONDUCTOR CORPORATION**

**Dated as of September 2, 2015**



---

**TABLE OF CONTENTS**

	<u>Page</u>
<b>ARTICLE I</b> The Merger	6
1.1 The Merger	6
1.2 Closing	6
1.3 Effective Time	6
1.4 Effects of the Merger	7
1.5 Governing Documents	7
1.6 Directors and Officers of the Surviving Corporation	7
<b>ARTICLE II</b> Effect of Merger on Company Securities	7
2.1 Effect on Capital Stock	7
2.2 Payment for Securities; Surrender of Certificates	8
2.3 Dissenters' Rights.	10
2.4 Treatment of Company Equity Awards	11
2.5 Withholding	13
<b>ARTICLE III</b> Representations and Warranties of the Company	14
3.1 Organization, Good Standing and Qualification	14
3.2 Capital Structure	14
3.3 Corporate Authority; Approval and Fairness; No Violations	15
3.4 Government Approvals	16
3.5 Company Reports; Financial Statements	17
3.6 Absence of Certain Changes or Events	18
3.7 No Undisclosed Liabilities	18
3.8 Litigation	18
3.9 Licenses, Permits, Etc.	19

---

3.10	Title to Properties	19
3.11	Intellectual Property	20
3.12	Taxes	20
3.13	Employment Matters	23
3.14	Related Party Transactions	26
3.15	Insurance	26
3.16	Material Contracts	26
3.17	Compliance with Applicable Laws	27
3.18	Foreign Corrupt Practices	27
3.19	Money Laundering Laws	28
3.20	Brokers; Schedule of Fees and Expenses	28
3.21	Business Relationships	28
3.22	OFAC	28
3.23	Additional PRC Representations and Warranties	28
3.24	Environmental Matters	29
3.25	Conflict Minerals	30
3.26	Information Supplied	30
3.27	Opinion of Financial Advisor	30
<b>ARTICLE IV</b>	<b>Representations and Warranties of Parent and Merger Sub</b>	<b>30</b>
4.1	Organization and Good Standing	31
4.2	Corporate Authority and Approval	31
4.3	Non-Contravention	31
4.4	Government Approvals	31
4.5	Litigation	32

---

4.6	Information Supplied	32
4.7	Credit Agreement	32
4.8	Ownership of Company Common Stock	33
4.9	Management Arrangements	33
4.10	WARN Act	33
4.11	Brokers	33
4.12	Operations of Merger Sub	33
<b>ARTICLE V</b>	<b>Covenants of the Parties</b>	<b>34</b>
5.1	Conduct of Business of the Company	34
5.2	Access to Information; Confidentiality	36
5.3	Insurance	37
5.4	Fulfillment of Conditions	37
5.5	Disclosure of Certain Matters	37
5.6	Regulatory and Other Authorizations; Notices and Consents	37
5.7	No Solicitation	39
5.8	Preparation of the Proxy Statement	43
5.9	Company Shareholder Meeting.	44
5.10	Disposition of Company Equity Awards	45
<b>ARTICLE VI</b>	<b>Additional Covenants of Parent</b>	<b>46</b>
6.1	Fulfillment of Conditions	46
6.2	Regulatory and Other Authorizations; Notices and Consents	46
6.3	Directors' and Officers' Indemnification and Insurance	46
6.4	Employee Benefit Matters	48

---

<b>ARTICLE VII</b>	Additional Agreements and Covenants	49
7.1	Confidentiality	49
7.2	Public Announcements	49
<b>ARTICLE VIII</b>	Conditions to Closing	50
8.1	Mutual Conditions Precedent	50
8.2	Company's Conditions Precedent	50
8.3	Parent's Conditions Precedent	51
<b>ARTICLE IX</b>	Termination, Amendment and Waiver	51
9.1	Termination by Mutual Consent	51
9.2	Termination by either Parent or the Company	51
9.3	Termination By Parent	52
9.4	Termination by the Company	52
9.5	Notice of Termination; Effect of Termination	53
9.6	Fees and Expenses Following Termination	53
9.7	Amendment	55
9.8	Extension; Waiver	55
<b>ARTICLE X</b>	Miscellaneous	55
10.1	Non-Survival and Representations and Warranties	55
10.2	Disclosure Schedule References	55
10.3	Notices	56
10.4	Interpretation	57
10.5	Severability	58
10.6	Entire Agreement; Third Party Beneficiaries	58
10.7	Counterparts; Facsimile Execution	58
10.8	Governing Law; Jurisdiction	59
10.9	Specific Performance	59
10.10	Assignment	60

---

## AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of September 2, 2015 (this “*Agreement*”), by and among DIODES INCORPORATED, a corporation incorporated in the State of Delaware (“*Parent*”), PSI Merger Sub, Inc., a corporation incorporated in the State of California (“*Merger Sub*”), and PERICOM SEMICONDUCTOR CORPORATION, a corporation incorporated in the State of California (the “*Company*”). Each of the parties to this Agreement is individually referred to herein as a “*Party*” and collectively as the “*Parties*.” Capitalized terms used herein that are not otherwise defined herein shall have the meanings ascribed to them in Annex A hereto.

### BACKGROUND

#### RECITALS

WHEREAS, the Parties intend to effect a merger (the “*Merger*”) in which Merger Sub will be merged with and into the Company, with the Company surviving the Merger on the terms and subject to the conditions set forth herein;

WHEREAS, each outstanding share of common stock, without par value, of the Company (the “*Company Common Stock*” or “*Company Shares*”) issued and outstanding immediately prior to the Effective Time will be automatically converted into the right to receive the Merger Consideration upon the terms and subject to the conditions set forth in this Agreement and in accordance with the General Corporation Law of the State of California, together with all amendments and additions thereto (“*California Law*”) (other than Company Shares to be cancelled in accordance with Section 2.1(b) and Dissenting Shares);

WHEREAS, the Board of Directors of the Company has unanimously (a) determined that it is in the best interests of the Company and its shareholders, and declared it advisable, to enter into this Agreement with Parent and Merger Sub, (b) approved the execution and delivery of this Agreement, and (c) resolved, subject to the terms and conditions set forth in this Agreement, to recommend the approval of this Agreement by the shareholders of the Company;

WHEREAS, the respective Boards of Directors of Parent and Merger Sub have unanimously (a) determined that it is in the best interests of each such Party and its stockholders or shareholders, and declared it advisable, to enter into this Agreement with the Company, and (b) approved the execution, delivery and performance of this Agreement and the consummation of the Transactions contemplated hereby, including the Merger;

WHEREAS, Parent intends to enter into Voting Agreements with the directors and executive officers of the Company pursuant to which such shareholders, on the terms and subject to the conditions set forth herein, have agreed to vote or cause to be voted all of the Company Shares beneficially owned by such shareholders for the approval of the Merger and this Agreement; and

WHEREAS, the Parties desire to make certain representations, warranties, covenants and agreements in connection with the Merger and the Transactions and also to prescribe certain conditions to the Merger.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, and intending to be legally bound hereby, the Parties agree as follows:

### ARTICLE I

#### The Merger

1.1 The Merger. On the terms and subject to the satisfaction or waiver of the conditions set forth in this Agreement, and in accordance with California Law, at the Effective Time, Merger Sub shall be merged with and into the Company, whereupon the separate corporate existence of Merger Sub will cease, with the Company continuing as the surviving corporation (the Company, as the surviving corporation in the Merger, sometimes being referred to herein as the “*Surviving Corporation*”), such that immediately following the Merger, the Surviving Corporation will be a wholly owned subsidiary of Parent. The Merger shall have the effect provided in this Agreement and as specified in the California Law.

1.2 Closing. Upon the terms and subject to the conditions set forth herein, the closing of the Merger (the “*Closing*”) will take place at 10:00 a.m., California time, as soon as practicable (and, in any event, within two (2) Business Days) after satisfaction or, to the extent permitted hereunder, waiver of all conditions set forth in ARTICLE VIII (other than those conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted hereunder, waiver of all such conditions), unless this Agreement has been terminated pursuant to ARTICLE IX hereof or unless another time or date is agreed to in writing by the Parties hereto. The Closing shall be held at the offices of Sheppard Mullin Richter & Hampton LLP, 379 Lytton Avenue, Palo Alto, California 94301, unless another place is agreed to in writing by the Parties hereto, and the actual date of the Closing is hereinafter referred to as the “*Closing Date*.”

1.3 Effective Time. On the Closing Date, the Parties shall (a) cause an agreement of merger satisfying the applicable requirements of the California Law and otherwise in substantially the form attached hereto as Exhibit A, but subject to any changes as may be required by the Secretary of State of the State of California and agreed to by Parent and the Company (the “*Agreement of Merger*”) to be duly executed by the Company and Merger Sub and filed with the Secretary of State of the State of California as soon as practicable on the Closing Date, together with the officer’s certificate required by the California Law, and (b) make any other filings, recordings or publications required to be made by the Company or Merger Sub under the California Law in connection with the Merger. The Merger shall become effective at such time as the Agreement of Merger is duly filed and accepted by the Secretary of State of the State of California or on such later date and time as shall be agreed to by the Company and Parent and specified in the Agreement of Merger (such date and time being hereinafter referred to as the “*Effective Time*”).

1.4 Effects of the Merger. The Merger shall have the effects set forth herein and in the applicable provisions of the California Law. Without limiting the generality of the foregoing, and subject thereto, from and after the Effective Time, all property, rights, privileges, immunities, powers, franchises, licenses and authority of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, liabilities, obligations, restrictions and duties of each of the Company and Merger Sub shall become the debts, liabilities, obligations, restrictions and duties of the Surviving Corporation.

1.5 Governing Documents. The Company Articles shall, by virtue of the Merger, be amended and restated so as to read in its entirety in the form attached hereto as Exhibit B and, as so amended and restated, shall be the articles of incorporation of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law. The Company Bylaws shall, by virtue of the Merger, be amended and restated to conform to the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, and as such shall be the bylaws of the Surviving Corporation until thereafter changed or amended as provided therein or by applicable Law.

1.6 Directors and Officers of the Surviving Corporation. The Parties shall take all actions necessary so that (a) the directors of Merger Sub at the Effective Time shall, from and after the Effective Time, be the directors of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the Surviving Corporation, and (b) the officers of Merger Sub at the Effective Time shall, from and after the Effective Time, be the officers of the Surviving Corporation until their successors shall have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the Surviving Corporation.

## ARTICLE II

### Effect of Merger on Company Securities

#### 2.1 Effect on Capital Stock.

(a) Merger Consideration. At the Effective Time, by virtue of the Merger and without any action on the part of the Parties or holders of any securities of the Parties, subject to Section 2.1(d), each share of Company Common Stock issued and outstanding immediately prior to the Effective Time (excluding Company Shares to be cancelled in accordance with Section 2.1(b) and any Dissenting Shares) shall be automatically converted into the right to receive \$17.00 in cash, without interest (the "**Merger Consideration**"). From and after the Effective Time, all such Company Shares shall no longer be outstanding and shall automatically be cancelled and shall cease to exist, and each applicable holder of such Company Shares shall cease to have any rights with respect thereto, except the right to receive the Merger Consideration therefor upon the surrender of such Company Shares in accordance with Section 2.2.

---

(b) Cancellation of Company Common Stock. At the Effective Time, all Company Shares owned by the Company, Parent, Merger Sub or by any of their respective direct or indirect wholly owned Subsidiaries shall be cancelled and shall cease to exist, and no consideration shall be delivered in exchange therefor.

(c) Treatment of Merger Sub Common Stock. At the Effective Time, each issued and outstanding share of common stock, without par value per share, of Merger Sub shall be automatically converted into and become one fully paid and nonassessable share of common stock of the Surviving Corporation and shall constitute the only outstanding shares of capital stock of the Surviving Corporation.

(d) Adjustment to Merger Consideration. The Merger Consideration shall be adjusted appropriately, without duplication, to reflect the effect of any stock split, reverse stock split, stock dividend (including any dividend or distribution of securities convertible into Company Common Stock), reorganization, recapitalization, reclassification, combination, exchange of shares or other like change with respect to the shares of Company Common Stock outstanding after the date hereof and prior to the Effective Time so as to provide Parent and the holder of Company Shares the same economic effect as contemplated by this Agreement prior to such event; provided, however, that nothing in this Section 2.1(d) shall be construed to permit the Company or any of its Subsidiaries to take any action with respect to its securities that is prohibited by the terms of this Agreement.

## 2.2 Payment for Securities; Surrender of Certificates

(a) Paying Agent Fund. Prior to the Effective Time, Parent or Merger Sub shall designate a bank or trust company reasonably acceptable to the Company to act as the paying agent in connection with the Merger (the "**Paying Agent**"). The Paying Agent shall also act as the agent for the Company's shareholders for the purpose of receiving and holding their Certificates and Book-Entry Shares and shall obtain no rights or interests in the shares represented thereby. At or prior to the Effective Time, Parent shall deposit, or cause to be deposited, with the Paying Agent cash in immediately available funds in an amount sufficient to pay the aggregate Merger Consideration payable to all holders of Company Common Stock (including Company Common Stock to be issued prior to the Effective Time in accordance with Section 2.4) (such cash amount, the "**Paying Agent Fund**"), in each case, for the sole benefit of the holders of shares of Company Common Stock. In the event the Paying Agent Fund shall be insufficient to pay the aggregate Merger Consideration, Parent shall, or shall cause Merger Sub to, promptly deposit additional funds with the Paying Agent in an amount which is equal to the deficiency in the amount required to make such payment. Parent shall cause the Paying Agent to make, and the Paying Agent shall make, delivery of the Merger Consideration, out of the Paying Agent Fund in accordance with this Agreement.



---

(b) Procedures for Surrender. Promptly after the Effective Time (and in any event, within three (3) Business Days thereafter), Parent shall, and shall cause the Surviving Corporation to, cause the Paying Agent to mail (and make available for collection by hand) to each holder of record of a certificate or certificates which immediately prior to the Effective Time represented outstanding Company Shares (the "**Certificates**") or non-certificated Company Shares represented by book-entry ("**Book-Entry Shares**") and whose Company Shares were converted pursuant to Section 2.1 into the right to receive the Merger Consideration (i) a letter of transmittal, which shall specify that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon delivery of the Certificates (or affidavits of loss in lieu thereof) to the Paying Agent and shall be in such form and have such other provisions as Parent may reasonably specify and (ii) instructions for effecting the surrender of the Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares in exchange for payment of the Merger Consideration payable in respect of such Company Shares pursuant to Section 2.1. Upon surrender of a Certificate (or an affidavit of loss in lieu thereof) or Book-Entry Share for cancellation to the Paying Agent or to such other agent or agents as may be appointed by Parent or the Surviving Corporation, together with such letter of transmittal duly completed and validly executed in accordance with the instructions thereto, and such other documents as may be required pursuant to such instructions, the holder of such Certificate or Book-Entry Share shall be entitled to receive in exchange therefor the applicable Merger Consideration pursuant to the provisions of this ARTICLE II for each Company Share formerly represented by such Certificate or Book-Entry Share. All such amounts shall be mailed (or made available for collection by hand if so elected by the surrendering holder) within five (5) Business Days following the Paying Agent's receipt of such Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share, letter of transmittal and such other documents, and the Certificate (or affidavit of loss in lieu thereof) or Book-Entry Share so surrendered shall be forthwith cancelled. The Paying Agent shall accept such Certificates (or affidavits of loss in lieu thereof) or Book-Entry Shares upon compliance with such reasonable terms and conditions as the Paying Agent may impose to effect an orderly exchange thereof in accordance with normal exchange practices. If payment of the Merger Consideration is to be made to a Person other than the Person in whose name the surrendered Certificate is registered, it shall be a condition precedent to payment that (A) the Certificate so surrendered shall be properly endorsed or shall be otherwise in proper form for transfer and (B) the Person requesting such payment shall have paid any transfer and other similar Taxes required by reason of the payment of the Merger Consideration to a Person other than the registered holder of the Certificate surrendered or shall have established to the satisfaction of the Paying Agent that such Tax either has been paid or is not payable. Any other transfer or similar Taxes incurred in connection with the transactions contemplated by this Agreement shall be paid by Parent. Payment of the applicable Merger Consideration with respect to Book-Entry Shares shall only be made to the Person in whose name such Book-Entry Shares are registered. Until surrendered as contemplated by this Section 2.2, each Certificate and Book-Entry Share shall be deemed at any time after the Effective Time to represent only the right to receive the applicable Merger Consideration as contemplated by this ARTICLE II, without interest thereon.

(c) Transfer Books; No Further Ownership Rights in Company Shares. At the Effective Time, the stock transfer books of the Company shall be closed and thereafter there shall be no further registrations of transfers of Company Shares on the records of the Company, other than registrations of transfers to reflect, in accordance with customary settlement

---

procedures, trades effected prior to the Effective Time. From and after the Effective Time, the holders of Certificates outstanding immediately prior to the Effective Time shall cease to have any rights with respect to such Company Shares except as otherwise provided for herein or by applicable Law. If, after the Effective Time, Certificates or Book-Entry Shares are presented to the Surviving Corporation for any reason, they shall be cancelled and exchanged as provided in this Agreement.

(d) Termination of Paying Agent Fund; No Liability. At any time following twelve (12) months after the Effective Time, Parent shall be entitled to require the Paying Agent to deliver to it any funds (including any interest received with respect thereto) remaining in the Paying Agent Fund that have not been disbursed, or for which disbursement is pending subject only to the Paying Agent's routine administrative procedures, to holders of Certificates or Book-Entry Shares, and thereafter such holders shall be entitled to look only to the Surviving Corporation and Parent (subject to abandoned property, escheat or other similar Laws) as general creditors thereof with respect to the applicable Merger Consideration, payable upon due surrender of their Certificates or Book-Entry Shares and compliance with the procedures in Section 2.2(b), without any interest thereon. Notwithstanding the foregoing, none of the Surviving Corporation, Parent or the Paying Agent shall be liable to any holder of a Certificate or Book-Entry Share for any Merger Consideration or other amounts delivered to a public official pursuant to any applicable abandoned property, escheat or similar Law.

(e) Lost, Stolen or Destroyed Certificates. In the event that any Certificates shall have been lost, stolen or destroyed, the Paying Agent shall issue in exchange for such lost, stolen or destroyed Certificates, upon the making of an affidavit of that fact by the holder thereof and, if required by Parent or the Paying Agent, the posting by such holder of a bond in such amount as Parent may determine is reasonably necessary as indemnity against any claim that may be made against it or the Surviving Corporation with respect to any such Certificates, the applicable Merger Consideration payable in respect thereof pursuant to Section 2.1 hereof.

### 2.3 Dissenters' Rights.

(a) Notwithstanding anything in this Agreement to the contrary, Company Shares, if any, as to which the holder thereof shall have (i) properly demanded that the Company purchase such Company Shares for fair market value in accordance with, and otherwise complied with, the provisions of Chapter 13 of the California Law ("**Chapter 13**") and (ii) not effectively withdrawn or lost such holder's rights to demand purchase for such Company Shares for fair market value pursuant to Chapter 13 (each, a "**Dissenting Share**"), shall not be converted into the right to receive the Merger Consideration payable pursuant to Section 2.1, but instead at the Effective Time shall become entitled only to payment of the fair value of such Company Shares determined in accordance with Chapter 13 (it being understood and acknowledged that at the Effective Time, such Dissenting Shares shall no longer be outstanding, shall automatically be cancelled and shall cease to exist, and such holder shall cease to have any rights with respect thereto other than the right to receive the fair value of such Dissenting Shares as determined in accordance with Chapter 13); *provided, however*, that if any such holder shall fail to perfect or otherwise shall waive, withdraw or lose the right to payment of the fair value of such Dissenting Shares under Chapter 13, then the right of such holder to be paid the fair value of such holder's Dissenting Shares shall cease and such Dissenting Shares shall be deemed to have been converted as of the Effective Time into, and to have become exchangeable solely for the right to receive, without interest or duplication, the Merger Consideration.

---

(b) The Company shall give prompt notice to Parent of any demands received by the Company for the purchase of any Company Shares pursuant to Chapter 13, of any withdrawals of such demands and of any other instruments served and received by the Company under Chapter 13, and Parent shall have the opportunity to participate in all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), make any payment with respect to, or settle or compromise or offer to settle or compromise, any such demand, or agree to do any of the foregoing.

#### 2.4 Treatment of Company Equity Awards.

(a) All options to acquire shares of Company Common Stock (the “*Company Options*”) and other equity awards (collectively, “*Company Equity Awards*”) that were granted under the Company’s stock plans, including the Company’s Amended and Restated 2001 Stock Incentive Plan (as amended), the Company’s Amended and Restated 2004 Stock Incentive Plan, the Company’s 2014 Stock Award and Incentive Compensation Plan, or any other equity plan, agreement or arrangement other than the Company ESPP (as defined below) (collectively, the “*Company Stock Plans*”) prior to the Effective Time, which are outstanding as of the Capitalization Date, are set forth in Section 2.4(a) of the Company Disclosure Schedule, together with the holder’s name, the date of grant, the type of award, the number of Company Shares originally granted and number of outstanding shares subject to the Company Equity Award, the vesting schedule, any expiration date, and any per Company Share exercise price or purchase price.

(b) Prior to the Effective Time, the Company Board (or, if appropriate, any committee thereof) will adopt resolutions and take all other actions necessary and appropriate to provide that, immediately prior to the Effective Time, (i) each unexpired and unexercised Company Option which is vested as of the Effective Time (the “*Vested Options*”) will be cancelled and, in exchange therefor, each former holder of any such cancelled Vested Option will only be entitled to receive, in consideration of the cancellation of such Vested Option and in full settlement therefor, a payment in cash of an amount equal to the product of (A) the total number of unexercised Company Shares subject to such Vested Option as of the time of cancellation of the Company Option (the “*Vested Unexercised Shares*”), and (B) the excess, if any, of the Merger Consideration over the exercise price per Vested Unexercised Share (such amounts payable hereunder being referred to as the “*Option Payments*”); and (ii) each unexpired and unexercised Company Option which is not vested as of the Effective Time (the “*Unvested Options*”) and which is held by an individual who is rendering continuous service to the Company or its Subsidiaries through the Effective Time and who is eligible to be included on a registration statement filed by Parent on Form S-8 will be canceled and replaced by Parent and become an award of restricted stock units covering shares of Parent Stock (“*Parent RSUs*”) issued under the Parent Stock Plan, on generally the same terms and conditions (including the applicable vesting requirements and the terms and conditions set forth on Section 2.4(b) of the

---

Company Disclosure Schedule) as applied to each such Unvested Option immediately prior to the Effective Time, except that each such Parent RSU award shall cover that whole number of shares of Parent Stock (rounded down) equal to the product of (A) the total number of unexercised Company Shares subject to such Unvested Option as of the time of cancellation of the Unvested Option multiplied by (B) the excess, if any, of the Merger Consideration over the exercise price per unexercised share subject to such Unvested Option and then divided by (C) the VWAP of Parent Stock and (iii) each Unvested Option held by an individual who is rendering continuous service to the Company or its Subsidiaries through the Effective Time but who is not eligible to be included on a registration statement filed by Parent on Form S-8 will vest as of immediately prior to the Effective Time and be treated as a Vested Option. Upon the terms set forth herein, the new award issued in exchange for the Unvested Options shall be made pursuant to Parent's form of stock option or restricted stock unit agreement as applicable. From and after the Effective Time, any such cancelled Company Option will no longer be exercisable by the former holder thereof.

(c) Prior to the Effective Time, the Company Board (or, if appropriate, any committee thereof) will adopt resolutions and take all other actions necessary and appropriate to provide that, immediately prior to the Effective Time, (i) each outstanding award of restricted stock units or performance share units granted pursuant to any Company Stock Plan which is vested as of the Effective Time (the "**Vested Company RSUs**"), will be cancelled in exchange for the right to receive a payment equal to the Merger Consideration and the amount of any declared but unpaid dividends with respect to such Vested Company RSU; *provided, however*, that, for the avoidance of doubt, no holder of a Vested Company RSU shall be entitled to any payment whatsoever in respect of the August 2015 Dividend (such amounts payable hereunder being referred to as the "**Vested RSU Payments**"), (ii) each outstanding award of restricted stock units or performance share units granted pursuant to any Company Stock Plan which is not vested prior to the Effective Time (the "**Unvested Company RSUs**") and, together with the Vested Company RSUs, the "**Company RSUs**") that is held by an individual who is rendering continuous service to the Company or its Subsidiaries through the Effective Time and who is eligible to be included on a registration statement filed by Parent on Form S-8 will be canceled and replaced by Parent and become a Parent RSU issued under the Parent Stock Plan, on generally the same terms and conditions (including applicable vesting requirements (other than performance-vesting requirements which will be deemed satisfied at "maximum" achievement) and deferral provisions) as applied to each such Unvested Company RSU immediately prior to the Effective Time, with respect to the number of shares of Parent Stock, rounded down to the nearest whole share of Parent Stock, that is equal to the product of the number of shares of Company Common Stock that were subject to such Unvested Company RSU immediately prior to the Effective Time multiplied by the quotient obtained by dividing (x) the Merger Consideration by (y) the VWAP of Parent Stock; and (iii) each Unvested Company RSU held by an individual who is rendering continuous service to the Company or its Subsidiaries through the Effective Time but who is not eligible to be included on a registration statement filed by Parent on Form S-8 will vest (treating for this purposes any performance-based vesting condition to which such Company RSU is subject as having been attained at "maximum" level) and be cancelled in exchange for the right to receive a payment equal to the Merger Consideration (such amounts payable hereunder, together with the Vested RSU Payments, the "**RSU Payments**"). Upon the terms set forth herein, the new award issued in exchange for the Unvested Company RSUs shall be made pursuant to Parent's form of restricted stock unit grant agreement.

---

(d) Parent shall, to the extent legally required, file, no later than the Closing Date, a registration statement on Form S-8 (or any successor or other appropriate form) under the Securities Act to register shares of Parent Stock issuable pursuant to Section 2.4(c).

(e) Any Option Payment or RSU Payment to which a current or former employee of the Company or any of its Subsidiaries becomes entitled pursuant Section 2.4(b) or Section 2.4(c) shall be made through the Surviving Corporation's payroll on the next regularly scheduled payroll after the Effective Time, in the case of the Vested RSU Payments, and on the next regularly scheduled payroll after each vesting event, in the case of the Unvested RSU Payments.

(f) As of the Effective Time, all Company Stock Plans will be terminated, and no further Company Options, Company RSUs or other rights with respect to Company Shares will be granted thereunder.

(g) Prior to the Effective Time, the Company's 2010 Employee Stock Purchase Plan, as amended (the "*Company ESPP*") shall be terminated and no further options or other rights with respect to Company Shares will be granted thereunder. The rights of participants in the Company ESPP with respect to any offering period then underway under such Company ESPP shall be determined by treating the last Business Day prior to, or if more administratively advisable, the last payroll date of the Company immediately prior to, the Effective Time or such earlier date as the Company ESPP administrator may determine as permitted under the terms of the Company ESPP (the "*Final Exercise Date*"), as the last day of such offering period and by making such other pro-rata adjustments as may be necessary to reflect the shortened offering period but otherwise treating such shortened offering period as a fully effective and completed offering period for all purposes under the Company ESPP. On the Final Exercise Date, the funds credited as of such date under the Company ESPP within the associated accumulated payroll withholding account for each participant under the Company ESPP shall be used to purchase Company Shares in accordance with the terms of the Company ESPP, and each Company Share purchased thereunder immediately prior to the Effective Time shall be cancelled at the Effective Time and converted into the right to receive the Merger Consideration in accordance with Section 2.1.

(h) The Company shall take all actions necessary to effect the provisions set forth in this Section 2.4, including without limitation any necessary amendments to any Contracts or other instruments and the delivery of all required notice, as applicable.

**2.5 Withholding.** Each of Parent and the Surviving Corporation shall be entitled to deduct and withhold, or cause the Paying Agent to deduct and withhold, from the consideration otherwise payable pursuant to this Agreement to any holder of Shares and from any payments under Section 2.4 such amounts as Parent, Surviving Corporation or the Paying Agent is required to deduct and withhold with respect to the making of such payment under the Code, or any other

applicable state, local or foreign Tax Law. Except for U.S. federal backup withholding and regular payroll withholding associated with payments under Section 2.4, before making any such deduction or withholding, Parent or the Surviving Corporation, as applicable, shall give the Company notice of the intention to make such deduction or withholding, and such notice, which shall include the authority, basis and method of calculation for the proposed deduction or withholding, shall be given at least a commercially reasonable period of time before such deduction or withholding is required, in order for the Company to obtain reduction of or relief from such deduction or withholding. To the extent that amounts are so withheld and timely remitted to the appropriate Governmental Entity, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

### ARTICLE III

#### Representations and Warranties of the Company

Except (x) as may be disclosed in the Company Reports filed or furnished with the SEC prior to August 31, 2015 (including any schedules or exhibits thereto, but excluding, in each case, any nonspecific disclosures set forth in any "Risk Factor" or "Forward Looking Statements" sections and any other similar disclosures contained therein to the extent they are general, nonspecific and forward-looking statements) or (y) as may be disclosed in the corresponding sections or subsections of the disclosure schedule delivered to Parent by the Company on the date of the Agreement (the "**Company Disclosure Schedule**"), the Company hereby represents and warrants to Parent and Merger Sub that:

3.1 Organization, Good Standing and Qualification. The Company is duly incorporated, validly existing and in good standing under the Laws of the State of California. Each of the Company's Subsidiaries is an independent legal Person duly organized, validly existing and in good standing under the Laws of the place of its establishment or incorporation. Each of the Company and its Subsidiaries has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted under the Laws of the place of its establishment or incorporation and is qualified to do business and in good standing as a foreign corporation or other legal entity under the Laws of the places where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except, in the case of any of the foregoing where the failure to be so qualified or in good standing, or to have such power or authority, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

#### 3.2 Capital Structure.

(a) As of the date of this Agreement, the authorized share capital of the Company consists of 60,000,000 authorized shares of Company Common Stock and 14,225,000 shares of preferred stock, without par value ("**Preferred Stock**"), of which, as of the close of business on August 28, 2015 (the "**Capitalization Date**") 21,856,370 shares of Company Common Stock and no shares of Preferred Stock are issued and outstanding. All of the issued

---

and outstanding shares of Company Common Stock have been duly authorized and are validly issued, fully paid and nonassessable. As of the close of business on the Capitalization Date, there are 1,248,543 shares of Company Common Stock reserved for issuance under outstanding Company Options. Each of the outstanding shares of share capital or other securities of each of the Company's directly or indirectly wholly-owned Subsidiaries, which are set forth in Section 3.2(a) of the Company Disclosure Schedule, has been duly authorized, and validly issued, and is fully paid and nonassessable and owned by the Company or by a wholly-owned Subsidiary, free and clear of any Liens (other than Permitted Liens). Except as set forth in Section 3.2(a) of the Company Disclosure Schedule, there are no preemptive or other outstanding rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company or any of its Subsidiaries to issue or sell any shares of share capital or other securities of the Company or any of its Subsidiaries or any securities or obligations convertible or exchangeable into or exercisable for, or giving any Person a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries, and no securities or obligations evidencing such rights are authorized, issued or outstanding. The Company does not have outstanding any bonds, debentures, notes or other obligations the holders of which have the right to vote (or convertible into or exercisable for securities having the right to vote) with the shareholders of the Company on any matter.

(b) Each Company Option or other award issued under a Company Stock Plan (i) was granted in compliance with all applicable Laws in all material respects and all of the terms and conditions of the applicable Company Stock Plan, (ii) has an exercise price per Company Share equal to or greater than the fair market value of a Company Share on the date of grant, and (iii) has a grant date identical to the date on which the Company Board or compensation committee actually awarded such Company Option or if later, the effective date of such grant deemed by the Company Board or the Company's compensation committee. Each share of Company Common Stock issued under the Company ESPP was issued in compliance with all applicable Laws in all material respects and all of the terms and conditions of the Company ESPP.

(c) Except for the issuance of Company Shares upon the settlement of Company Equity Awards outstanding as of the Capitalization Date, no shares of Company Common Stock or any other equity interests (including instruments convertible into Company Common Stock or other equity interests) have been issued or authorized for issuance on or after the close of business on the Capitalization Date and prior to the date of this Agreement.

### 3.3 Corporate Authority: Approval and Fairness: No Violations.

(a) The Company has full corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Merger and the Transactions contemplated hereby in accordance with the terms hereof, subject only to approval and authorization of this Agreement by the affirmative vote of the holders of at least a majority of the outstanding shares of Company Common Stock (the "*Company Shareholder Approval*"). This Agreement has been duly executed and delivered by the Company and, assuming due authorization, execution and delivery

---

hereof by the other Parties, constitutes a valid and binding agreement of the Company enforceable against the Company in accordance with its terms, except that (i) such enforcement may be subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equity principles and (ii) the remedy of specific performance and injunctive and other forms of equitable relief may be subject to equitable defenses and to the discretion of the court before which any proceeding therefor may be brought (collectively, the "**Enforceability Exceptions**").

(b) The Company Board has (i) determined that the Merger, on the terms and subject to the conditions set forth herein, is fair to, and in the best interests of, the Company and its shareholders, (ii) approved and declared advisable this Agreement, the Merger and the other Transactions contemplated hereby and (iii) upon the terms and subject to the conditions of this Agreement, unanimously resolved to recommend that the Company's shareholders approve this Agreement (the "**Company Board Recommendation**"). The Company Board has directed that this Agreement be submitted to the holders of Company Shares for their approval.

(c) The execution, delivery and performance of this Agreement by the Company do not, and the consummation by the Company of the Merger and the other Transactions contemplated hereby will not, constitute or result in (i) a breach or violation of, or a default under, any provision (x) of the Company Articles or Company Bylaws or (y) of the similar organizational documents of any of the Company's Subsidiaries, (ii) a breach or violation of, assuming (solely with respect to performance of this Agreement and consummation of the Merger and the other Transactions contemplated hereby) that the matters referred to in Section 3.4 are complied with and the Company Shareholder Approval is obtained, any Law to which the Company or any of its Subsidiaries is subject, (iii) a default under any of the terms, conditions or provisions of any Contract to which the Company or any of its Subsidiaries is a party, or an acceleration of the Company's or, if applicable, any of its Subsidiaries', obligations under any such Contract or require any Consent under any such Contract, or (iv) the creation of any Lien (other than a Permitted Lien) on any properties or assets of the Company or any of its Subsidiaries, except, in the case of clause (ii), clause (iii) or clause (iv) above, for any such breach, violation, default, creation or acceleration that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

**3.4 Government Approvals.** Except for (i) compliance with the applicable requirements of the Securities Act or the Exchange Act or the rules and regulations promulgated thereunder (including the filing of the Proxy Statement (including any amendment or supplement thereto) to be sent to the Company's shareholders in connection with the Merger and the other Transactions) or any other applicable U.S. state or federal securities, takeover or "blue sky" Laws, (ii) compliance with any applicable rules of NASDAQ, (iii) the filing of the Agreement of Merger with the Secretary of State of the State of California pursuant to the California Law and related documentation, (iv) if applicable, any required Consent or approval of, or filing with any applicable Governmental Antitrust Entity, and (v) all required filings with and Consents required under the HSR Act, no Consent or approval of, or filing, license, Permit or authorization, declaration or registration with, any Governmental Entity necessary for the execution and delivery of this Agreement by the Company, the performance by the Company of its obligations hereunder and the consummation by the Company of the Transactions, except for those that the



---

failure to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company or materially delay or impede the Closing. The Company has no secured creditors whose approval of the Merger is required under the Laws of the State of California.

### 3.5 Company Reports: Financial Statements.

(a) The Company has filed or furnished, as applicable, on a timely basis, all forms, statements, certifications, reports and documents required to be filed or furnished by it with the SEC pursuant to the Exchange Act or the Securities Act since June 30, 2014 (the “*Applicable Date*” and the forms, statements, reports and documents filed or furnished since the Applicable Date and those filed or furnished subsequent to the date of the Agreement, including any amendments or supplements thereto, the “*Company Reports*”). No Subsidiary of the Company is required to file or furnish any periodic reports with the SEC. Each of the Company Reports, at the time of its filing or being furnished complied or, if not yet filed or furnished, will comply when filed or furnished, in all material respects with the applicable requirements of the Securities Act, the Exchange Act, applicable accounting standards and the Sarbanes-Oxley Act of 2002 (as amended and including the rules and regulations promulgated thereunder), and any rules and regulations promulgated thereunder applicable to the Company Reports. As of their respective dates (or, if amended prior to the date of the Agreement, as of the date of such amendment), the Company Reports did not, and any Company Reports filed with or furnished to the SEC subsequent to the date of the Agreement will not, contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading, except to the extent corrected by a subsequently filed Company Report prior to the date hereof.

(b) The Company maintains internal control over financial reporting (as defined in Rule 13a-15 or 15d-15, as applicable, under the Exchange Act) that are designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with U.S. GAAP and includes policies and procedures that (i) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect the transactions and dispositions of the assets of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. GAAP, and that receipts and expenditures of the Company are being made in accordance with authorizations of management and directors of the Company, and (iii) 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 its financial statements.

(c) Each of the consolidated balance sheets included in or incorporated by reference into the Company Reports (including the related notes and schedules) fairly presents, or, in the case of Company Reports filed after the date of the Agreement, will fairly present, in all material respects, the consolidated financial position of the Company and its consolidated Subsidiaries as of its date, and each of the consolidated statements of income, changes in shareholders’ equity and cash flows included in or incorporated by reference into the Company Reports (including any related notes and schedules) fairly presents, or in the case of Company

---

Reports filed after the date of the Agreement, will fairly present, in all material respects, the results of operations, changes in shareholders' equity and cash flows, as the case may be, of the Company and its consolidated Subsidiaries for the periods set forth therein (subject, in the case of unaudited interim statements, to normal year-end audit adjustments and the exclusion of certain notes in accordance with the rules of the SEC relating to unaudited financial statements), in each case in accordance with U.S. GAAP, Regulation S-X and the rules and standards of the Public Company Accounting Oversight Board except as may be noted therein.

(d) The Company has implemented disclosure controls and procedures (as defined in Rule 13a-15(e) of the Exchange Act) that are reasonably designed to ensure that material information relating to the Company, including its Subsidiaries, required to be included in reports filed under the Exchange Act is made known to the chief executive officer and chief financial officer of the Company or other Persons performing similar functions by others within those entities. Neither the Company nor, to the Company's Knowledge, the Company's independent registered public accounting firm has identified or been made aware of "significant deficiencies" or "material weaknesses" (as defined by the Public Company Account Oversight Board) in the design or operation of the Company's internal controls and procedures which are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial data, in each case which has not been subsequently remediated. To the Company's Knowledge, there is no fraud, whether or not material, that involves the Company's management or other employees who have a significant role in the internal control over financial reporting utilized by the Company and its Subsidiaries.

3.6 Absence of Certain Changes or Events. Except as disclosed in the Company Reports, from the Company Balance Sheet Date to the date of this Agreement, the Company and its Subsidiaries have conducted their respective businesses only in the ordinary course (except for the execution and performance of this Agreement and the discussions, negotiations and transactions related thereto) and during such period there has not been any event, occurrence, development or state of circumstances or facts that has had or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

3.7 No Undisclosed Liabilities. Neither the Company nor any of its Subsidiaries has any material obligations or liabilities of a type (matured or unmatured, fixed or contingent, including any obligations to issue capital stock or other securities of the Company) required to be reflected on the face of a consolidated balance sheet of the Company prepared in accordance with U.S. GAAP due after the date of the Agreement, other than (a) those set forth or adequately provided for in the Company Balance Sheet, (b) those incurred in the ordinary course of business since the Company Balance Sheet date, (c) those that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company and (d) those incurred in connection with or arising as a result of the negotiation or execution of this Agreement or consummation of the Transactions.

3.8 Litigation. To the Knowledge of the Company, as of the date of the Agreement, there is no private or governmental action, suit, inquiry, notice of violation, claim, arbitration, audit, proceeding (including any partial proceeding such as a deposition) or investigation ("**Action**") pending or threatened in writing against the Company, any of its officers or directors

---

(in their capacities as such), any of its Subsidiaries or any of their properties, before or by any Governmental Entity which (a) challenges the legality, validity or enforceability of this Agreement or (b) would, if there were an unfavorable decision, have or reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect on the Company. To the Knowledge of the Company, as of the date of the Agreement, there is no Judgment imposed upon the Company, any of its officers or directors

(in their capacities as such), any of its Subsidiaries or any of their respective properties, that would prevent, enjoin, alter or materially delay any of the Transactions, or that would reasonably be expected to have a Material Adverse Effect on the Company. To the Knowledge of the Company, as of the date of the Agreement, neither the Company, any of its Subsidiaries nor any director or officer thereof (in his or her capacity as such), is or has been the subject of any Action involving a claim or violation of or liability under the securities Laws of any Governmental Entity or a claim of breach of fiduciary duty.

3.9 Licenses, Permits, Etc. The Company and its Subsidiaries possess or will possess prior to the Closing all Company Material Permits, and all such Company Material Permits are in full force and effect. True, complete and correct copies of the Company Material Permits issued to the Company and its Subsidiaries have previously been delivered to, or made available to, Parent. Unless otherwise stipulated herein or disclosed in the Company Reports, the Company, its Subsidiaries and each of their respective officers, directors, employees, representatives and agents (in each case, in their capacity as such and to the extent required to comply with the terms of such Company Material Permits) have complied with all terms of such Company Material Permits except where instances of such noncompliance have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries is in default under any of such Company Material Permits and no event has occurred and no condition exists which, with the giving of notice or the passage of time, or both, would constitute a default thereunder, except, in each case, for any such default that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. Neither the execution and delivery of this Agreement, the Transaction Documents or any of the other documents contemplated hereby or thereby nor the consummation of the Transactions or compliance by the Company and its Subsidiaries with any of the provisions hereof or thereof will result in any suspension, revocation, impairment, forfeiture or nonrenewal of any Company Material Permit applicable to the business of the Company and its Subsidiaries.

3.10 Title to Properties.

(a) Real Property. The Company has made available to Parent (i) an accurate and complete list of all real properties with respect to which the Company directly or indirectly holds a valid leasehold interest as well as any other real estate that is in the possession of or leased by the Company and its Subsidiaries (collectively, the “**Real Property**”), and (ii) copies of all leases under which any such Real Property is possessed (the “**Real Estate Leases**”). Neither the Company nor any of its Subsidiaries is in default under any of the Real Estate Leases, except where such defaults have not had and would not be reasonably expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, and to the Knowledge of the Company, there is no default by any of the lessors thereunder. The Company or the applicable Subsidiary of the Company has good and marketable fee simple title to all of the Real Property owned by the Company or such Subsidiary of the Company, in each case free and clear of all Liens (other than Permitted Liens).

---

(b) **Tangible Personal Property.** The Company and its Subsidiaries are in possession of and have good title to, or have valid leasehold interests in or valid contractual rights to use all material tangible personal property used in the conduct of their business, including the material tangible personal property reflected in the Company Financial Statements and material tangible personal property acquired since the Company Balance Sheet Date (collectively, the “**Tangible Personal Property**”). All Tangible Personal Property is free and clear of all Liens, other than Permitted Liens, and is in a condition materially adequate and suitable for the purposes for which it is presently being used, subject to reasonable ordinary wear and tear except, in each case, which, individually or in the aggregate, has not resulted and would not reasonably be expected to result in a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has granted any lease, sublease, tenancy or license of any portion of the Tangible Personal Property for which the annual rental payments exceed \$100,000. For clarity and notwithstanding the foregoing, no representations or warranties with respect to Intellectual Property Rights are made under this Section 3.10(b).

3.11 **Intellectual Property.** To the Knowledge of the Company, the Company and its Subsidiaries collectively own or are validly licensing or otherwise have the right to use any patents, trademarks, trade names, service marks, domain names, copyrights, Trade Secrets, and computer software programs, which are material to the conduct of their business as currently conducted, taken as a whole (the “**Intellectual Property Rights**”). No claims are pending or, to the Knowledge of the Company, threatened, in each case against the Company or any of its Subsidiaries, that the Company or any of its Subsidiaries is infringing or otherwise misappropriating the rights of any third party with regard to any Intellectual Property Right. To the Knowledge of the Company, no third party is infringing the rights of the Company or any of its Subsidiaries with respect to any Intellectual Property Right owned by the Company or its Subsidiary in a manner that materially adversely affects the conduct of the business currently being conducted by the Company and its Subsidiaries taken as a whole.

3.12 **Taxes.**

(a) Except as would not have, individually or in the aggregate, a Material Adverse Effect on the Company:

(1) Each of the Company and its Subsidiaries has timely filed, or has had timely filed on its behalf (taking into account, in each case, any valid extensions), all Tax Returns required to be filed by or with respect to it, and all such Tax Returns were true, complete and accurate in all material respects. Other than in the ordinary course of business, neither the Company nor any of its Subsidiaries has requested any extension of time within which to file any material Tax Return (other than automatic extensions), which Tax Return has not since been filed.

---

(2) Neither the Company nor any of its Subsidiaries has engaged in a trade or business, had a permanent establishment (within the meaning of an applicable Tax treaty or convention between its country of formation and any other country) or otherwise been subject to net income taxation in any country other than the country of its formation. No claim has been made in writing in the past five (5) years by a Governmental Entity in a jurisdiction where the Company or any of its Subsidiaries does not file a Tax Return that the Company or such Subsidiary is or may be subject to Taxation by that jurisdiction.

(3) All Taxes of the Company and each of its Subsidiaries due and payable (whether or not shown on any Tax Return) have been timely paid except for those Taxes that are being contested in good faith by appropriate proceedings. Since the Company Balance Sheet Date, the Company and its Subsidiaries have not incurred any material liability for Taxes outside the ordinary course of business, other than in connection with the Transactions.

(4) No deficiencies for any amount of Taxes have been proposed or assessed in writing against any of the Company and its Subsidiaries by any Governmental Entity, except for deficiencies being contested in good faith by appropriate proceedings. Neither the Company nor any of its Subsidiaries (A) is the subject of any currently ongoing Tax audit or other proceeding with respect to Taxes, nor, to the Knowledge of the Company, is any such audit or other proceeding threatened, or (B) has waived any statute of limitations in respect of any Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency, which waiver or extension is currently in effect.

(5) The Company and its Subsidiaries have withheld, and to the extent required by Law, paid to the appropriate Governmental Entity all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, shareholder or other third party.

(6) Neither the Company nor any of its Subsidiaries has any liability under any written Tax indemnity, Tax sharing or similar agreement (other than customary provisions for Taxes contained in credit, lease or other commercial agreements the primary purposes of which are unrelated to Taxes).

(7) Neither the Company nor any of its Subsidiaries has (A) been a member of an affiliated group (within the meaning of Section 1504 of the Code) or an affiliated, combined, consolidated, unitary, or similar group for state Tax purposes, other than the group of which the Company is the common parent or (B) any liability for the Taxes of another Person (other than the Company or any of its Subsidiaries) under Treasury Regulation §1.1502-6 (or any analogous provision of state, local or foreign Law), as a transferee or successor or otherwise by operation of Law.

---

(8) Neither the Company nor any of its Subsidiaries is required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) any change in method of accounting under Section 481(a) of the Code (or any analogous provision of state, local, or foreign Law) requested or filed prior to the Closing Date, (ii) an installment sale prior to the Closing Date, (iii) any election under Section 108(i) of the Code made prior to the Closing Date, or (iv) any closing agreement pursuant to Section 7121 of the Code entered into prior to the Closing Date.

(b) No power of attorney currently in force has been filed by the Company or any of its Subsidiaries with a Governmental Entity concerning any material Tax Return.

(c) Since January 1, 2011, neither the Company nor any of its Subsidiaries has applied for or has obtained a private letter ruling from the Internal Revenue Service (or a comparable Tax ruling from any other Governmental Entity) which ruling would have a material effect on the Tax liability of the Company or any of its Subsidiaries for any Tax period after the Company Balance Sheet Date.

(d) At no time during the two (2)-year period ending on the date hereof was the Company or any its Subsidiaries a “distributing corporation” or “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code in any distribution intended to qualify under Section 355 of the Code.

(e) There is no contract, plan or arrangement (written or otherwise) covering any current or former employee or independent contractor of the Company or any of its Subsidiaries that, individually or in the aggregate, could give rise to the payment of any amount that will not be deductible by the Company or any of its Subsidiaries under Sections 404 or 162(m) of the Code.

(f) All Company Benefit Plans which constitute a “non-qualified deferred compensation plan” within the meaning of Section 409A of the Code have at all times (i) complied with a reasonable, good faith interpretation of the documentation and form requirements of Code Section 409A (and applicable Treasury Regulations and Internal Revenue Service guidance promulgated thereunder) and (ii) have been operated in compliance with Code Section 409A (and applicable Treasury Regulations and Internal Revenue Service guidance promulgated thereunder) in all material respects such that no Taxes, interest or penalties have been or are reasonably expected to be imposed under Code Section 409A with respect to such Company Benefit Plans. Neither the Company nor any of its Affiliates has any indemnity or gross-up obligation to any Person for any Taxes or penalties or interest imposed under Section 409A of the Code. Any and all “stock rights” (within the meaning of Treasury Regulation Section 1.409A-1(b)(5)(i)) granted or awarded by the Company or any of its Affiliates to their respective service providers have been issued with exercise prices of not less than fair market value on the respective grant dates for purposes of Section 409A of the Code (and the guidance issued thereunder) and, except as provided by this Agreement (including Section 2.4(b) of the Company Disclosure Schedule), none of the stock rights has any feature for the deferral of compensation other than the deferral of recognition of income until the earlier of exercise or disposition of such stock right, and all requirements have been met in connection with all such issuances or any post-grant amendments or modifications.

---

(g) The Company is not, nor has been, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code during the last five years.

(h) No Subsidiary organized in a jurisdiction outside the United States is a “surrogate foreign corporation” within the meaning of Section 7874(a)(2)(B) of the Code or is treated as a U.S. corporation under Section 7874(b) of the Code.

(i) In the five (5)-year period ending on the date hereof, neither the Company nor any of its Subsidiaries has engaged in any “listed transaction” within the meaning of Treasury Regulation Section 1.6011-4(b)(2).

### 3.13 Employment Matters.

#### (a) Employee Benefit Matters.

(1) Neither the Company nor any ERISA Affiliate has notified employees of any plan or made any commitment to establish any new Company Benefit Plan, to modify any Company Benefit Plan (except to the extent required by Law or to conform any such Company Benefit Plan to the requirements of any applicable Law), or to adopt or enter into any Company Benefit Plan.

(2) With respect to each material Company Benefit Plan, Company has made available to Parent complete and accurate copies of (i) such Company Benefit Plan (or a written summary of any unwritten plan) together with all amendments, (ii) in the case of any plan for which Forms 5500 are required to be filed, the most recent annual report (Form 5500) with schedules attached, (iii) in the case of any plan that is intended to be qualified under Section 401(a) of the Code, the most recent determination, opinion, notification or advisory letter from the IRS, (iv) each trust agreement and group annuity contract relating to any Company Employee Plan, (v) the most recent summary plan descriptions for each Company Benefit Plan for which a summary plan description is required, (vi) all material correspondence to or from any Governmental Entity relating to legal compliance issues with any Company Benefit Plan within the past two (2) years, and (vii) the most recent financial statements annual actuarial valuations, if any, for each Company Benefit Plan.

(3) Except as would not reasonably expected to have a Material Adverse Effect on the Company: (i) each Company Benefit Plan has been established, maintained and administered in accordance with all applicable Legal Requirements, including ERISA and the Code, and in accordance with its terms, and (ii) each of the Company and any of its Subsidiaries and their respective ERISA Affiliates have met their obligations with respect to each Company Benefit Plan and have timely made (or timely will make) all required contributions thereto.

---

(4) Each Company Benefit Plan that is intended to be qualified under Section 401(a) of the Code, and any trust that is intended to be qualified under Section 501(a) of the Code, has received a determination, opinion or advisory letter from the IRS to the effect that such Company Benefit Plan is so qualified and the trust related thereto is exempt from federal income Taxes under Sections 401(a) and 501(a), respectively, of the Code. No such determination, opinion or advisory letter has been revoked and, to the Knowledge of the Company, revocation has not been threatened. Except as for such matters that do not have or are not expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, no “prohibited transaction,” within the meaning of Section 4975 of the Code or Sections 406 and 407 of ERISA that is not otherwise exempt under Section 408 of ERISA, has occurred with respect to any Company Benefit Plan.

(5) Neither the Company, any of its Subsidiaries nor any of their respective ERISA Affiliates has in the preceding six (6) years maintained, participated in or contributed to, or been obligated to contribute to (i) a plan subject to Title IV of ERISA or Section 412 of the Code, (ii) a “multiemployer plan” (as defined in Sections 3(37) or 4001(a)(3) of ERISA), or (iii) a “plan maintained by more than one employer” as defined in Section 413(c) of the Code. No Company Benefit Plan is funded by, associated with or related to a “voluntary employees’ beneficiary association” within the meaning of Section 501(c)(9) of the Code.

(6) Other than as required under Section 4980B of the Code, Part 6 of Subtitle B of Title I of ERISA or other applicable Legal Requirements, none of the Company Benefit Plans promises or provides health or other welfare benefits (excluding normal claims for benefits under the Company’s group life insurance, accidental death and dismemberment insurance and disability plans and policies) or coverage to any Person following retirement or other termination of employment.

(7) Except for such matters as would not have or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, there is no action, suit, proceeding, claim, arbitration, audit or investigation pending or, to the Knowledge of Company, threatened or, to the Knowledge of the Company, reasonably anticipated, with respect to any Company Benefit Plan or the assets of any Company Benefit Plan, other than claims for benefits in the ordinary course. No Company Benefit Plan is or within the last three (3) calendar years has been the subject of, or has received notice that it is the subject of, examination by a Governmental Entity or a participant in a government-sponsored amnesty, voluntary compliance or similar program.

(8) To the Knowledge of the Company, each individual who has received compensation for the performance of services on behalf of the Company or any of its Subsidiaries has been properly classified as an employee or independent contractor in accordance with applicable Legal Requirement.

(9) Section 3.13(a)(9) of the Company Disclosure Schedule sets forth a complete and accurate list of (i) all employment agreements with employees of Company or any of its Subsidiaries, other than customary offer letters and other similar employment agreements entered into in the ordinary course of business or which are



---

terminable at the election of the Company and under which the aggregate remaining obligations of the Company following termination would not exceed ten thousand dollars (\$10,000); and (ii) all operative severance agreements, programs and policies of the Company or any of its Subsidiaries with or relating to its Section 16 officers, excluding programs and policies required to be maintained by Legal Requirement.

(10) All material contributions required to be made with respect to any Company Benefit Plan on or prior to the Effective Time have been or will be timely made or are reflected on the Company Balance Sheet.

(11) The negotiation or consummation of the transactions contemplated by this Agreement will not, either alone or in combination with another event, (i) entitle any current or former employee, director, consultant or officer of the Company or any of its Affiliates to severance pay, or any other payment from the Company or any of its Affiliates, or pursuant to any Company Benefit Plan, (ii) accelerate the time of distribution, payment or vesting, a lapse of repurchase rights or increase the amount of compensation or benefits due any such employee, director or officer, (iii) result in the forgiveness of indebtedness, or (iv) trigger an obligation to fund benefits. No payment or benefit which will or may be made by the Company or its Affiliates with respect to any current or former employee or any other “disqualified individual” (as defined in Code Section 280G) is reasonably expected to be characterized as a “parachute payment,” within the meaning of Section 280G(b)(2) of the Code. Neither the Company nor any of its Affiliates has any indemnity or gross-up obligation to any Person for any Taxes or penalties or interest imposed under Code Sections 280G or 4999.

(12) Except for such matters as would not have or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, each Company Benefit Plan maintained or covering employees outside the United States (the “**Company Non-U.S. Employee Plans**”), and the books and records thereof, is in material compliance with the applicable Law of each applicable jurisdiction. No such Company Non-U.S. Employee Plan has unfunded liabilities in excess of two-million dollars (\$2,000,000), that as of the Effective Time, will not be offset by insurance or fully accrued. Section 3.13(a)(12) of the Company Disclosure Schedule contains a complete and accurate list of each country in which the Company or any of its Affiliates has operations as of the date of this Agreement and the approximate number of employees in each such country as of the date of this Agreement.

(13) Each Company Benefit Plan is amendable and terminable unilaterally by the Company at any time without material liability to the Company or any of its Subsidiaries as a result thereof, other than for benefits accrued as of the date of such amendment or termination and routine administrative costs. No Company Benefit Plan has been amended in contravention of the terms of such plan or any legal obligation owed to any participant in such plan.

---

(b) Labor Matters. (i) There are no collective bargaining or other labor union agreements to which the Company or any of its Subsidiaries is a party or by which it is bound; (ii) no labor dispute exists or, to the Knowledge of the Company, is imminent with respect to the employees of the Company or any of its Subsidiaries; (iii) there is no strike, work stoppage or other labor dispute involving the Company or any of its Subsidiaries pending or, to the Knowledge of the Company, threatened; (iv) no grievance is pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries; (v) neither the Company nor any of its Subsidiaries is a party to, or otherwise bound by, any consent decree with, or citation by, any Governmental Entities relating to employees or employment practices; and (vi) except for disputes, agreements and other matters that do not have or are not expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, no complaint, charge or Actions by or before any Governmental Entity brought by or on behalf of any employee, prospective employee, former employee, retiree, labor organization or other Representative of its employees is pending or, to the Knowledge of the Company, threatened against the Company or any of its Subsidiaries.

(c) Executive Officers. Except as set forth in Section 3.13(c) of the Company Disclosure Schedule, no executive officer of the Company or any of its Subsidiaries has notified the Company or such Subsidiary in writing that such executive officer intends to leave the Company or any such Subsidiary or otherwise terminate such executive officer's employment with the Company or such Subsidiary in connection with the consummation of the Transactions or within 60 days following the Closing Date.

3.14 Related Party Transactions. Except as disclosed in the Company Reports or in Section 3.14 of the Company Disclosure Schedule, none of the executive officers (as such term is used in the Company Reports) or directors of the Company or any of its Subsidiaries is presently a party, directly or indirectly, to any transaction with the Company or any of its Subsidiaries (other than for services as executive officers and directors).

3.15 Insurance. The Company has made available to Parent, prior to the date of this Agreement, true and correct copies of all Contracts of material insurance relating to the business, assets and operations of the Company and its Subsidiaries, as amended and supplemented to which the Company or any of its Subsidiaries is a party (as amended or supplemented, the "*Company Insurance Policies*"). All such Company Insurance Policies are in full force and effect, all premiums due thereon have been paid and, to the Knowledge of the Company, the Company and any such Subsidiary have complied with the provisions of such policies in all material aspects. Neither the Company nor any such Subsidiary has been advised of any defense to coverage in connection with any claim to coverage asserted or noticed by the Company or any such Subsidiary under or in connection with any of their extant insurance policies. The Company and its Subsidiaries are insured by insurers of recognized financial responsibility, or maintain self-insurance practices, against such losses and risks and in such amounts as are customary in the businesses in which they are engaged and in the geographic areas where any of which engages in such businesses.

3.16 Material Contracts. Except as has not and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company: (i) each Material Contract is a legal, valid and binding agreement on the Company or its Subsidiary(ies) party thereto and, to the Knowledge of the Company on the other party or parties thereto, and is

---

in full force and effect, subject to the Enforceability Exceptions; (ii) neither the Company nor any of its Subsidiaries is in breach or default of any Material Contract to which it is a party in any material respect; (iii) to the Knowledge of the Company, no event has occurred or circumstance has existed that (with or without notice or lapse of time), will or would reasonably be expected to, (A) contravene, conflict with or result in a violation or breach of, or become a default or event of default under, any provision of any Material Contract; or (B) permit the Company or any other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate or modify any Material Contract; (iv) neither the Company nor any of its Subsidiaries has received written notice of any proposed cancellation, revocation or termination of any Material Contract to which it is a party; and (v) there are no current renegotiations of, or current attempts by the Company to renegotiate, any material terms of any Material Contract. Since September 30, 2014, neither the Company nor any of its Subsidiaries has received any written notice regarding any actual or possible violation or breach of, or default under, any Material Contract, except in each such case for defaults, acceleration rights, termination rights and other rights that have not had and would not reasonably be expected to have a Material Adverse Effect on the Company. The Company is not a party to any standstill or similar agreement with respect to any class of equity securities of the Company or any of its Subsidiaries which remains in effect as of the date of this Agreement.

3.17 Compliance with Applicable Laws. The Company and its Subsidiaries are in compliance with all applicable Laws, including those relating to occupational health and safety and the Environment, except for instances of noncompliance that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company. Neither the Company nor any of its Subsidiaries has received any written communication during the past two (2) years from a Governmental Entity alleging that the Company or any such Subsidiary is not in compliance with any applicable Laws that has not been cured as of the date hereof, except for such noncompliance that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect on the Company. This Section 3.17 does not relate to matters with respect to Taxes, which are the subject of Section 3.12.

3.18 Foreign Corrupt Practices. Neither the Company, any of its Subsidiaries, nor, to the Knowledge of the Company, any of their respective Representatives, has, in the course of its actions for and on behalf of the Company or any of its Subsidiaries, directly or indirectly, (a) used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expenses relating to political activity; (b) made any direct or indirect unlawful payment to any Governmental Entity or any foreign or domestic government official or employee from corporate funds; (c) violated or is in violation of any provision of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder that are applicable to the Company or its Subsidiaries; or (d) made any unlawful bribe, rebate, payoff, influence payment, kickback or other unlawful payment in connection with the operations of the Company or any such Subsidiary to any foreign or domestic government official or employee. To the Knowledge of the Company, neither the Company nor any of its directors, officers, or employees is in violation of any applicable Law that is intended to prevent or deter bribery or corrupt business practices, including Section 385 of the PRC Criminal Law, which would subject the Company or the relevant directors, officers, or employees to a criminal offense under such applicable Law.

---

3.19 Money Laundering Laws. During the past five (5) years, the Company and its Subsidiaries have conducted their business at all times in compliance in all material respects with applicable money laundering statutes in all applicable jurisdictions, rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Entity (collectively, the “**Money Laundering Laws**”) and no proceeding involving the Company with respect to the Money Laundering Laws is pending or, to the Knowledge of the Company, is threatened.

3.20 Brokers; Schedule of Fees and Expenses. Except as set forth in Section 3.20 of the Company Disclosure Schedule, no broker, investment banker, financial advisor or other Person is entitled to any broker’s, finder’s, financial advisor’s or other similar fee or commission in connection with this Agreement or the Transactions based upon arrangements made by or on behalf of the Company or any of its Subsidiaries.

3.21 Business Relationships. To the Knowledge of the Company, as of the date of this Agreement, none of the Company’s end customers or distributors which individually accounted for at least 5% of the Company’s net revenue for the first three fiscal quarters of fiscal year 2015 has provided written notice to the Company of its intention to cancel a Material Contract with the Company as a result of the execution of this Agreement and the Transaction Documents and the consummation of the Transactions contemplated hereby and thereby.

3.22 OFAC. None of the Company, any director or officer of the Company, or, to the Knowledge of the Company, any agent, employee, Affiliate or Person acting on behalf of the Company is currently identified on the specially designated nationals or other blocked person list or otherwise currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department (“**OFAC**”); and the Company has not, directly or indirectly, used any funds, or loaned, contributed or otherwise made available such funds to any Subsidiary, joint venture partner or other Person, in connection with any sales or operations in Cuba, Iran, Syria, Sudan, Myanmar or any other country sanctioned by OFAC or for the purpose of financing the activities of any Person currently subject to, or otherwise in violation of, any U.S. sanctions administered by OFAC in the last five (5) fiscal years.

3.23 Additional PRC Representations and Warranties.

(a) All Consents, approvals, authorizations or licenses requisite under PRC Law for the due and proper establishment and operation of the Company and its Subsidiaries have been duly obtained from the relevant PRC Governmental Entity and are in full force and effect, except those that would not be reasonably expected to have a Material Adverse Effect on the Company.

(b) All filings and registrations with the PRC Governmental Entities required in respect of the Company and its Subsidiaries and their respective operations have been duly completed in accordance with the relevant PRC rules and regulations, except where the failure to complete such filings and registrations does not, and would not, individually or in the aggregate, have a Material Adverse Effect on the Company.

---

(c) The Company and its Subsidiaries have complied with all material relevant PRC Laws and regulations regarding the contribution and payment of their registered share capital, the payment schedules of which have been approved by the relevant PRC Governmental Entity.

(d) During the two (2)-year period immediately preceding the date of this Agreement, neither the Company nor any of its Subsidiaries is in receipt of any written notice from any relevant PRC Governmental Entity notifying it of the revocation or suspension of any licenses or authorizations issued to it or any subsidy granted to it by any PRC Governmental Entity as a result of non-compliance with the terms thereof or with applicable PRC Laws, except for matters contemplated by such written notice(s) which have been cured as of the date hereof, or that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

(e) With regard to employment and staff or labor, the Company and its Subsidiaries are in compliance with all applicable PRC Laws and regulations, including without limitation, Laws and regulations pertaining to welfare funds, social benefits, medical benefits, insurance, retirement benefits, pensions or the like, except for instances of noncompliance that have not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

3.24 Environmental Matters. Except for such matters as would not have or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, to the Knowledge of the Company, each of the Company and its Subsidiaries is, and during the past seven (7) years has been, in substantial compliance with, and has not been and is not in material violation of or subject to any material liability under, any applicable Environmental Law, and neither the Company nor any of its Subsidiaries, nor, to the Knowledge of the Company, any other Person for whose conduct they are or may be held to be responsible, received any written order or notice from (a) any Governmental Entity or private citizen acting in the public interest, or (b) the current or prior owner or operator of any Facilities, of any actual or potential material violation by the Company or any of its Subsidiaries, or failure by the Company or any of its Subsidiaries to comply with, any Environmental Law, or of any actual or threatened material obligation by the Company or any of its Subsidiaries to undertake or bear the cost of any liabilities under the Environmental Laws with respect to any of the Facilities or any other properties or assets (whether real, personal, or mixed) in which the Company or any of its Subsidiaries has or has had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used, or processed by the Company or any other Person for whose conduct the Company is or may be held legally responsible, or from any such Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled, or received.

---

3.25 Conflict Minerals. The Company and its Subsidiaries are, and since May 31, 2014 have been, in compliance in all material respects with all applicable U.S. federal securities Laws regarding Conflict Minerals, including Rule 13p-1 under the Exchange Act and any applicable written standards, requirements, directives or policies of the SEC or any other Governmental Entity relating thereto (the “**Conflict Minerals Rule**”). Neither the Company nor any of its Subsidiaries has received any written communication from any Governmental Entity or any third person that alleges that the Company or any of its Subsidiaries has failed to perform the due diligence or make the reports or disclosures required by the Conflict Minerals Rule or has submitted any false and misleading statements in its Form SD or Conflict Minerals Report. The Company has no Knowledge that Conflict Minerals necessary to the functionality or production of products it manufactures or contracts to manufacture originated from the Democratic Republic of the Congo or an adjoining country that would require the Company to file a Conflict Minerals Report as an Exhibit to a Form SD on the date hereof.

3.26 Information Supplied. The information relating to the Company and its Subsidiaries to be contained in the proxy statement in preliminary and definitive form relating to the Company Shareholder Meeting (together with any amendments or supplements thereto, the “**Proxy Statement**”), will not, on the date the Proxy Statement (and any amendment or supplement thereto) is first mailed to the shareholders of the Company, or at the time of the Company Shareholder Meeting (as it may be adjourned or postponed in accordance with the terms hereof), contain any untrue statement of any material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, at the time and in light of the circumstances under which they were made, not false or misleading. The Proxy Statement will comply in all material respects as to form with the requirements of the Exchange Act and the rules and regulations promulgated thereunder, and any other applicable federal securities Laws. Notwithstanding the foregoing provisions of this Section 3.26, no representation or warranty is made by the Company with respect to information or statements made or incorporated by reference in the Proxy Statement which were based on information supplied by or on behalf of Parent or Merger Sub, or otherwise were not supplied by or on behalf of the Company.

3.27 Opinion of Financial Advisor. The Company Board has received the opinion of the Company Financial Advisor to the effect that, subject to the assumptions and limitations set forth therein, as of the date of such opinion, the Merger Consideration to be received by the shareholders of the Company in the Merger is fair, from a financial point of view, to such shareholders.

#### ARTICLE IV

##### Representations and Warranties of Parent and Merger Sub

Except (x) as may be disclosed in the forms, statements, certifications, reports and documents required to be filed or furnished by Parent with the SEC pursuant to the Exchange Act or the Securities Act since the Applicable Date and the forms, statements, reports and documents filed or furnished since the Applicable Date and those filed or furnished subsequent to the date of the Agreement, including any amendments or supplements thereto, but excluding, in each case, any nonspecific disclosures set forth in any “Risk Factor” or “Forward Looking Statements” sections and any other similar disclosures contained therein to the extent they are

---

general, nonspecific and forward-looking statements) or (y) as may be disclosed in the corresponding sections or subsections of the disclosure schedule delivered to the Company by Parent on the date of the Agreement (the “*Parent Disclosure Schedule*”), Parent and Merger Sub hereby represent and warrant to the Company that:

4.1 Organization and Good Standing. Each of Parent and its Subsidiaries is a legal entity duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Each of the Parent and its Subsidiaries has all requisite corporate or similar power and authority to own, lease and operate its properties and assets and to carry on its business as presently conducted under the Laws of the place of its establishment or incorporation and is qualified to do business and in good standing as a foreign corporation or other legal entity under the Laws of the places where the ownership, leasing or operation of its assets or properties or conduct of its business requires such qualification, except, in the case of any of the foregoing, where the failure to be so qualified or in good standing, or to have such power or authority, would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent.

4.2 Corporate Authority and Approval. Each of Parent and Merger Sub has full corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform its obligations under this Agreement and to consummate the Merger and the Transactions contemplated hereby in accordance with the terms hereof. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming due authorization, execution and delivery hereof by the Company, constitutes a valid and binding agreement of Parent and Merger Sub enforceable against Parent and Merger Sub in accordance with its terms, subject to the Enforceability Exceptions.

4.3 Non-Contravention. The execution, delivery and performance of this Agreement by Parent and Merger Sub do not, and the consummation by the Merger Sub of the Merger and the other Transactions contemplated hereby will not, constitute or result in (A) a breach or violation of, or a default under, any provision (x) of the certificate of incorporation and bylaws of Parent and (y) the articles of incorporation or bylaws of Merger Sub, (B) a breach or violation of, assuming (solely with respect to performance of this Agreement and consummation of the Merger and the other Transactions contemplated hereby) that the matters referred to in Section 4.4 are complied with, any Law to which Parent or Merger Sub is subject, (C) a default under any of the terms, conditions or provisions of any Contract to which Parent or Merger Sub is a party, or an acceleration of Parent’s or, if applicable, Merger Sub’s, obligations under any such Contract or require any Consent under any such Contract, (D) the creation of any Lien (other than a Permitted Lien) on any properties or assets of Parent or Merger Sub, except, in the case of clause (B), clause (C) or clause (D) above, for any such breach, violation, default, creation or acceleration that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent.

4.4 Government Approvals. Except for (A) compliance with the applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder or any other applicable U.S. state or federal securities, takeover or “blue sky” Laws, (B) compliance with any applicable rules of NASDAQ, (C) the filing of the Agreement of Merger with the

---

Secretary of State of the State of California pursuant to the California Law, and (D) if applicable, any required Consent or approval of, or filing with any applicable Governmental Antitrust Entity, no Consent or approval of, or filing, license, Permit or authorization, declaration or registration with, any Governmental Entity necessary for the execution and delivery of this Agreement by Parent or Merger Sub, the performance by Parent and Merger Sub of their obligations hereunder and the consummation by Parent and Merger Sub of the Transactions, except for those that the failure to make or obtain are not, individually or in the aggregate, reasonably likely to affect adversely the ability of Parent and Merger Sub to consummate the Transactions.

4.5 Litigation. To the Knowledge of Parent, there is no Action pending or threatened in writing against or affecting Parent or Merger Sub, any of their officers or directors (in their capacities as such), any of their Subsidiaries or any of their properties, before or by any Governmental Entity which (a) challenges the legality, validity or enforceability of this Agreement or (b) would, if there were an unfavorable decision, have or reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect on Parent. To the Knowledge of Parent and Merger Sub, there is no Judgment imposed upon Parent or Merger Sub, any of their officers or directors (in their capacities as such), any of their Subsidiaries or any of their respective properties, that would prevent, enjoin, alter or materially delay any of the Transactions, or that would reasonably be expected to have a Material Adverse Effect on Parent or affect adversely the ability of Parent and Merger Sub to consummate the Transactions. To the Knowledge of Parent, as of the date of the Agreement, neither Parent, any of its Subsidiaries nor any director or officer thereof (in his or her capacity as such), is or has been the subject of any Action involving a claim or violation of or liability under the securities Laws of any Governmental Entity or a claim of breach of fiduciary duty.

4.6 Information Supplied. The information relating to Parent and its Subsidiaries to be contained in the Proxy Statement will not, on the date the Proxy Statement (and any amendment or supplement thereto) is first mailed to the shareholders of the Company, or at the time of the Company Shareholder Meeting (as it may be adjourned or postponed in accordance with the terms hereof), contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, at the time and in the light of the circumstances under which they were made, not misleading. The Proxy Statement (other than the portions thereof relating solely to the meeting of the shareholders of the Company) will comply as to form in all material respects with the provisions of the Exchange Act, the rules and regulations promulgated thereunder and any other applicable federal securities Laws. Notwithstanding the foregoing provisions of this Section 4.6, no representation or warranty is made by Parent or Merger Sub with respect to information or statements made or incorporated by reference in the Proxy Statement which were based on information supplied by or on behalf of the Company, or otherwise not supplied by or on behalf of Parent.

4.7 Credit Agreement. Parent has provided to the Company a fully executed copy of that certain Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent, dated as of the date hereof (the “*Credit Agreement Amendment*”), and the credit facilities thereby amended, the “*Credit Agreement*”), by and among Parent, the



---

other borrower and guarantors identified therein, the lenders identified therein and the administrative agent identified therein. The Third Amendment Effective Date (as defined in the Credit Agreement) has occurred. There are no conditions to the availability of Loans under the Credit Agreement or Credit Agreement Amendment except as referred to therein. The Credit Agreement Amendment has been duly executed and delivered by Parent and its Subsidiaries party thereto (the “*Specified Subsidiaries*”) and, assuming the due authorization, execution and delivery thereof by the other parties thereto, constitutes a valid and binding agreement of Parent and the Specified Subsidiaries enforceable against Parent and the Specified Subsidiaries in accordance with its terms, subject to the Enforceability Exceptions. For the avoidance of doubt, Parent’s receipt of financing contemplated by the Credit Agreement Amendment and the Credit Agreement or otherwise shall not be a condition to the Closing.

4.8 Ownership of Company Common Stock. Neither Parent nor any of its Subsidiaries owns (beneficially or otherwise) any Shares or other equity interests in the Company or any options, warrants or other rights to acquire Company Common Stock or other equity interests in the Company (or any other economic interest through derivative securities or otherwise in the Company).

4.9 Management Arrangements. As of the date hereof, except as previously disclosed to the Company, none of Parent or Merger Sub, or, to the Knowledge of Parent, their respective executive officers, directors or Affiliates, has entered into any agreement, arrangement or understanding with any of the executive officers, directors or Affiliates of the Company that is currently in effect or would become effective in the future (upon consummation of the Merger or otherwise) and that would be required to be disclosed under Item 1005(d) of Regulation M-A under the Exchange Act.

4.10 WARN Act. Parent and Merger Sub are neither planning nor contemplating, and Parent and Merger Sub have neither made nor taken, any decisions or actions concerning the employees of the Company or any of its Subsidiaries after the Closing that would require, prior to the Effective Time, the service of notice under the Worker Adjustment and Retraining Notification Act or similar local Laws.

4.11 Brokers. Other than Bank of America Merrill Lynch, neither Parent, Merger Sub nor any of their respective stockholders, directors, officers, employees or affiliates, has incurred or will incur on behalf of Parent, Merger Sub or any Parent Subsidiary, any brokerage, finders’, advisory or similar fee in connection with the transactions contemplated by this Agreement.

4.12 Operations of Merger Sub. Parent is the sole shareholder of Merger Sub, which was formed solely for the purpose of engaging in the Merger. Since its date of formation, Merger Sub has not carried on any business or conducted any other operations other than the execution of this Agreement, the performance of its obligations hereunder and matters ancillary thereto.

---

## ARTICLE V

### Covenants of the Parties

5.1 Conduct of Business of the Company. During the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement in accordance with the terms set forth in ARTICLE IX of this Agreement or the Closing Date, the Company agrees that the Company and its Subsidiaries shall use commercially reasonable efforts to (except to the extent expressly contemplated by this Agreement, set forth in Section 5.1 of the Company Disclosure Schedule or as consented to in writing by Parent (such consent not to be unreasonably withheld, conditioned or delayed)), (i) in all material respects, carry on their businesses in the ordinary course in substantially the same manner as heretofore conducted and use commercially reasonable efforts consistent with past practice and policies to preserve substantially intact their present business organizations, and (ii) use their commercially reasonable efforts consistent with past practice to keep available the services of their present executive officers and directors and use their commercially reasonable efforts consistent with past practice to, in all material aspects, preserve their relationships with customers, suppliers, distributors, licensors, licensees, and others having business dealings with them. The Company agrees to promptly notify Parent of any material event or occurrence not in the ordinary course of business consistent with past practice that would have or reasonably be expected to have a Material Adverse Effect on the Company. Without limiting the generality of the foregoing, during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement in accordance with the terms set forth in ARTICLE IX of this Agreement or the Closing Date, except as otherwise expressly permitted by or provided for in this Agreement, set forth in Section 5.1 of the Company Disclosure Schedule, required by any Legal Requirement or Law or as consented to in writing by Parent (such consent not to be unreasonably withheld, conditioned or delayed), the Company shall not do, allow, cause or permit any of the following actions to occur with respect to the Company without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed); provided, however, that Parent and Merger Sub acknowledge and agree that this Section 5.1 shall not give Parent the right, directly or indirectly, to control or direct the operations of the Company prior to the Closing to the extent prohibited by applicable Antitrust Laws:

(a) Charter Documents. Cause or permit any amendments to any of the Company Articles or Company Bylaws, except for such amendments made pursuant to a Legal Requirement or as contemplated by this Agreement;

(b) Dividends; Changes in Share Capital. Except for payment of the \$0.06 per share regular quarterly cash dividend declared by the Company's Board of Directors prior to the date hereof, which is payable on September 3, 2015 to shareholders of record at the close of business on August 20, 2015 (the "**August 2015 Dividend**"), declare or pay any dividends on or make any other distributions (whether in cash, stock or property) in respect of any of its share capital, or split, combine or reclassify any of its share capital;

---

(c) Material Contracts. Enter into any new Material Contract, or materially violate, amend or otherwise modify or waive any of the terms of any existing Material Contract, in each case, other than in the ordinary course of business consistent with past practice;

(d) Issuance of Securities. Issue, deliver or sell or authorize or propose the issuance, delivery or sale of, or purchase or propose the purchase of, any shares of its capital stock or securities convertible into, or subscriptions, rights, warrants or options to acquire, (including, for the avoidance of doubt, Company Equity Awards), or other agreements or commitments of any character obligating it to issue any such shares or other convertible securities, in each case, other than (i) the issuance of Company Shares upon the settlement of Company Equity Awards outstanding as of the date of this Agreement or granted hereafter in accordance with the terms of this Agreement, (ii) the award of up to 220,000 Company Shares underlying Company Equity Awards pursuant to the Company's stock plans, (iii) distributions of Company Shares under the Company ESPP in accordance with its terms and the terms of this Agreement, or (iv) pursuant to the exercise or conversion of rights to acquire such securities outstanding as of the date of the Agreement and set forth on the Company Disclosure Schedule;

(e) Intellectual Property. Transfer or license to any Person or entity any Intellectual Property Rights other than in the ordinary course of business consistent with past practice;

(f) Dispositions. Sell, lease, license or otherwise dispose of or encumber any of its properties or assets which are material, individually or in the aggregate, to its business, taken as a whole, except for transactions with an aggregate amount of less than \$1,000,000, or in the ordinary course of business consistent with past practice;

(g) Indebtedness. Except in its ordinary course of business, issue or sell any debt securities or guarantee any debt securities of others in excess of \$500,000 in the aggregate;

(h) Payment of Obligations. Pay, discharge or satisfy in an amount in excess of \$100,000 in any one case, any claim, liability or obligation (absolute, accrued, asserted or unasserted, contingent or otherwise) arising other than (i) in the ordinary course of business, and (ii) the payment, discharge or satisfaction of liabilities reflected or reserved against in the Company Financial Statements, as applicable;

(i) Capital Expenditures. Make any capital expenditures, capital additions or capital improvements except (x) those that do not exceed \$500,000 in the aggregate, or (y) those set forth in the Company's capital expenditure budget attached as Section 5.1(i) of the Company Disclosure Schedule;

(j) Employment. Except as set forth on Section 5.1(j) of the Company Disclosure Schedule, or required under the Legal Requirements or agreements or pursuant to plans or arrangements existing on the date of the Agreement, (i) take any action with respect to, adopt, enter into, terminate or amend any employment, severance, retirement, retention, incentive or similar agreement, arrangement or benefit plan for the benefit or welfare of any current or former director, executive officer or any collective bargaining agreement, (ii) increase

in any material respect the compensation or fringe benefits of, or pay any bonus to, any director or executive officer, (iii) materially amend or accelerate the payment, right to payment or vesting of any compensation or benefits, (iv) pay any material benefit not provided for as of the date of this Agreement under any benefit plan, or (v) grant any awards under any bonus, incentive, performance or other compensation plan or arrangement or benefit plan, excluding the grant of stock options, stock appreciation rights, stock based or stock related awards, performance units or restricted stock (which shall be governed by Section 5.1(d));

(k) Facilities. Open or close any Facilities or office except in the ordinary course of business or as otherwise set forth on Section 5.1(k) of the Company Disclosure Schedule;

(l) Litigation. Initiate, compromise or settle any material litigation or arbitration proceedings in an amount in excess of \$100,000 in any one case or \$500,000 in the aggregate;

(m) Tax Matters. Except as required by applicable Law or by a Governmental Entity, make, change or revoke any material Tax election (including any entity classification election under Treasury Regulations Section 301.7701-3), file any amended material Tax Return, adopt or change any material accounting method or period in respect of Taxes, enter into any closing agreement with respect to or otherwise settle any material Tax claim or assessment, or consent to any extension or waiver of any statute of limitations applicable to any material claim or assessment in respect of Taxes;

(n) Corporate Organization. Transfer the ownership or control of any Subsidiary, dissolve or wind up any Subsidiary or create any new Subsidiary; and

(o) Other. Agree in writing or otherwise to take any of the actions described in Sections 5.1(a)-(n) above.

If the Company desires to take an action which would be prohibited pursuant to this Section 5.1 without the prior written consent of Parent, prior to taking such action the Company may request such written consent by sending an e-mail or facsimile to each of the individuals listed on Section 5.1 of the Parent Disclosure Schedule (which such list of individuals may be updated by Parent from time to time by delivering notice thereof to the Company in accordance with Section 10.3), and Parent shall, and shall cause such individuals to, promptly respond to such requests.

## 5.2 Access to Information: Confidentiality.

(a) From the date of this Agreement until the earlier to occur of the Effective Time or the termination of this Agreement in accordance with the terms set forth in ARTICLE IX of this Agreement, the Company shall, and shall cause its Subsidiaries to, afford to Parent and Parent's Representatives reasonable access, at reasonable times during normal operating hours, upon prior notice and in a manner as shall not unreasonably interfere with the business or operations of the Company or any Subsidiary thereof, to the officers, employees, accountants, properties, offices and other Facilities and to all books, records, Contracts and other assets of the

---

Company and its Subsidiaries, and the Company shall, and shall cause its Subsidiaries to, furnish promptly to Parent such other information concerning the business and properties of the Company and its Subsidiaries as Parent may reasonably request from time to time. Notwithstanding the foregoing, neither the Company nor any of its Subsidiaries shall be required to provide access to or disclose information where such access or disclosure would be reasonably likely to jeopardize the protection of attorney-client privilege or contravene any Law (it being agreed that the Parties shall use their commercially reasonable efforts to cause such information to be provided in a manner that would not result in such jeopardy or contravention). No investigation shall affect the Company's representations and warranties contained herein, or limit or otherwise affect the remedies available to Parent or Merger Sub pursuant to this Agreement.

(b) Parent and the Company shall comply with, and shall cause their respective Representatives to comply with, all of their respective obligations under the Confidentiality Agreement, which shall survive the termination of this Agreement in accordance with the terms set forth in ARTICLE IX of this Agreement in accordance with the terms set forth therein. The terms and conditions of the Confidentiality Agreement shall apply to any information obtained by Parent or any of its Representatives in connection with any investigation conducted pursuant to the access contemplated by this Section 5.2.

5.3 Insurance. Through the Closing Date, the Company and its Subsidiaries shall use commercially reasonable efforts consistent with past practices to maintain insurance policies existing as of the date of this Agreement providing insurance coverage for the businesses in which the Company and its Subsidiaries are engaged and the assets and properties of the Company and its Subsidiaries of the kinds, in the amounts and against the risks as are commercially reasonable for such businesses and risks covered and for the geographic areas where the Company and its Subsidiaries engage in such businesses.

5.4 Fulfillment of Conditions. The Company shall use its reasonable best efforts to fulfill the conditions specified in ARTICLE VIII to the extent that the fulfillment of such conditions is within its control. The foregoing obligation includes (a) executing and delivering documents necessary or desirable to consummate the Transactions contemplated hereby, and (b) taking or refraining from such actions as may be necessary or requested by Parent in order to fulfill such conditions.

5.5 Disclosure of Certain Matters. From the date of the Agreement through the Closing Date, the Company shall give Parent prompt written notice of any event or development that occurs that (a) is of a nature that would have or reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, or (b) would require any amendment or supplement to the Proxy Statement.

5.6 Regulatory and Other Authorizations; Notices and Consents.

(a) The Company shall use its commercially reasonable efforts to obtain all material Consents that are or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Transaction Documents to which it is a party and will reasonably cooperate with Parent in promptly seeking to obtain all such Consents, including, but not limited to any matters involving Government Antitrust Entities.

---

(b) The Company shall give promptly such notices to third parties and use its commercially reasonable efforts to obtain such third party Consents as are required to consummate the Transactions.

(c) The Company shall cooperate and use its commercially reasonable efforts to assist any other Party in giving such notices and obtaining such Consents as are required to consummate the Transactions.

(d) Notwithstanding the generality of the foregoing, and upon the terms and subject to the conditions of this Agreement, each Party will use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or desirable to cause the conditions to the obligations of the other parties hereunder to be satisfied and to consummate the Transactions, including making all necessary filings (including filings under the HSR Act) with any Government Antitrust Entity, and obtaining all necessary waivers, clearances, Consents and approvals from, and taking all steps to avoid any Action or proceeding by, any Government Antitrust Entity.

(e) To the extent required, each of the Parties will use its commercially reasonable efforts to promptly prepare and file, or cause to be promptly prepared and filed, with the appropriate Government Antitrust Entity not later than ten (10) Business Days after the date of this Agreement (unless otherwise mutually agreed among the Parties) a notification with respect to the Transactions pursuant to the HSR Act in which each requests early termination of the waiting period thereunder. Each of the Parties shall respond, as promptly as reasonably practicable to all information requests from a Government Antitrust Entity under the HSR Act, and shall reasonably cooperate with each other in responding to any such request. Each of the Parties will furnish to the other (or its outside counsel) and, upon request, to any Government Antitrust Entity, such information and assistance as may be reasonably requested in connection with the foregoing, including by responding promptly to and complying fully with any request for additional information or documents under the HSR Act; provided, that in no event shall a Party be obligated to provide the other Parties any portion of the information and materials it furnishes to a Government Antitrust Entity in connection with its HSR filing that is not customarily furnished to the other Parties to a transaction in connection with HSR Act filings. Each of the Parties will use its commercially reasonable efforts to resolve favorably any review or consideration of the antitrust aspects of the Transactions by any Government Antitrust Entity with jurisdiction over the enforcement of any applicable Antitrust Laws. Each of the Parties shall promptly inform the other Parties of any communication to or from the Federal Trade Commission ("*FTC*"), the Antitrust Division of the United States Department of Justice ("*DOJ*"), or any other Governmental Entity regarding the Transactions. Each of the Parties will consult and cooperate with one another, and will consider in good faith the views of one another, in connection with any communication, analysis, appearance, presentation, memorandum, brief, argument, opinion, proposal, or other submission made to a Government Antitrust Entity in connection with any investigation or proceeding under the HSR Act relating to the Transactions. Except as may be prohibited by any Government Antitrust Entity, in connection with any

---

investigation or proceeding under the HSR Act concerning the Transactions, each of the Parties shall permit Representatives of the other Parties to be present and participate in all meetings, conferences, or other communications with a Government Antitrust Entity relating to any such proceeding or investigation.

(f) In furtherance and not in limitation of the efforts referred to above in this Section 5.6, if any objections are asserted with respect to the Transactions under the HSR Act, or if any Action, suit or proceeding is instituted (or threatened to be instituted) by the FTC, the DOJ or any other Governmental Entity or any third party challenging the Transactions or that would otherwise prohibit or materially impair or materially delay the consummation of the Transactions, each Party shall use its commercially reasonable efforts to resolve any such objections or actions, suits or proceedings so as to permit the consummation of the transactions contemplated by this Agreement as expeditiously as possible.

(g) Notwithstanding the foregoing in this Section 5.6, none of Parent or its Affiliates shall be obligated to: (i) offer, negotiate, commit to or effect, by consent decree, hold separate order, trust or otherwise, the sale, divestiture, license or other disposition of any material portion of its capital stock, assets, rights, products or businesses; (ii) agree to any material restrictions on the activities of Parent or its Affiliates (including, after the Closing, the Company); (iii) waive any material rights to which they are entitled; (iv) defend, commence or prosecute any Action; or (v) take any other action to prevent, effect the dissolution of, vacate, or lift any decree, order, judgment, injunction, temporary restraining order, or other order in any suit or proceeding that would otherwise have the effect of preventing or delaying the consummation of the Transactions.

(h) The Company shall cooperate and use its commercially reasonable efforts to assist the Parent and its Affiliates in the preparation of a notification for submission to the appropriate PRC Governmental Entity as provided in SAT Notice [2015] No. 7 in connection with indirect transfer of any PRC Subsidiary of the Company that would occur as a result of the Merger (the "**Announcement 7 Notification**"). The Parties contemplate that Parent will cause the Announcement 7 Notification to be filed with the appropriate PRC Governmental Entity within thirty (30) days following the Closing.

#### 5.7 No Solicitation.

(a) Subject to Section 5.7(c), Section 5.7(e) and Section 5.7(f), from the date of this Agreement until the earlier to occur of the Effective Time or the termination of this Agreement in accordance with the terms set forth in ARTICLE IX of this Agreement (the "**Exclusivity Period**"), the Company shall not, and shall cause its Subsidiaries not to, and shall not authorize or knowingly permit its employees, directors, officers or Representatives to, directly or indirectly, solicit, initiate or knowingly facilitate or knowingly encourage the submission of any Acquisition Proposal, or the making of any proposal that is reasonably expected to lead to any Acquisition Proposal, from any Person other than Parent, Merger Sub or their respective Affiliates or Representatives or (i) conduct or engage in any discussions (other than to describe its obligations under this Section 5.7(a)) or negotiations with, disclose any non-public information relating to the Company or any of its Subsidiaries to, afford access to the

---

business, properties, assets, books or records of the Company or any of its Subsidiaries to, or knowingly assist, participate in, facilitate or encourage any effort by, any third party (other than Parent, Merger Sub or their respective Affiliates or Representatives) in furtherance of or for the purpose of obtaining an Acquisition Proposal, or (ii) enter into any agreement or other Contract with any Person (other than Parent, Merger Sub or their respective Affiliates or Representatives) relating to any Acquisition Proposal (except for an Acceptable Confidentiality Agreement) (each, a “**Company Acquisition Agreement**”).

(b) Subject to Section 5.7(c), Section 5.7(e) and Section 5.7(f), during the Exclusivity Period, neither the Company Board nor any committee thereof shall (i) fail to include the Company Board Recommendation in the Proxy Statement, (ii) withdraw, amend, modify or materially qualify, in a manner adverse to Parent or Merger Sub, the Company Board Recommendation, (iii) publicly recommend an Acquisition Proposal to the Company’s shareholders, (iv) fail to recommend against acceptance of any tender offer or exchange offer for the Company Shares within five (5) Business Days after the commencement of such offer or fail to reaffirm the Company Board Recommendation within three (3) Business Days following Parent’s reasonable request therefor, or (v) resolve or agree to take any of the foregoing actions (any of the foregoing, a “**Company Adverse Recommendation Change**”). The Company shall, and shall cause its Subsidiaries to cease immediately and cause to be terminated, and shall not authorize or knowingly permit any of its or their Representatives to continue, any and all discussions or negotiations, if any, with any third party (other than Parent, Merger Sub or their respective Affiliates or Representatives) ongoing as of the date of the Agreement with respect to any Acquisition Proposal and shall instruct any such third party (or its agents or advisors) that has in the twelve (12) months prior to the date of this Agreement executed a confidentiality agreement relating to an Acquisition Proposal with or for the benefit of the Company to promptly return or destroy, in accordance with the terms of such confidentiality agreement, all non-public information in respect of the Company or any of its Subsidiaries that was furnished by or on behalf of the Company and its Subsidiaries.

(c) Notwithstanding Section 5.7(a), at any time prior to receipt of the Company Shareholder Approval, the Company Board, directly or indirectly through any Representative, may, subject to Section 5.7(d), (i) participate in negotiations or discussions concerning an Acquisition Proposal with, and only with, a third party (or such third party’s Representatives) that has made (and not withdrawn) an Acquisition Proposal in writing that the Company Board believes in good faith, after consultation with outside legal counsel and the Company Financial Advisor, constitutes or could reasonably be expected to result in a Superior Proposal, (ii) thereafter furnish to such third party non-public information relating to the Company or any of its Subsidiaries pursuant to an executed confidentiality agreement that constitutes an Acceptable Confidentiality Agreement (a copy of which confidentiality agreement shall be promptly (in any event within one (1) Business Day) provided for informational purposes only to Parent), (iii) following receipt of and on account of a Superior Proposal, make a Company Adverse Recommendation Change, and/or (iv) take any action that any court of competent jurisdiction orders the Company to take (which order remains unstayed), but in each case referred to in the foregoing clauses (i) through (iii), only if the Company Board determines in good faith, after consultation with outside legal counsel, that the failure to take such action



---

would reasonably be expected to be inconsistent with the fiduciary duties of the Company Board under applicable Law. Nothing contained herein shall prevent the Company Board from (i) disclosing to the Company's shareholders a position contemplated by Rule 14d-9 and Rule 14e-2(a) promulgated under the Exchange Act with regard to an Acquisition Proposal or (ii) making any disclosure to the Company's shareholders that the Company Board determines, after consultation with its outside legal counsel, is required in order to fulfill its fiduciary duties under, or in order to otherwise comply with, applicable Law; *provided, however*, that any such statement(s) shall be subject to the terms and conditions of this Agreement. For the avoidance of doubt, it shall not constitute a Company Adverse Recommendation Change for the Company Board to make a "stop, look and listen" communication pursuant to Rule 14d9-f or any statement to similar effect.

(d) The Company Board shall not take any of the actions referred to in clauses (i) through (iv) of Section 5.7(c) unless the Company shall have delivered to Parent a prior written notice advising Parent that it intends to take such action. The Company shall notify Parent promptly (and in any event within one (1) Business Day) orally and in writing (which may be by email) after it obtains Knowledge of the receipt by the Company (or any of its Representatives) of any Acquisition Proposal or any request that is received after the date of this Agreement from any Person (other than Parent, Merger Sub or their respective Affiliates or Representatives) for non-public information relating to the Company or any of its Subsidiaries or for access to the business, properties, assets, books or records of the Company or any of its Subsidiaries, in each case, related to an Acquisition Proposal or, to the Knowledge of the Company, that is to be used for the purposes of making an Acquisition Proposal. In such notice, the Company shall identify the third party making, and details of the material terms and conditions of, any such Acquisition Proposal or request. The Company shall notify Parent promptly (and in any event within one (1) Business Day) of any material amendments or proposed amendments as to price and other material terms thereof. Furthermore, the Company shall promptly (and in any event within one (1) Business Day) after receipt or delivery thereof, provide Parent (or its outside counsel) with copies of all material transaction agreements accompanying such Acquisition Proposal or request (including any written, or electronic material to the extent such material contains any financial terms, conditions or other material terms relating to any Acquisition Proposal, including the financing thereof). The Company shall provide Parent with at least twenty-four (24) hours prior notice of any meeting of the Company Board (or such lesser notice as is provided to the members of the Company Board) at which the Company Board is reasonably expected to consider any Acquisition Proposal. The Company shall promptly provide Parent with copies of any non-public information concerning the Company's business, present or future performance, financial condition or results of operations, provided by or on behalf of the Company to any third party in accordance with Section 5.7(c), to the extent such information has not been previously provided to Parent or its Representatives. The Company shall not, and shall cause its Subsidiaries not to, enter into any Contract with any Person subsequent to the date of this Agreement that prohibits the Company from providing the information described in Section 5.7(c) or this Section 5.7(d) to Parent.

---

(e) Notwithstanding anything to the contrary contained in Section 5.7(a) or Section 5.7(b), at any time prior to receipt of the Company Shareholder Approval, the Company Board may make a Company Adverse Recommendation Change for a reason unrelated to a Superior Proposal if the Company Board has determined in good faith, after consultation with its outside legal counsel, that, in light an Intervening Event and taking into account the results of any negotiations with, and any offer from, Parent as contemplated by Section 5.7(f) below, that the failure to take such action would reasonably be expected to be inconsistent with the fiduciary duties of the Company Board under applicable Law.

(f) Notwithstanding anything to the contrary in this Agreement, at any time prior to the receipt of the Company Shareholder Approval, the Company Board may make a Company Adverse Recommendation Change or terminate this Agreement in order to enter into (or permit any Subsidiary of the Company to enter into) a Company Acquisition Agreement, if:

(1) the Company promptly notifies Parent, in writing, at least three (3) Business Days (the “*Notice Period*”) before making a Company Adverse Recommendation Change (or, in the case of a Superior Proposal, entering into (or causing a Subsidiary of the Company to enter into) a Company Acquisition Agreement), of its intention to take such action with respect to a Superior Proposal, which notice shall state expressly that the Company has either (A) received an Acquisition Proposal that the Company Board intends to declare a Superior Proposal or (B) recognized the occurrence of an Intervening Event, and that the Company Board intends to make a Company Adverse Recommendation Change and/or the Company intends to enter into a Company Acquisition Agreement with respect thereto, as applicable;

(2) with respect to a Superior Proposal, the Company attaches to such notice the most current version of any written proposed agreement providing for the transaction contemplated by such Superior Proposal (which version shall be updated on a prompt basis) and the identity of the third party making such Superior Proposal;

(3) the Company shall, and shall cause its Subsidiaries to, and shall use its reasonable best efforts to cause its and its Subsidiaries’ Representatives to, during the Notice Period, negotiate with Parent in good faith to make such adjustments in the terms and conditions of this Agreement so that (A) such Acquisition Proposal ceases to constitute a Superior Proposal if Parent, in its discretion, proposes to make such adjustments in a manner that would form a binding Contract if accepted by the Company (it being agreed that, with respect to a Superior Proposal, in the event that, after commencement of the Notice Period, there is any material revision to the material terms of such Acquisition Proposal, including, any revision in price, the Notice Period shall be extended, if applicable, to ensure that at least two (2) Business Days remain in the Notice Period subsequent to the time the Company notifies Parent of any such material revision (it being understood that there may be multiple extensions)) or (B) the Company Board’s fiduciary duty to make a Company Adverse Recommendation Change as a result of an Intervening Event would be obviated, as applicable; and

---

(4) the Company Board determines in good faith, after consulting with outside legal counsel and the Company Financial Advisor, that (A) such Acquisition Proposal continues to constitute a Superior Proposal or (B) the Company Board's fiduciary duty to make a Company Adverse Recommendation Change as a result of an Intervening Event would remain, as applicable, after taking into account any adjustments made by Parent during the Notice Period in the terms and conditions of this Agreement.

(g) The Company shall keep confidential any proposals made by Parent to revise the terms of this Agreement, other than in the event of any amendment to this Agreement or to the extent required by applicable Law to be disclosed.

(h) The Company agrees that any action taken by a Company Representative that, if taken by the Company, would constitute a material breach of the restrictions set forth in this Section 5.7 shall be deemed to be a material breach of this Section 5.7 by the Company.

(i) No Company Adverse Recommendation Change shall change the approval of the Company Board for purposes of causing any takeover Law to be applicable to the Transactions.

#### 5.8 Preparation of the Proxy Statement.

(a) Within ten (10) Business Days after the date of this Agreement, the Company shall prepare, in consultation with Parent, and cause to be filed with the SEC the Proxy Statement in preliminary form. Each of the Company and Parent shall furnish all information concerning itself, its Affiliates and the holders of its shares to the other and provide such other assistance as may be reasonably requested in connection with the preparation, filing and distribution of the Proxy Statement. Notwithstanding the foregoing, the Company shall have no responsibility with respect to information or statements made or incorporated by reference in the Proxy Statement which were based on information supplied by or on behalf of Parent.

(b) The Company shall promptly notify Parent upon the receipt of any comments from the SEC or any request from the SEC for amendments or supplements to the Proxy Statement, and shall, as promptly as practicable after receipt thereof, provide Parent with copies of all correspondence between the Company and its Representatives, on one hand, and the SEC, on the other hand, and all written comments with respect to the Proxy Statement received by the Company from the SEC and advise Parent of any oral comments with respect to the Proxy Statement received from the SEC. The Company shall use its reasonable best efforts to respond as promptly as practicable to any comments from the SEC with respect to the Proxy Statement. Parent shall and shall cause its Representatives to assist and cooperate with the Company and its Representatives in the resolution of any such comments from the SEC related thereto. Notwithstanding the foregoing, prior to filing the preliminary or definitive draft of the Proxy Statement with the SEC, mailing the Proxy Statement (or any amendment or supplement thereto), or responding to any comments of the SEC with respect thereto, the Company shall provide Parent a reasonable opportunity to review and comment on such document or response in advance (including the proposed final version of such document or response) and the Company shall consider in good faith any comments provided by Parent or any of its Representatives with respect thereto.

(c) If, at any time prior to the receipt of the Company Shareholder Approval, any information relating to the Company or Parent, respectively, or any of their respective Affiliates, should be discovered by the Company or Parent which, in the reasonable judgment of the Company or Parent, respectively, should be set forth in an amendment of, or a supplement to, the Proxy Statement, so that any of such documents would not include any misstatement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Party which discovers such information shall promptly notify the other Parties, and the Company and Parent shall cooperate in the prompt filing with the SEC of any necessary amendment of, or supplement to, the Proxy Statement and, to the extent required by Law, in disseminating the information contained in such amendment or supplement to shareholders of the Company. Nothing in this Section 5.8(c) shall limit the obligations of any Party under Section 5.8(b).

(d) For purposes of this Section 5.8, any information concerning or related to the Company, its Affiliates or the Company Shareholder Meeting will be deemed to have been provided by the Company, and any information concerning or related to Parent or its Affiliates will be deemed to have been provided by Parent.

(e) The Company shall bear all of all fees and expenses, other than attorneys' fees, incurred by or on behalf of the Company in connection with the filing, printing and mailing of the Proxy Statement and any amendments or supplements thereto.

#### 5.9 Company Shareholder Meeting.

(a) As promptly as practicable following the date of this Agreement, the Company shall, in accordance with applicable Law and the Company Articles and Company Bylaws, establish a record date for, duly call, give notice of, convene and hold the Company Shareholder Meeting. The Company shall use its reasonable best efforts to cause the Proxy Statement to be mailed to the shareholders of the Company entitled to vote at the Company Shareholder Meeting and to hold the Company Shareholder Meeting as soon as practicable thereafter. The Company shall, through the Company Board of Directors, recommend to its shareholders that they give the Company Shareholder Approval, include such recommendation in the Proxy Statement and solicit and use its reasonable best efforts to obtain the Company Shareholder Approval, except in each case to the extent that the Company Board of Directors shall have made a Company Adverse Recommendation Change as permitted by Section 5.7. Notwithstanding the foregoing provisions of this Section 5.9, if:

(1) on a date for which the Company Shareholder Meeting is scheduled, the Company has not received proxies representing a sufficient number of shares of Company Common Stock (A) to conduct business at the meeting or (B) to obtain the Company Shareholder Approval, whether or not a quorum is present;

(2) the Company is required to postpone or adjourn the Company Shareholder Meeting by applicable Law, order or a request from the SEC or its staff; or

---

(3) the Company Board (or any committee thereof) has determined in good faith (after consultation with outside legal counsel) that it is necessary or appropriate to postpone or adjourn the Company Shareholder Meeting, including in order to give the Company's shareholders sufficient time to evaluate any information or disclosure that the Company has sent to the shareholders of the Company or otherwise made available to the shareholders of the Company (including in connection with any Company Adverse Recommendation Change);

then, the Company shall have the right to make one or more successive postponements or adjournments of the Company Shareholder Meeting. Once the Company has established a record date for the Company Shareholder Meeting, the Company shall not change such record date or establish a different record date for the Company Stockholder Meeting without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), unless, following consultation with Parent, required to do so by applicable Law or the Company Articles or Company Bylaws. Without the prior written consent of Parent (such consent not to be unreasonably withheld, conditioned or delayed), the approval of this Agreement, the adjournment of the Company Shareholder Meeting, as necessary, to solicit additional proxies if there are insufficient votes in favor of approval of this Agreement, and the advisory vote required by Rule 14a-21(c) under the Exchange Act shall be the only matters (other than matters of procedure and matters required by applicable Law to be voted on by the Company's shareholders in connection with the approval of this Agreement) that the Company shall propose to be acted on by the shareholders of the Company at the Company Shareholder Meeting.

(b) The Company will use reasonable best efforts to hold the Company Shareholder Meeting as soon as practicable after the Proxy Statement is mailed to the Company's shareholders.

(c) Without limiting the generality of the foregoing, unless this Agreement has been previously terminated in full compliance with ARTICLE IX, the Company agrees that (i) its obligation to duly call, give notice of, convene and hold the Company Shareholder Meeting shall not be affected by any Change of Board Recommendation and (ii) its obligations pursuant to this Section 5.9 shall not be affected by the commencement, public proposal, public disclosure or communication to the Company of any Acquisition Proposal (whether or not a Superior Proposal). Unless this Agreement is terminated in accordance with ARTICLE IX, the Company agrees that it shall not submit to the vote of the shareholders of the Company any Acquisition Proposal (whether or not a Superior Proposal) prior to the vote of the shareholders of the Company with respect to the Merger at the Company Shareholder Meeting.

5.10 Disposition of Company Equity Awards. The Company Board, or a committee thereof consisting of Non-Employee Directors (as such term is defined for purposes of Rule 16b-3(d) under the Exchange Act), shall adopt resolutions in advance of the Effective Time providing that, in connection with the transactions contemplated by this Agreement, the disposition of any Company Common Stock or Company Equity Awards and/or receipt of Parent Stock by Exchange Act Section 16 reporting persons is intended to be exempt from Exchange Act Section 16(b) liability pursuant to Rule 16b-3 under the Exchange Act.

---

## ARTICLE VI

### Additional Covenants of Parent

6.1 Fulfillment of Conditions. From the date of the Agreement to the Closing Date, Parent shall use its reasonable best efforts to fulfill the conditions specified in ARTICLE VIII. The foregoing obligation includes, without limitation, (a) executing and delivering documents as are necessary or desirable to consummate the Transactions, (b) taking or refraining from such actions as may be necessary or reasonably requested by the Company to fulfill such conditions (including using its reasonable best efforts to conduct the business of Parent and the Merger Sub in such manner that on the Closing Date the representations and warranties of Parent contained herein shall be accurate as though then made).

6.2 Regulatory and Other Authorizations; Notices and Consents. Parent shall use its reasonable best efforts to obtain all authorizations, Consents, orders and approvals of all Governmental Entities and officials that may be or become necessary for its execution and delivery of, and the performance of its obligations pursuant to, this Agreement and the Transaction Documents to which it is a party and shall cooperate fully with the Company in promptly seeking to obtain all such authorizations, Consents, orders and approvals (and in such regard use reasonable best efforts to cause the relevant Government Entities to permit the Company and/or its counsel to participate in the conversation and correspondence with such Government Authorities together with Parent's counsel). For the avoidance of doubt, this Section 6.2 shall be in furtherance of, and not in limitation of, any of Parent's obligations under Section 5.6.

### 6.3 Directors' and Officers' Indemnification and Insurance.

(a) Parent and Merger Sub agree that all rights to indemnification, advancement of expenses and exculpation by the Company or its Subsidiaries now existing in favor of each Person who is now, or has been at any time prior to the date of the Agreement or who becomes prior to the Effective Time an officer or director of the Company or its Subsidiaries (each an "**Indemnified Party**") as provided in the Company Articles and Company Bylaws or similar governing documents of the Company's Subsidiaries, in each case as in effect on the date of this Agreement, or pursuant to any other Contracts in effect on the date of the Agreement and disclosed in Section 6.3(a) of the Company Disclosure Schedule (the "**Indemnification Contracts**") (or with respect to Persons who become a director or officer of the Company prior to the Effective Time, in a form substantially similar the Indemnification Contracts) for acts or omissions occurring prior to the Effective Time (including acts or omissions occurring in connection with this Agreement and the consummation of the Merger) shall be honored by the Surviving Corporation and its Subsidiaries and shall survive the Merger and shall remain in full force and effect in accordance with their terms. Parent shall, and shall cause the Surviving Corporation and its Subsidiaries to, honor and fulfill in all respects the obligations of the Company and its Subsidiaries under any and such Indemnification Contracts.

---

(b) For six years after the Effective Time, to the fullest extent permitted under applicable Law, Parent and the Surviving Corporation and any successor to the Surviving Corporation shall, and Parent shall cause the Surviving Corporation or its successor to indemnify, defend and hold harmless each Indemnified Party against all losses, claims, damages, liabilities, fees, expenses, Judgments and fines arising directly or indirectly, in whole or in part out of actions or omissions in their capacity as such occurring at or prior to the Effective Time (including in connection with the Transactions contemplated by this Agreement), and shall advance and/or reimburse each Indemnified Party for any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such losses, claims, damages, liabilities, fees, expenses, Judgments and fines as the same are incurred, subject to the Surviving Corporation's receipt of an undertaking by such Indemnified Party to repay such legal and other fees and expenses paid in advance if it is ultimately determined in a final and non-appealable Judgment of a court of competent jurisdiction that such Indemnified Party is not entitled to be indemnified under applicable Law; provided, however, that the Surviving Corporation will not be liable for any settlement effected without the Surviving Corporation's prior written Consent (which Consent shall not be unreasonably withheld, conditioned or delayed).

(c) Parent shall cause the Surviving Corporation to provide, for an aggregate period of not less than six (6) years from the Effective Time, the Company's current directors and officers an insurance and indemnification policy that provides coverage for events occurring prior to the Effective Time (the "**D&O Insurance**") that is no less favorable than the Company's existing policy as of the date of this Agreement or, if insurance coverage that is no less favorable is unavailable, the best available coverage; provided, however, that the Surviving Corporation shall not be required to pay an annual premium for the D&O Insurance in excess of three hundred percent (300%) of the last annual premium paid prior to the date of this Agreement or, if less, the cost of a policy providing coverage on the same terms as the Company's existing policy as of the date of this Agreement; provided, further, that the Company may prior to the Effective Time substitute therefor a single premium tail coverage with respect to D&O Insurance, in a form reasonably acceptable to Parent, with an annual cost not in excess of three hundred percent (300%) of the last annual premium paid prior to the date of this Agreement.

(d) The obligations of Parent and the Surviving Corporation under this Section 6.3 shall survive the consummation of the Merger and shall not be terminated or modified in such a manner as to adversely affect any Indemnified Party to whom this Section 6.3 applies without the Consent of such affected Indemnified Party (it being expressly agreed that the Indemnified Parties to whom this Section 6.3 applies shall be third party beneficiaries of this Section 6.3, each of whom may enforce the provisions of this Section 6.3).

(e) In the event the Surviving Corporation or any of its respective successors or assigns (i) consolidates with or merges into any other Person and shall not be the continuing or surviving corporation or entity in such consolidation or merger or (ii) transfers or licenses all or substantially all of its properties and assets (including Intellectual Property Rights) to any Person, then, and in either such case, proper provision shall be made so that each of such successors and assigns of the Surviving Corporation shall assume all of the obligations set forth in this Section 6.3 to the extent of the assets transferred to such successor or assign. The

agreements and covenants contained herein shall not be deemed to be exclusive of any other rights to which any Indemnified Party is entitled, whether pursuant to Law, Contract or otherwise. Nothing in this Agreement is intended to, shall be construed to or shall release, waive or impair any rights to directors' and officers' insurance claims under any policy that is or has been in existence with respect to the Company or its officers, directors and employees, it being understood and agreed that the indemnification provided for in this Section 6.3 is not prior to, or in substitution for, any such claims under any such policies.

#### 6.4 Employee Benefit Matters

(a) For a period of one year following the Effective Time, Parent will provide, or will cause to be provided, to those employees of the Company who continue to be employed by Parent and its Subsidiaries, including, following the Closing, the Company (individually, a "**Continuing Employee**" and collectively, "**Continuing Employees**") with: (i) cash compensation, including base salary rate and commission and target bonus opportunity, no lower than the cash compensation provided to such Continuing Employee immediately prior to the Effective Time, (ii) equity awards set forth on Section 6.4(a) of the Company Disclosure Schedule, with respect to fiscal year 2016 awards previously approved by the Company, and (iii) health and welfare benefits on terms at least as favorable, in the aggregate, as the health and welfare benefits provided to such Continuing Employee by the Company immediately prior to the Effective Time.

(b) To the extent Parent elects to have Continuing Employees and their eligible dependents participate in its employee benefit plans, program or policies following the Effective Time, Parent shall use commercially reasonable efforts to, and shall cause the Surviving Corporation to use commercially reasonable efforts to, treat, and cause the applicable benefit plans in which Continuing Employees are entitled to participate to treat, the service of Continuing Employees with the Company or any Subsidiary of the Company or any of their predecessors to the extent previously recognized by the Company as of the date hereof attributable to any period before the Effective Time as service rendered to Parent, the Surviving Corporation, any Subsidiary of Parent for purposes of eligibility to participate, vesting and for other appropriate benefits including the applicability of minimum waiting periods for participation, but excluding benefit accrual (including minimum pension amount), equity incentive plans and eligibility for early retirement under any benefit plan of Parent or eligibility for retiree welfare benefit plans or as would otherwise result in a duplication of benefits. Without limiting the foregoing, Parent shall cause any actively at work or similar limitations, eligibility waiting periods, evidence of insurability requirements or required physical examinations under any health or similar plan of Parent to be waived with respect to Continuing Employees and their eligible dependents. Parent shall also use commercially reasonable efforts to cause any deductibles paid by Continuing Employees under any of the Company's or its Subsidiaries' health plans in the plan year in which Continuing Employees and their eligible dependents are transitioned to Parent's health or similar plans to be credited towards deductibles under the health plans of Parent or any Subsidiary of Parent.

(c) For the terms of the agreements or arrangements, Parent shall cause the Company or the Surviving Corporation, as applicable, to honor, in accordance with their terms, the employment, severance and change in control agreements and arrangements that are listed on Section 6.4(c) of the Company Disclosure Schedule.



---

(d) Nothing in this Agreement will require the continued employment of any Person, and except as expressly set forth in this Section 6.4, no provision of this Agreement will prevent Parent or the Surviving Corporation from amending or terminating any benefit plans of the Company, the Surviving Corporation, Parent or any of their respective Subsidiaries.

(e) The Company and Parent acknowledge and agree that all provisions contained in this Section 6.4 with respect to employees are included for the sole benefit of the respective parties and will not create any right in any other Person, including any employees, former employees, any participant in any benefit plan or any beneficiary thereof, nor will require the Company to continue or amend any particular benefit plan after the consummation of the transactions contemplated by this Agreement for any employee or former employee of the Company, and any such plan may be amended or terminated in accordance with its terms and applicable Law.

## ARTICLE VII

### Additional Agreements and Covenants

7.1 Confidentiality. Parent and the Company hereby acknowledge and agree to continue to be bound by the Confidentiality Agreement dated as of May 18, 2015, by and between Parent and the Company (the “*Confidentiality Agreement*”), which shall survive the termination of this Agreement.

7.2 Public Announcements. The initial press release relating to this Agreement shall be a joint press release, mutually acceptable to each of Parent and the Company. From the date of this Agreement until the Closing or termination of this Agreement in accordance with the terms set forth in ARTICLE IX of this Agreement, Parent and the Company shall cooperate in good faith to jointly prepare all press releases and public announcements pertaining to this Agreement and the Transactions governed by it, and none of the foregoing shall issue or otherwise make any public announcement or communication pertaining to this Agreement or the Transactions without the prior Consent of Parent (in the case of the Company) or the Company (in the case of Parent), except as required by Law as determined after consultation with outside counsel or by the rules and regulations of, or pursuant to any agreement, rules or regulations of, the relevant stock exchange or trading system, or for information that has been publicly disclosed in accordance with the requirements of this Section 7.2 prior to such public announcement or communication. Each Party will not unreasonably withhold approval from the others with respect to any press release or public announcement. The restrictions set forth in this Section 7.2 shall not apply to any release, announcement or disclosure made or proposed to be made by any Party with respect to an Acquisition Proposal, Intervening Event, Company Adverse Recommendation Change or Superior Proposal.

---

## ARTICLE VIII

### Conditions to Closing

8.1 Mutual Conditions Precedent. The respective obligations of the Company, Parent and Merger Sub to enter into and complete the Closing are subject to the fulfillment, on or prior to the Closing Date, of the following conditions, any one or more of which may be waived by the Company and Parent in writing:

(a) Approval and Authorization by the Company's Shareholders. This Agreement shall have been approved in a manner and by the holders of at least a sufficient number of shares of Company Common Stock required to constitute the Company Shareholder Approval.

(b) No Injunction or Illegality. No Specified Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any final and nonappealable Law or order making illegal, permanently enjoining or otherwise permanently prohibiting the consummation of the Transactions.

(c) Requisite Regulatory Approvals. All waiting periods (and extensions thereof) applicable to the Merger under the HSR Act shall have expired or been terminated.

8.2 Company's Conditions Precedent. The obligations of the Company to enter into and complete the Closing are subject, at the option of the Company, to the fulfillment on or prior to the Closing Date of the following conditions by Parent and Merger Sub, any one or more of which may be waived by the Company in writing:

(a) Representations and Covenants. The representations and warranties of Parent and Merger Sub contained in this Agreement shall be true and correct on and as of the Closing Date (except those representations and warranties that address matters only as of a particular date, which shall be true and correct as of that date), except where the failure of such representations or warranties to be so true and correct has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Parent, and Parent and Merger Sub shall each have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by each of them on or prior to the Closing Date, and Parent shall have delivered to the Company a certificate, dated the Closing Date, to the foregoing effect.

(b) Material Adverse Effect on Parent. There shall not have been any occurrence, event, incident, action, failure to act, or transaction since the date of the Agreement which has had or is reasonably likely to cause a Material Adverse Effect on Parent that is continuing.

(c) Agreement of Merger. The Agreement of Merger to be filed in accordance with the California Law on the Closing Date shall have been executed and delivered by Merger Sub.

8.3 Parent's Conditions Precedent. The obligations of Parent and Merger Sub to enter into and complete the Closing are subject, at the option of Parent, to the fulfillment on or prior to the Closing Date of the following conditions by the Company, any one or more of which may be waived by Parent in writing:

(a) Representations and Covenants. The representations and warranties of the Company contained in this Agreement shall be true and correct on and as of the Closing Date (except those representations and warranties that address matters only as of a particular date, which shall be true and correct as of that date), except where the failure of such representations or warranties to be so true and correct has not had or would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company, and the Company shall have performed and complied in all material respects with all covenants and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date, and the Company shall have delivered to Parent a certificate, dated the Closing Date, to the foregoing effect.

(b) No Material Adverse Effect on the Company. There shall not have been any occurrence, event, incident, action, failure to act, or transaction since the date of the Agreement which has had or is reasonably likely to cause a Material Adverse Effect on the Company that is continuing.

(c) FIRPTA Certificate. The Company shall have furnished to Parent a certification in accordance with Treasury Regulation § 1.1445-2(c), and otherwise in form and substance reasonably satisfactory to Parent, certifying that an interest in the Company is not a real property interest because the Company is not and has not been a United States real property holding corporation (as defined in Section 897(c)(2) of the Code) during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code (a "*FIRPTA Certificate*"). Parent shall file such certification with the Internal Revenue Service on behalf of the Company.

## ARTICLE IX

### Termination, Amendment and Waiver

9.1 Termination by Mutual Consent. This Agreement may be terminated at any time prior to the Effective Time (notwithstanding any approval of this Agreement by the shareholders of the Company) by mutual written consent of Parent, Merger Sub and the Company.

9.2 Termination by either Parent or the Company. This Agreement may be terminated by either Parent or the Company at any time prior to the Effective Time (notwithstanding any approval and authorization of this Agreement by the shareholders of the Company):

(a) if the Merger has not been consummated on or before March 2, 2016 (the "*End Date*"); provided, however, that the right to terminate this Agreement pursuant to this Section 9.2(a) shall not be available to any Party whose breach of any representation, warranty, covenant or agreement set forth in this Agreement has been the cause of, or resulted in, the failure of the Merger to be consummated on or before the End Date;

---

(b) if any Specified Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Law that remains in effect (other than the application to the Transactions of applicable waiting periods under the HSR Act or other Antitrust Laws) or order making illegal, permanently enjoining or otherwise permanently prohibiting the consummation of the Transactions, and such Law or order (i) shall have or is reasonably expected to have a Material Adverse Effect on the Company and its Subsidiaries taken as a whole and (ii) shall have become final and nonappealable; provided, however, that the right to terminate this Agreement pursuant to this Section 9.2(b) shall not be available to any Party whose breach of any representation, warranty, covenant or agreement set forth in this Agreement has been the cause of, or resulted in, the issuance, promulgation, enforcement or entry of any such Law or Order; or

(c) if this Agreement has been submitted to the shareholders of the Company for approval and authorization at a duly convened Company Shareholders Meeting and the Company Shareholder Approval shall not have been obtained at such meeting (including any adjournment or postponement thereof).

9.3 Termination By Parent. This Agreement may be terminated by Parent at any time prior to the Effective Time (notwithstanding any approval of this Agreement by the shareholders of the Company):

(a) if, prior to the receipt of the Company Shareholder Approval at the Company Shareholder Meeting, (i) a Company Adverse Recommendation Change shall have occurred, (ii) the Company shall have entered into, or publicly announced its intention to enter into, a Company Acquisition Agreement (other than an Acceptable Confidentiality Agreement), or (iii) the Company shall have materially breached its obligations under Section 5.7; or

(b) if there shall have been a breach of any representation, warranty, covenant or agreement on the part of the Company set forth in this Agreement such that the conditions set forth in Section 8.2(a) would not be satisfied and such breach is incapable of being cured by the End Date; provided that Parent shall have given the Company at least 30 days written notice prior to such termination stating Parent's intention to terminate this Agreement pursuant to this Section 9.3(b).

9.4 Termination by the Company. This Agreement may be terminated by the Company at any time prior to the Effective Time (notwithstanding, in the case of Section 9.4(b) immediately below, any approval and authorization of this Agreement by the shareholders of the Company):

(a) if prior to the receipt of the Company Shareholder Approval at the Company Shareholders Meeting, the Company Board authorizes the Company, in full compliance with the terms of this Agreement to enter into a Company Acquisition Agreement (other than an Acceptable Confidentiality Agreement) in respect of a Superior Proposal;

---

provided that the Company shall have paid the full amount due pursuant to Section 9.6(b) hereof prior to or concurrently with the termination of this Agreement pursuant to this Section 9.4(a); and provided further that any attempted termination of this Agreement pursuant to this Section 9.4(a) shall become effective no earlier than upon payment to Parent of the full amount due pursuant to Section 9.6(b) hereof; or

(b) if there shall have been a breach of any representation, warranty, covenant or agreement on the part of Parent or Merger Sub set forth in this Agreement such that the conditions set forth in Section 8.1(a) would not be satisfied and such breach is incapable of being cured by the End Date; provided that the Company shall have given Parent at least 30 days written notice prior to such termination stating the Company's intention to terminate this Agreement pursuant to this Section 9.4(b); or

(c) if (i) all of the conditions set forth in Sections 8.1 and 8.3 (other than those conditions that by their terms are to be satisfied at the Closing) have been satisfied or waived, (ii) Parent shall have failed to consummate the Merger by the time set forth in Section 1.2, and (iii) the Company shall have given Parent written notice at least five (5) Business Days prior to such termination stating the Company's intention to terminate this Agreement pursuant to this Section 9.4(c).

9.5 Notice of Termination; Effect of Termination. The Party desiring to terminate this Agreement pursuant to this ARTICLE IX (other than pursuant to Section 9.1) shall deliver written notice of such termination to each other Party specifying with particularity the reason for such termination, and any such termination in accordance with this Section 9.5 shall be effective immediately upon delivery of such written notice to the other Parties; provided, however, that any purported termination of this Agreement by the Company pursuant to Section 9.4(a) shall be effective solely upon payment by the Company to Parent of the full amount due pursuant to Section 9.6(b). If this Agreement is terminated pursuant to this ARTICLE IX, it will become void and of no further force and effect, with no liability on the part of any Party (or any stockholder, director, officer, employee, agent or Representative of such Party) to any other Party hereto, except (i) with respect to Section 5.2(b), this Section 9.5, Section 9.6 and ARTICLE X (and any related definitions contained in any such Sections or ARTICLE X), which shall remain in full force and effect and (ii) a Party shall remain liable for any liabilities or damages caused by such Party to the extent such liabilities or damages were the result of fraud or the willful and material breach of this Agreement by such Party.

9.6 Fees and Expenses Following Termination.

(a) If this Agreement is terminated by Parent pursuant to Section 9.3(a), then the Company shall pay to Parent (by wire transfer of immediately available funds), within two (2) Business Days after such termination, a fee in an amount equal to the Termination Fee.

(b) If this Agreement is terminated by the Company pursuant to Section 9.4(a), then the Company shall pay to Parent (by wire transfer of immediately available funds), at or prior to such termination, the Termination Fee.

---

(c) If this Agreement is terminated by the Company or Parent pursuant to (i) Section 9.2(a) hereof and provided that the Company Shareholder Approval shall not have been obtained at the Company Shareholders Meeting (including any adjournment or postponement thereof) or (ii) Section 9.2(c) hereof and, in the case of clauses (i) and (ii) immediately above, (A) prior to such termination (in the case of termination pursuant to Section 9.2(a)) or the Company Shareholders Meeting (in the case of termination pursuant to Section 9.2(c)), an Acquisition Proposal shall have been publicly disclosed and not withdrawn and (B) within twelve (12) months following the date of such termination of this Agreement the Company shall have entered into a definitive agreement with respect to any Acquisition Proposal, or any Acquisition Proposal shall have been consummated (in each case whether or not such Acquisition Proposal is the same as the original Acquisition Proposal publicly disclosed), then in any such event the Company shall pay to Parent (by wire transfer of immediately available funds), no later than two (2) Business Days following the consummation of such transaction, the Termination Fee, (it being understood for all purposes of this Section 9.6(c), all references in the definition of Acquisition Proposal to 15% shall be deemed to be references to "more than 50%" instead). If a Person (other than Parent or its Affiliates) makes an Acquisition Proposal that has been publicly disclosed and subsequently withdrawn prior to such termination or the Company Shareholders Meeting, as applicable, and, within twelve (12) months following the date of the termination of this Agreement, such Person or any of its controlled Affiliates makes an Acquisition Proposal that is publicly disclosed, such initial Acquisition Proposal shall be deemed to have been "not withdrawn" for purposes of clauses (1) and (2) of this paragraph (c).

(d) The Company acknowledges and hereby agrees that the provisions of this Section 9.6 are an integral part of the Transactions contemplated by this Agreement (including the Merger), and that, without such provisions, Parent and Merger Sub would not have entered into this Agreement. If the Company shall fail to pay in a timely manner the amounts due pursuant to this Section 9.6, and, in order to obtain such payment, Parent makes a claim against the Company therefor that results in a Judgment against the Company, the Company shall pay to Parent the reasonable and documented costs and expenses of Parent (including its reasonable attorneys' fees and expenses) incurred or accrued in connection with such suit, together with interest on the amounts set forth in this Section 9.6 at the prime lending rate prevailing during such period as published in The Wall Street Journal. Any interest payable hereunder shall be calculated on a daily basis from the date such amounts were required to be paid until (but excluding) the date of actual payment. The Parties acknowledge and agree that in no event shall the Company be obligated to pay the Termination Fee on more than one occasion.

(e) Notwithstanding anything to the contrary in this Agreement, Parent and Merger Sub agree that, upon any termination of this Agreement under circumstances where the Termination Fee is payable by the Company pursuant to this Section 9.6 and such Termination Fee is paid in full, such fee shall be deemed to be liquidated damages for any and all losses or damages suffered or incurred by Parent or Merger Sub or any of their respective Affiliates in connection with this Agreement and the negotiation, execution and performance thereof, and Parent and Merger Sub shall be precluded from any other remedy against the Company or its Subsidiaries, at law or in equity or otherwise, and neither Parent nor Merger Sub shall seek to obtain any recovery, Judgment, or damages of any kind, including consequential, indirect, or

---

punitive damages, against the Company or any of the Company's Subsidiaries or any of their respective directors, officers, employees, partners, managers, members, stockholders or Affiliates or their respective Representatives in connection with this Agreement or the Transactions contemplated hereby.

(f) Except as expressly set forth in this Section 9.6, all Expenses incurred in connection with this Agreement and the Transactions contemplated hereby will be paid by the Party incurring such Expenses.

9.7 Amendment. At any time prior to the Effective Time, this Agreement may be amended or supplemented in any and all respects, whether before or after receipt of the Company Shareholder Approval, by written agreement signed by each of the Parties hereto; provided, however, that following the receipt of the Company Shareholder Approval, there shall be no amendment or supplement to the provisions of this Agreement which by Law or in accordance with the rules of any relevant self-regulatory organization would require further approval by the holders of the Company Shares without such approval.

9.8 Extension; Waiver. At any time prior to the Effective Time, Parent or Merger Sub, on the one hand, or the Company, on the other hand, may (a) extend the time for the performance of any of the obligations of the other Party(ies), (b) waive any inaccuracies in the representations and warranties of the other Party(ies) contained in this Agreement or in any document delivered under this Agreement, or (c) unless prohibited by applicable Law, waive compliance with any of the covenants, agreements or conditions contained in this Agreement. Any agreement on the part of a Party to any extension or waiver will be valid only if set forth in an instrument in writing signed by such Party. The failure or delay of any Party to assert any of its rights under this Agreement or otherwise will not constitute a waiver of such rights.

## ARTICLE X

### Miscellaneous

10.1 Non-Survival and Representations and Warranties. None of the representations and warranties contained in this Agreement or in any instrument delivered under this Agreement will survive the Effective Time. This Section 10.1 does not limit any covenant of the Parties to this Agreement which, by its terms, contemplates performance after the Effective Time.

10.2 Disclosure Schedule References. The parties hereto agree that any reference in a particular Section of the Company Disclosure Schedule or Parent Disclosure Schedule, as the case may be, shall only be deemed to be an exception to (or, as applicable, a disclosure for purposes of) (i) the representations and warranties (or covenants, as applicable) of the relevant Party that are contained in the corresponding Section of this Agreement and (ii) any other representations and warranties of such Party that is contained in this Agreement, but only if the relevance of that reference as an exception to (or a disclosure for purposes of) such representations and warranties would be reasonably apparent to an individual who has read that reference and such representations and warranties.

---

10.3 Notices. All notices, requests, claims, demands and other communications required or permitted under, or otherwise made in connection with, this Agreement, shall be in writing (including e-mail) and shall be deemed to have been duly given (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next Business Day if transmitted by national overnight courier (with confirmation of delivery) or (e) on the date delivered if sent by e-mail (with confirmation of delivery), in each case, addressed as follows:

if to Parent or Merger Sub, to:

Diodes Incorporated  
4949 Hedgcoxe Road, Suite 200  
Plano, TX 75024  
Attention: Keh-Shew Lu, Chief Executive Officer  
Facsimile No.: (972) 731-3510  
Email: KS\_Lu@diodes.com

with a copy to (which shall not constitute notice):

Sheppard, Mullin, Richter & Hampton, LLP  
333 South Hope Street  
Forty-Third Floor  
Los Angeles, CA 90071  
Attention: Peter M. Menard, Esq.  
Facsimile No.: (213) 443-2860  
Email: pmenard@sheppardmullin.com

if to the Company, to:

Pericom Semiconductor Corporation  
1545 Barber Lane  
Milpitas, California 95035  
Attention: Alex Hui  
Facsimile No.: (408) 434-1040  
Email: AHui@PERICOM.com

with a copy to (which shall not constitute notice):

Latham & Watkins LLP  
140 Scott Drive  
Menlo Park, California 94025  
Attention: Tad J. Freese  
Facsimile No.: (650) 463-2600  
Email: tad.freese@lw.com



---

or to such other address or facsimile number as such Party may hereafter specify for the purpose by notice to the other Parties hereto.

10.4 Interpretation.

(a) When a reference is made in this Agreement to a Section, such reference shall be to a Section of this Agreement unless otherwise indicated.

(b) The headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

(c) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(d) Unless otherwise specifically provided for herein, the terms “or” will not be deemed to be exclusive.

(e) The words “hereof,” “herein” and “hereunder” and words of like import used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement.

(f) Unless otherwise indicated, all references herein to dollars or “\$” shall mean and refer to U.S. denominated dollars.

(g) The captions herein are included for convenience of reference only and shall be ignored in the construction or interpretation hereof. References to Articles, Sections, Exhibits and Schedules are to Articles, Sections, Exhibits and Schedules of this Agreement unless otherwise specified.

(h) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Exhibit or Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.

(i) Any singular term in this Agreement shall be deemed to include the plural, and any plural term the singular, and words denoting either gender shall include both genders as the context requires. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(j) A reference to any legislation or to any provision of any legislation shall include any modification, amendment, re-enactment thereof, any legislative provision substituted therefore and all rules, regulations and statutory instruments issued or related to such legislation.

(k) The parties hereto acknowledge that they have participated in the drafting of this Agreement and have been represented by counsel during the negotiation and execution of this Agreement and, therefore, agree to waive the application of any Law, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

---

(l) A reference to any “willful breach” or any breach committed “willfully” shall mean a breach that is a consequence of an act undertaken, or inaction by, the breaching Party with the actual Knowledge and intent that the taking of such act or inaction would constitute or cause a breach of this Agreement.

(m) Although the same or similar subject matters may be addressed in different provisions, the parties intend that each such provision shall be read separately, be given independent legal significance and not be construed as limiting any other provision in this Agreement (whether or not more general or more specific in scope, substance or content).

10.5 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule or Law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that Transactions are fulfilled to the extent possible.

10.6 Entire Agreement; Third Party Beneficiaries. This Agreement, taken together with all Exhibits, Annexes and Schedules and the other documents delivered pursuant hereto (a) constitutes the entire agreement, and supersedes all prior agreements and understandings, both written and oral, among the Parties with respect to the Transactions (except the Confidentiality Agreement, which shall survive the execution of this Agreement and continue to be binding pursuant to its terms) and (b) nothing in this Agreement, express or implied, is intended to or will confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement except for (i) each Indemnified Party as set forth in Section 6.3, (ii) the Company on behalf of the Company’s equityholders to pursue damages (including claims for damages based on loss of the economic benefits of the Transactions to the Company’s equityholders) in the event of the breach of this Agreement prior to the Closing Date by Parent or Merger Sub (whether or not this Agreement has been terminated pursuant to ARTICLE IX), which right is hereby expressly acknowledged and agreed by Parent and Merger Sub, and (iii) as expressly set forth in this Agreement. The third-party beneficiary rights referenced in clause (ii) of the preceding sentence may be exercised only by the Company (on behalf of the Company’s equityholders as their agent) through actions expressly approved by the Company Board, and no Company equityholder whether purporting to act in its capacity as a Company equityholder or purporting to assert any right (derivatively or otherwise) on behalf of the Company, will have any right or ability to exercise or cause the exercise of any such right.

10.7 Counterparts; Facsimile Execution. This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement and shall become effective when two or more counterparts have been signed by each of the Parties and delivered to the other Parties. Facsimile or .pdf execution and delivery of this Agreement is legal, valid and binding for all purposes.

---

10.8 Governing Law; Jurisdiction.

(a) This Agreement and all disputes, controversies, cross-claims, third-party claims or other Proceedings of any kind or description, whether in law or in equity, whether in contract or in tort or otherwise, arising out of or in connection with or relating to any matter which is the subject of this Agreement or any of the transactions contemplated by this Agreement will be governed by, and construed in accordance with, the Laws of the State of California, without regard to Laws that may be applicable under conflicts of laws principles (whether of the State of California or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of California.

(b) Each of the parties hereto (i) consents to submit itself to the exclusive personal jurisdiction and exclusive venue of any United States federal court or California state court located in the City and County of Los Angeles, California with respect to any dispute arising out of, relating to or in connection with this Agreement or any of the transactions contemplated by this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court, and (iii) agrees that it will not bring any action arising out of, relating to or in connection with this Agreement or any of the transactions contemplated by this Agreement in a United States federal or state court sitting in the City and County of Los Angeles,, California, as described above. Nothing in this Section 10.8 shall prevent any Party from bringing an action or proceeding in any jurisdiction to enforce any Judgment entered by any United States federal court or California state court located in the City and County of Los Angeles,, California, as applicable. Each of the Company, Parent and Merger Sub hereby agrees that service of any process, summons, notice or document by U.S. registered mail to the respective addresses set forth on the signature page hereof shall be effective service of process for any suit or proceeding in connection with this Agreement or any of the transactions contemplated hereby.

10.9 Specific Performance. The Company, Parent and Merger Sub acknowledge and agree that irreparable damage would occur in the event any of the provisions of this Agreement required to be performed by any of the Parties were not performed in accordance with their specific terms or were otherwise breached, and that monetary damages, even if available, would not be an adequate remedy therefor. Accordingly, in the event of any breach or threatened breach by any Party of any covenant or obligation contained in this Agreement, the Company or Parent shall be entitled to obtain, without proof of actual damages (and in addition to any other remedy to which such Party may be entitled at law or in equity): (a) a decree or order from a court of competent jurisdiction of specific performance to enforce the observance and performance of such covenant or obligation; and (b) an injunction from a court of competent jurisdiction restraining such breach or threatened breach. Each Party hereby waives any requirement for the securing or posting of any bond in connection with any such remedy.

---

10.10 Assignment. Neither this Agreement nor any of the rights, interests or obligations under this Agreement shall be assigned, in whole or in part, by operation of law or otherwise by any of the Parties without the prior written consent of the other Parties. Any purported assignment without such consent shall be void. Subject to the preceding sentences, this Agreement will be binding upon, inure to the benefit of, and be enforceable by, the Parties and their respective successors and assigns.

*[Signature Page Follows]*

---

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed by their respective authorized signatories as of the date first indicated above.

**DIODES INCORPORATED**

By: /s/ Keh-Shew Lu  
Name: Keh-Shew Lu  
Title: Chief Executive Officer

**PSI MERGER SUB, INC.**

By: /s/ Keh-Shew Lu  
Name: Keh-Shew Lu  
Title: Chief Executive Officer

**PERICOM SEMICONDUCTOR CORPORATION**

By: /s/ Alex Chiming Hui  
Name: Alex Chiming Hui  
Title: Chief Executive Officer

---

## ANNEX A

### Definitions

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

“Acceptable Confidentiality Agreement” means a confidentiality agreement that contains confidentiality provisions that are no less favorable to the Company than those contained in the Confidentiality Agreement.

“Acquisition Proposal” means a proposal or offer from, or indication of interest in making a proposal or offer by, any Person (other than Parent and its Affiliates, including Merger Sub) concerning any (a) direct or indirect acquisition of assets of the Company or its Subsidiaries (including any voting equity interests of Subsidiaries, but excluding sales of assets in the ordinary course of business) equal to fifteen percent (15%) or more of the fair market value of the Company’s consolidated assets or to which fifteen percent (15%) or more of the Company’s net revenues or net income on a consolidated basis are attributable, (b) direct or indirect acquisition of fifteen percent (15%) or more of the voting equity interests of the Company, (c) tender offer or exchange offer that if consummated would result in any Person beneficially owning (within the meaning of Section 13(d) of the Exchange Act) fifteen percent (15%) or more of the voting equity interests of the Company, (d) merger, consolidation, other business combination or similar transaction involving the Company or any of its Subsidiaries, pursuant to which such Person would own fifteen percent (15%) or more of the outstanding voting equity, consolidated assets, net revenues or net income of the Company, or (e) liquidation or dissolution (or the adoption of a plan of liquidation or dissolution) of the Company or the declaration or payment of an extraordinary dividend (whether in cash or other property) by the Company.

“Action” has the meaning set forth in Section 3.8 of the Agreement.

“Affiliates” means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by Contract or otherwise and, in any event and without limitation of the previous sentence, any Person owning fifty percent (50%) or more of the voting securities of a second Person shall be deemed to control that second Person. For the purposes of this definition, a Person shall be deemed to control any of his or her immediate family members.

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

“Agreement of Merger” has the meaning set forth in Section 1.3 of the Agreement.

“Announcement 7 Notification” has the meaning set forth in Section 5.6(h) of the Agreement.

“Antitrust Laws” means any Laws that are designed or intended to prohibit, restrain or regulate actions having the purpose or effect of monopolization or restraint of trade or significant impediment or lessening of competition or strengthening of dominant positions through merger or acquisition.

---

“Applicable Date” has the meaning set forth in Section 3.5(a) of the Agreement.

“August 2015 Dividend” has the meaning set forth in Section 5.1(b) of the Agreement.

“Book-Entry Shares” has the meaning set forth in Section 2.2(b) of the Agreement.

“Business Day” means a day (excluding Saturdays, Sundays and public holidays) on which commercial banks are generally open for banking business in Los Angeles, California.

“California Law” has the meaning set forth in the Background section of the Agreement.

“Capitalization Date” has the meaning set forth in Section 3.2(a) of the Agreement.

“Certificates” has the meaning set forth in Section 2.2(b) of the Agreement.

“Change” has the meaning set forth in the definition of Material Adverse Effect in this Annex A.

“Chapter 13” has the meaning set forth in Section 2.3(a) of the Agreement.

“Closing” has the meaning set forth in Section 1.2 of the Agreement.

“Closing Date” has the meaning set forth in Section 1.2 of the Agreement.

“Code” means the Internal Revenue Code of 1986, as amended, and applicable Treasury Regulations issued pursuant thereto.

“Company” has the meaning set forth in the preamble to the Agreement.

“Company Acquisition Agreement” has the meaning set forth in Section 5.7(a) of the Agreement.

“Company Adverse Recommendation Change” has the meaning set forth in Section 5.7(b) of the Agreement.

“Company Articles” means the Articles of Incorporation of the Company as amended, amended and restated and supplemented and in effect on the date hereof.

“Company Balance Sheet” means the unaudited balance sheet of the Company as of March 28, 2015, included in the Company Reports.

“Company Benefit Plan” means any material “employee benefit plan” within the meaning of Section 3(3) of ERISA, and any other material written or oral plan, agreement or arrangement involving compensation or benefits, including insurance coverage, severance benefits, disability benefits, deferred compensation, bonuses, stock options, stock purchase, phantom stock, stock appreciation or other forms of fringe benefits, perquisites, incentive

---

compensation or post-retirement compensation or post-employment compensation and all material employment, management, consulting, relocation, repatriation, expatriation, change in control, severance or similar agreements, written or otherwise, which is or has been maintained, contributed to or required to be contributed to for the benefit of, or relating to, any current or former employee, officer, director or consultant of the Company or any of its Subsidiaries or any of their respective ERISA Affiliates, or with respect to which any such party has or may have any liability.

“Company Board” means the Board of Directors of the Company.

“Company Board Recommendation” has the meaning set forth in Section 3.3(b) of the Agreement.

“Company Bylaws” means the bylaws of the Company, as amended and restated as of the date of the Agreement.

“Company Common Stock” has the meaning set forth in the Background section of the Agreement.

“Company Disclosure Schedule” has the meaning set forth in ARTICLE III of the Agreement.

“Company Equity Awards” has the meaning set forth in Section 2.4(a) of the Agreement.

“Company ESPP” has the meaning set forth in Section 2.4(g) of the Agreement.

“Company Financial Advisor” means Cowen and Company, or another financial advisor of nationally recognized reputation engaged by the Company to provide advice related to the Transactions provided that notice of the engagement is given to Parent prior to the engagement of such other financial advisor.

“Company Financial Statements” means the financial statements of the Company included in the Company Reports.

“Company Insurance Policies” has the meaning set forth in Section 3.15 of the Agreement.

“Company Material Permits” means all Permits other than such franchises, licenses, permits, authorizations and approvals the lack of which has not had and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Company.

“Company Non-U.S. Employee Plans” has the meaning set forth in Section 3.13(a)(16) of the Agreement.

“Company Options” has the meaning set forth in Section 2.4(a) to the Agreement.

“Company Reports” has the meaning set forth in Section 3.5(a) to the Agreement.



---

“Company RSUs” has the meaning set forth in Section 2.4(c) to the Agreement.

“Company Shareholder Approval” has the meaning set forth in Section 3.3(a) of the Agreement.

“Company Shareholder Meeting” means a special meeting of the stockholders of the Company to be held pursuant to the California Law to consider the approval of this Agreement.

“Company Shares” has the meaning set forth in the Background section of the Agreement.

“Company Stock Plans” has the meaning set forth in Section 2.4(a) of the Agreement.

“Confidentiality Agreement” has the meaning set forth in Section 7.1 of the Agreement.

“Conflict Minerals” means columbite-tantalite (coltan), cassiterite, gold, wolframite or their derivatives, tantalum, tin and tungsten and any other minerals or derivatives that the United States Secretary of State determines after the date of this Agreement to be financing conflict in a Covered Country.

“Conflict Mineral Rule” has the meaning set forth in Section 3.25 of the Agreement.

“Consent” means the consent, approval, order or authorization of, or registration, declaration or filing with any Person.

“Continuing Employee” has the meaning set forth in Section 6.4(a) of the Agreement.

“Contract” means a legally binding contract, lease, license, indenture, note, bond, agreement, Permit, concession, franchise or other instrument.

“Covered Countries” means the Democratic Republic of the Congo and its adjoining countries, including, as of the date of this Agreement, Angola, Burundi, Central African Republic, the Republic of the Congo, Rwanda, South Sudan, Tanzania, Uganda and Zambia.

“Credit Agreement” has the meaning set forth in Section 4.7 of the Agreement.

“Credit Agreement Amendment” has the meaning set forth in Section 4.7 of the Agreement.

“D&O Insurance” has the meaning set forth in Section 6.3(c) of the Agreement.

“DOJ” has the meaning set forth in Section 5.6(e) of the Agreement

“Dissenting Shares” has the meaning set forth in Section 2.3(a) of the Agreement.

“Effective Time” has the meaning set forth in Section 1.3 of the Agreement.

“Enforceability Exceptions” has the meaning set forth in Section 9.2(a) of the Agreement.

---

“End Date” has the meaning set forth in Section 9.2(a) of the Agreement.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

“Environmental Law” means any Legal Requirement that requires or relates to: (a) releases of pollutants or hazardous substances or materials, violations of discharge limits, or other prohibitions and of the commencements of activities, such as resource extraction or construction, that could have significant impact on the Environment; (b) protecting resources, species, or ecological amenities; (c) cleaning up pollutants that have been released, preventing the threat of release, or paying the costs of such clean up or prevention; or (d) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment, or permitting self-appointed representatives of the public interest to recover for injuries done to public assets.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“ERISA Affiliate” of an entity means any Person which is, or at any applicable time was, a member of (i) a controlled group of corporations (as defined in Section 414(b) of the Code), (ii) a group of trades or businesses under common control (as defined in Section 414(c) of the Code) or (iii) an affiliated service group (as defined under Section 414(m) of the Code or the regulations under Section 414(o) of the Code), any of which includes or included the entity.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, supplemented or otherwise modified from time to time.

“Exclusivity Period” has the meaning set forth in Section 5.7(a) of the Agreement.

“Expenses” means all out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment bankers, experts and consultants to a Party and its Affiliates) incurred by a Party on its behalf in connection with or related to the authorization, preparation, diligence, negotiation, execution and performance of this Agreement and the Transaction Documents.

“Facilities” means any Real Property owned or leased by the Company or any of its Subsidiaries and any buildings, plants and structures thereon owned or leased by the Company or any of its Subsidiaries.

“Final Exercise Date” has the meaning set forth in Section 2.4(f) of the Agreement.

“FIRPTA Certificate” has the meaning set forth in Section 8.3(c) of the Agreement.

“FTC” has the meaning set forth in Section 5.6(e) of the Agreement.

“Government Antitrust Entity” means any Government Entity with jurisdiction over Antitrust Laws.

---

“Governmental Entity” means any national, federal, state, provincial, local or foreign government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body of competent jurisdiction, or other governmental authority or instrumentality, domestic or foreign, of competent jurisdiction.

“Hazardous Material” means any chemical, material or substance defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” or “toxic substances” or words of similar import under any applicable Law or regulations, including Environmental Laws.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976

“Indemnified Party” has the meaning set forth in Section 6.3(a) of the Agreement.

“Indemnification Contracts” has the meaning set forth in Section 6.3(a) of the Agreement.

“Intellectual Property Rights” shall have the meaning set forth in Section 3.11 of the Agreement.

“Intervening Event” means a material development or material change in circumstances with respect to the Company and its Subsidiaries, taken as a whole, occurring after the date of this Agreement, that is (i) materially more favorable to the recurring financial condition and results of operations of the Company and its Subsidiaries, taken as a whole, relative to other businesses operating in the same industry, (ii) was neither known to the Company Board nor reasonably foreseeable as of or prior to the date of this Agreement and (iii) does not relate to (A) any Acquisition Proposal, (B) the fact, in and of itself, that the Company meets or exceeds any internal or published projections, forecasts, estimates or predictions of revenue, earnings or other financial or operating metrics for any period ending on or after the date of this Agreement (provided that the exception in this clause (B) shall not prevent or otherwise affect any such development or change underlying the Company meeting or exceeding such metrics from being taken into account in determining whether an Intervening Event has occurred), or (C) any changes after the date of this Agreement in the market price or trading volume of the shares of Company Common Stock (provided that the exception in this clause (C) shall not prevent or otherwise affect any such development or change underlying such change in market price or trading value from being taken into account in determining whether an Intervening Event occurred).

“IRS” means the United States Internal Revenue Service or any successor thereto.

“Judgment” means any judgment, order or decree.

“Knowledge”, (i) with respect to the Company, means the actual knowledge of each of Alex Chiming Hui, Chi-Hung (John) Hui, and Kevin Bauer, or any fact or matter which any such individuals reasonably would be expected to learn from such individual’s direct reports in the ordinary course of customary performance of such individuals’ and such direct reports’ duties consistent with their respective title and responsibilities and (ii) with respect to Parent or the Merger Subs, means the actual knowledge, after due inquiry, of each of Keh-Shew Lu and

---

Richard D. White or any fact or matter which any such individuals reasonably would be expected to learn from such individual's direct reports in the ordinary course of customary performance of such individuals' and such direct reports' duties consistent with their respective title and responsibilities.

"Law(s)" means any law, statute, ordinance, rule, regulation, order, writ, injunction or decree.

"Legal Requirement" means any federal, state, local, municipal, provincial, foreign or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entities (or under the authority of any national securities exchange upon which securities of Parent and the Company are then listed or traded).

"Liens" means any liens, security interests, pledges, equities and claims of any kind, voting trusts, stockholder agreements and other encumbrances. Liens excludes licenses of Intellectual Property Rights.

"Material Adverse Effect" means, with respect to a Person, any event, change or effect (collectively, a "**Change**") that, considered with all Changes, had a material adverse effect on the financial condition, properties, assets, liabilities, business or results of operations of such Person and its Subsidiaries, taken as a whole, provided, however, that a Change shall not be deemed a Material Adverse Effect or considered in determining whether there has occurred (or would reasonably be expected to occur) a Material Adverse Effect, if (i) such Change results from (A) general economic, regulatory or political conditions in the U.S., the PRC, the Republic of China (Taiwan) or any other nation or jurisdiction in which such Person conducts material business operations, (B) conditions generally affecting the other companies in such Person's industry, (C) any Change caused by the announcement, pendency or performance of this Agreement, including any cancellation of or delays in customer orders, failure to obtain new customer orders, disruption in supplier, partnership, distributor, reseller or similar relationships, or loss of employees, (D) shareholder action or derivative litigation alleging (1) a breach of fiduciary duty by the Company Board relating to the negotiation, execution, delivery or performance (or disclosure with respect thereto) of this Agreement or the proposed consummation of the Merger or the other Transactions, or (2) that the Proxy Statement violates the disclosure requirements of the Exchange Act or other applicable Law (provided, however, that for this exception to apply, the Company must have complied with its obligations in Section 5.7), (E) acts of war (whether or not declared), the commencement, continuation or escalation of a war, acts of armed hostility, sabotage or terrorism or natural disasters in any locations where such Person conducts material business operations, (F) the failure of such Person to meet internal or analysts' financial expectations or projections (it being understood that the underlying causes of any such failure may be taken into account in determining whether a Material Adverse Effect has occurred), (G) changes in trading volume or a decline in such Person's stock price (it being understood that the underlying causes of any such change or decline may be taken into account in determining whether a Material Adverse Effect has occurred), (H) any facts, events or circumstances that the other Parties or their respective Representatives knew or should have known prior to the date of this Agreement, (I) any actions taken or failure to take action, in each case, which (1) is required

---

by the terms of this Agreement or (2) which Parent, with respect to the Company, or the Company, with respect to Parent, has approved, consented to or requested, or the failure to take or avoid any such action as a result of any failure to so approve, consent or request, in each case in writing and in compliance with the terms of this Agreement; (J) general financial, credit or capital market conditions, including interest rates or exchange rates; (K) any Changes resulting from a change in Law or U.S. GAAP after the date hereof; or (L) any matter expressly set forth on the Company Disclosure Schedule, with respect to the Company, or the Parent Disclosure Schedule, with respect to Parent, and (ii) with respect to clauses (A), (B), and (E), the conditions or circumstances that caused such Change do not have an impact on the Company and its Subsidiaries, taken as a whole, that is materially disproportionate to the impact such conditions or circumstances have on the other companies in the Company's industry.

“Material Contract” means (a) a contract required to be filed with the Company Reports pursuant to Item 601 of Regulation S-K, and (b) a written Contract, as amended and supplemented to which the Company or any of its Subsidiaries is a party or by which any of their respective assets and properties is currently bound, which involve annual obligations of payment by, or annual payments to, the Company or its Subsidiaries in excess of \$500,000.

“Merger” has the meaning set forth in the Background section of the Agreement.

“Merger Consideration” has the meaning set forth in Section 2.1(a) of the Agreement.

“Merger Sub” has the meaning set forth in the preamble to the Agreement.

“Money Laundering Laws” has the meaning set forth in Section 3.19 of the Agreement.

“NASDAQ” means The NASDAQ Stock Market LLC.

“Notice Period” has the meaning set forth in Section 5.7(d) of the Agreement.

“OFAC” has the meaning set forth in Section 3.22 of the Agreement.

“Option Payments” has the meaning set forth in Section 2.4(b) of the Agreement.

“Parent” has the meaning set forth in the preamble to the Agreement.

“Parent Disclosure Schedule” has the meaning set forth in ARTICLE IV of the Agreement.

“Parent Stock” means the common stock, par value \$0.66 2/3 per share, of Parent.

“Parent Stock Plan” means the Parent's 2013 Equity Incentive Plan.

“Party” or “Parties” has the meaning set forth in the preamble to the Agreement.

“Paying Agent” has the meaning set forth in Section 2.2(a) of the Agreement.

“Paying Agent Fund” has the meaning set forth in Section 2.2(1) of the Agreement.

---

“Permits” means all governmental franchises, licenses, permits, authorizations and approvals necessary to enable a Person to own, lease or otherwise hold its properties and assets and to conduct its businesses as presently conducted. Permits excludes licenses of Intellectual Property Rights.

“Permitted Lien” means (a) any restriction on transfer arising under applicable securities law; (b) any Liens for Taxes not yet delinquent or being contested in good faith by appropriate proceedings for which reserves have been established if required by U.S. GAAP; (c) any statutory Liens arising in the ordinary course of business by operation of Law with respect to a liability that is not yet due and delinquent and which are not, individually or in the aggregate, significant or any statutory Liens to secure the performance of tenders, statutory obligations, surety and appeal bonds, bids, leases, government contracts, performance and return of money bonds and similar obligations; (d) zoning, entitlement, building and other land use regulations imposed by governmental agencies having jurisdiction over the Real Property which are not violated by the current use and operation of the Real Property; (e) covenants, conditions, restrictions, easements and other similar matters of record affecting title to the Real Property which do not materially impair the occupancy or use of the Real Property for the purposes for which it is currently used or proposed to be used in connection with the such relevant Person’s business; (f) Liens identified on title policies, title opinions or preliminary title reports or other documents or writings included in the public records; (g) Liens arising under worker’s compensation, unemployment insurance, social security, retirement and similar legislation; (h) Liens of lessors and licensors arising under lease agreements or license arrangements; and (i) those Liens the existence of which are disclosed in the notes to the consolidated financial statements of the Company included in the Company Reports filed prior to the date of this Agreement or those Liens set forth in the Company Disclosure Schedule.

“Person” means an individual, partnership, corporation, joint venture, unincorporated organization, cooperative or a Governmental Entity or agency thereof.

“PRC” means the People’s Republic of China, for the purposes of this Agreement, excluding the Hong Kong Special Administrative Region and the Macao Special Administrative Region and Taiwan.

“Preferred Stock” has the meaning set forth in Section 3.2(a) of the Agreement.

“Proxy Statement” has the meaning set forth in Section 3.26 of the Agreement.

“Real Estate Leases” has the meaning set forth in Section 3.10(a) of the Agreement.

“Real Property” has the meaning set forth in Section 3.10(a) of the Agreement.

“Regulation S-X” means Regulation S-X promulgated under the Securities Act.

“Representatives” of any Party means such Party’s employees, accountants, auditors, actuaries, counsel, financial advisors, bankers, investment bankers and consultants and any other Person acting on behalf of such Party.

“RSU Payments” has the meaning set forth in Section 2.4(c) of the Agreement.

---

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, supplemented or otherwise modified from time to time.

“Specified Governmental Entity” means (i) any state or federal court in the State of California; (ii) any United States federal regulatory or administrative agency (including, without limitation, the DOJ and the FTC); (iii) the Ministry of Commerce of the PRC, the National Development and Reform Commission of the PRC and the State Administration of Foreign Exchange of the PRC; and (iv) any federal or national Governmental Entity in Taiwan.

“Specified Subsidiaries” has the meaning set forth in Section 4.7 of the Agreement.

“Subsidiary” means with respect to a Person an entity if (a) such Person directly or indirectly owns, beneficially or of record, an amount of voting securities or other interests in such entity that is sufficient to enable such Person to elect at least a majority of the members of such entity’s board of directors or other governing body, or (b) at least 50% of the outstanding equity or financial interests of such entity such that its financial results are consolidated with such other Person.

“Superior Proposal” means a bona fide written Acquisition Proposal (with all references to “fifteen percent (15%)” in the definition of Acquisition Proposal being treated as references to “fifty percent (50%)” for these purposes) that the Company Board determines in good faith (after consultation with outside legal counsel and the Company Financial Advisor) is more favorable from a financial point of view to the holders of the Company Shares than the Transactions contemplated by this Agreement, taking into account any revisions to the terms of this Agreement and the Merger agreed to by Parent during the Notice Period set forth in Section 5.7(f)(1).

“Surviving Corporation” has the meaning set forth in Section 1.1 of the Agreement.

“Tangible Personal Property” has the meaning set forth in Section 3.10(b) of the Agreement.

“Tax(es)” includes any and all federal, state, local and foreign taxes and other charges in the nature of a Tax imposed by any Governmental Entity, including taxes that are or are based upon or measured by gross receipts, income, profits, sales, use and occupation, and value added, ad valorem, transfer, gains, franchise, withholding, payroll, recapture, employment, excise, unemployment, insurance, social security, business license, occupation, business organization, stamp, environmental and property taxes, together with all interest, penalties and additions imposed with respect to such amounts.

“Tax Return” means any report, return, information statement or other form or document (including all schedules, exhibits and other attachments thereto and amendments thereof) filed or required to be filed with any Governmental Entity in connection with any Tax (including estimated Taxes).

“Termination Fee” means \$15,000,000.

---

“Trade Secrets” means all trade secrets under applicable Law and other rights in know-how and confidential or proprietary information, processing, manufacturing or marketing information, including new developments, inventions, processes, ideas or other proprietary information, in each case, that provides advantages over competitors who do not know or use it, derives independent economic value from not being generally known and not being easily ascertainable by proper means by others, and are subject to commercially efforts to maintain their secrecy.

“Transaction Documents” means this Agreement and any other agreement or document to be delivered by the Parties on the Closing Date.

“Transactions” means any transactions contemplated by this Agreement or any Transaction Document.

“U.S.” or “United States” means the United States of America.

“U.S. GAAP” means generally accepted accounting principles of the United States.

“Unvested Options” has the meaning set forth in Section 2.4(b) of the Agreement.

“Unvested Company RSUs” has the meaning set forth in Section 2.4(c) of the Agreement.

“Unvested RSU Payments” has the meaning set forth in Section 2.4(c) of the Agreement.

“Unvested Unexercised Shares” has the meaning set forth in Section 2.4(b) of the Agreement.

“Vested Company RSUs” has the meaning set forth in Section 2.4(c) of the Agreement.

“Vested Options” has the meaning set forth in Section 2.4(b) of the Agreement.

“Vested RSU Payments” has the meaning set forth in Section 2.4(c) of the Agreement.

“Vested Unexercised Shares” has the meaning set forth in Section 2.4(b) of the Agreement.

“Voting Agreement” means an agreement in the form of Exhibit C to this Agreement.

“VWAP of Parent Stock” means the volume weighted average price of Parent Stock on Nasdaq for a twenty (20) trading day period, starting with the opening of trading on the twenty-first (21st) trading day prior to the Closing Date to the closing of trading on the second to last trading day prior to the Closing Date, as reported by Bloomberg and determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.



AMENDMENT NO. 3 TO CREDIT AGREEMENT,  
INCREMENTAL TERM ASSUMPTION AGREEMENT,  
LIMITED WAIVER AND CONSENT\*

THIS AMENDMENT NO. 3 TO CREDIT AGREEMENT, INCREMENTAL TERM ASSUMPTION AGREEMENT, LIMITED WAIVER AND CONSENT dated as of September 2, 2015 (this "Amendment") is entered into among DIODES INCORPORATED, a Delaware corporation (the "Domestic Borrower"), DIODES INTERNATIONAL B.V., a *besloten vennootschap met beperkte aansprakelijkheid* organized under the laws of the Netherlands, having its statutory seat in Amsterdam, the Netherlands and registered with the trade register of the Chambers of Commerce in the Netherlands under number 34274981 (the "Foreign Borrower") and together with the Domestic Borrower, the "Borrowers" and each, individually, a "Borrower"), certain Subsidiaries of the Domestic Borrower identified on the signature pages hereto as guarantors (the "Subsidiary Guarantors"), the Lenders identified on the signature pages hereto and Bank of America, N.A., as Administrative Agent (in such capacity, the "Administrative Agent").

PRELIMINARY STATEMENTS

The Borrowers, Subsidiary Guarantors, the Lenders and the Administrative Agent are parties to that certain Credit Agreement dated as of January 8, 2013 (as amended by Amendment No. 1 to Credit Agreement and Limited Waiver dated as of November 1, 2013, Amendment No. 2 to Credit Agreement and Amendment No. 1 to Collateral Agreement dated as of June 19, 2015, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement").

The Borrowers have advised the Administrative Agent and the Lenders that the Domestic Borrower intends to acquire 100% of the Equity Interests of Pericom Semiconductor Corporation, a California corporation ("Pericom"), through a merger of Pericom with and into a newly created wholly owned Subsidiary of the Domestic Borrower (the "Pericom Acquisition").

The Borrowers have requested that the Administrative Agent and the Lenders agree to amend the Existing Credit Agreement to, among other things, permit the Pericom Acquisition, provide for an increase to the Revolving Credit Facility pursuant to Section 2.17 and for a new incremental term loan pursuant to Section 2.18 to fund a portion of the purchase price for the Pericom Acquisition and to pay transaction fees and expenses (the "Additional Credit Facilities") and make certain other amendments to the Existing Credit Agreement, in each case as more specifically set forth herein. Subject to the terms and conditions set forth herein, the Administrative Agent and each of the Lenders party hereto have agreed to grant such requests of the Borrowers.

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

1. Defined Terms. Except as otherwise provided herein, all capitalized undefined terms used in this Amendment (including, without limitation, in the introductory paragraph and the preliminary statements hereto) shall have the meanings assigned thereto in the Credit Agreement.

---

\* Confidential treatment has been requested with respect to all the redacted portions of the document, which has been filed separately with the Securities and Exchange Commission.

2. Amendments to Credit Agreement. The Existing Credit Agreement is hereby amended in its entirety so that, after giving effect to such amendment, it reads in the form set forth on Exhibit A hereto (as amended by this Amendment and as otherwise amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”). For the avoidance of doubt, the parties hereto agree and acknowledge that the Additional Credit Facilities described in Sections 3 and 4 below constitute an increase in the Revolving Credit Facility under Section 2.17 of the Existing Credit Agreement and the making of Incremental Term Loans under Section 2.18 of the Existing Credit Agreement, respectively. Pursuant to this Amendment, the amounts available for increases in the Revolving Credit Facility under Section 2.17 of the Credit Agreement and the making of Incremental Term Loans under Section 2.18 of the Credit Agreement, in each case following the Third Amendment Effective Date, shall be reset to the amounts as set forth in Exhibit A and shall not be reduced or otherwise affected by the Additional Credit Facilities provided for in this Amendment. Schedule 2.01 to the Credit Agreement and Exhibits A and D to the Credit Agreement are hereby amended in their entirety to read as attached to the Credit Agreement, as amended hereby.

3. Additional Revolving Credit Loans. Each Existing Lender that is increasing its Revolving Credit Commitment or issuing an Incremental Term Commitment pursuant to this Amendment (each such Existing Lender, an “Increasing Lender”) and each bank or other financial institution joining the Credit Agreement as a Lender pursuant to this Amendment (each such bank or other financial institution, a “New Lender”), party to this Amendment with a Revolving Credit Commitment as set forth on Schedule 2.01 (collectively, the “Additional Revolving Lenders”) severally and for itself alone, hereby agrees, on the terms and subject to the conditions set forth herein and otherwise set forth in the Credit Agreement and in reliance upon the representations and warranties set forth herein and in the other Credit Documents, to (a) make Revolving Credit Loans to the Borrowers as set forth in Section 2.01(b) of the Credit Agreement, (b) to participate in Letters of Credit as set forth in Section 2.03 of the Credit Agreement and (c) to participate in Swingline Loans as set forth in Section 2.04 of the Credit Agreement. From and after the Third Amendment Effective Date, each Additional Revolving Lender shall be, or continue to be (as applicable), a party to the Credit Agreement as a “Revolving Credit Lender” and a “Lender” and have the rights and obligations of a Revolving Credit Lender and a Lender under the Credit Agreement and under the other Credit Documents and shall be bound by the provisions thereof. The Revolving Credit Facility, as increased hereby, shall for all purposes, constitute Obligations under the Credit Agreement and shall be secured and guaranteed with the other Obligations on a pari passu basis.

4. Incremental Term Loans.

(a) Incremental Term Loans. Each Increasing Lender that is issuing an Incremental Term Commitment pursuant to this Amendment and each New Lender party to this Amendment with an Incremental Term Commitment as set forth on Schedule 2.01 (collectively, the “Incremental Term Lenders”) severally and for itself alone, hereby agrees, on the terms and subject to the conditions set forth herein and otherwise set forth in the Credit Agreement and in reliance upon the representations and warranties set forth herein and in the other Credit Documents, to make an Incremental Term Loan to the Domestic Borrower on the 2015 Incremental Term Draw Date as set forth in Section 2.01(a) of the Credit Agreement.

(b) Additional Term Lenders. From and after the Third Amendment Effective Date, each Incremental Term Lender hereunder shall be a party to the Credit Agreement as an “Incremental Term Lender”, “2015 Incremental Term Lender” and “Lender” thereunder and have the rights and obligations of an Incremental Term Lender, 2015 Incremental Term Lender and Lender under the Credit Agreement and under the other Loan Documents and shall be bound by the provisions thereof. The Incremental Term Loans shall for all purposes, constitute Obligations under the Credit Agreement and shall be secured and guaranteed with the other Obligations on a pari passu basis.

5. FATCA. For purposes of determining withholding Taxes imposed under FATCA, from and after the effective date of the Amendment, the Borrowers and the Administrative Agent shall treat (and the Lenders hereby authorize the Administrative Agent to treat) the Credit Agreement as not qualifying as a “grandfathered obligation” within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

6. Waivers. Subject to the terms and conditions hereof:

(a) Subject to the proviso set forth in Section 6.12(a)(ii) of the Credit Agreement, the Administrative Agent and the Lenders hereby waive any requirement of the Credit Agreement and the Collateral Agreement, and any other Loan Documents, that Pericom pledge or grant any security interest in Equity Interests in its Foreign Subsidiaries in existence on the 2015 Incremental Term Draw Date;

(b) solely with respect to the increase in the Revolving Credit Facility contemplated by this Amendment, the Administrative Agent and the Lenders hereby agree to waive the requirement set forth in Section 2.17 of the Existing Credit Agreement that each Revolving Credit Lender be provided with a period of no less than ten Business Days from the date of delivery of the notice requesting the increase of the Revolving Credit Facility to respond to such notice; and

(c) solely with respect to the making of the Term Loans contemplated by this Amendment, the Administrative Agent and the Lenders hereby agree to waive the requirement set forth in Section 2.18 of the Existing Credit Agreement that each Lender be provided with a period of no less than fifteen Business Days from the date of delivery of the notice requesting the making of Incremental Term Loans to respond to such notice.

7. Consent. Subject to the terms and conditions hereof, the Administrative Agent and the Lenders hereby consent to the transfer from the Foreign Borrower to Diodes Hong Kong Holding Company Limited (company number: 1168572), a company incorporated in Hong Kong with limited liability (“DHC”) of all of its Equity Interests in Diodes Hong Kong Limited (company number: 760243), a company incorporated in Hong Kong with limited liability (“DHK”); provided that such transfer shall be made subject to the Share Charge dated August 14, 2013 (the “Share Charge”) executed by the Foreign Borrower in favor of the Administrative Agent and such transfer shall be effected by the execution of a share transfer deed in form and substance satisfactory to the Administrative Agent (the “Share Transfer Deed”) and receipt of all documents set out therein (including share certificates representing the Equity Interests in DHK accompanied by undated stock powers executed in blank), filings, and all notarizations, recordations and searches as may be required under local law to ensure the security interests in the Equity Interests in DHK under the Share Charge and the Share Transfer Deed shall be delivered at such time to the Administrative Agent.

8. Conditions to Effectiveness. This Amendment shall be effective upon satisfaction of each of the following conditions:

(a) The Administrative Agent’s receipt of the following, each of which shall be originals or electronic images in a portable document format (e.g. “.pdf” or “.tif”) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Third Amendment Effective Date (or, in the case of certificates of governmental officials, a recent date before the Third Amendment Effective Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Amendment;

---

(ii) a Revolving Credit Note executed by each Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Amendment and the other Loan Documents to which such Loan Party is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing (where customary in such jurisdiction) and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a favorable opinion of Sheppard, Mullin, Richter & Hampton, LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to matters concerning the Loan Parties and the Loan Documents as the Lenders may reasonably request;

(vi) a favorable opinion of NautaDutilh New York P.C., local counsel to the Loan Parties in the Netherlands, addressed to the Administrative Agent and each Lender, as to matters concerning the Loan Parties and the Loan Documents as the Lenders may reasonably request;

(vii) a favorable opinion of Allen & Overy LLP, local counsel to the Loan Parties in the United Kingdom, addressed to the Administrative Agent and each Lender, as to matters concerning the Loan Parties and the Loan Documents as the Lenders may reasonably request;

(viii) a certificate signed by a Responsible Officer of the Domestic Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) of the Credit Agreement shall have been satisfied before and after giving effect to the financing under this Amendment and the Credit Agreement and the transactions contemplated hereby, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (C) no action, suit, investigation or proceeding shall be pending or, to the knowledge of the Loan Parties, threatened in any court or before any arbitrator or Governmental Authority against any Loan Party or any of its Subsidiaries that could reasonably be expected to have a Material Adverse Effect;

(ix) pro forma consolidated financial statements of the Domestic Borrower and its Subsidiaries after giving effect to the financing under this Amendment and the Credit Agreement and the transactions contemplated hereby (including, without limitation, the Pericom Acquisition);

(x) pro forma forecasts prepared by management of the Domestic Borrower, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders, of consolidated balance sheets and statements of income or operations and cash flows of the Domestic Borrower and its Subsidiaries on a quarterly basis for the first year following the Third Amendment Effective Date and on an annual basis for each year thereafter during the term of this Amendment, in each case after giving effect to the financing under this Amendment and the Credit Agreement and the transactions contemplated hereby (including, without limitation, the Pericom Acquisition);

---

(xi) the annual (or other audited) financial statements of Pericom for the fiscal years ended 2012, 2013 and 2014, interim financial statements for Pericom dated the end of the most recent fiscal quarter for which financial statements are available (or, in the event the Lenders' due diligence review reveals material changes since such financial statements, as of a later date within 45 days of the Third Amendment Effective Date);

(xii) certificate from the chief financial officer of each Borrower attesting to the Solvency of each Borrower and each Guarantor before and after giving effect to the financing under this Amendment and the Credit Agreement and the transactions contemplated hereby;

(xiii) the Administrative Agent shall have received (x) completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each parcel of Material Real Property together with a notice about special flood hazard area status and flood disaster assistance duly executed by each Loan Party relating thereto and (y) if any such property is located in a special flood hazard area (A) notices to (and confirmations of receipt by) such Loan Party as to the existence of a special flood hazard and, if applicable, the unavailability of flood hazard insurance under the National Flood Insurance Program and (B) evidence of applicable flood insurance, if available, in each case in such form, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent;

(xiv) notice of borrowing (if applicable) with respect to any Revolving Credit Loans in each case in form and substance satisfactory to the Administrative Agent in accordance with the Credit Agreement;

(xv) the documentation and other information as to each Loan Party as requested by the Administrative Agent and each Lender in order to comply with requirements of the PATRIOT Act; and

(xvi) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Lenders reasonably may require.

(b) All fees required to be paid pursuant to the terms of the Engagement Letter dated as of August 12, 2015 by and among Merrill Lynch, Pierce, Fenner & Smith, Inc. and the Borrowers due and payable on the "Amendment Effective Date" as set forth therein shall have been paid.

(c) The Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) prior to or on the Third Amendment Effective 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 Borrowers and the Administrative Agent).

(d) The Administrative Agent and the Arranger shall have completed a due diligence investigation of the Borrowers, Pericom and their respective Subsidiaries with results reasonably satisfactory to the Administrative Agent and the Arranger. No changes or developments shall have occurred, and no new or additional information shall have been received or discovered by the Administrative Agent or the Arranger regarding Pericom, the Borrowers and their respective Subsidiaries or the Pericom Acquisition after the date such due diligence investigation has been completed that (A) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect or (B) could reasonably lead the Administrative Agent and the Arranger to believe that the Borrowers and their Subsidiaries would not have good and marketable title to all of the material assets of Pericom and its Subsidiaries described in the Pericom Acquisition Related Documents.

---

(e) The Consolidated Leverage Ratio, based on the most recently ended fiscal quarter prior to the Third Amendment Effective Date for which financial statements are available (calculated on a pro forma basis after giving effect to the financing under this Amendment and the Credit Agreement and the transactions contemplated hereby, including the 2015 Incremental Term Borrowing and the Pericom Acquisition) shall be no greater than 2.75 to 1.00, and the Administrative Agent shall have received a Compliance Certificate executed by a Responsible Officer of the Domestic Borrower as of the Third Amendment Effective Date for such Measurement Period evidencing the same.

Without limiting the generality of the provisions of the last paragraph of Section 9.03 of the Credit Agreement, for purposes of determining compliance with the conditions specified in this Section 8, the L/C Issuer and each Lender that has signed this Amendment 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 Third Amendment Effective Date specifying its objection thereto.

9. Post-Closing Covenants. Each Loan Party shall (and shall cause each of its Subsidiaries to) execute and deliver the documents and complete the tasks set forth in this Section 9, in each case within the time limits specified, in each case as such time limit may be extended by the Administrative Agent in its sole discretion, so long as the Loan Parties are working diligently in good faith to complete, or cause their Subsidiaries to complete, the applicable requirement as determined by the Administrative Agent in its sole discretion. For the avoidance of doubt, should any Loan Party fail to perform or observe any term, covenant or agreement contained in this Section 9, such failure shall constitute an Event of Default under the Credit Agreement.

(a) Foreign Matters:

(i) not later than December 31, 2015 (unless extended by the Administrative Agent in its sole discretion), the Loan Parties and their Subsidiaries (as applicable) shall provide the Administrative Agent with executed counterparts to any pledge agreements, charges, amendments, modifications and confirmations, authorizing resolutions, legal opinions and such other agreements, documents, certificates, filings, notarizations, recordations and searches as may be required under local law to ensure the creation and perfection of security interests (or the continuation and continuing perfection thereof) in the Equity Interests in the Foreign Borrower, Diodes Hong Kong Holding Company Limited, Diodes Hong Kong Limited and the First-Tier Foreign Subsidiaries (including, without limitation, Diodes International B.V., Diodes Holdings UK Limited and Diodes Zetex Ltd., but excluding each First-Tier Foreign Subsidiary of Pericom) granted or purported to be granted by the Loan Parties pursuant to the Collateral Documents;

(ii) not later than December 31, 2015 (unless extended by the Administrative Agent in its sole discretion), Diodes Zetex Limited and Diodes Holdings UK Limited shall provide the Administrative Agent with executed counterparts to any amendments or modifications to the UK Composite Debenture dated as of January 8, 2013, and related authorizing resolutions, legal opinions and such other agreements, documents, certificates, filings, notarizations, recordations and searches as may be required under local law to ensure the continuing security interests in their respective assets (and the continuing perfection thereof) granted or purported to be granted pursuant to such Collateral Document;

---

(iii) not later than December 31, 2015 (unless extended by the Administrative Agent in its sole discretion), Diodes Zetex Limited and Diodes Holdings UK Limited shall provide the Administrative Agent with executed counterparts to any amendments or modifications to the UK Deed of Guarantee, in each case dated as of January 8, 2013, and related authorizing resolutions, legal opinions and such other agreements, documents, certificates, filings, notarizations, recordations and searches as may be required under local law to ensure the continuing validity and enforceability of such Loan Document; and

(iv) not later than December 31, 2015 (unless extended by the Administrative Agent in its sole discretion), the Foreign Borrower shall provide the Administrative Agent with executed counterparts to any amendments or modifications to the Dutch Omnibus Pledge Agreement and the Dutch Charged Account Control Deed, in each case dated as of January 8, 2013, and related authorizing resolutions, legal opinions and such other agreements, documents, certificates, filings, notarizations, recordations and searches as may be required under local law to ensure the continuing security interests in the applicable assets (and the continuing perfection thereof) granted or purported to be granted pursuant to such Collateral Documents;

(b) Pericom Real Estate Matters. Within 90 days after the 2015 Incremental Term Draw Date (unless extended by the Administrative Agent in its sole discretion) and with respect to each parcel of Material Real Property owned by Pericom (each, a "Pericom Property"), Pericom shall execute and deliver the documents and complete the tasks set forth below to the extent requested by the Administrative Agent:

(i) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and, together with an appropriate fixture filing financing statement, are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem necessary or desirable in order to create a valid first and subsisting Lien on the real property interests and fixtures intended to be secured in favor of the Administrative Agent and that all filing, documentary, stamp, intangible and recording taxes and fees have been paid;

(ii) fully paid title insurance policies (the "Mortgage Policies"), with endorsements and in amounts reasonably acceptable to the Administrative Agent, issued (and to the extent reasonably requested by the Administrative Agent, coinsured and reinsured) by nationally recognized title insurers acceptable to the Administrative Agent, insuring the Mortgages to be valid first and subsisting Liens on the real property described therein, free and clear (or insured over) of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only permitted encumbrances and other Liens permitted under the Loan Documents, and providing for such other affirmative assurances (including endorsements for future advances under the Loan Documents, for mechanics' and materialmen's Lien coverage, zoning and subdivision of the applicable property) as may be reasonably requested by the Administrative Agent;

(iii) copies of any existing appraisals of each of the properties previously obtained by Pericom or any other Loan Party in the possession of any Loan Party;

(iv) evidence that all other actions that the Administrative Agent may reasonably deem necessary or desirable in order to create valid first and subsisting Liens on the real property Collateral have been taken;

---

(v) such environmental site assessment reports as may be reasonably requested by the Administrative Agent prepared by an environmental consulting firm engaged by the Loan Parties or, with the prior consent of the Borrowers, the Administrative Agent and which is reasonably acceptable to the Administrative Agent and indicating the presence or absence of Hazardous Materials and the estimated cost of any compliance, removal or remedial action in connection with any Hazardous Materials on such properties;

(vi) favorable opinions of local counsel to the Loan Parties, addressed to the Administrative Agent and each Lender (and their permitted successors and assigns), as to the matters concerning the Mortgages and related matters as the Administrative Agent may reasonably request; and

(vii) fully paid zoning reports in form and substance reasonably satisfactory to Administrative Agent from a company acceptable to Lender or other evidence reasonably satisfactory to Administrative Agent that each parcel of real property and each Loan Party's activities at such parcel of real property are in compliance with all applicable state, county and municipal zoning and subdivision laws, regulations and codes.

(c) Domestic Borrower Real Estate Matters. Within 90 days after the Third Amendment Effective Date (unless extended by the Administrative Agent in its sole discretion), the Domestic Borrower shall execute and deliver a modification (the "Texas Deed of Trust Modification") to that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated May 17, 2013, and recorded in the real property records of Collin County, TX (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "TX Deed of Trust") together with:

(i) evidence that counterparts of the TX Deed of Trust Modification have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem necessary in order to ensure a continuing valid first and subsisting Lien on the real property interests intended to secure the Obligations (as amended by this Amendment) in favor of the Administrative Agent and that all filing, documentary, stamp, intangible and recording taxes and fees have been paid;

(ii) fully paid mortgagee's title policy in favor of the Administrative Agent for the TX Deed of Trust, insuring the TX Deed of Trust (as modified by the TX Deed of Trust Modification) continues to be a valid first and subsisting Lien on the real property encumbered thereby, free and clear (or insured over) of all defects and encumbrances, excepting only permitted encumbrances and other Liens permitted under the Loan Documents or identified in the existing mortgagee title policy in favor of the Administrative Agent for the TX Deed of Trust, and providing for such other affirmative assurances (including endorsements for future advances under the Loan Documents and other endorsements consist with the mortgagee's existing title policy) as may be reasonably requested by the Administrative Agent;

(iii) evidence that all other actions that the Administrative Agent may reasonably deem necessary in order to ensure its continuing valid first and subsisting Lien on the real property encumbered under the TX Deed of Trust (as amended by the TX Deed of Trust Modification) have been taken, including, without limitation, the execution and delivery by the Domestic Borrower of any resolutions, title affidavits and other documents reasonably required in connection therewith; and

(iv) favorable opinions of local Texas counsel to the Domestic Borrower, addressed to the Administrative Agent and each Lender (and their permitted successors and assigns), as to the matters concerning the TX Deed of Trust Modification and related matters as the Administrative Agent may reasonably request;



---

(d) TFSS Equity Interests. Within 15 days after the Third Amendment Effective Date (unless extended by the Administrative Agent in its sole discretion), the Loan Parties shall deliver to the Administrative Agent certificates representing the Equity Interests owned by the Domestic Borrower in TF Semiconductor Solutions Inc. accompanied by undated stock powers executed in blank;

(e) Collateral Matters. Within 45 days after the 2015 Incremental Term Draw Date (unless extended or waived by the Administrative Agent in its sole discretion), the Loan Parties shall deliver to the Administrative Agent evidence that all actions (other than those actions required to be done on or prior to the Third Amendment Effective Date pursuant to Section 8 of this Amendment or the definition of "2015 Incremental Term Conditions" in the Credit Agreement) that the Administrative Agent may deem necessary or desirable in order to perfect (or ensure the continued perfection of) the Liens created under the Collateral Documents have been taken, including receipt of duly executed landlord waiver agreements, Account Control Agreements and Securities Account Control Agreements, and intellectual property notices, in each case to the extent not previously delivered, and effective to ensure the perfection or continued perfection thereof (as applicable), in connection with the Credit Agreement, including with respect to Pericom and its Domestic Subsidiaries, in accordance with Section 6.12 of the Credit Agreement without regard to the time periods set forth therein; and

(f) Collateral Searches. Within 15 days after the Third Amendment Effective Date (unless extended by the Administrative Agent in its sole discretion), the Loan Parties shall deliver to the Administrative Agent such UCC, Lien and Intellectual Property, charge, and other searches (to the extent available in any non-U.S. jurisdiction) requested by the Administrative Agent with respect to Pericom and its Subsidiaries, and other evidence satisfactory to the Administrative Agent that such Liens are the only Liens upon the Collateral granted by Pericom, except Liens permitted under the Credit Agreement; provided that, with respect to any Lien for which the Administrative Agent requests the Loan Parties to provide appropriate mortgage, intellectual property and lien releases and termination statements, the Loan Parties shall provide such completed and (where applicable) executed documentation within 5 Business Days of such request (unless extended by the Administrative Agent in its sole discretion).

10. Effect of the Amendment. Except as expressly provided herein, the Credit Agreement, the Collateral Agreement and the other Loan Documents shall remain unmodified and in full force and effect. Except as expressly set forth herein, this Amendment shall not be deemed (a) to be a waiver of, or consent to a modification of or amendment of, any other term or condition of the Credit Agreement, the Collateral Agreement or any other Loan Document, (b) to prejudice any other right or rights which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with the Credit Agreement, the Collateral Agreement or the other Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated, supplemented or otherwise modified from time to time, (c) to be a commitment or any other undertaking or expression of any willingness to engage in any further discussion with the Borrowers or any other Person with respect to any waiver, amendment, modification or any other change to the Credit Agreement, the Collateral Agreement or the other Loan Documents or any rights or remedies arising in favor of the Lenders or the Administrative Agent, or any of them, under or with respect to any such documents or (d) to be a waiver of, or consent to a modification or amendment of, any other term or condition of any other agreement by and among any Loan Party, on the one hand, and the Administrative Agent or any other Lender, on the other hand. References in this Amendment to the Credit Agreement (and indirect references such as "hereunder", "hereby", "herein", and "hereof") and in any Loan Document to the Credit Agreement shall be deemed to be references to the Credit Agreement as modified hereby. References in this Amendment to the Collateral Agreement (and indirect references such as "hereunder", "hereby", "herein", and "hereof") and in any Loan Document to the Collateral Agreement shall be deemed to be references to the Collateral Agreement as modified hereby.

---

11. Representations and Warranties/No Default. By their execution hereof, each Loan Party hereby represents and warrants as follows:

(a) Such Loan Party has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Amendment and each other document executed in connection herewith to which it is a party in accordance with their respective terms.

(b) This Amendment and each other document executed in connection herewith has been duly executed and delivered by its duly authorized officers, and each such document constitutes the legal, valid and binding obligation of such Loan Party, 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.

(c) Each of the representations and warranties set forth in the Credit Agreement and the other Loan Documents is true and correct as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that the representations and warranties contained in subsections (a) and (b) of Section 5.05 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01 of the Credit Agreement.

(d) No Default or Event of Default has occurred or is continuing or would result after giving effect to the financing under this Amendment and the Credit Agreement and the transactions contemplated hereby (including, without limitation, the Pericom Acquisition).

12. Reaffirmations. (a) Each Loan Party agrees that the amendments contemplated by this Amendment shall not limit or diminish the obligations of such Person under, or release such Person from any obligations under, the Credit Agreement, the Collateral Agreement and each other Loan Document to which it is a party, (b) each Loan Party confirms, ratifies and reaffirms its obligations under the Credit Agreement, the Collateral Agreement and each other Loan Document to which it is a party, and (c) each Loan Party agrees that the Credit Agreement, the Collateral Agreement and each other Loan Document to which it is a party remain in full force and effect and are hereby ratified and confirmed.

13. Confirmation as to Dutch Collateral Documents. Reference is made to (i) that certain share pledge dated 8 January 2013, among the Domestic Borrower as pledgor, Bank of America, N.A. as pledgee and the Foreign Borrower as company (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Dutch Share Pledge") and (ii) that certain omnibus pledge agreement dated 8 January 2013, between the Foreign Borrower as pledgor and Bank of America, N.A. as pledgee (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Dutch Omnibus Pledge Agreement", together with the Dutch Share Pledge, the "Dutch Collateral Documents"). Each party to the Dutch Collateral Documents hereby confirms that:

(a) the Credit Agreement (as amended by this Amendment), and the other Loan Documents will remain in full force and effect and any reference in the Loan Documents to the Credit Agreement or to any provision of the Credit Agreement will be construed as a reference to the Credit Agreement, or that provision, as amended by this Amendment;

(b) notwithstanding the amendments made to the Credit Agreement pursuant to this Amendment, the Dutch Collateral Documents and the security interests created thereunder will remain in full force and effect and will continue to secure all liabilities which are expressed to be secured by them and the rights of the Loan Parties under such security interest will not be affected by this Amendment;

---

(c) any amount owed by any Borrower under this Amendment and the Credit Agreement (as amended by this Amendment) is part of (i) the definition of Secured Obligations (as included/defined in the Dutch Collateral Documents) and (ii) each Loan Party's Parallel Debts (as included/defined in the Credit Agreement); and

(d) the Dutch Collateral Documents shall also secure the relevant Secured Obligations included in the relevant Dutch Collateral Document as these may have been or may be varied, amended and restated, supplemented, increased or otherwise altered, under this Amendment.

#### 14. Representations, Warranties and Agreements of Increasing Lenders and New Lenders.

(a) Each Increasing Lender and each New Lender (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Amendment and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it is sophisticated with respect to decisions to acquire assets of the type represented by the Commitments and either it, or the Person exercising discretion in making its decision to acquire the Commitments, is experienced in acquiring assets of such type, and (iii) 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 Amendment and the Credit Agreement; and (b) agrees that it will, independently and without reliance upon the Administrative Agent 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.

(b) Each New Lender (a) represents and warrants that (i) it meets all the requirements to be an Eligible Assignee under the Credit Agreement, (ii) from and after the Increase Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of its Commitments, shall have the obligations of a Lender thereunder; (iii) 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 6.01 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 Amendment, and (iv) if it is a Foreign Lender, it has provided all documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by such New Lender together with its signature page hereto; (b) agrees that 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; and (c) irrevocably appoints Bank of America, N.A. to act on its behalf as the Administrative Agent under the Credit Agreement 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 of the Credit Agreement or any other Loan Documents, together with such actions and powers as are reasonably incidental thereto.

#### 15. Miscellaneous

(a) Governing Law. THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Without limiting the general applicability of the foregoing and the terms of the other Loan Documents to this Amendment and the parties hereto, the terms of Section 11.14 and Section 11.15 of the Credit Agreement are incorporated herein by reference, *mutatis mutandis*.

---

(b) Loan Document. This Amendment shall constitute a “Loan Document” under and as defined in the Credit Agreement.

(c) Counterparts; Electronic Execution. This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Amendment by telecopy or other electronic imaging means shall be effective as delivery of a manually executed counterpart of this Amendment.

(d) Severability. If any provision of this Amendment is determined to be illegal, invalid or unenforceable, such provision shall be fully severable and the remaining provisions shall remain in full force and effect and shall be construed without giving effect to the illegal, invalid or unenforceable provisions.

(e) Entirety. This Amendment, the other Loan Documents and the other documents relating to the Obligations represent the entire agreement of the parties hereto and thereto, and supersede all prior agreements and understandings, oral or written, if any, including any commitment letters or correspondence relating to the Loan Documents, any other documents relating to the Obligations, or the transactions contemplated herein and therein.

[Remainder of page intentionally blank.]

---

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date first above written.

**DOMESTIC BORROWER:**

DIODES INCORPORATED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FOREIGN BORROWER:**

DIODES INTERNATIONAL B.V.

By: \_\_\_\_\_  
Name: Richard Dallas White  
Title: Managing Director A

By: \_\_\_\_\_  
Name: Eveline Sonja van Dalen  
Title: Managing Director B

**SUBSIDIARY GUARANTORS:**

DIODES INVESTMENT COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

DIODES FABTECH INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DIODES HOLDINGS UK LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DIODES ZETEX LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**BANK OF AMERICA, N.A.,**  
as a Lender, L/C Issuer and Swing Line Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated



---

**COMPASS BANK,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**CITIBANK, N.A.,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**HSBC BANK USA, N.A.,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**REGIONS BANK,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**SILICON VALLEY BANK,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**CAPITAL ONE BANK,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**COMERICA BANK,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

---

**MUFG UNION BANK, N.A.,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated



---

**WELLS FARGO BANK, N.A.,**  
as a Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature Page to  
Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent  
Diodes Incorporated

Published CUSIP Number: 25454HAA8  
Revolver Facility CUSIP Number: 25454HAB6  
2015 Incremental Term Facility CUSIP Number: \_\_\_\_\_

**CREDIT AGREEMENT<sup>1</sup>**

Dated as of January 8, 2013

among

**DIODES INCORPORATED,**

as the Domestic Borrower,

**DIODES INTERNATIONAL B.V.,**

as the Foreign Borrower,

**DIODES INVESTMENT COMPANY,  
DIODES FABTECH INC.,  
DIODES HOLDINGS UK LIMITED and  
DIODES ZETEX LIMITED,**  
as Guarantors,

**BANK OF AMERICA, N.A.,**  
as Administrative Agent, Swing Line Lender  
and  
L/C Issuer,

and

The Other Lenders Party Hereto

**CITIBANK, N.A.,  
COMPASS BANK,  
REGIONS BANK,  
CAPITAL ONE, NATIONAL ASSOCIATION**  
and  
**MUFG UNION BANK, N.A.,**  
as Syndication Agents

**BANK OF AMERICA MERRILL LYNCH,**  
as  
Sole Lead Arranger and Sole Bookrunner

---

<sup>1</sup> As amended by (a) Amendment No. 1 to Credit Agreement and Limited Waiver dated as of November 1, 2013, (b) Amendment No. 2 to Credit Agreement and Amendment No. 1 to Collateral Agreement dated as of June 29, 2015 and (c) Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent dated as of September 2, 2015. Confidential treatment has been requested with respect to all the redacted portions of the Credit Agreement, which has been filed separately with the Securities and Exchange Commission.

---

**TABLE OF CONTENTS**

<u>Section</u>	<u>Page</u>
ARTICLE I DEFINITIONS AND ACCOUNTING TERMS	1
1.01 Defined Terms	1
1.02 Other Interpretive Provisions	39
1.03 Accounting Terms	40
1.04 Rounding	41
1.05 Exchange Rates; Currency Equivalents	41
1.06 Additional Alternative Currencies	41
1.07 Change of Currency	42
1.08 Times of Day	43
1.09 Letter of Credit Amounts	43
ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS	43
2.01 The Borrowings	43
2.02 Borrowings, Conversions and Continuations of Loans	44
2.03 Letters of Credit	46
2.04 Swing Line Loans	55
2.05 Prepayments	58
2.06 Termination or Reduction of Commitments	60
2.07 Repayment of Loans	61
2.08 Interest	62
2.09 Fees	63
2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate	64
2.11 Evidence of Debt	65
2.12 Payments Generally; Administrative Agent's Clawback	65
2.13 Sharing of Payments by Lenders	67
2.14 Applicable Designees	68
2.15 Cash Collateral	68
2.16 Defaulting Lenders	69
2.17 Increase in Revolving Credit Facility	72
2.18 Incremental Term Loans	73
ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY	75
3.01 Taxes	75
3.02 Illegality and Applicable Designees	80
3.03 Inability to Determine Rates	81
3.04 Increased Costs; Reserves on Eurocurrency Rate Loans	82
3.05 Compensation for Losses	83
3.06 Mitigation Obligations; Replacement of Lenders	84
3.07 Survival	85

ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS	85
4.01 Conditions of Initial Credit Extension	85
4.02 Conditions to all Credit Extensions	88
ARTICLE V REPRESENTATIONS AND WARRANTIES	89
5.01 Existence, Qualification and Power	89
5.02 Authorization; No Contravention	89
5.03 Governmental Authorization; Other Consents	90
5.04 Binding Effect	90
5.05 Financial Statements; No Material Adverse Effect	90
5.06 Litigation	91
5.07 No Default	91
5.08 Ownership of Property; Liens; Investments	91
5.09 Environmental Compliance	92
5.10 Insurance	92
5.11 Taxes	93
5.12 ERISA Compliance	93
5.13 Subsidiaries; Equity Interests; Loan Parties	94
5.14 Margin Regulations; Investment Company Act	95
5.15 Disclosure	95
5.16 Compliance with Laws	95
5.17 Intellectual Property; Licenses, Etc	96
5.18 Sanctions Concerns and Anti-Corruption Laws	96
5.19 Solvency	96
5.20 Labor Matters	96
5.21 Collateral Documents	96
5.22 Regulation H	97
5.23 Pericom Acquisition Agreement	97
ARTICLE VI AFFIRMATIVE COVENANTS	97
6.01 Financial Statements	97
6.02 Certificates; Other Information	98
6.03 Notices	101
6.04 Payment of Obligations	101
6.05 Preservation of Existence, Etc	102
6.06 Maintenance of Properties	102
6.07 Maintenance of Insurance	102
6.08 Compliance with Laws	102
6.09 Books and Records	102
6.10 Inspection Rights	102
6.11 Use of Proceeds	103
6.12 Covenant to Guarantee Obligations and Give Security	103
6.13 Compliance with Environmental Laws	104
6.14 Further Assurances	104
6.15 Compliance with Terms of Leaseholds	105

6.16	Material Contracts	105
6.17	Post Closing Matters	105
6.18	Anti-Corruption Laws	105
ARTICLE VII NEGATIVE COVENANTS		105
7.01	Liens	105
7.02	Indebtedness	107
7.03	Investments	108
7.04	Fundamental Changes	110
7.05	Dispositions	110
7.06	Restricted Payments	111
7.07	Change in Nature of Business	112
7.08	Transactions with Affiliates	112
7.09	Burdensome Agreements	112
7.10	Use of Proceeds	113
7.11	Financial Covenants	113
7.12	Amendments of Organization Documents	113
7.13	Accounting Changes	113
7.14	Prepayments of Indebtedness	113
7.15	Amendment of Indebtedness; Pericom Acquisition Related Documents	113
7.16	Sanctions	113
7.17	Anti-Corruption Laws	114
ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES		114
8.01	Events of Default	114
8.02	Remedies Upon Event of Default	116
8.03	Application of Funds	117
ARTICLE IX ADMINISTRATIVE AGENT		119
9.01	Appointment and Authority	119
9.02	Rights as a Lender	119
9.03	Exculpatory Provisions	120
9.04	Reliance by Administrative Agent	121
9.05	Delegation of Duties	121
9.06	Resignation of Administrative Agent	121
9.07	Non-Reliance on Administrative Agent and Other Lenders	123
9.08	No Other Duties, Etc	123
9.09	Administrative Agent May File Proofs of Claim	123
9.10	Collateral and Guaranty Matters	124
9.11	Secured Cash Management Agreements and Secured Hedge Agreements	125
ARTICLE X GUARANTY		125
10.01	The Guaranty	125
10.02	Obligations Unconditional	126
10.03	Reinstatement	128
10.04	Subrogation and Contribution	129

---

10.05	Remedies	129
10.06	Rights of Contribution	130
10.07	Guarantee of Payment; Continuing Guarantee	131
10.08	Additional Guarantor Waivers and Agreements	131
10.09	Appointment of Domestic Borrower	132
10.10	Keepwell	132
ARTICLE XI MISCELLANEOUS		132
11.01	Amendments, Etc	132
11.02	Notices; Effectiveness; Electronic Communication	135
11.03	No Waiver; Cumulative Remedies; Enforcement	137
11.04	Expenses; Indemnity; Damage Waiver	137
11.05	Payments Set Aside	140
11.06	Successors and Assigns	140
11.07	Treatment of Certain Information; Confidentiality	145
11.08	Right of Setoff	146
11.09	Interest Rate Limitation	147
11.10	Counterparts; Integration; Effectiveness	147
11.11	Survival of Representations and Warranties	147
11.12	Severability	147
11.13	Replacement of Lenders	148
11.14	Governing Law; Jurisdiction; Etc.	148
11.15	Waiver of Jury Trial	150
11.16	California Judicial Reference	150
11.17	No Advisory or Fiduciary Responsibility	150
11.18	Electronic Execution of Assignments and Certain Other Documents	151
11.19	USA PATRIOT Act	151
11.20	<b>ENTIRE AGREEMENT</b>	151
11.21	Judgment Currency	152
11.22	Parallel Debt	152

---

SCHEDULES

1.01(a)	Applicable Designees
2.01	Commitments and Applicable Percentages
5.01	Qualifications
5.05	Supplement to Interim Financial Statements
5.08(b)	Existing Liens
5.08(c)	Owned Real Property
5.08(d)(i)	Leased Real Property (Lessee)
5.08(d)(ii)	Leased Real Property (Lessor)
5.08(e)	Existing Investments
5.09	Environmental Matters
5.12(d)	Pension Plans
5.13	Subsidiaries and Other Equity Investments; Loan Parties
5.17	Intellectual Property Matters
6.17	Post Closing Matters
7.02	Existing Indebtedness
7.09	Burdensome Agreements
11.02	Administrative Agent's Office, Certain Addresses for Notices

---

EXHIBITS

*Form of*

A	Committed Loan Notice
B	Swing Line Loan Notice
C-1	Incremental Term Note
C-2	Revolving Credit Note
D	Compliance Certificate
E-1	Assignment and Assumption
E-2	Administrative Questionnaire
F	U.S. Tax Compliance Certificates
G	Notice of Loan Prepayment



---

## CREDIT AGREEMENT

This CREDIT AGREEMENT ("Agreement") is entered into as of January 8, 2013, among DIODES INCORPORATED, a Delaware corporation (the "Domestic Borrower"), DIODES INTERNATIONAL B.V., a *besloten vennootschap met beperkte aansprakelijkheid* organized under the laws of the Netherlands, having its statutory seat in Amsterdam, the Netherlands and registered with the trade register of the Chambers of Commerce in the Netherlands under number 34274981 (the "Foreign Borrower") and together with the Domestic Borrower, the "Borrowers" and each, individually, a "Borrower"), certain Subsidiaries of the Domestic Borrower identified on the signature pages hereto as guarantors, each lender from time to time party hereto (collectively, the "Lenders" and individually, a "Lender"), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

### PRELIMINARY STATEMENTS:

The Borrowers have requested that the Lenders provide credit facilities, and the Lenders are willing to do so on the terms and conditions set forth herein.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

### ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

"2015 Incremental Term Availability Period" means the period from the Third Amendment Effective Date until December 31, 2015; provided that the 2015 Incremental Term Availability Period shall automatically terminate immediately upon the 2015 Incremental Term Borrowing or upon any termination, cancellation or expiration of the 2015 Incremental Term Commitments as otherwise set forth in this Agreement.

"2015 Incremental Term Borrowing" means a borrowing consisting of simultaneous 2015 Incremental Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the 2015 Incremental Term Lenders pursuant to Section 2.01(a).

"2015 Incremental Term Commitment" means, as to each 2015 Incremental Term Lender, its obligation to make 2015 Incremental Term Loans to the Domestic Borrower pursuant to Section 2.01(a) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such 2015 Incremental Term Lender's name on Schedule 2.01 under the caption "2015 Incremental Term Commitment" or opposite such caption in the Assignment and Assumption pursuant to which such 2015 Incremental Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The 2015 Incremental Term Commitment of all of the 2015 Incremental Term Lenders on the Third Amendment Effective Date shall be \$100,000,000.

---

“2015 Incremental Term Conditions” means each of the following conditions:

(a) The Administrative Agent’s receipt of the following, each of which shall be originals or electronic images in a portable document format (e.g. “.pdf” or “.tif”) (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the 2015 Incremental Term Draw Date (or, in the case of certificates of governmental officials, a recent date before the 2015 Incremental Term Draw Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

(i) an Incremental Term Note executed by the Domestic Borrower in favor of each Lender requesting an Incremental Term Note;

(ii) to the extent applicable:

(A) certificates representing the Pledged Equity in Pericom referred to in the Collateral Agreement (excluding certificates representing the Pledged Equity of any Foreign Subsidiaries of Pericom in existence on the 2015 Incremental Term Draw Date) accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank (to the extent available in any non-U.S. jurisdiction), and

(B) proper Financing Statements with respect to Pericom in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Collateral Documents, covering the Collateral described in the Collateral Documents,

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of Pericom as the Administrative Agent may reasonably require evidencing the identity, authority and capacity of each Responsible Officer of Pericom authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which Pericom is a party;

(iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that Pericom is duly organized or formed, and that Pericom is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(v) a certificate signed by a Responsible Officer of the Domestic Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) of the Credit Agreement shall have been satisfied before and after giving effect to the 2015 Incremental Term Borrowing and the Pericom Acquisition and that (B) since June 30, 2015, there shall have been no “Material Adverse Effect” (as such term is defined in the draft Pericom Acquisition Agreement delivered via email to Winston & Strawn LLP on August 27, 2015, marked “SMRH Draft 8/26/15” and bearing document footer number SMRH:442581684.2);

---

(vi) certificate from the chief financial officer of each Borrower attesting to the Solvency of each Borrower and each Guarantor before and after giving effect to the 2015 Incremental Term Borrowing and the Pericom Acquisition;

(vii) notices of borrowing with respect to the 2015 Incremental Term Loan in form and substance satisfactory to the Administrative Agent in accordance with this Agreement;

(viii) the Lenders shall be reasonably satisfied with the amount, types and terms and conditions of all insurance maintained by Pericom and its Subsidiaries, and the Administrative Agent shall have received evidence of such insurance, consistent with the insurance deliverables provided in connection with the Closing Date;

(ix) an executed joinder agreement with respect to Pericom in the form attached as Exhibit B to the Third Amendment; and

(x) a favorable opinion of Sheppard, Mullin, Richter & Hampton, LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to matters concerning the Loan Parties and the Loan Documents as the Lenders may reasonably request.

(b) All of the existing Indebtedness, if any, for borrowed money of Pericom and its Subsidiaries (other than Indebtedness permitted to exist pursuant to Section 7.02) shall be repaid in full, and all Liens and other security interests upon any of the property of Pericom and its Subsidiaries shall be terminated on or prior to the 2015 Incremental Term Draw Date (other than Liens permitted to exist pursuant to Section 7.01 as modified by Supplemental Schedule 5.08(b) delivered to the Administrative Agent on or prior to the 2015 Incremental Term Draw Date) (including, without limitation, the receipt of payoff letters and the filing of appropriate mortgage, intellectual property and lien releases as set forth in the Pericom Acquisition Agreement).

(c) The Pericom Acquisition Agreement (including all schedules and exhibits thereto) shall be in form and substance reasonably satisfactory to the Administrative Agent and the Arranger, and shall be in full force and effect. The Administrative Agent shall have received certified copies of the Pericom Acquisition Agreement and each other material Pericom Acquisition Related Document, duly executed by the parties thereto, together with all agreements, instruments and other documents delivered in connection therewith as the Administrative Agent shall request. The Pericom Acquisition shall have been consummated or shall be simultaneously consummated in accordance with the Pericom Acquisition Related Documents for an aggregate purchase price not in excess of \$475,000,000 (plus or minus working capital adjustments) (without giving effect to any amendment, modification, consent or waiver that would be materially adverse to the Lenders, without the prior written consent of the Administrative Agent and the Arranger, which consent shall not be unreasonably withheld, delayed or conditioned), and in compliance in all material respects with all applicable Laws and regulatory approvals.

---

(d) The Consolidated Leverage Ratio, based on the most recently ended fiscal quarter prior to the 2015 Incremental Term Draw Date for which financial statements are available (calculated on a pro forma basis after giving effect to the 2015 Incremental Term Borrowing and the Pericom Acquisition) shall be no greater than 2.75 to 1.00, and the Administrative Agent shall have received a Compliance Certificate executed by a Responsible Officer of the Domestic Borrower as of the 2015 Incremental Term Draw Date for such Measurement Period evidencing the same.

“2015 Incremental Term Draw Date” has the meaning specified in Section 2.01(a).

“2015 Incremental Term Facility” means, at any time, (a) on or prior to the 2015 Incremental Term Draw Date, the aggregate amount of the 2015 Incremental Term Commitments at such time and (b) thereafter, the aggregate principal amount of the 2015 Incremental Term Loans of all 2015 Incremental Term Lenders outstanding at such time.

“2015 Incremental Term Lender” means (a) at any time on or prior to the 2015 Incremental Term Draw Date, any Lender that has a 2015 Incremental Term Commitment at such time and (b) at any time after the Third Amendment Effective Date, any Lender that holds 2015 Incremental Term Loans at such time.

“2015 Incremental Term Loan” means an advance made by any 2015 Incremental Term Lender under the 2015 Incremental Term Facility.

“Additional Secured Obligations” means all obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof 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; provided that Additional Secured Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“Administrative Agent” means Bank of America in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

“Administrative Agent’s Office” means, with respect to any currency, the Administrative Agent’s address and, as appropriate, account as set forth on Schedule 11.02 with respect to such currency, or such other address or account with respect to such currency as the Administrative Agent may from time to time notify the Domestic Borrower and the Lenders.

“Administrative Questionnaire” means an administrative questionnaire in substantially the form of Exhibit E-2 or any other form approved by the Administrative Agent.

---

“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 specified in Section 11.02(c).

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

“Agreement” means this Credit Agreement.

“Alternative Currency” means each of Euro, Sterling and each other currency (other than Dollars) that is approved in accordance with Section 1.06.

“Alternative Currency Equivalent” means, at any time, with respect to any amount denominated in Dollars, the equivalent amount thereof in the applicable Alternative Currency as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of such Alternative Currency with Dollars.

“Alternative Currency Sublimit” means an amount equal to the lesser of the Revolving Credit Facility and \$20,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Applicable Designee” means any office, branch or Affiliate of a Lender designated thereby from time to time with the consent of the Administrative Agent (which such consent shall not be unreasonably withheld, conditioned or delayed) to fund Loans or issue Letters of Credit to or for the benefit of the Foreign Borrower. As of the Closing Date, the Applicable Designees of each Lender are set forth on Schedule 1.01(a) (which schedule may be updated from time to time upon written notice by any Lender to the Administrative Agent). Any assignment by a Lender of all or a portion of its Commitment to fund or participate in Loans or Letters of Credit to or for the benefit of the Foreign Borrower to an Applicable Designee shall be effected by delivering to the Administrative Agent an addendum executed by such Lender and its Applicable Designee, in form and substance satisfactory to the Administrative Agent. For all purposes of this Agreement, any designation of an Applicable Designee by a Lender shall not affect such Lender’s rights and obligations with respect to its Commitment and the Loan Parties and the other Lenders and the Administrative Agent shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement and the other Loan Documents, except as otherwise expressly permitted in this Agreement or in the applicable addendum.

“Applicable Percentage” means (a) in respect of any Incremental Term Facility, with respect to any Incremental Term Lender at any time, the percentage (carried out to the ninth decimal place) of such Incremental Term Facility represented by (i) on or prior to the applicable Incremental Term Loan Date, such Incremental Term Lender’s Incremental Term Commitment at such time and (ii) thereafter, the principal amount of such Incremental Term Lender’s Incremental Term Loans at such time, and (b) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Revolving Credit Lender’s Revolving Credit Commitment at such time. If the commitment of each Revolving Credit

Lender to make Revolving Credit Loans and the obligation of the L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02, or if the Revolving Credit Commitments have expired, then the Applicable Percentage of each Revolving Credit Lender in respect of the Revolving Credit Facility shall be determined based on the Applicable Percentage of such Revolving Credit Lender in respect of the Revolving Credit Facility most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender in respect of each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption or Incremental Term Assumption Agreement pursuant to which such Lender becomes a party hereto, as applicable.

“Applicable Rate” means, for any day, the rate per annum set forth below opposite the applicable Pricing Level then in effect (based on the Consolidated Leverage Ratio), it being understood that the Applicable Rate for (a) Revolving Credit Loans that are Base Rate Loans shall be the percentage set forth under the column “Revolving Credit Loans” and “Base Rate”, (b) Revolving Credit Loans that are Eurocurrency Rate Loans shall be the percentage set forth under the column “Revolving Credit Loans” and “Eurocurrency Rate & Letter of Credit Fee”, (c) that portion of the 2015 Incremental Term Loan comprised of Base Rate Loans shall be the percentage set forth under the column “2015 Incremental Term Loan” and “Base Rate”, (d) that portion of the 2015 Incremental Term Loan comprised of Eurocurrency Rate Loans shall be the percentage set forth under the column “2015 Incremental Term Loan” and “Eurocurrency Rate & Letter of Credit Fee”, (e) the Letter of Credit Fee shall be the percentage set forth under the column “Revolving Credit Loans” and “Eurocurrency Rate & Letter of Credit Fee”, (f) the Commitment Fee shall be the percentage set forth under the column “Commitment Fee” and (g) the Applicable Rate for any other Incremental Term Loan shall be as set forth in the Incremental Term Assumption Agreement executed in connection therewith:

Pricing Level	Applicable Rate					
	Consolidated Leverage Ratio	Eurocurrency Rate & Letter of Credit Fee		Base Rate		Commitment Fee
		Revolving Credit Loans	2015 Incremental Term Loan	Revolving Credit Loans	2015 Incremental Term Loan	
1	< 1.00:1	1.50%	1.50%	0.50%	0.50%	0.25%
2	□ 1.00:1 but < 1.50:1	1.75%	1.75%	0.75%	0.75%	0.30%
3	□ 1.50:1 but < 2.00:1	2.00%	2.00%	1.00%	1.00%	0.35%
4	□ 2.00:1 but < 2.50	2.25%	2.25%	1.25%	1.25%	0.40%
5	□ 2.50:1	2.50%	2.50%	1.50%	1.50%	0.40%

---

Any increase or decrease in the Applicable Rate resulting from a change in the Consolidated Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.02(b); ~~provided, however,~~ that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 5 shall apply, in each case as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and in each case shall remain in effect until the first Business Day following the date on which such Compliance Certificate is delivered.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b). Any adjustment in the Applicable Rate shall be applicable to all Credit Extensions then existing or subsequently made or issued.

“Applicable Revolving Credit Percentage” means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender’s Applicable Percentage in respect of the Revolving Credit Facility at such time.

“Applicable Time” means, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment.

“Appropriate Lender” means, at any time, (a) with respect to any Incremental Term Facility or the Revolving Credit Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan with respect to such Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) the L/C Issuer and (ii) if any Letters of Credit have been issued pursuant to Section 2.03(a), the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding pursuant to Section 2.04(a), the Revolving Credit Lenders.

“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.

“Arranger” means Merrill Lynch, Pierce, Fenner & Smith Incorporated, in its capacity as sole lead arranger and sole bookrunner.

“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 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form (including an electronic documentation form generated by use of an electronic platform) approved by the Administrative Agent.

“Attributable Indebtedness” means, on any date, (a) in respect of any Capitalized Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease or similar payments under the relevant lease or other applicable agreement or instrument that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease or other agreement or instrument were accounted for as a Capitalized Lease.

---

“Audited Financial Statements” means the audited consolidated balance sheet of the Domestic Borrower and its Subsidiaries for the fiscal year ended December 31, 2011, and the related consolidated statements of income or operations, shareholders’ equity and cash flows for such fiscal year of the Domestic Borrower and its Subsidiaries, including the notes thereto.

“Availability Period” means in respect of the Revolving Credit Facility, the period from and including the Closing Date to the earliest of (a) the Maturity Date for the Revolving Credit Facility, (b) the date of termination of the Revolving Credit Commitments pursuant to Section 2.06, and (c) the date of termination of the commitment of each Revolving Credit Lender to make Revolving Credit Loans and of the obligation of the L/C Issuer to make L/C Credit Extensions pursuant to Section 8.02.

“Bank of America” means Bank of America, N.A. and its successors.

“Base Rate” means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus 1/2 of 1.00%, (b) the rate of interest in effect for such day as publicly announced from time to time by Bank of America as its “prime rate,” and (c) the Eurocurrency Rate plus 1.00%; and if the Base Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement. The “prime rate” is a rate set by Bank of America based upon various factors including Bank of America’s costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate announced by Bank of America shall take effect at the opening of business on the day specified in the public announcement of such change.

“Base Rate Loan” means a Revolving Credit Loan or an Incremental Term Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

“Borrowers” has the meaning specified in the introductory paragraph hereto.

“Borrower Materials” has the meaning specified in Section 6.02.

“Borrowing” means a Revolving Credit Borrowing, a Swing Line Borrowing or an Incremental Term Borrowing, as the context may require.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office with respect to Obligations denominated in Dollars is located and:

(i) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Dollars, any fundings, disbursements, settlements and payments in Dollars in respect of any such Eurocurrency Rate Loan, or any other dealings in Dollars to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means any such day that is also a London Banking Day;



---

(ii) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in Euro, any fundings, disbursements, settlements and payments in Euro in respect of any such Eurocurrency Rate Loan, or any other dealings in Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan, means a TARGET Day;

(iii) if such day relates to any interest rate settings as to a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, means any such day on which dealings in deposits in the relevant currency are conducted by and between banks in the London or other applicable offshore interbank market for such currency; and

(iv) if such day relates to any fundings, disbursements, settlements and payments in a currency other than Dollars or Euro in respect of a Eurocurrency Rate Loan denominated in a currency other than Dollars or Euro, or any other dealings in any currency other than Dollars or Euro to be carried out pursuant to this Agreement in respect of any such Eurocurrency Rate Loan (other than any interest rate settings), means any such day on which banks are open for foreign exchange business in the principal financial center of the country of such currency.

“Capital Expenditures” means, with respect to any Person for any period, any expenditure in respect of the purchase or other acquisition of any fixed or capital asset (excluding normal replacements and maintenance which are properly charged to current operations).

“Capitalized Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Collateralize” means to deposit in a Controlled Account or to pledge and deposit with or deliver to the Administrative Agent, for the benefit of one or more of the L/C Issuer or Swing Line Lender (as applicable) or the Lenders, as collateral for L/C Obligations, the Obligations in respect of Swing Line Loans, or obligations of the Revolving Credit Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the Administrative Agent and the L/C Issuer or Swing Line Lender, as applicable, shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the L/C Issuer or Swing Line 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 Equivalents” means any of the following types of Investments, to the extent owned by the Domestic Borrower or any of its Subsidiaries free and clear of all Liens (other than Permitted Liens):

(a) readily marketable obligations issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof having maturities of not more than 360 days from the date of acquisition thereof; provided that the full faith and credit of the United States of America is pledged in support thereof;

(b) time deposits with, or insured certificates of deposit or bankers' acceptances of, any commercial bank that (i) (A) is a Lender or (B) is organized under the laws of the United States of America, any state thereof or the District of Columbia or is the principal banking subsidiary of a bank holding company organized under the laws of the United States of America, any state thereof or the District of Columbia, and is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in clause (c) of this definition and (iii) has combined capital and surplus of at least \$1,000,000,000, in each case with maturities of not more than 90 days from the date of acquisition thereof;

(c) commercial paper issued by any Person organized under the laws of any state of the United States of America and rated at least "Prime-1" (or the then equivalent grade) by Moody's or at least "A-1" (or the then equivalent grade) by S&P, in each case with maturities of not more than 180 days from the date of acquisition thereof; and

(d) Investments, classified in accordance with GAAP as current assets of the Borrower or any of its Subsidiaries, in money market investment programs registered under the Investment Company Act of 1940, which are administered by financial institutions that have the highest rating obtainable from either Moody's or S&P, and the portfolios of which are limited solely to Investments of the character, quality and maturity described in clauses (a), (b) and (c) of this definition.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, at the time it enters into a Cash Management Agreement with a Loan Party or any Subsidiary, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980.

"CERCLIS" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"CFC" means a Person that is a controlled foreign corporation under Section 957 of the Code.

"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, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law", regardless of the date enacted, adopted or issued.

---

“Change of Control” means an event or series of events by which:

(a) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, 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 Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities 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 35% or more of the Equity Interests of the Domestic Borrower entitled to vote for members of the board of directors or equivalent governing body of the Domestic Borrower on a fully-diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire pursuant to any option right); or

(b) the Domestic Borrower shall fail to own directly one hundred percent (100%) of the Equity Interests of the Foreign Borrower.

“Chengdu Site Development” means the construction and/or expansion of manufacturing, production, assembly and/or testing facilities owned by Diodes Technology (Chengdu) Company Limited.

“Closing Date” means the first date all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 11.01.

“Code” means the Internal Revenue Code of 1986.

“Collateral” means, collectively, the “U.S. Collateral,” the “European Collateral” and the “Mortgaged Property” referred to in the Collateral Documents and all of the other property that is or is intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

“Collateral Agreement” means the collateral agreement dated as of the Closing Date executed by the Loan Parties in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, together with each other collateral agreement, collateral agreement supplement, collateral agreement joinder and notice of grant of security interest delivered pursuant to Section 6.12, in each case, as amended, restated, supplemented or otherwise modified from time to time.

“Collateral Documents” means, collectively, the Collateral Agreement, the Mortgages, the Foreign Security Agreements, and each of the mortgages, collateral assignments, supplements, security agreements, pledge agreements or other similar agreements delivered to the Administrative Agent pursuant to Section 6.12, and each of the other agreements, instruments, supplements, addendums or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

“Commitment” means an Incremental Term Commitment or a Revolving Credit Commitment, as the context may require.

“Committed Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurocurrency Rate Loans, pursuant to Section 2.02(a), which shall be substantially in the form of Exhibit A or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Domestic Borrower.

---

“Commodity Exchange Act” means the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

“Compliance Certificate” means a certificate substantially in the form of Exhibit D.

“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 EBITDA” means, at any date of determination, an amount equal to Consolidated Net Income of the Domestic Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period plus (a) the following to the extent deducted in calculating such Consolidated Net Income: (i) Consolidated Interest Charges, (ii) the provision for Federal, state, local and foreign income taxes payable, (iii) depreciation and amortization expense, (iv) fees, expenses, costs or charges related to the Pericom Acquisition up to an aggregate amount not to exceed \$1,500,000, (v) non-cash stock compensation expense, non-cash impairments of assets and intangibles and other non-cash charges (excluding write downs of accounts receivable, write-downs of inventory, and any other non-cash expense to the extent it represents an accrual of or a reserve for cash expense in any future period), (vi) with respect to any acquisitions permitted under Sections 7.03(g) and (i), non-cash adjustments in accordance with GAAP purchase accounting rules under FASB Statement No. 141 and EITF Issue No. 01-3, in the event that such an adjustment is required, in each case, as determined in accordance with GAAP and (vii) other non-recurring expenses reducing such Consolidated Net Income which do not represent a cash item in such period or any future period (in each case of or by the Domestic Borrower and its Subsidiaries for such Measurement Period) and minus (b) the following to the extent included in calculating such Consolidated Net Income: (i) Federal, state, local and foreign income tax credits and (ii) all non-cash items increasing Consolidated Net Income (in each case of or by the Domestic Borrower and its Subsidiaries for such Measurement Period). For the purposes of calculating Consolidated EBITDA for any Measurement Period, pursuant to any determination of the Consolidated Leverage Ratio or the Consolidated Fixed Charge Coverage Ratio, (x) the Consolidated EBITDA attributable to any Equity Interests of, or any assets comprising a division or business unit or a substantial part of all of the business of, a Subsidiary of the Domestic Borrower Disposed of during such Measurement Period shall be excluded from the calculation of Consolidated EBITDA as if such Disposition and the repayment of any Indebtedness in connection therewith occurred on the first day of such Measurement Period, and (y) the Consolidated EBITDA attributable to any Person, division or business unit acquired by the Domestic Borrower or any Subsidiary pursuant to an acquisition permitted hereunder during such Measurement Period shall be included in the calculation of Consolidated EBITDA as if such permitted acquisition occurred on the first day of such Measurement Period, giving effect only to such pro forma adjustments as are permitted by SEC Regulation S-X.

---

“Consolidated Fixed Charge Coverage Ratio” means, at any date of determination, the ratio of (a) (i) Consolidated EBITDA, less (ii) the aggregate amount of all Capital Expenditures (other than the amount of Capital Expenditures made by the Domestic Borrower and its Subsidiaries with respect to the Chengdu Site Development during the applicable Measurement Period in an aggregate amount for all Measurement Periods not to exceed \$90,000,000) to (b) the sum of (i) Consolidated Interest Charges paid in cash, (ii) the aggregate principal amount of all regularly scheduled principal payments or redemptions or similar acquisitions for value of outstanding debt for borrowed money, but excluding any such payments to the extent refinanced through the incurrence of additional Indebtedness otherwise expressly permitted under Section 7.02, (iii) the aggregate amount of all Restricted Payments paid in cash (other than dividends and other distributions paid by a Subsidiary that is not a Loan Party to its parent if its parent is a Subsidiary or paid by a Loan Party to its parent if its parent is a Loan Party) and (iv) the aggregate amount of Federal, state, local and foreign income taxes paid in cash, in each case, of or by the Domestic Borrower and its Subsidiaries for the most recently completed Measurement Period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Domestic Borrower and its Subsidiaries on a consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business, including Indebtedness incurred under Section 7.02(h)), (e) all Attributable Indebtedness in respect of Capitalized Leases and Synthetic Lease Obligations, (f) without duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than the Domestic Borrower or any Subsidiary, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which the Domestic Borrower or a Subsidiary is a general partner or joint venturer, unless such Indebtedness is expressly made non-recourse to the Domestic Borrower or such Subsidiary.

“Consolidated Interest Charges” means, for any Measurement Period, the sum of (a) all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP and (b) the portion of rent expense under Capitalized Leases that is treated as interest in accordance with GAAP, in each case, of or by the Domestic Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period.

“Consolidated Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness as of such date to (b) Consolidated EBITDA for the most recently completed Measurement Period.

“Consolidated Net Income” means, at any date of determination, the net income (or loss) of the Domestic Borrower and its Subsidiaries on a consolidated basis for the most recently completed Measurement Period; provided that Consolidated Net Income shall exclude (a) extraordinary gains and extraordinary losses for such Measurement Period, (b) the net income of any Subsidiary during such Measurement Period to the extent that the declaration or payment of

dividends or similar distributions by such Subsidiary of such income is not permitted by operation of the terms of its Organization Documents or any agreement, instrument or Law applicable to such Subsidiary during such Measurement Period, except that the Domestic Borrower's equity in any net loss of any such Subsidiary for such Measurement Period shall be included in determining Consolidated Net Income, and (c) any income (or loss) for such Measurement Period of any Person if such Person is not a Subsidiary, except that the Domestic Borrower's equity in the net income of any such Person for such Measurement Period shall be included in Consolidated Net Income up to the aggregate amount of cash actually distributed by such Person during such Measurement Period to the Domestic Borrower or a Subsidiary as a dividend or other distribution (and in the case of a dividend or other distribution to a Subsidiary, such Subsidiary is not precluded from further distributing such amount to the Domestic Borrower as described in clause (b) of this proviso).

“Contractual Obligation” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

“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.

“Controlled Account” means each deposit account and securities account that is subject to an account control agreement in form and substance satisfactory to the Administrative Agent and the L/C Issuer.

“Credit Extension” means each of the following: (a) a Borrowing and (b) an L/C Credit Extension.

“CRR” means the Regulation (EU) No. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012.

“Debtor Relief Laws” means the Bankruptcy Code of the United States, 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 event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“Default Rate” means (a) when used with respect to Obligations other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the Applicable Rate plus (iii) 2% per annum; provided that with respect to a Eurocurrency Rate Loan, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Rate) otherwise applicable to such Loan plus 2% per annum, and (b) when used with respect to Letter of Credit Fees, a rate equal to the Applicable Rate plus 2% per annum.

---

“Defaulting Lender” means, subject to Section 2.16(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the L/C Issuer or the Swing Line 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 (e) 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, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, the L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

“Designated Jurisdiction” means any country or territory to the extent that such country or territory itself is the subject of any Sanction.

“Determining Party” has the meaning specified in Section 3.02(b).

“Diodes Zetex Pension Scheme” means the Diodes Zetex Pension Scheme established under an interim deed dated March 15, 1984 and governed by a third definitive deed and rules dated January 7, 2009, as amended.

---

“Diodes Zetex Pension Scheme Guarantee” means that certain pension protection fund compliant guarantee by Diodes Zetex Semiconductors Limited, a company incorporated and registered in England and Wales, for the benefit of HR Trustees Limited and others as trustees of the Diodes Zetex Pension Scheme.

“Diodes Zetex Pension Scheme Legal Charge” means that legal charge dated March 26, 2012 by and between Diodes Zetex Semiconductors Limited, a company incorporated and registered in England and Wales, HR Trustees Limited and others as trustees of the Diodes Zetex Pension Scheme, pursuant to which Diodes Zetex Semiconductors Limited grants a lien on certain real property located in the United Kingdom to secure obligations under the Diodes Zetex Pension Scheme.

“Disposition” or “Dispose” means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction) of any property by any Loan Party or Subsidiary (or the granting of any option or other right to do any of the foregoing), including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith, but excluding any Involuntary Disposition.

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

“Dollar Equivalent” means, at any time, (a) with respect to any amount denominated in Dollars, such amount, and (b) with respect to any amount denominated in any Alternative Currency, the equivalent amount thereof in Dollars as determined by the Administrative Agent or the L/C Issuer, as the case may be, at such time on the basis of the Spot Rate (determined in respect of the most recent Revaluation Date) for the purchase of Dollars with such Alternative Currency.

“Domestic Borrower” has the meaning specified in the introductory paragraph hereto.

“Domestic Loan Party” means the Domestic Borrower or any of the Global Guarantors.

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States.

“Dutch Financial Supervision Act” means the Financial Supervision Act (*Wet op Het Financieel Toezicht*), as amended from time to time.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 11.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 11.06(b)(iii)); provided that notwithstanding the foregoing, “Eligible Assignee” shall not include (x) the Borrowers or any of the Borrowers’ Affiliates or Subsidiaries or (y) any Person that cannot (either directly or through an Applicable Designee) lend to the Foreign Borrower in Alternative Currencies or U.S. Dollars; provided further that, in each case, the respective assignee must qualify as a Non-Public Lender.

“Environmental Laws” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.



---

“Environmental Liability” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“Environmental Permit” means any permit, approval, identification number, license or other authorization required under any Environmental Law.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

“ERISA Affiliate” means any trade or business (whether or not incorporated) under common control with the Domestic Borrower within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of the Domestic Borrower or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity 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; (c) a complete or partial withdrawal by the Domestic Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization or insolvency; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or Multiemployer Plan; (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; (h) 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 Domestic Borrower or any ERISA Affiliate or (i) a failure by the Domestic Borrower or any ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or the failure by the Domestic Borrower or any ERISA Affiliate to make any required contribution to a Multiemployer Plan.

“Euro” and “€” mean the single currency of the Participating Member States.

“Eurocurrency Rate” means:

(a) for any Interest Period:

(i) with respect to any Credit Extension denominated in a LIBOR Quoted Currency, the rate per annum equal to the London Interbank Offered Rate (“LIBOR”), or a comparable or successor rate which rate is approved by the Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) (in such case, the “LIBOR Rate”) at or about 11:00 a.m. (London time) on the Rate Determination Date, for deposits in the relevant currency, with a term equivalent to such Interest Period; and

(ii) with respect to any Credit Extension denominated in any Non-LIBOR Quoted Currency, the rate per annum as designated with respect to such Alternative Currency at the time such Alternative Currency is approved by the Administrative Agent and the relevant Lenders pursuant to Section 1.06; and

(b) for any interest rate calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the LIBOR Rate, at or about 11:00 a.m. (London time) determined two (2) Business Days prior to such date for Dollar deposits being delivered in the London interbank market for deposits in Dollars with a term of one (1) month commencing that day;

provided that (i) to the extent a comparable or successor rate is approved by the Administrative Agent in connection with any rate set forth in this definition, the approved rate shall be applied in a manner consistent with market practice; provided, further, that to the extent such market practice is not administratively feasible for the Administrative Agent, such approved rate shall be applied in a manner as otherwise reasonably determined by the Administrative Agent and (ii) if the Eurocurrency Rate shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

“Eurocurrency Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurocurrency Rate”. Eurocurrency Rate Loans may be denominated in Dollars or, in the case of a Revolving Credit Loan, in an Alternative Currency. All Revolving Credit Loans denominated in an Alternative Currency must be Eurocurrency Rate Loans.

“European Collateral” means all of the “European Collateral” referred to in the Collateral Documents.

“Event of Default” has the meaning specified in Section 8.01.

---

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation thereof) by virtue of such Loan Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 10.10 and any other “keepwell, support or other agreement” for the benefit of such Loan Party and any and all guarantes of such Loan Party’s Swap Obligations by other Loan Parties) at the time the Guaranty of such Loan Party, or grant by such Loan Party of a Lien, becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a Master Agreement governing more than one Swap Contract, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to Swap Contracts for which such Guaranty or Lien is or becomes excluded in accordance with the first sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to any 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 Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a) or (c), 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 3.01(e), and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA. Notwithstanding anything to the contrary contained in this definition, “Excluded Taxes” shall not include any withholding tax imposed at any time on payments made by or on account of a Foreign Loan Party hereunder or under any other Loan Document, provided that such Recipient shall have complied (to the extent applicable) with Section 3.01(e)(i).

“Existing Credit Agreement” means that certain Credit Agreement dated as of November 25, 2009 among the Domestic Borrower, Diodes Zetex Limited, a company incorporated and registered under the laws of England and Wales, the Foreign Borrower, and Bank of America as lender, as amended.

“Extraordinary Receipt” means any cash received by or paid to or for the account of any Person not in the ordinary course of business, including tax refunds, pension plan reversions, condemnation awards (and payments in lieu thereof), indemnity payments and any purchase price adjustments, but excluding proceeds of insurance, and excluding proceeds of Dispositions and Involuntary Dispositions.

---

“Facility” means any Incremental Term Facility or the Revolving Credit Facility, as the context may require.

“Facility Office” means the office designated by the applicable Lender through which such Lender will perform its obligations under this Agreement.

“FASB ASC” means the Accounting Standards Codification of the Financial Accounting Standards Board.

“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.

“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 (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means the letter agreement, dated November 16, 2012, among the Borrowers, the Administrative Agent and the Arranger.

“First Tier Foreign Subsidiary” mean a Foreign Subsidiary all or any portion of whose Equity Interests are owned directly by the Domestic Borrower or a Global Guarantor.

“Flood Hazard Property” means any Mortgaged Property that is in an area designated by the Federal Emergency Management Agency as having special flood or mudslide hazards.

“Foreign Borrower” has the meaning specified in the introductory paragraph hereto.

“Foreign Guarantors” means (a) Diodes Zetex Limited, a company incorporated and registered under the laws of England and Wales, (b) Diodes Holdings UK Limited, a company incorporated and registered under the laws of England and Wales and (c) each Foreign Subsidiary that becomes a guarantor.

“Foreign Lender” means (a) with respect to the Domestic Borrower, a Lender that is not a U.S. Person, and (b) with respect to the Foreign Borrower, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“Foreign Loan Parties” means the Foreign Borrower and the Foreign Guarantors.

---

“Foreign Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Foreign Loan Party arising under any Loan Document or otherwise with respect to (a) any Loan made to the Foreign Borrower, (b) any Letter of Credit issued for the account of the Foreign Borrower, (c) any Secured Cash Management Agreement with any Foreign Loan Party or (d) any Secured Hedge Agreement with any Foreign Loan Party, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Foreign Loan Party or any Affiliate thereof 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; provided that Foreign Obligations of a Foreign Loan Party shall exclude any Excluded Swap Obligations with respect to such Foreign Loan Party.

“Foreign Pension Plan” means any plan, fund (including, without limitation, any super-annuation fund) or other similar program, arrangement or agreement established or maintained outside of the United States by any Loan Party or any of its Subsidiaries primarily for the benefit of employees of such Loan Party or such Subsidiaries residing outside the United States, which plan, fund, or similar program provides or results in, retirement income, a deferral of income in contemplation of retirement or payments to be made upon termination of employment, and which is not subject to ERISA or the Code.

“Foreign Plan 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 any Loan Party or an Affiliate thereof in an aggregate amount in excess of the Threshold Amount: (i) the partial or complete withdrawal of any Loan Party or an Affiliate thereof from a Foreign Pension Plan if withdrawal liability is asserted by such plan, or (ii) the termination of a defined benefit Foreign Pension Plan, the institution of proceedings to terminate a defined benefit Foreign Pension Plan, or the imposition of liability on any Loan Party or an Affiliate thereof due to a violation of foreign law with respect to a defined benefit Foreign Pension Plan.

“Foreign Security Agreements” means the collective reference to the security agreements, debentures, pledge agreements, charges, deeds, guaranty agreements, and other similar documents and agreements pursuant to which any Loan Party purports to pledge or grant a security interest in any property or assets located outside the United States securing the Obligations or provide credit support for the Obligations, in each case, that are governed by the laws of any jurisdiction outside of the United States, each as may be amended, restated, supplemented or otherwise modified from time to time.

“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 that is a Revolving Credit Lender, (a) with respect to the L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations other than L/C Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Credit Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the

---

Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit 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 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 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.

“Global Guarantors” means (a) each Domestic Subsidiary identified as a “Global Guarantor” on the signature pages to this Agreement and (b) each Domestic Subsidiary that becomes a guarantor of the Obligations, whether pursuant to Section 6.12 or otherwise.

“Global Loan Parties” means the Domestic Borrower and the Global Guarantors.

“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 of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into 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 (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the related primary obligation, or portion thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term “Guarantee” as a verb has a corresponding meaning.

---

“Guarantors” means, collectively, (a) Global Guarantors and the Foreign Guarantors and (b) with respect to Additional Secured Obligations owing by any Loan Party or any of its Subsidiaries and any Swap Obligation of a Specified Loan Party (determined before giving effect to Sections 10.01 and 10.10) under the Guaranty, each Borrower.

“Guaranty” means, collectively, the Guaranty made by the Guarantors under Article X in favor of the Secured Parties and each guaranty and/or deed of guarantee entered into by a Foreign Guarantor, together with each other guaranty and guaranty supplement delivered pursuant to Section 6.12, in each case, as amended, restated, supplemented or otherwise modified from time to time.

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

“Hedge Bank” means any Person that, at the time it enters into a Swap Contract permitted under Article VI or VII, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Swap Contract.

“IFRS” means international accounting standards within the meaning of IAS Regulation 1606/2002 to the extent applicable to the relevant financial statements delivered under or referred to herein.

“Incremental Term Assumption Agreement” means an Incremental Term Assumption Agreement in form reasonably satisfactory to the Administrative Agent, among the Borrowers, the Administrative Agent and one or more Incremental Term Lenders.

“Incremental Term Borrowing” means a borrowing consisting of simultaneous Incremental Term Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Incremental Term Lenders pursuant to Section 2.18, including, without limitation, the 2015 Incremental Term Borrowing.

“Incremental Term Commitment” means the commitment of any Lender or Eligible Assignee who is or subsequently becomes a Lender pursuant to an Incremental Term Assumption Agreement to make Incremental Term Loans to a Borrower, including, without limitation, the 2015 Incremental Term Commitments.

“Incremental Term Facility” means, at any time, (a) on or prior to an Incremental Term Loan Date, the aggregate amount of any Incremental Term Commitments at such time and (b) thereafter, the aggregate principal amount of the Incremental Term Loans of all Incremental Term Lenders outstanding at such time, including, without limitation, the 2015 Incremental Term Facility.

---

“Incremental Term Lender” means a Lender with an Incremental Term Commitment or an outstanding Incremental Term Loan, including, without limitation, the 2015 Incremental Term Lenders.

“Incremental Term Loan Date” means, with respect to any Incremental Term Commitment requested by the Domestic Borrower pursuant to Section 2.18, the date on which such Incremental Term Commitment is requested to become effective.

“Incremental Term Loans” means term loans made by one or more Lenders to the Borrowers pursuant to Section 2.18, including, without limitation, the 2015 Incremental Term Loans.

“Indebtedness” means, as to any Person at a particular time, without duplication, all of the following, whether or not included as indebtedness or liabilities in accordance with GAAP:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments;
- (b) the maximum amount of all direct or contingent obligations of such Person arising under letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and similar instruments;
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the ordinary course of business and, in each case, not past due for more than 90 days after the date on which such trade account payable was created);
- (e) indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, provided, that if such Person has not assumed or otherwise become liable for such indebtedness, the amount of such indebtedness deemed to be Indebtedness of such Person shall not exceed the fair market value of the property subject to such Lien at the time of determination;
- (f) Capitalized Leases and Synthetic Lease Obligations of such Person;
- (g) all obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Equity Interest in such Person or any other Person or any warrant, right or option to acquire such Equity Interest, valued, in the case of a redeemable preferred interest, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends; and
- (h) all Guarantees of such Person in respect of 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. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capitalized Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

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

“Indemnitees” has the meaning specified in Section 11.04(b).

“Information” has the meaning specified in Section 11.07.

“Interest Payment Date” means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date of the Facility under which such Loan was made; provided that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date of the Facility under which such Loan was made (with Swing Line Loans being deemed made under the Revolving Credit Facility for purposes of this definition).

“Interest Period” means as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter (in each case, subject to availability for the interest rate applicable to the relevant currency), as selected by the Domestic Borrower in its Committed Loan Notice; provided that:

- (a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless, in the case of a Eurocurrency Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;
- (b) any Interest Period pertaining to a Eurocurrency Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and
- (c) no Interest Period shall extend beyond the Maturity Date of the Facility under which such Loan was made.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt

---

of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment.

“Involuntary Disposition” means any loss of, damage to or destruction of, or any condemnation or other taking for public use of, any property of any Loan Party or any Subsidiary.

“IP Rights” has the meaning specified in Section 5.17.

“IRS” means the United States Internal Revenue Service.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice, Inc. (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the L/C Issuer and the Domestic Borrower (or any Subsidiary) or in favor of the L/C Issuer and relating to such Letter of Credit.

“Laws” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“L/C Advance” means, with respect to each Revolving Credit Lender, such Lender’s funding of its participation in any L/C Borrowing in accordance with its Applicable Revolving Credit Percentage.

“L/C Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“L/C Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the increase of the amount thereof.

“L/C Issuer” means Bank of America, through itself or through one of its designated Affiliates or branch offices, in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“L/C Obligations” means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Lender” has the meaning specified in the introductory paragraph hereto and, unless the context requires otherwise, includes the Swing Line Lender and the Incremental Term Lenders. The term “Lender” shall include any Applicable Designee.

“Lending Office” means, as to the Administrative Agent, the L/C Issuer or any Lender, the office or offices of such Person described as such in such Person’s Administrative Questionnaire, or such other office or offices as such Person may from time to time notify the Domestic Borrower and the Administrative Agent; which office may include any Affiliate of such Person or any domestic or foreign branch of such Person or such Affiliate.

“Letter of Credit” means any letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder. A Letter of Credit may be a standby letter of credit or a commercial letter of credit payable upon presentation of appropriate supporting documents (“sight”). Letters of Credit may be issued in Dollars or in an Alternative Currency.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the L/C Issuer.

“Letter of Credit Expiration Date” means the day that is seven days prior to the Maturity Date then in effect for the Revolving Credit Facility (or, if such day is not a Business Day, the next preceding Business Day).

“Letter of Credit Fee” has the meaning specified in Section 2.03(h).

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Revolving Credit Facility. The Letter of Credit Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“LIBOR” has the meaning specified in the definition of Eurocurrency Rate.

“LIBOR Quoted Currency” means Dollars, Euro and Sterling, in each case as long as there is a published LIBOR rate with respect thereto.

“Lien” means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

---

“Loan” means an extension of credit by a Lender to a Borrower under Article II in the form of a Revolving Credit Loan, a Swing Line Loan, a 2015 Incremental Term Loan or, if applicable, any other Incremental Term Loan.

“Loan Documents” means, collectively, (a) this Agreement, (b) the Notes, (c) the Guaranty, (d) the Collateral Documents, (e) the Fee Letter, (f) each Issuer Document (g) each Incremental Term Assumption Agreement and (h) all other certificates, agreements, documents and instruments executed and delivered, in each case, by or on behalf of any Loan Party pursuant to the foregoing (but specifically excluding any Secured Hedge Agreement or any Secured Cash Management Agreement); provided, however, that for purposes of Section 11.01, “Loan Documents” shall mean this Agreement, the Guaranty and the Collateral Documents.

“Loan Parties” means, collectively, the Borrowers and the Guarantors.

“London Banking Day” means any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

“Mandatory Cost” means any amount incurred periodically by any Lender during the term of the Facility which constitutes fees, costs or charges imposed on lenders generally in the jurisdiction in which such Lender is domiciled, subject to regulation, or has its Facility Office by any Governmental Authority.

“Master Agreement” has the meaning specified in the definition of “Swap Contract.”

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities (actual or contingent), condition (financial or otherwise) or prospects of any Borrower or the Domestic Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

“Material Contract” means, with respect to any Person, each contract to which such Person is a party involving aggregate consideration payable to or by such Person of \$5,000,000 or more or otherwise material to the business, condition (financial or otherwise), operations, performance, properties or prospects of such Person.

“Material Real Property” means each parcel (or group of contiguous related parcels) of real property owned by the Domestic Borrower or any Subsidiary located within the United States with a book value equal to or greater than \$5,000,000; all Material Real Property as of the Closing Date is identified on Schedule 5.08(c).

“Maturity Date” means (a) with respect to the 2015 Incremental Term Facility and the Revolving Credit Facility, January 8, 2018, and (b) with respect to any other Incremental Term Facility, the maturity date set forth in the applicable Incremental Term Assumption Agreement for such Incremental Term Facility; provided, however, that, in each case, if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

---

“Measurement Period” means, at any date of determination, the most recently completed four fiscal quarters of the Domestic Borrower.

“Merger Sub” means PSI Merger Sub, Inc., a California corporation and wholly-owned Domestic Subsidiary of the Domestic Borrower.

“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 103% of the Fronting Exposure of the L/C Issuer with respect to Letters of Credit issued 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 2.15(a)(i), (a)(ii) or (a)(iii), an amount equal to 103% of the Outstanding Amount of all L/C Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the L/C Issuer in their sole discretion.

“Moody’s” means Moody’s Investors Services, Inc. and any successor thereto.

“Mortgage” means each deeds of trust, trust deed, deed to secure debt, mortgage, leasehold mortgage and leasehold deed of trust, each in form and substance reasonably acceptable to the Administrative Agent and covering the properties identified to be mortgaged on Schedules 5.08(c) and 5.08(d), together with the Assignments of Leases and Rents referred to therein and each other mortgage delivered pursuant to Section 6.12, in each case, as amended, restated, supplemented or otherwise modified from time to time.

“Mortgaged Property” means any owned property of a Loan Party listed on Schedules 5.08(c) or 5.08(d) and any other owned real property of a Loan Party that is or will become encumbered by a Mortgage in favor of the Administrative Agent in accordance with the terms of this Agreement.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including the Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in Section 4064 of ERISA.

“Net Cash Proceeds” means the aggregate cash or Cash Equivalents proceeds received by any Loan Party or any Subsidiary in respect of any Disposition or Involuntary Disposition, or any Extraordinary Receipt, in each case net of (a) direct costs incurred in connection therewith (including, without limitation, legal, accounting and investment banking fees and sales commissions), (b) taxes paid or payable as a result thereof and any withholding taxes paid or payable in connection therewith or as a result of any intercompany transfer of such cash or Cash Equivalents, and (c) the amount necessary to retire any Indebtedness secured by a Permitted Lien; it being understood that “Net Cash Proceeds” shall include, without limitation, any cash or Cash Equivalents received upon the sale or other disposition of any non-cash consideration received by any Loan Party or any Subsidiary in any Disposition or Involuntary Disposition.

---

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 11.01 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-LIBOR Quoted Currency” means any currency other than a LIBOR Quoted Currency.

“Non-Public Lender” means (i) until the publication of an interpretation of “public” as referred to in the CRR by the competent authority/ies: an entity which (x) assumes existing rights and/or obligations vis-à-vis the Foreign Borrower, the value of which is at least €100,000 (or its equivalent in another currency), (y) provides repayable funds for an initial amount of at least €100,000 (or its equivalent in another currency) or (z) otherwise qualifies as not forming part of the public; and (ii) as soon as the interpretation of the term “public” as referred to in the CRR has been published by the relevant authority/ies: an entity which is not considered to form part of the public on the basis of such interpretation.

“Note” means an Incremental Term Note or a Revolving Credit Note, as the context may require.

“Notice of Loan Prepayment” means a notice of prepayment with respect to a Loan, which shall be substantially in the form of Exhibit G or such other form as may be approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

“NPL” means the National Priorities List under CERCLA.

“Obligations” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan, or Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof 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; provided that Obligations of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organization Documents” means, (a) with respect to any corporation, the certificate or articles of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction); (c) with respect to

---

a *besloten vennootschap met beperkte aansprakelijkheid*, the deed of incorporation and the articles of association and (d) 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 or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 3.06).

“Outstanding Amount” means (a) with respect to Revolving Credit Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Revolving Credit Loans, occurring on such date; (b) with respect to Incremental Term Loans and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Incremental Term Loans and Swing Line Loans, as the case may be, occurring on such date; and (c) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension 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 Unreimbursed Amounts.

“Overnight Rate” means, for any day, (a) with respect to any amount denominated in Dollars, the greater of (i) the Federal Funds Rate and (ii) an overnight rate determined by the Administrative Agent, the L/C Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation, and (b) with respect to any amount denominated in an Alternative Currency, an overnight rate determined by the Administrative Agent or the L/C Issuer, as the case may be, in accordance with banking industry rules on interbank compensation.

“Participant” has the meaning specified in Section 11.06(d).

“Participating Member State” means any member state of the European Union that adopts or has adopted the Euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

---

“Participant Register” has the meaning specified in Section 11.06(d).

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

“Pension Plan” means any employee pension benefit plan (other than a Multiemployer Plan) that is maintained or is contributed to by the Domestic Borrower and any ERISA Affiliate and is either covered by Title IV of ERISA or is subject to the minimum funding standards under Section 412 of the Code.

“Pericom” means Pericom Semiconductor Corporation, a California corporation.

“Pericom Acquisition” means the acquisition by the Domestic Borrower of all of the stock of Pericom from the existing shareholders of Pericom for not more than \$475,000,000 in cash and stock (plus or minus working capital adjustments).

“Pericom Acquisition Agreement” means the Agreement and Plan of Merger dated on or about the Third Amendment Effective Date among the Domestic Borrower, Merger Sub and Pericom, as amended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

“Pericom Acquisition Related Documents” means the Pericom Acquisition Agreement and all other documents related thereto or executed in connection therewith.

“Permitted Liens” has the meaning set forth in Section 7.01.

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

“Plan” means any employee benefit plan within the meaning of Section 3(3) of ERISA (including a Pension Plan), maintained for employees of the Domestic Borrower or any ERISA Affiliate or any such Plan to which the Domestic Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“Platform” has the meaning specified in Section 6.02.

“Pledged Debt” has the meaning specified in the Collateral Agreement.

“Pledged Equity” has the meaning specified in the Collateral Agreement.

“Public Lender” has the meaning specified in Section 6.02.



---

“Qualified ECP Guarantor” means, at any time, each Loan Party with total assets exceeding \$10,000,000 or that qualifies at such time as an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” at such time under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

“Rate Determination Date” means two (2) Business Days prior to the commencement of such Interest Period (or such other day as is generally treated as the rate fixing day by market practice in such interbank market, as determined by the Administrative Agent; provided that to the extent such market practice is not administratively feasible for the Administrative Agent, then “Rate Determination Date” means such other day as otherwise reasonably determined by the Administrative Agent).

“Recipient” means the Administrative Agent, any Lender, the L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“Register” has the meaning specified in Section 11.06(c).

“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.

“Removal Effective Date” has the meaning specified in Section 9.06(b).

“Reportable Event” means any of the events set forth in Section 4043(c) of ERISA, other than events for which the 30 day notice period has been waived.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Incremental Term Loans or Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Incremental Term Lenders” means, as of any date of determination, with respect to any Incremental Term Facility, Incremental Term Lenders holding more than 50% of such Incremental Term Facility on such date. The portion of any Incremental Term Facility held by any Defaulting Lender shall be disregarded in determining Required Incremental Term Lenders at any time.

“Required Lenders” means, as of any date of determination, Lenders holding more than 50% of the sum of the (a) Total Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition), (b) aggregate unused Revolving Credit Commitments and (c) aggregate unused 2015 Incremental Term Commitments. The Total Outstandings of any Defaulting Lender shall be disregarded in determining Required Lenders at any time; provided that, the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination.

---

“Required Revolving Lenders” means, as of any date of determination, Revolving Credit Lenders holding more than 50% of the sum of the (a) Total Revolving Credit Outstandings (with the aggregate amount of each Revolving Credit Lender’s risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed “held” by such Revolving Credit Lender for purposes of this definition) and (b) aggregate unused Revolving Credit Commitments. The unused Revolving Credit Commitment of, and the portion of the Total Outstandings of any Defaulting Lender shall be disregarded in determining Required Revolving Lenders at any time; provided that, the amount of any participation in any Swing Line Loan and Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or L/C Issuer, as the case may be, in making such determination.

“Resignation Effective Date” has the meaning specified in Section 9.06(a).

“Responsible Officer” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, solely for purposes of the delivery of incumbency certificates pursuant to Section 4.01, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to Article II, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party. In the case of any Loan Party that is organized under the laws of the Netherlands, a “Responsible Officer” means any management board members duly authorized to represent such Loan Party or any other authorized officer of the applicable Loan Party or any other person that is designated in a notice to the Administrative Agent as an authorized representative of any Loan Party that is organized under the laws of the Netherlands. To the extent requested by the Administrative Agent, each Responsible Officer will provide an incumbency certificate and to the extent requested by the Administrative Agent, appropriate authorization documentation, in form and substance satisfactory to the Administrative Agent.

“Restricted Payment” means any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of the Domestic Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to the Domestic Borrower’s stockholders, partners or members (or the equivalent Person thereof).

“Revaluation Date” means, (a) with respect to any Revolving Credit Loan, each of the following: (i) each date of a Borrowing of a Eurocurrency Rate Loan denominated in an Alternative Currency, (ii) each date of a continuation of a Eurocurrency Rate Loan denominated in an Alternative Currency pursuant to Section 2.02, and (iii) such additional dates as the Administrative Agent shall determine or the Required Lenders shall require; and (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance, amendment and/or

---

extension of a Letter of Credit denominated in an Alternative Currency, (ii) each date of any payment by the L/C Issuer under any Letter of Credit denominated in an Alternative Currency, and (iii) such additional dates as the Administrative Agent or the L/C Issuer shall determine or the Required Lenders shall require.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of Eurocurrency Rate Loans, having the same Interest Period made by each of the Revolving Credit Lenders pursuant to Section 2.01(b).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01(b), (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Lender’s name on Schedule 2.01 under the caption “Revolving Credit Commitment” or opposite such caption in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. The Revolving Credit Commitment of all Revolving Credit Lenders on the Third Amendment Effective Date shall be \$400,000,000.

“Revolving Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender’s participation in L/C Obligations and Swing Line Loans at such time.

“Revolving Credit Facility” means, at any time, the aggregate amount of the Revolving Credit Lenders’ Revolving Credit Commitments at such time.

“Revolving Credit Lender” means, at any time, (a) so long as any Revolving Credit Commitment is in effect, any Lender that has a Revolving Credit Commitment at such time or (b) if the Revolving Credit Commitments have terminated or expired, any Lender that has a Revolving Credit Loan or a participation in L/C Obligations or Swing Line Loans at such time.

“Revolving Credit Loan” has the meaning specified in Section 2.01(b).

“Revolving Credit Note” means a promissory note made by a Borrower in favor of a Revolving Credit Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Revolving Credit Lender, substantially in the form of Exhibit C-2.

“Revolving Credit Increase Effective Date” has the meaning specified in Section 2.17(d).

“S&P” means Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., and any successor thereto.

“Same Day Funds” means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

---

“Sanction(s)” means any sanction administered or enforced by the United States Government (including, without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

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

“Secured Cash Management Agreement” means any Cash Management Agreement that is entered into by and between any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Swap Contract permitted under Article VI or VII that is entered into by and between any Loan Party and any Hedge Bank.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders (including Applicable Designees), the L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

“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 saleable 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. 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.

“Special Notice Currency” means at any time an Alternative Currency, other than the currency of a country that is a member of the Organization for Economic Cooperation and Development at such time located in North America or Europe.

“Specified Loan Party” means any Loan Party that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to Section 10.10).

“Spot Rate” for a currency means the rate determined by the Administrative Agent or the L/C Issuer, as the case may be, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the Administrative Agent or the L/C Issuer may obtain such spot rate from another financial institution designated by the Administrative Agent or the L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that the L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

---

“Sterling” and “£” mean the lawful currency of the United Kingdom.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power and/or the power for the election of the majority of the directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled (pursuant to an agreement or otherwise), directly, or indirectly through one or more intermediaries, or both, by such Person. Unless otherwise specified, all references herein to a “Subsidiary” or to “Subsidiaries” shall refer to a Subsidiary or Subsidiaries of the Domestic Borrower.

“Swap Contract” 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 Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a “Master Agreement”), including any such obligations or liabilities under any Master Agreement.

“Swap Obligations” means with respect to any Loan Party any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

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

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

---

“Swing Line Lender” means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice of a Swing Line Borrowing pursuant to Section 2.04(b), which shall be substantially in the form of Exhibit B or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the applicable Borrower.

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$10,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

“TARGET2” means the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on November 19, 2007.

“TARGET Day” means any day on which TARGET2 (or, if such payment system ceases to be operative, such other payment system, if any, determined by the Administrative Agent to be a suitable replacement) is open for the settlement of payments in Euro.

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

“Third Amendment” means that certain Amendment No. 3 to Credit Agreement, Incremental Term Assumption Agreement, Limited Waiver and Consent, dated as of September 2, 2015, executed by the Borrowers, the Guarantors, the Administrative Agent and the Lenders.

“Third Amendment Effective Date” means the first date all the conditions precedent in Section 7 of the Third Amendment are satisfied or waived in accordance with Section 11.01 of the Existing Credit Agreement (as defined in the Third Amendment).

“Threshold Amount” means \$2,000,000.

“Total Outstandings” means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

“Total Revolving Credit Outstandings” means the aggregate Outstanding Amount of all Revolving Credit Loans, Swing Line Loans and L/C Obligations.

---

“Type” means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

“UCC” means the Uniform Commercial Code as in effect in the State of New York; provided that, if perfection or the effect of perfection or non-perfection or the priority of any security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, “UCC” means the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions hereof relating to such perfection, effect of perfection or non-perfection or priority.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (“ICC”) Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

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

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“U.S. Collateral” means all the “U.S. Collateral” referred to in the Collateral Documents.

“U.S. Loan Party” means any Loan Party that is organized under the laws of one of the states of the United States of America and that is not a CFC.

“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 specified in Section 3.01(e)(ii)(B)(III).

1.02 Other Interpretive 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. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including the Loan Documents and any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, amended and restated, modified, extended, restated, replaced or supplemented from time to time (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “hereto,” “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Preliminary Statements, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Preliminary Statements, Exhibits and Schedules to, the Loan Document in which such references appear, (v) any

reference to any law shall include all statutory and regulatory rules, regulations, orders and provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified, extended, restated, replaced or supplemented from time to time, and (vi) 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. Any and all references to “Borrower” regardless of whether preceded by the term a, any, each of, all, and/or, or any other similar term shall be deemed to refer, as the context requires, to each and every (and/or any one or all) parties constituting a Borrower, individually and/or in the aggregate.

(b) 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.”

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

(d) English language words used in this Agreement to describe Netherlands law concepts intend to describe such concepts only and the consequences of the use of those words in English law or any other foreign law are to be disregarded.

### 1.03 Accounting Terms.

(a) Generally. 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, applied in a manner consistent with that used in preparing the Audited Financial Statements, 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 on financial liabilities shall be disregarded.

(b) Changes in GAAP. If at any time any change in GAAP (including the adoption of IFRS) 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.



---

1.04 Rounding. Any financial ratios required to be maintained by the Borrowers 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 is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

1.05 Exchange Rates; Currency Equivalents.

(a) The Administrative Agent or the L/C Issuer, as applicable, shall determine the Spot Rates as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with a Revolving Credit Borrowing, conversion, continuation or prepayment of a Eurocurrency Rate Loan or the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Revolving Credit Borrowing, Eurocurrency Rate Loan or Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the L/C Issuer, as the case may be.

(c) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any comparable or successor rate thereto.

1.06 Additional Alternative Currencies.

(a) The Domestic Borrower may from time to time request that Eurocurrency Rate Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency;" provided that such requested currency is a lawful currency (other than Dollars) that is readily available and freely transferable and convertible into Dollars. In the case of any such request with respect to the making of Eurocurrency Rate Loans, such request shall be subject to the approval of the Administrative Agent and each Lender with a Commitment under which such currency is requested to be made available; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the L/C Issuer.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., 20 Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request

pertaining to Letters of Credit, the L/C Issuer, in its or their sole discretion). In the case of any such request pertaining to Eurocurrency Rate Loans, the Administrative Agent shall promptly notify each Appropriate Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the L/C Issuer thereof. Each Appropriate Lender (in the case of any such request pertaining to Eurocurrency Rate Loans) or the L/C Issuer (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Eurocurrency Rate Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Lender or the L/C Issuer, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Lender or the L/C Issuer, as the case may be, to permit Eurocurrency Rate Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Appropriate Lenders consent to making Eurocurrency Rate Loans in such requested currency, the Administrative Agent shall so notify the Domestic Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Revolving Credit Borrowings of Eurocurrency Rate Loans; and if the Administrative Agent and the L/C Issuer consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify the Domestic Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.06, the Administrative Agent shall promptly so notify the Domestic Borrower.

#### 1.07 Change of Currency.

(a) Each obligation of the Borrowers to make a payment denominated in the national currency unit of any member state of the European Union that adopts the Euro as its lawful currency after the date hereof shall be redenominated into Euro at the time of such adoption. If, in relation to the currency of any such member state, the basis of accrual of interest expressed in this Agreement in respect of that currency shall be inconsistent with any convention or practice in the London interbank market for the basis of accrual of interest in respect of the Euro, such expressed basis shall be replaced by such convention or practice with effect from the date on which such member state adopts the Euro as its lawful currency; provided that if any Revolving Credit Borrowing in the currency of such member state is outstanding immediately prior to such date, such replacement shall take effect, with respect to such Revolving Credit Borrowing, at the end of the then current Interest Period.

(b) Each provision of this Agreement shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect the adoption of the Euro by any member state of the European Union and any relevant market conventions or practices relating to the Euro.

(c) Each provision of this Agreement also shall be subject to such reasonable changes of construction as the Administrative Agent may from time to time specify to be appropriate to reflect a change in currency of any other country and any relevant market conventions or practices relating to the change in currency.

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

1.09 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

## ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

### 2.01 The Borrowings.

(a) 2015 Incremental Term Borrowing. Subject to the terms and conditions set forth herein, including, without limitation, satisfaction of each of the 2015 Incremental Term Conditions and each condition set forth in Section 4.02, each 2015 Incremental Term Lender severally agrees to make a single loan to the Domestic Borrower, in Dollars, in a single draw during the 2015 Incremental Term Availability Period (the date of such draw, the “2015 Incremental Term Draw Date”) in an amount equal to such 2015 Incremental Term Lender’s Applicable Percentage of the 2015 Incremental Term Facility. Any 2015 Incremental Term Commitments not used at the time of the 2015 Incremental Term Borrowing on the 2015 Incremental Term Draw Date shall be automatically cancelled. The 2015 Incremental Term Borrowing shall consist of 2015 Incremental Term Loans made simultaneously by the 2015 Incremental Term Lenders in accordance with their respective Applicable Percentage of the 2015 Incremental Term Facility. 2015 Incremental Term Borrowings repaid or prepaid may not be reborrowed. 2015 Incremental Term Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein; provided, however, any 2015 Incremental Term Borrowing made on the 2015 Incremental Term Draw Date shall be made as Base Rate Loans.

(b) Revolving Credit Borrowings. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrowers in Dollars or in an Alternative Currency from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender’s Revolving Credit Commitment; provided that after giving effect to any Revolving Credit Borrowing, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Lender’s Revolving Credit Commitment, and (iii) the aggregate Outstanding Amount of all Revolving Credit Loans denominated in Alternative Currencies plus the aggregate Outstanding Amount of all L/C Obligations denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit. Within the limits of each Revolving Credit Lender’s Revolving Credit Commitment, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(b), prepay under Section 2.05, and reborrow under this Section 2.01(b). Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

---

## 2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Incremental Term Loans or Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Domestic Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Administrative Agent of a Committed Loan Notice. Each such Committed Loan Notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or of any conversion of Eurocurrency Rate Loans to Base Rate Loans, (ii) on the requested date of any Borrowing of Base Rate Loans, and (iii) four Business Days (or five Business Days in the case of a Special Notice Currency) prior to the requested date of any Borrowing or continuation of Eurocurrency Rate Loans denominated in an Alternative Currency. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, in connection with any conversion or continuation of an Incremental Term Loan, if less, the entire principal thereof then outstanding). Except as provided in Sections 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, in connection with any conversion or continuation of an Incremental Term Loan, if less, the entire principal thereof then outstanding). Each Borrowing by the Foreign Borrower and each Letter of Credit issued for the account of the Foreign Borrower, shall be provided by a Lender that is a Non-Public Lender. Each Committed Loan Notice and each telephonic notice shall specify (i) the name of the applicable Borrower, (ii) the applicable Facility and whether such Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of Loans, as the case may be, under such Facility, (iii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iv) the principal amount of Loans to be borrowed, converted or continued, (v) the Type of Loans to be borrowed or to which existing Loans are to be converted, (vi) if applicable, the duration of the Interest Period with respect thereto, and (vii) the currency of the Loans to be borrowed, converted or continued. If the Domestic Borrower fails to specify a currency in a Committed Loan Notice requesting a Borrowing, then the Loans so requested shall be made in Dollars. If the Domestic Borrower fails to specify a Type of Loan in a Committed Loan Notice or if the Domestic Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans; provided, however, that in the case of a failure to timely request a continuation of Revolving Credit Loans denominated in an Alternative Currency, such Loans shall be continued as Eurocurrency Rate Loans in their original currency with an Interest Period of one month. No Revolving Credit Loan may be converted into or continued as a Revolving Credit Loan denominated in a different currency, but instead must be repaid in the original currency of such Revolving Credit Loan and reborrowed in the other currency. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Domestic Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, 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 Swing Line Loan may not be converted to a Eurocurrency Rate Loan.

---

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage under the applicable Facility of the applicable Incremental Term Loan or Revolving Credit Loans, whether such Loan is to be denominated in Dollars or an Alternative Currency, and if no timely notice of a conversion or continuation is provided by the Domestic Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans or continuation of Loan denominated in a currency other than Dollars, in each case as described in the preceding subsection. In the case of a Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office for the applicable currency not later than 1:00 p.m. in the case of any Loan denominated in Dollars, and not later than the Applicable Time specified by the Administrative Agent in the case of any Loan in an Alternative Currency, in each case on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.02 (and, if such Borrowing is the initial Credit Extension, Section 4.01), the Administrative Agent shall make all funds so received available to the applicable Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of such Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Domestic Borrower; provided that if, on the date the Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Domestic Borrower, there are L/C Borrowings outstanding with respect to the applicable Borrower, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such L/C Borrowings, and second, shall be made available to such Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans (whether in Dollars or an Alternative Currency) without the consent of the Required Lenders, and the Required Lenders may demand that any or all of the then outstanding Eurocurrency Rate Loans denominated in an Alternative Currency be redenominated into Dollars in the amount of the Dollar Equivalent thereof, on the last day of the then current Interest Period with respect thereto.

(d) The Administrative Agent shall promptly notify the Domestic Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Domestic Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Incremental Term Borrowings, all conversions of Incremental Term Loans from one Type to the other, and all continuations of Incremental Term Loans as the same Type, there shall not be more than 5 Interest Periods in effect in respect of the Incremental Term Facility. After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than 5 Interest Periods in effect in respect of the Revolving Credit Facility.

---

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all or the 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.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the L/C Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in an Alternative Currency applicable to the L/C Issuer for the account of any Borrower or Loan Party, and to amend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of the Borrowers or any Loan Party and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (w) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility, (x) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Lender's Commitment, (y) the aggregate Outstanding Amount of all Revolving Credit Loans denominated in Alternative Currencies plus the aggregate Outstanding Amount of all L/C Obligations denominated in Alternative Currencies shall not exceed the Alternative Currency Sublimit, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by a Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by such Borrower that the L/C Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The L/C Issuer shall not issue any Letter of Credit, if:

(A) the expiry date of the requested Letter of Credit would occur more than twelve months after the date of issuance or last extension, unless the Required Revolving Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Revolving Credit Lenders have approved such expiry date.

---

(iii) The L/C Issuer shall not be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the L/C Issuer from issuing the Letter of Credit, or any Law applicable to the L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the L/C Issuer shall prohibit, or request that the L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon the L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of the L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is in an initial stated amount less than \$100,000, in the case of a commercial Letter of Credit, or \$500,000, in the case of a standby Letter of Credit;

(D) except as agreed by the Administrative Agent and the L/C Issuer, the Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency;

(E) the L/C issuer does not as of the issuance date of such requested Letter of Credit issue letters of credit in the requested currency;

(F) any Revolving Credit Lender is at that time a Defaulting Lender, unless the L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the L/C Issuer (in its sole discretion) with the Domestic Borrower or such Revolving Credit Lender to eliminate the L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(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 the L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion;

(G) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or

(H) the L/C Issuer does not as of the issuance date of the requested Letter of Credit issue Letters of Credit in the requested currency.

(iv) The L/C Issuer shall not amend any Letter of Credit if the L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) The L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) the L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

---

(vi) The L/C Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by the L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term “Administrative Agent” as used in Article IX included the L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the applicable Borrower delivered to the L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the applicable Borrower. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the L/C Issuer, by personal delivery or by any other means acceptable to the L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days prior to the proposed issuance date or date of amendment, as the case may be, of any Letter of Credit denominated in Dollars, and not later than 12:00 noon at least ten Business Days prior to the proposed issuance date or date of amendment, as the case may be, of any Letter of Credit denominated in an Alternative Currency (or in each case such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion). In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount and currency thereof and the absence of specification of currency shall be deemed a request for a Letter of Credit denominated in Dollars; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) the purpose and nature of the requested Letter of Credit; and (H) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (1) the Letter of Credit to be amended; (2) the proposed date of amendment thereof (which shall be a Business Day); (3) the nature of the proposed amendment; and (4) such other matters as the L/C Issuer may require. Additionally, the applicable Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may require.



---

(ii) Promptly after receipt of any Letter of Credit Application, the L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Loan Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower (or the applicable Loan Party) or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Letter of Credit.

(iii) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the applicable Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements: Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the L/C Issuer shall promptly notify the applicable Borrower and the Administrative Agent thereof. In the case of a Letter of Credit denominated in an Alternative Currency, the applicable Borrower shall reimburse the L/C Issuer in such Alternative Currency, unless (A) the L/C Issuer (at its option) shall have specified in such notice that it will require reimbursement in Dollars, or (B) in the absence of any such requirement for reimbursement in Dollars, the applicable Borrower shall have notified the L/C Issuer promptly following receipt of the notice of drawing that the applicable Borrower will reimburse the L/C Issuer in Dollars. In the case of any such reimbursement in Dollars of a drawing under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the applicable Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Not later than 11:00 a.m. on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in Dollars, or the Applicable Time on the date of any payment by the L/C Issuer under a Letter of Credit to be reimbursed in an Alternative Currency (each such date, an "Honor Date"), the applicable Borrower shall reimburse the L/C Issuer through the Administrative Agent in an amount equal to the amount of such drawing and in the applicable currency. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in Dollars pursuant to the second sentence in this Section 2.03(c)(i) and (B) the Dollar amount paid by the applicable Borrower, whether on or after the Honor Date, shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, such Borrower agrees, as a separate and independent

obligation, to indemnify the L/C Issuer for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing. If the applicable Borrower fails to so reimburse the L/C Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Revolving Credit Percentage thereof. In such event, the applicable Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Revolving Credit Commitments and the conditions set forth in Section 4.02 (other than the delivery of a Committed Loan Notice). Any notice given by the L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer, in Dollars, at the Administrative Agent’s Office for Dollar denominated payments in an amount equal to its Applicable Revolving Credit Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.02 cannot be satisfied or for any other reason, the Domestic Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender’s payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03.

(iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender’s Applicable Revolving Credit Percentage of such amount shall be solely for the account of the L/C Issuer.

---

(v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the L/C Issuer, any Borrower, any Subsidiary or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.02 (other than delivery by the applicable Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the applicable Borrower to reimburse the L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the L/C Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations.

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the applicable Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Revolving Credit Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the

---

date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute. The obligation of the applicable Borrower to reimburse the L/C Issuer for each drawing under each Letter of Credit and to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that any Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer 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) any draft, demand, endorsement, certificate or other document presented under or in connection with such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the applicable Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the applicable Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vii) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(viii) any adverse change in the relevant exchange rates or in the availability of relevant Alternative Currency to any Borrower or any Subsidiary or in the relevant currency markets generally; or

---

(ix) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Domestic Borrower or any Subsidiary.

The applicable Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the applicable Borrower's instructions or other irregularity, the applicable Borrower will immediately notify the L/C Issuer. The applicable Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) Role of L/C Issuer. Each Lender and each Borrower agree that, in paying any drawing under a Letter of Credit, the L/C Issuer shall not have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Revolving Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrowers hereby assume all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided that this assumption is not intended to, and shall not, preclude the applicable Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the L/C Issuer shall be liable or responsible for any of the matters described in Section 2.03(e); provided, however, that anything in such clauses to the contrary notwithstanding, the applicable Borrower may have a claim against the L/C Issuer, and the L/C Issuer may be liable to the applicable Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the applicable Borrower which the applicable Borrower proves, as determined by a final nonappealable judgment of a court of competent jurisdiction, were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, the L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and the L/C Issuer shall not be responsible for the validity or sufficiency of any instrument transferring, endorsing or assigning or purporting to transfer, endorse or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication ("SWIFT") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability. Unless otherwise expressly agreed by the L/C Issuer and the applicable Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, the L/C Issuer shall not be responsible to any Borrower for, and the L/C Issuer's rights and remedies against the applicable Borrower shall not be impaired by, any action or inaction of the L/C Issuer 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 Law or any order of a jurisdiction where the L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade—International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees. The applicable Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance, subject to Section 2.16, with its Applicable Revolving Credit Percentage a Letter of Credit fee (the "Letter of Credit Fee") for each Letter of Credit equal to the Applicable Rate times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. Letter of Credit Fees shall be (i) due and payable on the first Business Day after the end of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly basis in arrears. If there is any change in the Applicable Rate during any quarter, the daily amount available to be drawn under each standby Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Revolving Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer. The applicable Borrower shall pay directly to the L/C Issuer for its own account, in Dollars, a fronting fee (i) with respect to each commercial Letter of Credit, at the rate specified in the Fee Letter, computed on the Dollar Equivalent of the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the applicable Borrower and the L/C Issuer, computed on the Dollar Equivalent of the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum specified in the Fee Letter, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.09. In addition, the applicable Borrower shall pay directly to the L/C

Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) 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, the applicable Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. Each Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the applicable Borrower, and that the applicable Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

#### 2.04 Swing Line Loans.

(a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04, shall make loans in Dollars (each such loan, a "Swing Line Loan") to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Revolving Credit Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Revolving Credit Commitment; provided, however, that (x) after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Revolving Credit Facility at such time, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Lender's Revolving Credit Commitment, (y) the applicable Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan, and (z) the Swing Line Lender shall not be under any obligation to make any Swing Line Loan if it shall determine (which determination shall be conclusive and binding absent manifest error) that it has, or by such Credit Extension may have, Fronting Exposure. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.05, and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Revolving Credit Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the applicable Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by: (A) telephone or (B) a Swing Line Loan Notice; provided that any telephonic notice must be confirmed immediately by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such Swing Line Loan Notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00

---

p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$100,000, and (ii) the requested borrowing date (which shall be a Business Day). Promptly after receipt by the Swing Line Lender of any Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the applicable Borrower at its office by crediting the account of the applicable Borrower on the books of the Swing Line Lender in immediately available funds.

(c) Refinancing of Swing Line Loans.

(i) The Swing Line Lender at any time in its sole discretion may request, on behalf of the applicable Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Revolving Credit Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02, without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section 4.02. The Swing Line Lender shall furnish the applicable Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Revolving Credit Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in immediately available funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the applicable Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.



---

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the greater of the Federal Funds Rate and a rate determined by the Swing Line Lender in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the applicable Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the applicable Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations.

(i) At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 11.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Revolving Credit Lender shall pay to the Swing Line Lender its Applicable Revolving Credit Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the Federal Funds Rate. The Administrative Agent will make such demand upon the request of the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the applicable Borrower for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Revolving Credit Percentage of any Swing Line Loan, interest in respect of such Applicable Revolving Credit Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The applicable Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

#### 2.05 Prepayments.

##### (a) Optional.

(i) Each Borrower may, upon notice to the Administrative Agent pursuant to delivery to the Administrative Agent of a Notice of Loan Prepayment, at any time or from time to time voluntarily prepay Incremental Term Loans and Revolving Credit Loans in whole or in part without premium or penalty; provided that, unless otherwise agreed by the Administrative Agent, (i) such notice must be received by the Administrative Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans denominated in Dollars, (B) on the date of prepayment of Base Rate Loans, and (C) four Business Days (or five, in the case of prepayment of Loans denominated in Special Notice Currencies) prior to any date of prepayment of Eurocurrency Rate Loans denominated in an Alternative Currency; (ii) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof; or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment, the Type(s) of Loans to be prepaid, the currency in which such Loan(s) to be prepaid is(are) denominated and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by a Borrower, the applicable Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Each prepayment of the outstanding Incremental Term Loans pursuant to this Section 2.05(a) shall be applied (x) ratably to the Incremental Term Facility and (y) to the principal repayment installments thereof on a pro-rata basis. Subject to Section 2.16, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

---

(ii) The applicable Borrower may, upon notice to the Swing Line Lender pursuant to delivery to the Swing Line Lender of a Notice of Loan Prepayment (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that, unless otherwise agreed by the Swing Line Lender, (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000 or a whole multiple of \$100,000 in excess thereof (or, if less, the entire principal thereof then outstanding). Each such notice shall specify the date and amount of such prepayment. If such notice is given by a Borrower, the applicable Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of principal shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05.

(b) Mandatory.

(i) Dispositions and Involuntary Dispositions. The Borrowers (as to the Foreign Borrower, limited to prepayment of Foreign Obligations, and limited to Net Cash Proceeds received by the Foreign Borrower or any of its Subsidiaries from any Disposition referred to below) shall prepay the Loans and/or Cash Collateralize the L/C Obligations as hereinafter provided in an aggregate amount equal to 100% of the Net Cash Proceeds received by any Loan Party or any Subsidiary from all Dispositions (other than Dispositions permitted pursuant to Section 7.05(b), (c), (d) and (e)) and Involuntary Dispositions, as to each receipt of any Net Cash Proceeds, within five (5) Business Days of the later of the date of the related Disposition and the date of such receipt; provided, however, that so long as no Default shall have occurred and be continuing, such Net Cash Proceeds shall not be required to be so applied (A) until the aggregate amount of the Net Cash Proceeds derived from any such Disposition or Involuntary Disposition in any fiscal year of the Domestic Borrower is equal to or greater than \$1,000,000 and (B) at the election of the Domestic Borrower (as notified by the Domestic Borrower to the Administrative Agent on or prior to the date of such Disposition or Involuntary Disposition) to the extent such Loan Party or such Subsidiary reinvests all or any portion of such Net Cash Proceeds in like assets (but specifically excluding current assets as classified by GAAP) within one hundred eighty (180) days after the receipt of such Net Cash Proceeds; provided that if such Net Cash Proceeds shall have not been so reinvested they shall be immediately applied to prepay the Loans and/or Cash Collateralize the L/C Obligations.

(ii) Extraordinary Receipts. Immediately upon receipt by any Loan Party or any Subsidiary of any Extraordinary Receipt received by or paid to or for the account of any Loan Party or any of its Subsidiaries, and not otherwise included in clause (ii), (iii) or (iv) of this Section, the Borrower shall prepay the Loans and/or Cash Collateralize the L/C Obligations as hereinafter provided in an aggregate principal amount equal to 100% of all Net Cash Proceeds received therefrom.

(iii) Application of Payments. Each prepayment of Loans pursuant to the foregoing provisions of Section 2.05(b)(i)-(ii) shall be applied, first, to the principal repayment installments of the Incremental Term Loans on a pro-rata basis for all such principal repayment installments but specifically excluding the final principal installment on the Maturity Date and, second, to the Revolving Credit Facility in the manner set forth

---

in clause (v) of Section 2.05(b) (without reduction of any Revolving Credit Commitment hereunder). Subject to Section 2.16, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of the relevant Facilities.

(iv) Revolving Credit Outstandings. If for any reason the Total Revolving Credit Outstandings at any time exceed the Revolving Credit Facility then in effect, the applicable Borrower shall immediately upon notice from the Administrative Agent prepay Revolving Credit Loans, Swing Line Loans and L/C Borrowings and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess.

(v) Application of Other Payments. Except as otherwise provided in Section 2.16, prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b), first, shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second, shall be applied to the outstanding Revolving Credit Loans, and, third, shall be used to Cash Collateralize the remaining L/C Obligations. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from a Borrower or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the L/C Issuer or the Revolving Credit Lenders, as applicable.

(vi) Alternative Currencies. If the Administrative Agent notifies the Borrowers at any time that the Outstanding Amount of all Loans and L/C Obligations denominated in Alternative Currencies at such time exceeds an amount equal to 105% of the Alternative Currency Sublimit then in effect, then, within two Business Days after receipt of such notice, the Borrowers shall prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed 100% of the Alternative Currency Sublimit then in effect.

Within the parameters of the applications set forth above, prepayments pursuant to this Section 2.05(b) shall be applied first to Base Rate Loans and then to Eurocurrency Rate Loans in direct order of Interest Period maturities. All prepayments under this Section 2.05(b) shall be subject to Section 3.05, but otherwise without premium or penalty, and shall be accompanied by interest on the principal amount prepaid through the date of prepayment.

2.06 Termination or Reduction of Commitments. (a) Optional. The Domestic Borrower may, upon notice to the Administrative Agent, terminate the 2015 Incremental Term Commitment (prior to any Borrowing thereunder), the Revolving Credit Facility, the Letter of Credit Sublimit, the Swing Line Sublimit or the Alternative Currency Sublimit, or from time to time permanently reduce the Revolving Credit Facility, the Letter of Credit Sublimit, the Swing Line Sublimit or the Alternative Currency Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$10,000,000 or any whole multiple of \$1,000,000 in excess thereof and (iii) the Domestic Borrower shall not terminate or reduce (A) the Revolving Credit Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Revolving Credit Facility, (B) the Letter of Credit Sublimit if, after giving

effect thereto, the Outstanding Amount of L/C Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit or (D) the Alternative Currency Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Revolving Loans denominated in an Alternative Currency would exceed the Alternative Currency Sublimit.

(b) Mandatory. The aggregate 2015 Incremental Term Commitments shall be automatically and permanently reduced to zero on the earlier of (ii) the date of the 2015 Incremental Term Borrowing and (ii) the expiration of the 2015 Incremental Term Availability Period.

(c) Application of Commitment Reductions; Payment of Fees. The Administrative Agent will promptly notify the Lenders of any termination or reduction of the Letter of Credit Sublimit, Swing Line Sublimit, the Alternative Currency Sublimit or the Revolving Credit Facility under this Section 2.06. Upon any reduction of the Revolving Credit Facility, the Revolving Credit Commitment of each Revolving Credit Lender shall be reduced by such Lender's Applicable Revolving Credit Percentage of such reduction amount. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

#### 2.07 Repayment of Loans.

(a) 2015 Incremental Term Loans. The Domestic Borrower shall repay to the 2015 Incremental Term Lenders the aggregate principal amount of all 2015 Incremental Term Loans outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.05), unless accelerated sooner pursuant to Section 8.02:

<u>Payment Dates</u>	<u>Principal Repayment Installments</u>
December 31, 2015	\$ 2,500,000
March 31, 2016	\$ 2,500,000
June 30, 2016	\$ 2,500,000
September 30, 2016	\$ 2,500,000
December 31, 2016	\$ 2,500,000
March 31, 2017	\$ 2,500,000
June 30, 2017	\$ 2,500,000
September 30, 2017	\$ 2,500,000
December 31, 2017	\$ 2,500,000

---

provided, however, that (i) the final principal repayment installment of the 2015 Incremental Term Loans shall be repaid on the Maturity Date for the 2015 Incremental Term Facility and in any event shall be in an amount equal to the aggregate principal amount of all 2015 Incremental Term Loans outstanding on such date and (ii) (A) if any principal repayment installment to be made by the Domestic Borrower (other than principal repayment installments on Eurocurrency Rate Loans) shall come due on a day other than a Business Day, such principal repayment installment shall be due on the next succeeding Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be and (B) if any principal repayment installment to be made by the Borrower on a Eurocurrency Rate Loan shall come due on a day other than a Business Day, such principal repayment installment shall be extended to the next succeeding Business Day unless the result of such extension would be to extend such principal repayment installment into another calendar month, in which event such principal repayment installment shall be due on the immediately preceding Business Day.

(b) Revolving Credit Loans. Each Borrower shall repay to the Revolving Credit Lenders on the Maturity Date for the Revolving Credit Facility the aggregate principal amount of all Revolving Credit Loans outstanding on such date.

(c) Swing Line Loans. Each Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date ten (10) Business Days after such Loan is made and (ii) the Maturity Date for the Revolving Facility.

(d) Incremental Term Loans. Each Borrower shall repay to the Administrative Agent for the ratable amount of the applicable Incremental Term Lenders the aggregate principal amount of each Incremental Term Loan outstanding on the dates in the respective amounts set forth in the applicable Incremental Term Assumption Agreement, with a final principal payment of all outstanding amounts on the applicable Maturity Date for such Incremental Term Loan.

#### 2.08 Interest.

(a) Subject to the provisions of subsection (b) below, (i) each Eurocurrency Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate for such Facility; (ii) each Base Rate Loan under a Facility shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for such Facility; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for the Revolving Credit Facility.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(ii) If any amount (other than principal of any Loan) payable by any Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iii) Upon the request of the Required Lenders, while any Event of Default exists, (other than as set forth in clauses (b)(i) and (b)(ii) above), the Borrowers shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees. In addition to certain fees described in subsections (h) and (i) of Section 2.03:

(a) Commitment Fee. The Domestic Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the Outstanding Amount of L/C Obligations subject to adjustment as provided in Section 2.16. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be counted toward or considered usage of the Revolving Credit Commitments for purposes of determining the commitment fee. The commitment fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Credit Facility. The commitment fee shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) 2015 Incremental Term Commitment Fee. Until the termination or expiration of the 2015 Incremental Term Availability Period, the Domestic Borrower shall pay to the Administrative Agent for the account of each 2015 Incremental Term Lender in accordance with its Applicable Percentage of the 2015 Incremental Term Facility, a commitment fee in Dollars equal to the Applicable Rate times the aggregate amount of 2015 Incremental Term Commitments. The commitment fee shall accrue beginning with the 61<sup>st</sup> day following the

---

beginning of the 2015 Incremental Term Availability Period, including at any time during which one or more of the conditions in Article IV or the definition of “2015 Incremental Term Conditions” is not met, and shall be due and payable monthly in arrears on the last Business Day of each month during the 2015 Incremental Term Availability Period, commencing with November 2015, and on the last day of the 2015 Incremental Term Availability Period. The commitment fee shall be calculated monthly in arrears, and if there is any change in the Applicable Rate during any month the actual daily amount shall be computed and multiplied by the Applicable Rate separately for each period during such month that such Applicable Rate was in effect.

(c) Other Fees. (i) The Domestic Borrower shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Domestic 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. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees; Retroactive Adjustments of Applicable Rate. (a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year) or, in the case of interest in respect of Revolving Credit Loans denominated in Alternative Currencies as to which market practice differs from the foregoing, in accordance with such market practice. Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Domestic Borrower or for any other reason, the Domestic Borrower or the Lenders determine that (i) the Consolidated Leverage Ratio as calculated by the Domestic Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Consolidated Leverage Ratio would have resulted in higher pricing for such period, each Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or the L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or the L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or the L/C Issuer, as the case may be, under Section 2.03(c)(iii), 2.03(h) or 2.08(b) or under Article VIII. Each Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.



---

## 2.11 Evidence of Debt.

(a) The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers 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 Borrowers 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 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, such Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount, currency and maturity of its Loans and payments with respect thereto.

(b) In addition to the accounts and records referred to in subsection (a) above, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## 2.12 Payments Generally: Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrowers shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein and except with respect to principal of and interest on Loans denominated in an Alternative Currency, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the applicable Administrative Agent's Office in such Alternative Currency and in Same Day Funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, any Borrower is prohibited by any Law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in Dollars in the Dollar Equivalent of the Alternative Currency payment amount. The Administrative Agent will

---

promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent (i) after 2:00 p.m., in the case of payments in Dollars, or (ii) after the Applicable Time specified by the Administrative Agent in the case of payments in an Alternative Currency, shall in each case be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. Subject to Section 2.07(a) and as otherwise specifically provided for in this Agreement, if any payment to be made by any Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders: Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Borrowing of Base Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the applicable 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 applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to such 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, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by such Borrower, the interest rate applicable to Base Rate Loans or in the case of Alternative Currencies in accordance with such market practice, in each case, as applicable. 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 such Borrower the amount of such interest paid by such Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim such Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrowers: Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or the L/C Issuer hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Appropriate Lenders or the L/C Issuer, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Appropriate Lenders or the L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or the L/C Issuer, in Same Day Funds 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.

---

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

(c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to any Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).

(e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

2.13 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 of or interest on any of the Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it, resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Loans or participations and accrued interest thereon 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 subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

---

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of a 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), (y) the application of Cash Collateral provided for in Section 2.15, or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section shall apply).

Each Loan Party consents to the foregoing and agrees, to the extent it may effectively do so under applicable law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

2.14 Applicable Designees. Each of the Administrative Agent, the L/C Issuer, the Swing Line Lender and each Lender at its option may make any Credit Extension or otherwise perform its obligations hereunder through any Applicable Designee; provided that any exercise of such option shall not affect the obligation of such Borrower to repay any Credit Extension in accordance with the terms of this Agreement. Any Applicable Designee shall be considered a Lender; provided that in the case of an Affiliate or branch of a Lender, all provisions applicable to a Lender shall apply to such Affiliate or branch of such Lender to the same extent as such Lender; provided that for the purposes only of voting in connection with any Loan Document, any participation by any Applicable Designee in any outstanding Credit Extension shall be deemed a participation of such Lender.

2.15 Cash Collateral.

(a) Certain Credit Support Events. If (i) the L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (iii) the Borrowers shall be required to provide Cash Collateral pursuant to Section 8.02(c), or (iv) there shall exist a Defaulting Lender, each Borrower shall immediately (in the case of clause (iii) above) or within one Business Day (in all other cases) following any request by the Administrative Agent or the L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount attributable to Letters of Credit issued at the request of such Borrower (determined in the case of Cash Collateral provided pursuant to clause (iv) above, after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender).

(b) Grant of Security Interest. Each Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided by it as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c). 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 or the L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, each 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 with respect to Letters of Credit issued for such Borrower's account. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more Controlled Accounts at Bank of America. The Borrowers shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03, 2.04, 2.05, 2.16 or 8.02 in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, obligations to fund participations therein (including, as to Cash Collateral provided by a Revolving Credit Lender that is a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Credit Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi))) or (ii) the determination by the Administrative Agent and the L/C Issuer that there exists excess Cash Collateral; provided, however, (x) any such release shall be without prejudice to, and any disbursement or other transfer of Cash Collateral shall be and remain subject to, any other Lien conferred under the Loan Documents and the other applicable provisions of the Loan Documents, and (y) the Person providing Cash Collateral and the L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

#### 2.16 Defaulting Lenders.

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

(i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 11.01.

(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 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 L/C Issuer or Swing Line Lender hereunder; *third*, to Cash Collateralize the L/C Issuer's Fronting

Exposure with respect to such Defaulting Lender in accordance with Section 2.15; *fourth*, as the applicable Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined by the Administrative Agent and the applicable Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15; *sixth*, to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line 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 applicable Borrower as a result of any judgment of a court of competent jurisdiction obtained by such Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise as may be required under the Loan Documents in connection with any Lien conferred thereunder or directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any fee payable under Sections 2.09(a) or 2.09(b) 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 Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15.

---

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the L/C Issuer and Swing Line Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the L/C Issuer's or Swing Line Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in L/C Obligations and Swing Line Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Applicable Revolving Credit Percentages (calculated without regard to such Defaulting Lender's Commitment) but only to the extent that (x) the conditions set forth in Section 4.02 are satisfied at the time of such reallocation (and, unless the Domestic Borrower shall have otherwise notified the Administrative Agent at such time, the Domestic Borrower shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swing Line Loans. If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Domestic Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, (x) first, prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) second, Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.15.

(b) Defaulting Lender Cure. If the Domestic Borrower, the Administrative Agent, the Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(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 applicable Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

2.17 Increase in Revolving Credit Facility. (a) Request for Increase. Provided there exists no Default, upon notice to the Administrative Agent (which shall promptly notify the Revolving Credit Lenders and other Eligible Assignees selected by the Domestic Borrower with the approval of the Administrative Agent, the L/C Issuer and the Swing Line Lender (which approvals shall not be unreasonably withheld) (any such Eligible Assignees, “Potential Revolving Credit Lenders”), the Borrowers may from time to time, request an increase in the Revolving Credit Facility (subject to item (iii) in the below proviso) by an aggregate amount of increases in the Revolving Credit Facility (for all such requests, but excluding all portions of such increase requests that are allocated as Incremental Term Loans pursuant to item (iii) of the proviso in this Section 2.17(a)) not greater than (x) \$200,000,000 less (y) the amount of all Incremental Term Loans made pursuant to Section 2.18 (whether pursuant to a direct Borrower request under such Section or the operation of item (iii) in the following proviso, but excluding the aggregate amount of the 2015 Incremental Term Loans); provided that (i) any such request for an increase shall be in a minimum amount of \$25,000,000, (ii) the Borrowers may make a maximum of five such requests (inclusive of any direct requests made for Incremental Term Loans pursuant to Section 2.18), and (iii) no more than 50% of the aggregate amount requested pursuant to this Section 2.17(a) by the applicable Borrower may be an increase to the Revolving Credit Facility and the remaining portion of such requested increase under this Section 2.17 shall be deemed a request for an Incremental Term Loan in such amount under, and in accordance with, the terms of Section 2.18. At the time of sending such notice, the applicable Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Revolving Credit Lender or Potential Revolving Credit Lender is requested to respond (which shall in no event be less than ten Business Days from the date of delivery of such notice to the Revolving Credit Lenders and Potential Revolving Credit Lenders).

(b) Lender Elections to Increase. Each Revolving Credit Lender or Potential Revolving Credit Lender shall notify the Administrative Agent within such time period whether or not it agrees to increase its Revolving Credit Commitment or provide a new Revolving Credit Commitment, as applicable, and, if so, the amount thereof. Any Revolving Credit Lender or Potential Revolving Credit Lender not responding within such time period shall be deemed to have declined to increase its Revolving Credit Commitment or to provide a new Revolving Credit Commitment, as applicable.

(c) Notification by Administrative Agent: Additional Revolving Credit Lenders. The Administrative Agent shall notify the applicable Borrower and each Revolving Credit Lender of the Revolving Credit Lenders’ and Potential Revolving Credit Lenders’ responses to each request made hereunder. Each Potential Revolving Credit Lender that elects to participate in such requested increase (a “New Revolving Credit Lender”) shall become a Revolving Credit Lender hereunder pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Effective Date and Allocations. If the Revolving Credit Facility is increased in accordance with this Section, the Administrative Agent and the applicable Borrower shall determine the effective date (the “Revolving Credit Increase Effective Date”) and the final allocation of such increase. The Administrative Agent shall promptly notify the applicable Borrower and the Revolving Credit Lenders and New Revolving Credit Lenders of the final allocation of such increase and the Revolving Credit Increase Effective Date. Upon the effectiveness of any such increase, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the increased Revolving Credit Facility. Any such amendment may be memorialized in writing by the Administrative Agent with the Borrowers’ consent and furnished to the other parties hereto.



(e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, the Domestic Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Revolving Credit Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (y) certifying that, before and after giving effect to such increase, (A) no Default or Event of Default exists, (B) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or, with respect to representations and warranties modified by materiality standards, in all respects) on and as of the Revolving Credit Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.17, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01, (C) on a pro forma basis after giving effect to the incurrence of any Revolving Credit Loans made on the Revolving Credit Increase Effective Date or the incurrence of any Incremental Term Loans made on the Incremental Term Loan Date, the Borrowers and their respective Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b), (D) no less than 50% of the aggregate amount of the increase requested pursuant to Section 2.17(a) shall have been fully subscribed for as an Incremental Term Loan by existing or new Incremental Term Lenders, and (E) the Administrative Agent shall have received legal opinions relating to such increase and other closing certificates and documentation as may be reasonably requested and consistent with those delivered on the Closing Date under Section 4.01. The Borrowers shall prepay any Revolving Credit Loans outstanding on the Revolving Credit Increase Effective Date (and pay any additional amounts required pursuant to Section 3.05) to the extent necessary to keep the outstanding Revolving Credit Loans ratable with any revised Applicable Revolving Credit Percentages arising from any nonratable increase in the Revolving Credit Commitments under this Section.

(f) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

(g) Pari Passu. All increases to the Revolving Credit Commitment shall be guaranteed and secured on a pari passu basis with the existing Revolving Credit Facility and any existing Incremental Term Facility.

2.18 Incremental Term Loans. (a) Provided there exists no Default or Event of Default, upon notice to the Administrative Agent (which shall promptly notify the Lenders and other Eligible Assignees selected by the Domestic Borrower with the approval of the Administrative Agent (which approval shall not be unreasonably withheld) (any such Eligible Assignees, "Potential Incremental Term Lenders")), the Borrowers may from time to time, request Incremental Term Commitments in Dollars in an aggregate amount (for all such requests

---

including all portions of such increase requests that are allocated as Incremental Term Loans pursuant to item (iii) of the proviso in Section 2.17(a) not greater than (x) \$200,000,000 less (y) the aggregate amount of increases in the Revolving Credit Facility made pursuant to Section 2.17; but excluding the aggregate amount of the increase of the Revolving Credit Facility affected on the Third Amendment Effective Date, provided that (A) any such request for Incremental Term Commitments shall be in a minimum amount of \$25,000,000, and (B) the Borrowers may make a maximum of five such direct requests (inclusive of any requests made pursuant to Section 2.17). At the time of sending such notice, the applicable Borrower (in consultation with the Administrative Agent) shall specify (x) the time period within which each Lender or Potential Incremental Term Lender is requested to respond (which shall in no event be less than fifteen Business Days from the date of delivery of such notice to the Lenders and Potential Incremental Term Lenders), (y) the pricing and the amortization terms with respect to such Incremental Term Commitments and (z) the applicable Incremental Term Loan Date.

(b) Lender Elections: Additional Lenders. Each Lender and Potential Incremental Term Lender shall notify the Administrative Agent within such time period of its Incremental Term Commitment, if any. Any Lender or Potential Incremental Term Lender not responding within such time period shall be deemed to have declined to provide an Incremental Term Commitment. The Administrative Agent shall notify the applicable Borrower of the Lenders' and Potential Incremental Term Lenders' responses to each request made hereunder.

(c) Incremental Term Assumption Agreement. The Borrowers and each Incremental Term Lender shall execute and deliver to the Administrative Agent an Incremental Term Assumption Agreement and such other documentation as the Administrative Agent shall reasonably specify to evidence the Incremental Term Commitment of such Incremental Term Lender. Each Incremental Term Assumption Agreement shall specify the terms of the Incremental Term Loans to be made thereunder; provided that the final maturity date of any Incremental Term Loans shall be no earlier than the later of the Maturity Date in respect of the Revolving Credit Facility and the latest maturity date for any Incremental Term Loans then outstanding. The Administrative Agent shall promptly notify each Lender and each Potential Incremental Term Lender that has elected to provide an Incremental Term Commitment as to the effectiveness of each Incremental Term Assumption Agreement. Upon the effectiveness of any Incremental Term Assumption Agreement, this Agreement shall be amended to the extent (but only to the extent) necessary to reflect the existence and terms of the Incremental Term Commitments evidenced thereby. Any such amendment may be memorialized in writing by the Administrative Agent with the Borrowers' consent and furnished to the other parties hereto.

(d) Conditions to Effectiveness of Incremental Term Loan. As a condition precedent to any Incremental Term Commitment becoming effective under this Section 2.18, the Domestic Borrower shall deliver to the Administrative Agent a certificate of each Loan Party dated as of the Incremental Term Loan Date (in sufficient copies for each Lender requesting the same) signed by a Responsible Officer of such Loan Party (x) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such Incremental Term Loan, and (y) certifying that, before and after giving effect to such increase, (A) no Default or Event of Default Exists, (B) the representations and warranties contained in Article V and the other Loan Documents are true and correct in all material respects (or, with respect to representations and warranties modified by materiality standards, in all respects) on and as of the Incremental Term Loan Date, except to the extent that such representations and warranties specifically refer to an

earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.18, the representations and warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01, (C) on a pro forma basis after giving effect to the incurrence of any Incremental Term Loans made on the Incremental Term Loan Date or the incurrence of any Revolving Credit Loans made on the Revolving Credit Increase Effective Date, the Borrowers and their respective Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 7.11, such compliance to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) and (D) the Administrative Agent shall have received legal opinions relating to such Incremental Term Loans and other closing certificates and documentation as required by the relevant Incremental Assumption Agreement and consistent with those delivered on the Closing Date under Section 4.01.

(e) Conflicting Provisions. This Section shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

(f) Pari Passu. All Incremental Term Loans shall be guaranteed and secured on a pari passu basis with the existing Revolving Credit Facility and any existing Incremental Term Facility.

### ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY

#### 3.01 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Laws. If any applicable Laws (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

---

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Loan Party or the Administrative Agent, as required by such Laws, shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Loan Parties. Without limiting the provisions of subsection (a) above, each Loan Party 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.

(c) Tax Indemnifications.

(i) Each of the Loan Parties shall, and does hereby, jointly and severally indemnify each Recipient, and shall make payment in respect thereof within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and 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 such Loan Party by a Lender or the L/C Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the L/C Issuer, shall be conclusive absent manifest error. Each Loan Party shall, and does hereby, jointly and severally indemnify the Administrative Agent, and shall make payment in respect thereof within 10 days after demand therefor, for any amount which a Lender or the L/C Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 3.01(c)(ii) below.

(ii) Each Lender and the L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Indemnified Taxes attributable to such Lender or the L/C Issuer (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of such Loan Party to do so), (y) the Administrative Agent and each Loan Party, as applicable, against any Taxes attributable to such Lender's failure to comply

---

with the provisions of Section 11.06(d) relating to the maintenance of a Participant Register and (z) the Administrative Agent and each Loan Party, as applicable, against any Excluded Taxes attributable to such Lender or the L/C Issuer, in each case, that are payable or paid by the Administrative Agent or any Borrower 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 and the L/C Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. Upon request by a Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by any Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, such Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to such Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to such Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Domestic Borrower and the Administrative Agent, at the time or times reasonably requested by the Domestic Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Domestic 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 Domestic Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Domestic Borrower or the Administrative Agent as will enable Domestic Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing, in the event that a Borrower is a U.S. Person,

---

(A) any Lender that is a U.S. Person shall deliver to the Domestic 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 Domestic Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Domestic 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 Domestic Borrower or the Administrative Agent), whichever of the following is applicable:

(I) 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 (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E (or W-8BEN, as applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(II) executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit F-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of such 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 W-8BEN, as applicable); or

(IV) 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 (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-2 or Exhibit F-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit F-4 on behalf of each such direct and indirect partner;

---

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Domestic 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 Domestic Borrower or the Administrative Agent), executed copies (or originals, as required) of any other form prescribed by applicable law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable law to permit the Domestic Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Domestic Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Domestic 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 Domestic Borrower or the Administrative Agent as may be necessary for the Domestic 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.

(iii) Each Lender agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Domestic Borrower and the Administrative Agent in writing of its legal inability to do so.

(f) Treatment of Certain Refunds. Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the L/C Issuer, or have any obligation to pay to any Lender or the L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the L/C Issuer, as the case may be. If any Recipient 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 by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section 3.01, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by such Loan Party under this Section 3.01 with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Recipient, agrees to repay the amount paid over to such Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no

---

event will the applicable Recipient be required to pay any amount to any Loan Party pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient 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 subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

(g) Survival. Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender or the L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

### 3.02 Illegality and Applicable Designees.

(a) If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurocurrency Rate (whether denominated in Dollars or an Alternative Currency), or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars or any Alternative Currency in the applicable interbank market, then, on notice thereof by such Lender to the Domestic Borrower through the Administrative Agent, (i) any obligation of such Lender to make or continue Eurocurrency Rate Loans in the affected currency or currencies or, in the case of Eurocurrency Rate Loans in Dollars, to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Domestic Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrowers shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable and such Loans are denominated in Dollars, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid or converted.



---

(b) If, in any applicable jurisdiction, the Administrative Agent, the L/C Issuer or any Lender or any Applicable Designee (the “Determining Party”) determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for the Administrative Agent, the L/C Issuer or any Lender or its Applicable Designee to (i) perform any of its obligations hereunder or under any other Loan Document, (ii) fund or maintain its participation in any Loan or (iii) issue, make, maintain, fund or charge interest or fees with respect to any Credit Extension to the Foreign Borrower such Determining Party shall promptly notify the Administrative Agent and, upon the Administrative Agent notifying the Domestic Borrower of such determination, and until such notice by such Determining Party is revoked, any obligation of such Person to issue, make, maintain, fund or charge interest or fees with respect to any such Credit Extension shall be suspended, and to the extent required by applicable Law, cancelled. Upon receipt of such notice, the Loan Parties shall, (A) repay such Determining Party’s participation in the Loans or other applicable Obligations on the last day of the Interest Period for each Loan or other Obligation occurring after the Administrative Agent has notified the Domestic Borrower or, if earlier, the date specified by such Determining Party in the notice delivered to the Administrative Agent (being no earlier than the last day of any applicable grace period permitted by applicable Law) and (B) take all reasonable actions requested by such Determining Party to mitigate or avoid such illegality. Upon any Determining Party’s making any such determination, such Determining Party shall take all commercially reasonable actions to resolve the subject of such determination in a manner that allows the Loan or Loans, participation, Credit Extension, or other applicable Obligations to remain outstanding, including by transferring such Loan, participation, Credit Extension or other applicable Obligations to any office, branch or Affiliate of the Determining Party that would not be affected by such determination.

3.03 Inability to Determine Rates. If the Required Lenders determine that for any reason in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof that (a) deposits (whether in Dollars or an Alternative Currency) are not being offered to banks in the applicable offshore interbank market for such currency for the applicable amount and Interest Period of such Eurocurrency Rate Loan, (b) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan (whether denominated in Dollars or an Alternative Currency), or (c) the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Domestic Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans in the affected currency or currencies shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Domestic Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans in the affected currency or currencies or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans in the amount specified therein.

---

3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

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

(iii) impose on any Lender or the L/C Issuer or the London interbank market any other condition, cost or expense affecting this Agreement or Eurocurrency Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any Loan), or to increase the cost to such Lender or the L/C Issuer of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the L/C Issuer, the Domestic Borrower will pay (or cause the Foreign Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer'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 the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy), then from time to time the Domestic Borrower will pay (or cause the Foreign Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Mandatory Costs. If any Lender or the L/C Issuer incurs any Mandatory Costs attributable to the Obligations, then from time to time the Domestic Borrower will pay (or cause the Foreign Borrower to pay) to such Lender or the L/C Issuer, as the case may be, such Mandatory Costs. Such amount shall be expressed as a percentage rate per annum and shall be payable on the full amount of the applicable Obligations.

---

(d) Certificates for Reimbursement. A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a), (b) or (c) of this Section and delivered to the Domestic Borrower shall be conclusive absent manifest error. The Domestic Borrower shall pay (or cause the Foreign Borrower to pay) such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(e) Reserves on Eurocurrency Rate Loans. The Domestic Borrower shall pay (or cause the Foreign Borrower to pay) to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive) and (ii) without duplication of any cost in clause (i) of this clause (e), as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Domestic Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable 10 days from receipt of such notice.

(f) Delay in Requests. Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such Lender's or the L/C Issuer's right to demand such compensation, provided that no Borrower shall be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Domestic Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer'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).

3.05 Compensation for Losses. Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Domestic Borrower shall promptly compensate (or cause the Foreign Borrower to compensate) such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

---

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by any Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by Domestic Borrower or the Foreign Borrower;

(c) any failure by any Borrower to make payment of any Loan or of any drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Domestic Borrower pursuant to Section 11.13;

including any loss of anticipated profits, any foreign exchange losses, and any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan or from fees payable to terminate the deposits from which such funds were obtained or from the performance of any foreign exchange contract. The Domestic Borrower shall also pay (or cause the Foreign Borrower to pay) any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

#### 3.06 Mitigation Obligations; Replacement of Lenders.

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or requires any Borrower to pay any Indemnified Taxes or additional amounts to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Domestic Borrower such Lender or the L/C Issuer shall, as applicable, 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 or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Domestic Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if any 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 3.01 and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 3.06(a), the Domestic Borrower may replace such Lender in accordance with Section 11.13.

3.07 Survival. All obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

#### **ARTICLE IV CONDITIONS PRECEDENT TO CREDIT EXTENSIONS**

4.01 Conditions of Initial Credit Extension. The obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following, each of which shall be originals or telecopies (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Domestic Borrower;

(ii) a Note executed by each of the Borrowers in favor of each Lender requesting a Note;

(iii) the Collateral Documents, duly executed by each Loan Party, to the extent applicable, together with:

(A) certificates representing the Pledged Equity referred to therein accompanied by undated stock powers executed in blank and instruments evidencing the Pledged Debt indorsed in blank (to the extent available in any non-U.S. jurisdiction) and the Administrative Agent shall have received satisfactory evidence that the Liens in favor of the Administrative Agent on the equity interests of the Foreign Loan Parties required to be pledged have been validly created, are enforceable and have been perfected under the laws of each applicable jurisdiction,

(B) proper Financing Statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable (or the foreign equivalent thereof) in order to perfect the Liens created under the Collateral Documents, covering the Collateral described in the Collateral Documents as well as UCC, Lien and Intellectual Property, charge, and other searches (to the extent available in any non-U.S. jurisdiction) and other evidence satisfactory to the Administrative Agent that such Liens are the only Liens upon the Collateral, except Liens permitted hereunder,

---

(C) completed requests for information, dated on or before the date of the initial Credit Extension, listing all effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such other financing statements,

(D) evidence of the completion of all other actions, recordings and filings of or with respect to the Collateral Documents that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created thereby,

(E) the Account Control Agreements and Securities Account Control Agreements (if any) in each case as referred to in the Collateral Agreement and duly executed by the appropriate parties,

(F) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Collateral Documents has been taken (including receipt of duly executed payoff letters, UCC-3 termination statements and landlords' and bailees' waiver and consent agreements);

(iv) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party or is to be a party;

(v) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect;

(vi) a favorable opinion of Sheppard, Mullin, Richter & Hampton, LLP, counsel to the Loan Parties, addressed to the Administrative Agent and each Lender, as to matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(vii) a favorable opinion of NautaDutilh New York P.C., local counsel to the Loan Parties in the Netherlands, addressed to the Administrative Agent and each Lender, as to matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

(viii) a favorable opinion of Allen & Overy LLP, local counsel to the Loan Parties in the United Kingdom, addressed to the Administrative Agent and each Lender, as to matters concerning the Loan Parties and the Loan Documents as the Required Lenders may reasonably request;

---

(ix) a certificate of a Responsible Officer of the Domestic Borrower either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by each Loan Party and the validity against each Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(x) a certificate signed by a Responsible Officer of the Domestic Borrower certifying (A) that the conditions specified in Sections 4.02(a) and (b) have been satisfied, and (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(xi) no action, suit, investigation, litigation or proceeding pending or, to the knowledge of either Borrower, threatened in any court or before any arbitrator or governmental instrumentality that in the Administrative Agent's or Arranger's judgment could reasonably be expected to have a Material Adverse Effect;

(xii) annual audited financial statements of the Domestic Borrower and its Subsidiaries on a consolidated basis for the fiscal years ended 2009, 2010 and 2011;

(xiii) interim financial statements of the Domestic Borrower and its Subsidiaries on a consolidated basis described in Section 5.05(b);

(xiv) pro forma financial statements for the Domestic Borrower and its Subsidiaries on a consolidated basis for the fiscal period ending on September 30, 2012, including forecasts prepared by management of the Domestic Borrower, of consolidated balance sheets and statements of income or operations and cash flows of the Domestic Borrower and its Subsidiaries on a quarterly basis for the first year following the Closing Date and on an annual basis for each year thereafter during the term of this Agreement;

(xv) certificates attesting to the Solvency of each Borrower and their respective Subsidiaries before and after giving effect to the financing under this Agreement and the transactions contemplated hereby, from the chief financial officer of each Borrower;

(xvi) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance, naming the Administrative Agent, on behalf of the Lenders, as an additional insured or lender's loss payee, as the case may be, under all insurance policies maintained with respect to the assets and properties of the Loan Parties that constitutes Collateral; including, without limitation, for each parcel of Material Real Property Collateral, (i) standard flood hazard determination forms and (ii) if any property is located in a special flood hazard area (A) notices to (and confirmations of receipt by) such Loan Party as to the existence of a special flood hazard and, if applicable, the unavailability of flood hazard insurance under the National Flood Insurance Program and (B) evidence of applicable flood insurance, if available, in each case in such form, on such terms and in such amounts as required by The National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent;

---

(xvii) the documentation and other information as to each Loan Party as requested by the Administrative Agent and each Lender in order to comply with requirements of the PATRIOT Act;

(xviii) evidence that the Existing Credit Agreement has been or concurrently with the Closing Date is being terminated and all Liens securing obligations under the Existing Credit Agreement have been or concurrently with the Closing Date are being released; and

(xix) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the L/C Issuer, the Swing Line Lender or the Required Lenders reasonably may require.

(b) Any fees required to be paid on or before the Closing Date shall have been paid.

(c) the Domestic Borrower shall have paid all fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced prior to or on 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 Domestic Borrower and the Administrative Agent).

(d) The Lenders shall have completed a due diligence investigation of the Borrowers, their respective Subsidiaries in scope, and with results, satisfactory to the Lenders, and shall have been given such access to the management, records, books of account, contracts and properties of the Borrowers and their respective Subsidiaries and shall have received such financial, business and other information regarding each of the foregoing Persons and businesses as they shall have requested;

Without limiting the generality of the provisions of the last paragraph of Section 9.03, for purposes of determining compliance with the conditions specified in this Section 4.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required 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.

4.02 Conditions to all Credit Extensions. The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of the Borrowers and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 4.02, the representations and



warranties contained in subsections (a) and (b) of Section 5.05 shall be deemed to refer to the most recent statements furnished pursuant to subsections (a) and (b), respectively, of Section 6.01, and the representations and warranties contained in Section 5.23 shall only have effect on and following the 2015 Incremental Term Draw Date.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of a Revolving Credit Loan to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the Administrative Agent or the Required Lenders would make it impracticable for such Revolving Credit Loan to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrowers shall be deemed to be a representation and warranty that the conditions specified in Sections 4.02(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES**

Each Borrower and each other Loan Party, represents and warrants to the Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power. Each Loan Party and each Subsidiary thereof (a) is duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and consummate the transactions contemplated hereby, and (c) is duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clauses (b)(i) or (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect. The jurisdictions in which each Loan Party and its Subsidiaries is qualified to do business are listed on Schedule 5.01.

5.02 Authorization; No Contravention. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is or is to be a party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any Contractual Obligation to which such Person is a party or affecting such Person or the properties of such Person or any of its Subsidiaries or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

---

5.03 Governmental Authorization; Other Consents. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, other than (i) authorizations, approvals, actions, notices and filings which have been duly obtained prior to the Closing Date and (ii) filings to perfect the Liens created by the Collateral Documents.

5.04 Binding Effect. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms.

5.05 Financial Statements; No Material Adverse Effect. (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Domestic Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show all material indebtedness and other liabilities, direct or contingent, of the Domestic Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated and consolidating balance sheets of the Domestic Borrower and its Subsidiaries dated September 30, 2012, and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Domestic Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments. Schedule 5.05 sets forth all material indebtedness and other liabilities, direct or contingent, of the Domestic Borrower and its consolidated Subsidiaries as of the date of such financial statements, including liabilities for taxes, material commitments and Indebtedness.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

---

(d) The consolidated and consolidating forecasted balance sheets, statements of income and cash flows of the Domestic Borrower and its Subsidiaries delivered pursuant to Section 4.01 or Section 6.01(c) were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Domestic Borrower's best estimate of its future financial condition and performance.

5.06 Litigation. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the Domestic Borrower after due and diligent investigation, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against the Domestic Borrower or any of its Subsidiaries or against any of their properties or revenues that (a) purport to affect or pertain to this Agreement, any other Loan Document or any of the transactions contemplated hereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to have a Material Adverse Effect.

5.07 No Default. Neither any Loan Party nor any Subsidiary thereof is in default under, or with respect to, any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens; Investments. (a) Each Loan Party and each Subsidiary thereof has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) The property of each Loan Party and each of its Subsidiaries is subject to no Liens, other than Liens permitted by Section 7.01 and as set forth on Schedule 5.08(b).

(c) Schedule 5.08(c) sets forth a complete and accurate list of all real property owned by each Loan Party and each of its Subsidiaries, showing as of the date hereof the street address, county or other relevant jurisdiction, state, record owner, book value thereof, and identifying whether such real property is Material Real Property and to be mortgaged. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the real property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Liens created or permitted by the Loan Documents.

(d) Schedule 5.08(d)(i) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessee, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each lease is the legal, valid and binding obligation of the lessor thereof, enforceable in accordance with its terms except to the extent that failure of such lease to be so enforceable would not, or could not reasonably be expected to, result in a Material Adverse Effect. Schedule 5.08(d)(ii) sets forth a complete and accurate list of all leases of real property under which any Loan Party or any Subsidiary of a Loan Party is the lessor, showing as of the date hereof the street address, county or other relevant jurisdiction, state, lessor, lessee, expiration date and annual rental cost thereof. Each lease is the legal, valid and binding obligation of the lessee thereof, enforceable in accordance with its terms except to the extent that failure of such lease to be so enforceable would not, or could not reasonably be expected to, result in a Material Adverse Effect.

---

(e) Schedule 5.08(e) sets forth a complete and accurate list of all Investments held by any Loan Party or any Subsidiary of a Loan Party on the date hereof, showing as of the date hereof the amount, obligor or issuer and maturity, if any, thereof.

5.09 Environmental Compliance. (a) The Loan Parties and their respective Subsidiaries conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof each Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as otherwise set forth in Schedule 5.09, none of the properties currently or formerly owned or operated by any Loan Party or any of its Subsidiaries is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; there are no and never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed of on any property currently owned or operated by any Loan Party or any of its Subsidiaries or, to the best of the knowledge of the Loan Parties, on any property formerly owned or operated by any Loan Party or any of its Subsidiaries; there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or any of its Subsidiaries; and Hazardous Materials have not been released, discharged or disposed of on any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries.

(c) Neither any Loan Party nor any of its Subsidiaries is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party or any of its Subsidiaries have been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any of its Subsidiaries.

5.10 Insurance. The properties of the Domestic Borrower and its Subsidiaries are insured with financially sound and reputable insurance companies not Affiliates of the Domestic Borrower or its Subsidiaries, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where any Borrower or the applicable Subsidiary operates.

---

#### 5.11 Taxes.

(a) The Domestic Borrower and its Subsidiaries have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP. There is no proposed tax assessment against the Domestic Borrower or any Subsidiary that would, if made, have a Material Adverse Effect. Neither any Loan Party nor any Subsidiary thereof is party to any tax sharing agreement

(b) There is no tax, levy, impost, duty, fee, assessment or other governmental charge, or any deduction or withholding, imposed by any Governmental Authority in or of the jurisdiction in which the Foreign Borrower is organized and existing either (i) on or by virtue of the execution or delivery of any Loan Documents or (ii) on any payment to be made by or on account of the Foreign Borrower pursuant to any Loan Documents

(c) The Foreign Borrower is resident for Tax purposes only in the Netherlands.

#### 5.12 ERISA Compliance.

(a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws. Each Pension Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of the Domestic Borrower, nothing has occurred that would prevent or cause the loss of such tax-qualified status.

(b) There are no pending or, to the best knowledge of the Domestic Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan or Multiemployer Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.

(c) (i) No ERISA Event has occurred, and neither the Domestic Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event; (ii) the Domestic Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and neither the Domestic Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) neither the Domestic Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither the Domestic Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no

---

Pension Plan or Multiemployer Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan or Multiemployer Plan.

(d) Schedule 5.12(d) hereto lists, as of the Closing Date, all Pension Plans, Foreign Pension Plans and Multiemployer Plans and, thereafter, as of each date on which such Schedule is updated pursuant to Section 6.02(i), any new Pension Plans, Foreign Pension Plans or Multiemployer Plans for which the Borrower, any Subsidiary or any ERISA Affiliate could have liability.

(e) Except as, in the aggregate, could not reasonably be expected to have a Material Adverse Effect: (i) each Foreign Pension Plan is in compliance and in good standing (to the extent such concept exists in the relevant jurisdiction) with all laws, regulations and rules applicable thereto, including all funding requirements, and the respective requirements of the governing documents for such Foreign Pension Plan; (ii) with respect to each Foreign Pension Plan maintained or contributed to by any Loan Party or any Subsidiary thereof, (A) that is required by applicable law to be funded in a trust or other funding vehicle, the aggregate of the accumulated benefit obligations under such Foreign Pension Plan does not exceed to any material extent the current fair market value of the assets held in the trusts or similar funding vehicles for such Foreign Pension Plan and (B) that is not required by applicable law to be funded in a trust or other funding vehicle, reasonable reserves have been established in accordance with prudent business practice or where required by ordinary accounting practices in the jurisdiction in which such Foreign Pension Plan is maintained; (iii) there are no actions, suits or claims (other than routine claims for benefits) pending or, to the best knowledge of any Loan Party or any Subsidiary thereof, threatened against any Loan Party or any Subsidiary thereof with respect to any Foreign Pension Plan; (iv) all contributions (including, where applicable, “normal cost”, “special payments” and any other payment in respect of any funding deficiencies or shortfalls) required to have been made by any Loan Party or any Subsidiary thereof to any Foreign Pension Plan have been made within the time required by law or by the terms of such Foreign Pension Plan; (v) no defined benefit Foreign Pension Plan with respect to which any Loan Party or any Subsidiary thereof could have any liability has been terminated or wound-up in whole or in part and no actions or proceedings have been taken or instituted to terminate or wind-up in whole or in part such a defined benefit Foreign Pension Plan; and (vi) no circumstances exist or event has occurred that would reasonably be expected to provide any basis for a Governmental Authority under applicable law to take steps to cause the termination or wind-up, in whole or in part, of any Foreign Pension Plan or the institution of proceedings by any Governmental Authority to terminate or wind-up, in whole or in part, any Foreign Pension Plan or to have a trustee or a replacement administrator appointed to administer any Foreign Pension Plan.

5.13 Subsidiaries; Equity Interests; Loan Parties. As of the Closing Date, the Domestic Borrower has no Subsidiaries other than those specifically disclosed in Part (a) of Schedule 5.13, and all of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by the Subsidiary indicated on and in the amounts specified on Part (a) of Schedule 5.13 free and clear of all Liens except those created under the Collateral Documents. No Loan Party has equity investments in any other corporation or entity other than those specifically disclosed in Part (b) of Schedule 5.13. All of the outstanding Equity

---

Interests in the Domestic Borrower have been validly issued, are fully paid and non-assessable. Set forth on Part (c) of Schedule 5.13 is a complete and accurate list of all Loan Parties, showing as of the Closing Date (as to each Loan Party) the jurisdiction of its incorporation, the address of its principal place of business and its U.S. taxpayer identification number or, in the case of any non-U.S. Loan Party that does not have a U.S. taxpayer identification number, its unique identification number issued to it by the jurisdiction of its incorporation. The copies of the Organization Documents of each Loan Party provided pursuant to Section 4.01(a)(iv) and (vi) are true and correct copies of each of the respective documents, each of which is valid and in full force and effect.

5.14 Margin Regulations: Investment Company Act. (a) Borrowers are not engaged, nor will they engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. Following the application of the proceeds of each Borrowing or drawing under each Letter of Credit, not more than twenty-five percent (25%) of the value of the assets (either of the Domestic Borrower only or of the Domestic Borrower and its Subsidiaries on a consolidated basis) subject to the provisions of Section 7.01 or Section 7.05 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 and within the scope of Section 8.01(e) will be margin stock.

(b) None of the Borrowers, any Person Controlling the Borrowers, or any Subsidiary is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

5.15 Disclosure. The Borrowers have disclosed to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information furnished (whether in writing or orally) by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, the Borrowers represent only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time.

5.16 Compliance with Laws. Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

---

5.17 Intellectual Property; Licenses, Etc. The Domestic Borrower and each of its Subsidiaries own, or possess the right to use, all of the trademarks, service marks, trade names, copyrights, patents, patent rights, franchises, licenses and other intellectual property rights (collectively, “IP Rights”) that are reasonably necessary for the operation of their respective businesses, without conflict with the rights of any other Person. To the best knowledge of the Domestic Borrower, no slogan or other advertising device, product, process, method, substance, part or other material now employed, or now contemplated to be employed, by the Domestic Borrower or any of its Subsidiaries infringes upon any rights held by any other Person. Except as specifically disclosed in Schedule 5.17, no claim or litigation regarding any of the foregoing is pending or, to the best knowledge of the Borrower, threatened, which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

5.18 Sanctions Concerns and Anti-Corruption Laws.

(a) Sanctions Concerns. No Loan Party, nor, any Related Party, (i) is currently the subject of any Sanctions, (ii) is included on OFAC’s List of Specially Designated Nationals, HMT’s Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority, (iii) is located, organized or residing in any Designated Jurisdiction, or (iv) is or has been (within the previous five (5) years) engaged in any transaction with any Person who is now or was then the subject of Sanctions or who is located, organized or residing in any Designated Jurisdiction. No Loan nor Letter of Credit nor the proceeds from any Credit Extension, has been used, directly or indirectly, to lend, contribute, provide or has otherwise made available to fund any activity or business in any Designated Jurisdiction or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that will result in any violation by any Person (including any Lender, the Arranger, the Administrative Agent, the L/C Issuer or the Swing Line Lender) of Sanctions.

(b) Anti-Corruption Laws. The Loan Parties and their Subsidiaries have conducted their business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar applicable anti-corruption legislation in other jurisdictions, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.19 Solvency. Each Loan Party is, individually and together with its Subsidiaries on a consolidated basis, Solvent.

5.20 Labor Matters. There are no collective bargaining agreements or Multiemployer Plans covering the employees of the Domestic Borrower or any of its Subsidiaries as of the Closing Date and neither the Domestic Borrower nor any Subsidiary has suffered any strikes, walkouts, work stoppages or other material labor difficulty within the last five years.

5.21 Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 7.01) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed prior to the Closing Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.



5.22 Regulation H. No Mortgaged Property is a Flood Hazard Property unless the Administrative Agent shall have received the following: (a) the applicable Loan Party's written acknowledgement of receipt of written notification from the Administrative Agent (i) as to the fact that such Mortgaged Property is a Flood Hazard Property, (ii) as to whether the community in which each such Flood Hazard Property is located is participating in the National Flood Insurance Program and (iii) such other flood hazard determination forms, notices and confirmations thereof as requested by the Administrative Agent and (b) copies of insurance policies or certificates of insurance of the applicable Loan Party evidencing flood insurance reasonably satisfactory to the Administrative Agent and naming the Administrative Agent as loss payee on behalf of the Lenders. All flood hazard insurance policies required hereunder have been obtained and remain in full force and effect, and the premiums thereon have been paid in full.

5.23 Pericom Acquisition Agreement. As of the 2015 Incremental Term Draw Date, the Domestic Borrower has delivered to the Administrative Agent a complete and correct copy of the Pericom Acquisition Agreement (including all schedules, exhibits, amendments, supplements, modifications and assignments thereof and, to the extent requested by the Administrative Agent, all other material documents delivered pursuant thereto or in connection therewith). As of the 2015 Incremental Term Draw Date, neither the Domestic Borrower nor any direct or indirect parent or Subsidiary of the Domestic Borrower is in default in the performance or compliance with any material provisions thereof. The Pericom Acquisition Agreement is in full force and effect as of the 2015 Incremental Term Draw Date and has not been terminated, rescinded or withdrawn. As of the 2015 Incremental Term Draw Date, all requisite material approvals by Governmental Authorities having jurisdiction over each of the parties to the Pericom Acquisition Agreement, with respect to the transactions contemplated thereby, have been obtained, and no such approvals impose any conditions to the consummation of the transactions contemplated by the Pericom Acquisition Agreement or to the conduct by the Domestic Borrower of its business thereafter which have not been satisfied or fulfilled. As of the 2015 Incremental Term Draw Date, each of the representations and warranties given by any Loan Party in the Pericom Acquisition Agreement is true and correct in all material respects.

5.24 European Insolvency Regulation. • The Foreign Borrower is incorporated in a jurisdiction where Council Regulation (EC) No 1346/2000 on insolvency proceedings of 29 May 2000 (the "Insolvency Regulation") applies, its center of main interest (as that term is used in section 3(1) of the Insolvency Regulation) is situated in its jurisdiction of incorporation, and it has no establishment (as defined in section 2(h) of the Insolvency Regulation) in any other jurisdiction.

## **ARTICLE VI AFFIRMATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, each Borrower shall, and shall (except in the case of the covenants set forth in Sections 6.01, 6.02, 6.03 and 6.11) cause each Subsidiary to:

6.01 Financial Statements. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

---

(a) as soon as available, but in any event within 90 days after the end of each fiscal year of the Domestic Borrower (commencing with the fiscal year ending December 31, 2012), a consolidated and consolidating balance sheet of the Domestic Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated and consolidating statements of income or operations, changes in shareholders' equity, and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, such consolidated statements to be audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing reasonably acceptable to the Required Lenders, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit;

(b) as soon as available, but in any event within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Domestic Borrower (commencing with the fiscal quarter ending March 31, 2013), a consolidated and consolidating balance sheet of the Domestic Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated and consolidating statements of income or operations for such fiscal quarter and for the portion of the Domestic Borrower's fiscal year then ended, and the related consolidated and consolidating statements of changes in shareholders' equity, and cash flows for the portion of the Domestic Borrower's fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding portion of the previous fiscal year, all in reasonable detail, such consolidated statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Domestic Borrower as fairly presenting the financial condition, results of operations, shareholders' equity and cash flows of the Domestic Borrower and its Subsidiaries in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Domestic Borrower to the effect that such statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Domestic Borrower and its Subsidiaries; and

(c) as soon as available, but in any event at least 45 days before the end of each fiscal year of the Domestic Borrower, an annual business plan and budget of the Domestic Borrower and its Subsidiaries on a consolidated basis, including forecasts prepared by management of the Domestic Borrower, in form satisfactory to the Administrative Agent and the Required Lenders, of consolidated balance sheets and statements of income or operations and cash flows of the Domestic Borrower and its Subsidiaries on a quarterly basis for the immediately following fiscal year.

6.02 Certificates: Other Information. Deliver to the Administrative Agent and each Lender, in form and detail satisfactory to the Administrative Agent and the Required Lenders:

(a) concurrently with the delivery of the financial statements referred to in Section 6.01(a), a certificate of its independent certified public accountants certifying such financial statements and stating that in making the examination necessary therefor no knowledge was obtained of any Default under the financial covenants set forth herein or, if any such Default shall exist, stating the nature and status of such event;

---

(b) concurrently with the delivery of the financial statements referred to in Sections 6.01(a) and (b), a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Domestic Borrower (which delivery may, unless Administrative Agent, or a Lender requests executed originals, be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof all purposes);

(c) promptly after any request by the Administrative Agent or any Lender, copies of any detailed audit reports, management letters or recommendations submitted to the board of directors (or the audit committee of the board of directors) of the Domestic Borrower by independent accountants in connection with the accounts or books of the Domestic Borrower or any Subsidiary, or any audit of any of them;

(d) 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 Domestic Borrower, and copies of all annual, regular, periodic and special reports and registration statements which the Domestic Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Securities Exchange Act of 1934, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(e) promptly after the furnishing thereof, copies of any statement or report furnished to any holder of debt securities of any Loan Party or any Subsidiary thereof pursuant to the terms of any indenture, loan or credit or similar agreement and not otherwise required to be furnished to the Lenders pursuant to Section 6.01 or any other clause of this Section 6.02;

(f) promptly, and in any event within fifteen Business Days after receipt thereof by any Loan Party or any Subsidiary thereof, copies of each notice or other correspondence received from the SEC (or comparable agency in any applicable non-U.S. jurisdiction) concerning any investigation or possible investigation or other inquiry by such agency regarding financial or other operational results of any Loan Party or any Subsidiary thereof;

(g) promptly, such additional information regarding any Foreign Pension Plans, as the Administrative Agent or any Lender may from time to time reasonably request;

(h) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request;

(i) promptly after the assertion or occurrence thereof, notice of any action or proceeding against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could (i) reasonably be expected to have a Material Adverse Effect or (ii) cause any property described in the Mortgages to be subject to any material restrictions on ownership, occupancy, use or transferability under any Environmental Law; and

(j) (i) as soon as available, but in any event within 45 days after the end of each fiscal year of the Borrower, a report supplementing Schedules 5.08(c), 5.08(d)(i), 5.08(d)(ii) and 5.13 containing a description of all changes in the information included in such Schedules as may be

---

necessary for such Schedules to be accurate and complete, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent, and (ii) as soon as available, but in any event within 30 days after the establishment thereof, a report supplementing Schedule 5.12(d) setting forth each new Pension Plan, Foreign Pension Plan or Multiemployer Plan for which the Borrower, any Subsidiary or any ERISA Affiliate could have liability as may be necessary for such Schedule to be accurate and complete, each such report to be signed by a Responsible Officer of the Borrower and to be in a form reasonably satisfactory to the Administrative Agent.

Documents required to be delivered pursuant to Section 6.01(a) or (b) or Section 6.02(d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Domestic Borrower posts such documents, or provides a link thereto on the Domestic Borrower's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Domestic 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: (A) the Domestic Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Domestic 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 (B) the Domestic 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 (i.e., soft copies) of such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Domestic Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

Each Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger may, but shall not be obligated to, make available to the Lenders and the L/C Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak, ClearPar or a substantially similar electronic transmission system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to any of the Borrowers or their respective Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or Equity Interests that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," such Borrower shall be deemed to have authorized the Administrative Agent, any Affiliate thereof, the Arranger, the L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive or proprietary) with respect to such Borrower or its securities for

---

purposes of United States Federal and state securities laws (provided that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) the Administrative Agent and any Affiliate thereof and the Arranger 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 Side Information.” Notwithstanding the foregoing, the Borrowers shall be under no obligation to mark any Borrower Materials “PUBLIC.”

6.03 Notices. Promptly notify the Administrative Agent and each Lender:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of the Domestic Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between the Domestic Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting the Domestic Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event;

(d) of any material change in accounting policies or financial reporting practices by the Domestic Borrower or any Subsidiary, including any determination by the Domestic Borrower referred to in Section 2.10(b); and

(e) of any (i) occurrence of any Disposition or Involuntary Disposition of property or assets for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(i), and (ii) receipt of any Extraordinary Receipt for which the Borrowers are required to make a mandatory prepayment pursuant to Section 2.05(b)(ii).

Each notice pursuant to this Section 6.03 shall be accompanied by a statement of a Responsible Officer of the Domestic Borrower setting forth details of the occurrence referred to therein and stating what action the Domestic Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

6.04 Payment of Obligations. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by the applicable Borrower or such Subsidiary; (b) all lawful claims which, if unpaid, would by law become a Lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such Indebtedness.

---

6.05 Preservation of Existence, Etc. (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization except in a transaction permitted by Section 7.04 or 7.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance. Maintain with financially sound and reputable insurance companies not Affiliates of the Domestic Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and providing for not less than 30 days' prior notice to the Administrative Agent of termination, lapse or cancellation of such insurance, including, without limitation, flood hazard insurance on all Mortgaged Properties that are Flood Hazard Properties, on such terms and in such amounts as required by the National Flood Insurance Reform Act of 1994 or as otherwise required by the Administrative Agent.

6.08 Compliance with Laws. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records. (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Domestic Borrower or such Subsidiary, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over the Domestic Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights. Permit representatives and independent contractors of the Administrative Agent (on behalf of itself and the Lenders) to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and independent public accountants, all at the expense of the Borrowers and at such reasonable times during normal business hours (not more than twice per calendar year in the aggregate for all such visits and inspections), upon reasonable advance notice to the Domestic Borrower; provided that when an Event of Default exists the Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the expense of the Domestic Borrower as often as may be reasonably desired at any time during normal business hours and without advance notice.

---

6.11 Use of Proceeds. Use the proceeds of the Credit Extensions (i) to refinance all outstanding Indebtedness under the Existing Credit Agreement, (ii) for working capital, (iii) for capital expenditures, and (iii) for general corporate purposes not in contravention of any Law or of any Loan Document, including, without limitation, financing permitted acquisitions.

6.12 Covenant to Guarantee Obligations and Give Security.

(a) Additional Domestic Subsidiaries. Notify the Administrative Agent of the creation or acquisition of any Domestic Subsidiary and promptly thereafter (and in any event within thirty (30) days after such creation or acquisition or such later time as may be determined by the Administrative Agent in its sole discretion), cause such Domestic Subsidiary, and cause each direct and indirect parent of such Domestic Subsidiary (if it has not already done so), to (i) become a Global Guarantor by delivering to the Administrative Agent a duly executed joinder agreement or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a security interest in all Collateral (subject to the exceptions specified in the Collateral Agreement, and excluding any grant of a security interest by Pericom in any Equity Interests in any Foreign Subsidiaries of Pericom in existence on the 2015 Incremental Term Draw Date; provided that if any such Foreign Subsidiaries of Pericom continue to be First-Tier Foreign Subsidiaries of Pericom at any time on or after June 30, 2017 then Pericom shall be required to comply with this Section 6.12 with respect to the grant of a security interest in any Equity Interests in any such continuing First-Tier Subsidiaries of Pericom) owned by such Subsidiary by delivering to the Administrative Agent a duly executed supplement to each Collateral Document or such other document as the Administrative Agent shall deem appropriate for such purpose and comply with the terms of each Collateral Document, (iii) deliver to the Administrative Agent such documents and certificates referred to in Section 4.01 as may be reasonably requested by the Administrative Agent, (iv) deliver to the Administrative Agent such original certificates representing the Pledged Equity or other certificates of such Person accompanied by undated irrevocable stock powers executed in blank, (v) deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with respect to such Person, and (vi) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) Notify the Administrative Agent at the time that any Person becomes a First-Tier Foreign Subsidiary of any Domestic Loan Party, and at the request of the Administrative Agent, promptly thereafter (and in any event within forty-five (45) days after such request or such later time as may be determined by the Administrative Agent in its sole discretion), cause (i) the applicable Domestic Loan Party to deliver to the Administrative Agent Collateral Documents pledging (A) one hundred percent (100%) of the total outstanding non-voting capital stock of such new Foreign Subsidiary to secure the Obligations, (B) one hundred percent (100%) of the total outstanding voting stock of such new Foreign Subsidiary to secure the Foreign Obligations and (C) (1) if the Domestic Loan Party holds more than 65% of the total Voting Stock of such new Foreign Subsidiary, then up to 65% of the total voting stock thereof to secure the Obligations (to the extent the pledge of a greater percentage would result in adverse tax consequences to the Domestic Borrower) or (2) if the Domestic Loan Party holds less than 65% of the total Voting Stock of such new Foreign Subsidiary, the aggregate of all such voting stock thereof owned or held by the Domestic Loan Party to secure the Obligations, and a consent thereto executed by such new Foreign Subsidiary (including, without limitation, if applicable,

---

original stock certificates (or the equivalent thereof pursuant to the applicable Laws and practices of any relevant foreign jurisdiction) evidencing such capital stock of such new Foreign Subsidiary as is being pledged, together with an appropriate undated stock power for each certificate duly executed in blank by the registered owner thereof), (ii) such Person to deliver to the Administrative Agent such documents and certificates as may be reasonably requested by the Administrative Agent, (iii) the applicable Domestic Loan Party to deliver to the Administrative Agent such updated Schedules to the Loan Documents as reasonably requested by the Administrative Agent with regard to such Person and (iv) such Person to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope satisfactory to the Administrative Agent.

(c) Real Property Collateral. Notify the Administrative Agent, within ten (10) days after the acquisition of any owned Material Real Property located in the United States by any Loan Party that is not subject to the existing Collateral Documents, and within sixty (60) days following a request by the Administrative Agent, deliver such mortgages, deeds of trust, completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determinations, title insurance policies, environmental reports, surveys, flood hazard insurance and other documents reasonably requested by the Administrative Agent in connection with granting and perfecting a first priority Lien, other than Permitted Encumbrances, on such real property in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, all in form and substance acceptable to the Administrative Agent.

(d) Cost. Notwithstanding the foregoing, the provisions of this Section 6.12 shall not apply to assets as to which the Administrative Agent and the Domestic Borrower shall reasonably determine that the costs and burdens of obtaining a security interest therein or perfection thereof outweigh the value of the security afforded thereby.

6.13 Compliance with Environmental Laws. Comply, and cause all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew all Environmental Permits necessary for its operations and properties; and conduct any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; provided, however, that neither the Domestic Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances in accordance with GAAP.

6.14 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgement, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law and consistent with the terms of this Agreement and the other Loan Documents, subject any Loan Party's or any of its Subsidiaries'



properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (iii) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries is or is to be a party, and cause each of its Subsidiaries to do so.

6.15 Compliance with Terms of Leaseholds. Make all payments and otherwise perform all obligations in respect of all leases of real property to which the Domestic Borrower or any of its Subsidiaries is a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

6.16 Material Contracts. Perform and observe all the terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time requested by the Administrative Agent and, upon request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

6.17 Post Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 6.17, in each case within the time limits specified on such schedule.

6.18 Anti-Corruption Laws. Conduct its business in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar applicable anti-corruption legislation in other jurisdictions and maintain policies and procedures designed to promote and achieve compliance with such laws.

## **ARTICLE VII NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder, any Loan or other Obligation hereunder shall remain unpaid or unsatisfied, or any Letter of Credit shall remain outstanding, the Borrowers shall not, nor shall they permit any Subsidiary to, directly or indirectly:

7.01 Liens. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, or sign or file or suffer to exist under the Uniform Commercial Code of any jurisdiction a financing statement that names the

Domestic Borrower or any of its Subsidiaries as debtor, or assign any accounts or other right to receive income, other than the following (the “Permitted Liens”):

- (a) Liens pursuant to any Loan Document;
- (b) Liens securing the Additional Secured Obligations;
- (c) Liens existing on the date hereof (or, as to Pericom and its Subsidiaries, on the 2015 Incremental Term Draw Date) and listed on Schedule 5.08(b) and any renewals or extensions thereof, provided that (i) the property covered thereby is not changed, (ii) the amount secured or benefited thereby is not increased except as contemplated by Section 7.02(d), (iii) the direct or any contingent obligor with respect thereto is not changed, and (iv) any renewal or extension of the obligations secured or benefited thereby is permitted by Section 7.02(d);
- (d) Liens for taxes not yet due or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person in accordance with GAAP;
- (e) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s or other like Liens arising in the ordinary course of business which are not overdue for a period of more than 30 days or which are being contested in good faith and by appropriate proceedings diligently conducted, if adequate reserves with respect thereto are maintained on the books of the applicable Person;
- (f) pledges or deposits in the ordinary course of business in connection with workers’ compensation, unemployment insurance and other social security legislation, other than any Lien imposed by ERISA;
- (g) deposits to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;
- (h) easements, rights-of-way, restrictions and other similar encumbrances affecting real property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person;
- (i) Liens securing judgments for the payment of money not constituting an Event of Default under Section 8.01(h);
- (j) Liens securing Indebtedness permitted under Section 7.02(f); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or fair market value, whichever is lower, of the property being acquired on the date of acquisition;
- (k) Liens arising under Article 24 or 26 of the general terms and conditions (*Algemene Bank Voorwaarden*) of any member of the Dutch Banker’s Association (*Nederlandse Vereniging van Banken*) or any similar term applied by a financial institution in the Netherlands pursuant to its general terms and conditions;

---

(l) Liens arising under the Diodes Zetex Pension Scheme Legal Charge;

(m) Liens arising in connection with Indebtedness permitted under Section 7.02(h); provided that such Liens do not at any time encumber any property other than the property financed by such Indebtedness; and

(n) Liens not otherwise permitted under this Section 7.01 securing Indebtedness outstanding in an aggregate principal amount not to exceed \$2,000,000, provided that no Lien shall extend to or cover any Collateral.

7.02 Indebtedness. Create, incur, assume or suffer to exist any Indebtedness, except:

(a) obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the ordinary course of business for the purpose of directly mitigating risks associated with fluctuations in interest rates or foreign exchange rates and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party;

(b) Indebtedness under the Loan Documents;

(c) Indebtedness among Borrowers and Loan Parties;

(d) Indebtedness outstanding on the date hereof and listed on Schedule 7.02 and any refinancings, refundings, renewals or extensions thereof; provided that the amount of such Indebtedness is not increased at the time of such refinancing, refunding, renewal or extension except by an amount equal to a reasonable premium or other reasonable amount paid, and fees and expenses reasonably incurred, in connection with such refinancing and by an amount equal to any existing commitments unutilized thereunder and (ii) the terms relating to principal amount, amortization, maturity, collateral (if any) and subordination (if any), and other material terms taken as a whole, of any such refinancing, refunding, renewing or extending Indebtedness, and of any agreement entered into and of any instrument issued in connection therewith, are no less favorable in any material respect to the Loan Parties or the Lenders than the terms of any agreement or instrument governing the Indebtedness being refinanced, refunded, renewed or extended and the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the then applicable market interest rate;

(e) Guarantees of the Domestic Borrower or any Subsidiary in respect of Indebtedness otherwise permitted under Sections 7.02(a), (d) or (f) of the Domestic Borrower or any wholly-owned Subsidiary thereof;

(f) Indebtedness in respect of Capitalized Leases, Synthetic Lease Obligations and purchase money obligations for fixed or capital assets within the limitations set forth in Section 7.01(i); provided, however, that the aggregate amount of all such Indebtedness at any one time outstanding shall not exceed \$2,000,000;

(g) Indebtedness of Subsidiaries (inclusive of the Indebtedness of such Subsidiaries set forth on Schedule 7.02) organized under the laws of a jurisdiction in Asia in an aggregate amount not to exceed \$70,000,000 at any time, all of which may be refinanced, amended or replaced from time to time; provided that the aggregate amount of such Indebtedness does not exceed \$70,000,000;

---

(h) Indebtedness consisting of the deferred purchase price of equipment that shall be paid for within six months after delivery, subject to such equipment being qualified after delivery;

(i) Indebtedness of Subsidiaries incurred by reason of Investments in such Subsidiaries permitted under Section 7.03(c)(iii) and (iv);

(j) Indebtedness arising under the Diodes Zetex Pension Scheme, including the Diodes Zetex Pension Scheme Guarantee; and

(k) Indebtedness incurred under or in connection with Secured Cash Management Agreements.

7.03 Investments. Make or hold any Investments, except:

(a) Investments held by the Domestic Borrower and its Subsidiaries in the form of Cash Equivalents;

(b) advances to officers, directors and employees of the Domestic Borrower and Subsidiaries in an aggregate amount not to exceed \$500,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(c) (i) Investments by the Domestic Borrower and its Subsidiaries in their respective Subsidiaries outstanding on the date hereof, (ii) additional Investments by the Domestic Borrower and its Subsidiaries in Loan Parties, (iii) additional Investments by Subsidiaries of the Domestic Borrower that are not Loan Parties in other Subsidiaries that are not Loan Parties and (iv) so long as no Default has occurred and is continuing or would result from such Investment, additional Investments by the Loan Parties in wholly-owned Subsidiaries that are not Loan Parties in an aggregate amount invested from the date hereof not to exceed \$5,000,000;

(d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Guarantees permitted by Section 7.02;

(f) Investments existing on the date hereof (other than those referred to in Section 7.03(c)(i)) and set forth on Schedule 5.08(e);

(g) the purchase or other acquisition of all of the Equity Interests in, or all or substantially all of the property of, any Person that, upon the consummation thereof, will be wholly-owned directly by the Domestic Borrower or one or more of its wholly-owned Subsidiaries (including as a result of a merger or consolidation); provided that, with respect to each purchase or other acquisition made pursuant to this Section 7.03(g):

---

(i) any such newly-created or acquired Subsidiary shall comply with the requirements of Section 6.12 if and to the extent applicable;

(ii) the lines of business of the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be substantially the same lines of business as one or more of the principal businesses of the Domestic Borrower and its Subsidiaries in the ordinary course;

(iii) such purchase or other acquisition shall not include or result in any contingent liabilities that could reasonably be expected to be material to the business, financial condition, operations or prospects of the Domestic Borrower and its Subsidiaries, taken as a whole (as determined in good faith by the board of directors (or the persons performing similar functions) of the Domestic Borrower or such Subsidiary if the board of directors is otherwise approving such transaction and, in each other case, by a Responsible Officer);

(iv) immediately before and immediately after giving pro forma effect to any such purchase or other acquisition, (A) no Default shall have occurred and be continuing, (B) the Domestic Borrower shall have demonstrated to the satisfaction of the Administrative Agent that the Consolidated Leverage Ratio of the Domestic Borrower and its Subsidiaries shall be at least 0.25 lower than the maximum Consolidated Leverage Ratio, (C) the Domestic Borrower and its Subsidiaries shall be in pro forma compliance with the covenant set forth in Section 7.11(b), (in each of the foregoing items (B) and (C) such calculations to be determined on the basis of the financial information most recently delivered to the Administrative Agent and the Lenders pursuant to Section 6.01(a) or (b) as though such purchase or other acquisition had been consummated as of the first day of the fiscal period covered thereby) and (D) evidence satisfactory to the Administrative Agent that the Borrowers have availability under the Revolving Credit Facility plus unrestricted cash of the Borrowers in an aggregate amount of at least \$50,000,000; and

(v) the Domestic Borrower shall have delivered to the Administrative Agent and each Lender, at least five Business Days prior to the date on which any such purchase or other acquisition is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent and the Required Lenders, certifying that all of the requirements set forth in this clause (vi) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(h) other Investments not exceeding \$5,000,000 in the aggregate in any fiscal year of the Domestic Borrower;

(i) the Pericom Acquisition; provided that Pericom shall comply with Section 6.12; and

(j) other Investments (not otherwise referenced in the preceding clauses (a) through (i)), not exceeding \$20,000,000 in the aggregate outstanding at any time; provided that (i) no Default has occurred and is continuing or would result from such Investment and (ii) any Investments made pursuant to this Section 7.03(j) are pledged as Collateral over which the Administrative Agent has a first priority security interest contemporaneously with the making of any such Investment.

---

7.04 Fundamental Changes. Merge, dissolve, liquidate, consolidate with or into another Person, or Dispose of (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge with (i) the Domestic Borrower; provided that the Domestic Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when (x) any Loan Party is merging with another Subsidiary, such Loan Party shall be the continuing or surviving Person or the continuing or surviving Person shall thereupon become a Loan Party and (y) any Domestic Subsidiary is merging with another Subsidiary, such Domestic Subsidiary shall be the continuing or surviving Person;

(b) any Loan Party may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Domestic Borrower or to another Loan Party;

(c) any Subsidiary that is not a Loan Party may dispose of all or substantially all its assets (including any Disposition that is in the nature of a liquidation) to (i) another Subsidiary that is not a Loan Party or (ii) to a Loan Party;

(d) in connection with any acquisition permitted under Section 7.03, any Subsidiary of the Domestic Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided that (i) the Person surviving such merger shall be a wholly-owned Subsidiary of the Domestic Borrower, (ii) in the case of any such merger involving the Foreign Borrower, the Foreign Borrower shall be the surviving Person, and (iii) in the case of any such merger to which any Loan Party (other than the Foreign Borrower) is a party, such Loan Party is the surviving Person; and

(e) so long as no Default has occurred and is continuing or would result therefrom, any Subsidiary of the Domestic Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; provided, however, that in each case, immediately after giving effect thereto (i) in the case of any such merger to which the a Foreign Borrower is a party, the Foreign Borrower is the surviving corporation and (ii) in the case of any such merger to which any Loan Party (other than the Foreign Borrower) is a party, such Loan Party is the surviving corporation.

7.05 Dispositions. Make any Disposition or enter into any agreement to make any Disposition, except:

(a) Dispositions of obsolete or worn out property, whether now owned or hereafter acquired, in the ordinary course of business;

(b) Dispositions of inventory in the ordinary course of business;

(c) Dispositions of equipment or real property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are reasonably promptly applied to the purchase price of such replacement property;

(d) (i) Dispositions of property by any Subsidiary to the Domestic Borrower or to a wholly-owned Subsidiary; provided that if the transferor of such property is a Guarantor (other than as contemplated in item (iii) of this subsection), the transferee thereof must either be a Borrower or a Guarantor; (ii) the Domestic Borrower may Dispose of 100% of the Equity Interests in [REDACTED]<sup>2</sup> to either (A) a First-Tier Foreign Subsidiary of the Domestic Borrower; provided that, at such time, 65% of the Equity Interests of such First-Tier Foreign Subsidiary is pledged to support the Obligations and the remaining 35% is pledged to support the Foreign Obligations or (B) a direct Foreign Subsidiary of the Foreign Borrower; provided that, at such time, 100% of the Equity Interests of such direct Foreign Subsidiary is pledged to support the Foreign Obligations (in each of the foregoing items (A) and (B) of this subsection, pursuant to such documentation as may be reasonably required by the Administrative Agent including, without limitation, documentation and legal opinions under the applicable Foreign jurisdictions), and (iii) [REDACTED]<sup>2</sup>, may Dispose of its property to any Subsidiary of the Domestic Borrower;

(e) Dispositions permitted by Section 7.04;

(f) Dispositions by any Loan Parties not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition, (ii) the aggregate book value of all property Disposed of in reliance on this clause (f) in any fiscal year shall not exceed \$2,000,000 and (iii) the purchase price for such asset shall be paid to such Loan Party solely in cash; and

(g) Dispositions by any Subsidiaries that are not Loan Parties not otherwise permitted under this Section 7.05; provided that (i) at the time of such Disposition, no Default shall exist or would result from such Disposition, (ii) the aggregate book value of all property Disposed of in reliance on this clause (g) in any fiscal year shall not exceed \$5,000,000 and (iii) the purchase price for such asset shall be paid to such Subsidiary solely in cash.

provided, however, that any Disposition pursuant to Section 7.05(a) through (g) shall be for fair market value.

7.06 Restricted Payments. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, or issue or sell any Equity Interests or accept any capital contributions, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(a) each Subsidiary may make Restricted Payments to the Borrowers, any Subsidiaries of the Borrowers and any other Person that owns a direct Equity Interest in such Subsidiary, ratably according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made;

<sup>2</sup> Confidential treatment has been requested with respect to all the redacted portions of the Credit Agreement, which has been filed separately with the Securities and Exchange Commission.

(b) the Domestic Borrower and each Subsidiary may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of such Person;

(c) the Domestic Borrower and each Subsidiary may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(d) the Borrowers may make Restricted Payments not otherwise permitted pursuant to this Section 7.06 so long as (i) no Default or Event of Default has occurred and is continuing or would result therefrom and (ii) both before and after giving effect thereto, the pro forma Consolidated Leverage Ratio shall be at least 0.25 to 1.00 less than the maximum Consolidated Leverage Ratio then permitted pursuant to Section 7.11(a); and

(e) so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Domestic Borrower may make declare and make dividend payments of a net type not otherwise permitted pursuant to this Section 7.06 in an aggregate amount not to exceed \$1,500,000 in any fiscal year.

7.07 Change in Nature of Business. Engage in any material line of business substantially different from those lines of business conducted by the Domestic Borrower and its Subsidiaries on the date hereof or any business substantially related or incidental thereto.

7.08 Transactions with Affiliates. Enter into any transaction of any kind with any Affiliate of any Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to any Borrower or such Subsidiary as would be obtainable by the applicable Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate; provided that the foregoing restriction shall not apply to transactions between or among the Loan Parties that are otherwise permitted by the terms of this Agreement.

7.09 Burdensome Agreements. Enter into or permit to exist any Contractual Obligation (other than this Agreement or any other Loan Document) that (a) limits the ability (i) of any Subsidiary to make Restricted Payments to any Borrower or any Guarantor or to otherwise transfer property to or invest in any Borrower or any Guarantor, except for any agreement in effect (A) on the date hereof and set forth on Schedule 7.09 or (B) at the time any Subsidiary becomes a Subsidiary of a Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of such Borrower, (ii) of any Subsidiary to Guarantee the Indebtedness of a Borrower or (iii) of a Borrower or any Subsidiary to create, incur, assume or suffer to exist Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 7.02(f) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness; or (b) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person.



---

7.10 Use of Proceeds. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.11 Financial Covenants.

(a) Maximum Consolidated Leverage Ratio. Permit the Consolidated Leverage Ratio for the fiscal quarter of the Domestic Borrower ending September 30, 2015 and each fiscal quarter ending thereafter to be greater than 2.50 to 1.00; provided that, upon the 2015 Incremental Term Draw Date, the Consolidated Leverage Ratio shall not exceed 3.00 to 1.00 for each fiscal quarter ended during the period from the 2015 Incremental Term Draw Date through and including September 30, 2016, and thereafter returning to 2.50 to 1.00 for all subsequent fiscal quarters.

(b) Minimum Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio at any time to be less than 1.35 to 1.00.

7.12 Amendments of Organization Documents. Amend any of its Organization Documents in any manner adverse to the Administrative Agent or the other Secured Parties.

7.13 Accounting Changes. Make any change in (a) accounting policies or reporting practices, except as required by GAAP, or (b) fiscal year.

7.14 Prepayments of Indebtedness. Prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Indebtedness, except (a) the prepayment of the Credit Extensions in accordance with the terms of this Agreement, (b) regularly scheduled or required repayments or redemptions of Indebtedness set forth in Schedule 7.02 and refinancings and refundings of such Indebtedness in compliance with Section 7.02(d) and (c) Indebtedness permitted pursuant to Section 7.02(g).

7.15 Amendment of Indebtedness: Pericom Acquisition Related Documents.

(a) Amend, modify or change in any manner any term or condition of any Indebtedness set forth in Schedule 7.02, except for any refinancing, refunding, renewal or extension thereof permitted by Section 7.02(d), and except for any amendment, modification or change of Indebtedness permitted pursuant to Section 7.02(g).

(b) Cancel or terminate any Pericom Acquisition Related Document or consent to or accept any cancellation or termination thereof or (x) amend, modify or change in any manner any term or condition of any Pericom Acquisition Related Document, (y) give any consent, waiver or approval thereunder or (z) take or fail to take any action thereunder, which, in any case of clause (x), (y) or (z), could be reasonably expected to have a material and adverse effect on the interests of the Lenders without the prior written consent of the Administrative Agent and the Required Lenders.

7.16 Sanctions. Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension, or lend, contribute or otherwise make available such Credit Extension or the proceeds of any Credit Extension to any Person, to fund any activities of or business with any

Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of Sanctions, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, Swing Line Lender, or otherwise) of Sanctions.

7.17 Anti-Corruption Laws. Directly or indirectly, use any Credit Extension or the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and other similar applicable anti-corruption legislation in other jurisdictions.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

8.01 Events of Default. Any of the following shall constitute an Event of Default:

(a) Non-Payment. Any Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, and in the currency required hereunder, any amount of principal of any Loan or any L/C Obligation, or (ii) within three days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or (iii) within five days after the same becomes due, any other amount payable hereunder or under any other Loan Document; or

(b) Specific Covenants. Any Borrower fails to perform or observe any term, covenant or agreement contained in any of Section 6.01, 6.02, 6.03, 6.05, 6.10, 6.11, 6.12, 6.14, 6.17, or Article VII; or

(c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days; or

(d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made; or

(e) Cross-Default. (i) Any Loan Party or any Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than the Threshold Amount, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or Guarantee (of more than the Threshold Amount) or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to 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, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which a Loan Party or any Subsidiary thereof is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which a Loan Party or any Subsidiary thereof is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by such Loan Party or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) Insolvency Proceedings, Etc. The Domestic Borrower or any of its Subsidiaries institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property, or files a notice under Section 36 of the Tax Collection Act of the Netherlands (*Invorderingswet 1990*); or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for 60 calendar days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undismissed or unstayed for 60 calendar days, or an order for relief is entered in any such proceeding; or

(g) Inability to Pay Debts; Attachment. (i) The Domestic Borrower or any Subsidiary thereof becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within 30 days after its issue or levy; or

(h) Judgments. There is entered against any Borrower or any Subsidiary thereof (i) one or more final judgments or orders for the payment of money in an aggregate amount (as to all such judgments or orders) exceeding the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 10 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) ERISA. (i) An ERISA Event occurs which has resulted or could reasonably be expected to result in liability of the Domestic Borrower under Title IV of ERISA in an aggregate amount in excess of the Threshold Amount, or (ii) the Domestic Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) Foreign Pension Plans. (i) There occurs any Foreign Plan Event or any Loan Party or an Affiliate thereof takes any action or contravenes any applicable law with respect to a Foreign Pension Plan that could reasonably be expected to have a Material Adverse Effect or (ii) Diodes Zetex Limited, Diodes Zetex Semiconductors Limited or the Domestic Borrower fails to

---

perform any obligation required by the Diodes Zetex Pension Scheme and the result of such failure is the ability of the trustees of such scheme to exercise remedies under the Diodes Zetex Pension Scheme Guarantee or the Diodes Zetex Pension Scheme Legal Charge, whether or not such remedies are actually exercised; or

(k) Invalidity of Loan Documents. Any provision of any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations, ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any provision of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document; or

(l) Change of Control. There occurs any Change of Control; or

(m) Collateral Documents. Any Collateral Document after delivery thereof pursuant to Section 4.01 or 6.12 shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority Lien (subject to Liens permitted by Section 7.01) on the Collateral purported to be covered thereby.

8.02 Remedies Upon Event of Default. If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrowers;

(c) require that each Borrower Cash Collateralize its L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuer all rights and remedies available to it, the Lenders and the L/C Issuer under the Loan Documents;

provided that upon the occurrence of an actual or deemed entry of an order for relief with respect to any Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuer to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

---

### 8.03 Application of Funds.

(a) Domestic Persons. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit Fees and any Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer arising under the Loan Documents and amounts payable under Article III), ratably among them 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 Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents (other than any Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the applicable Borrower pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the applicable Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Excluded Swap Obligations with respect to any Loan Party shall not be paid with amounts received from such Loan Party or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

---

(b) Foreign Persons. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Foreign Obligations shall, subject to the provisions of Sections 2.15 and 2.16, be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Foreign Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Foreign Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit Fees and any Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements) payable to the Lenders and the L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuer arising under the Loan Documents and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Foreign Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents (other than any Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements), ratably among the Lenders and the L/C Issuer in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Foreign Obligations constituting unpaid principal of the Loans, L/C Borrowings and Foreign Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuer, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to the Administrative Agent for the account of the L/C Issuer, to Cash Collateralize that portion of L/C Obligations constituting Foreign Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the applicable Borrower pursuant to Sections 2.03 and 2.15; and

Last, the balance, if any, after all of the Foreign Obligations have been indefeasibly paid in full, to the applicable Borrower or as otherwise required by Law.

Subject to Sections 2.03(c) and 2.15, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Foreign Obligations, if any, in the order set forth above.

---

(c) Cash Management Agreements and Hedge Agreements. Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a “Lender” party hereto.

## ARTICLE IX ADMINISTRATIVE AGENT

9.01 Appointment and Authority. (a) Each of the Lenders and the L/C Issuer hereby irrevocably appoints, designates and authorizes Bank of America 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. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuer, and neither the Borrowers nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. 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.

(b) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article IX and Article XI (including Section 11.04(c)), as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity.

---

Such Person and its Affiliates may accept deposits from, lend money to, 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 or other business with any Loan Party or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders or to provide notice to or consent of the Lenders with respect thereto.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent and its Related Parties:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) 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; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty or responsibility to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

Neither the Administrative Agent nor any of its Related Parties shall be liable for any action taken or not taken by the Administrative Agent 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 Sections 11.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Domestic Borrower, a Lender or the L/C Issuer.

Neither the Administrative Agent nor any of its Related Parties have any duty or obligation 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, (iii) the performance or observance of any



---

of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Collateral Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall be fully protected in relying and shall not incur any liability for relying upon, any notice, request, certificate, communication, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall 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 the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer 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 Loan Parties), 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.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by 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 Facilities 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 or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuer and the Domestic Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Domestic Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 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) on behalf of the Lenders and the L/C Issuer, 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. The parties hereto acknowledge and agree that, for purposes of any right of pledge governed by Netherlands law, any resignation by the Administrative Agent is not effective with respect to its rights under the Parallel Debts until such rights are assigned to the successor Administrative Agent.

(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 Domestic 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) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuer 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 (2) 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, to or through the Administrative Agent shall instead be made by or to each Lender and the L/C Issuer directly, until such time, if any, as the Required Lenders 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 as provided in Section 3.01(g) and 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 (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Domestic 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 11.04 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.

---

(d) Any resignation or removal by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(e). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment by the Domestic Borrower of a successor L/C Issuer or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer 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 Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the titles 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, the Arranger, a Lender or the L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan 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 any Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, 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 L/C Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuer and the Administrative Agent under Sections 2.03(h) and 2.03(i), 2.09, 2.10(b) and 11.04) 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 the L/C Issuer 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 L/C Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09, 2.10(b) and 11.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the L/C Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the L/C Issuer or in any such proceeding.

9.10 Collateral and Guaranty Matters. Each Lender (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank) and the L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the L/C Issuer shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.01(j); and

(c) to release any Guarantor from its obligations under the Guaranty, and to release any pledge of Equity Interests of such Person, if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10. In each case as specified in this Section 9.10, the Administrative Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan

---

Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10.

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein or in any Guaranty or any Collateral Document, no Cash Management Bank or Hedge Bank that obtains the benefits of Section 8.03, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of any Guaranty or any Collateral Document) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

## **ARTICLE X GUARANTY**

### 10.01 The Guaranty.

(a) Global Guarantors. Each of the Global Guarantors hereby jointly and severally guarantees to the Secured Parties, as primary obligor and not as surety, the prompt payment of all Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Global Guarantors hereby further agree that if any of the Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Global Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever (other than as otherwise expressly required pursuant to the Loan Documents), and that in the case of any extension of time of payment or renewal of any of the Obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

---

(b) Foreign Guarantors. Each of the Foreign Guarantors hereby jointly and severally guarantees the Secured Parties, as primary obligor and not as surety, the prompt payment of all Foreign Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. Each of the Foreign Guarantors hereby further agrees that if any of such Foreign Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), the Foreign Guarantors will, jointly and severally, promptly pay the same, without any demand or notice whatsoever (other than as otherwise expressly required pursuant to the Loan Documents), and that in the case of any extension of time of payment or renewal of any of such obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

(c) Domestic Borrower. The Domestic Borrower hereby guarantees to the Secured Parties, as primary obligor and not as surety, the prompt payment of all Foreign Obligations in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) strictly in accordance with the terms thereof. The Domestic Borrower hereby further agrees that if any of such Foreign Obligations are not paid in full when due (whether at stated maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise), it will promptly pay the same, without any demand or notice whatsoever (other than as otherwise expressly required pursuant to the Loan Documents), and that in the case of any extension of time of payment or renewal of any of such obligations, the same will be promptly paid in full when due (whether at extended maturity, as a mandatory prepayment, by acceleration, as a mandatory cash collateralization or otherwise) in accordance with the terms of such extension or renewal.

(d) Savings Clause. Notwithstanding any provision to the contrary contained herein or in any other of the Loan Documents, Swap Contracts or Cash Management Agreements, the obligations of each Guarantor (in its capacity as such) under this Loan Agreement and the other Loan Documents shall (A) exclude any Excluded Swap Obligations with respect to such Guarantor and (B) be limited to an aggregate amount equal to the largest amount that would not render such obligations subject to avoidance under the Debtor Relief Laws or any comparable provisions of any applicable Law.

#### 10.02 Obligations Unconditional.

(a) Global Guarantors. The obligations of the Global Guarantors under Section 10.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents, Swap Contracts or Cash Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 10.02 that the obligations of the Global Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each Global Guarantor agrees that such Global Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Borrowers or any other Guarantor for amounts paid under this Article X until such time as the Obligations have been paid in full and the Commitments have expired or terminated.

---

(b) Foreign Guarantors. The obligations of the Foreign Guarantors under Section 10.01 are joint and several, absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents, Swap Contracts or Cash Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Foreign Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 10.02 that the obligations of the Foreign Guarantors hereunder shall be absolute and unconditional under any and all circumstances. Each of the Foreign Guarantors agrees that such Foreign Guarantor shall have no right of subrogation, indemnity, reimbursement or contribution against the Foreign Borrower, the Domestic Borrower or any other Guarantor for amounts paid under this Article X until such time as the Obligations have been paid in full and the Commitments have expired or terminated.

(c) Domestic Borrower. The obligations of the Domestic Borrower under Section 10.01 are absolute and unconditional, irrespective of the value, genuineness, validity, regularity or enforceability of any of the Loan Documents, Swap Contracts or Cash Management Agreements, or any other agreement or instrument referred to therein, or any substitution, release, impairment or exchange of any other guarantee of or security for any of the Foreign Obligations, and, to the fullest extent permitted by applicable Law, irrespective of any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, it being the intent of this Section 10.02 that the obligations of the Domestic Borrower hereunder shall be absolute and unconditional under any and all circumstances. The Domestic Borrower agrees that it shall have no right of subrogation, indemnity, reimbursement or contribution against the Foreign Borrower or any other Guarantor for amounts paid under this Article X until such time as the Obligations have been paid in full and the Commitments have expired or terminated.

(d) Certain Waivers. Without limiting the generality of the foregoing subsections (a), (b) and (c), it is agreed that, to the fullest extent permitted by Law, the occurrence of any one or more of the following shall not alter or impair the liability of the Domestic Borrower or any Guarantor hereunder, which shall remain absolute and unconditional as described above:

(i) at any time or from time to time, without notice to the Domestic Borrower or any Guarantor, the time for any performance of or compliance with any of the Obligations shall be extended, or such performance or compliance shall be waived;

(ii) any of the acts mentioned in any of the provisions of any of the Loan Documents, any Swap Contract between any Loan Party and any Lender or any Affiliate of a Lender, any Cash Management Agreement between any Loan Party and any Lender or any Affiliate of a Lender, or any other agreement or instrument referred to in the Loan Documents, such Swap Contracts or such Cash Management Agreements shall be done or omitted;

(iii) the maturity of any of the Obligations shall be accelerated, or any of the Obligations shall be modified, supplemented or amended in any respect, or any right under any of the Loan Documents, any Swap Contract between any Loan Party and any Lender or any Affiliate of a Lender, any Cash Management Agreement between any Loan Party and any Lender or any Affiliate of a Lender, or any other agreement or instrument referred to in the Loan Documents, such Swap Contracts or such Cash Management Agreements shall be waived or any other guarantee of any of the Obligations or any security therefor shall be released, impaired or exchanged in whole or in part or otherwise dealt with;

(iv) any Lien granted to, or in favor of, the Administrative Agent acting as “collateral agent” in accordance with Section 9.01(b) or any holder of the Obligations as security for any of the Obligations shall fail to attach or be perfected; or

(v) any of the Obligations shall be determined to be void or voidable (including for the benefit of any creditor of the Domestic Borrower or any Guarantor) or shall be subordinated to the claims of any Person (including any creditor of the Domestic Borrower or any Guarantor).

(e) Certain Additional Waivers.

(i) With respect to its obligations under this Article X, the Domestic Borrower and each Guarantor hereby expressly waives diligence, presentment, demand of payment, protest and all notices (other than as otherwise expressly required pursuant to the Loan Documents) whatsoever, and any requirement that the Administrative Agent or any other holder of the Obligations exhaust any right, power or remedy or proceed against any Person under any of the Loan Documents, any Swap Contract between any Loan Party and any Lender or any Affiliate of a Lender, any Cash Management Agreement between any Loan Party and any Lender or any Affiliate of a Lender, or any other agreement or instrument referred to in the Loan Documents, such Swap Contracts or such Cash Management Agreements, or against any other Person under any other guarantee of, or security for, any of the Obligations; and

(ii) Each Loan Party waives any rights and defenses that are or may become available to it by reason of §§ 2787 to 2855, inclusive, and §§ 2899 and 3433 of the California Civil Code. As provided below, this Guaranty shall be governed by, and construed in accordance with, the laws of the State of New York. The foregoing waivers and the provisions hereinafter set forth in this Guaranty which pertain to California law are included solely out of an abundance of caution, and shall not be construed to mean that any of the above-referenced provisions of California law are in any way applicable to this Guaranty or the Obligations.

10.03 Reinstatement.

(a) Global Guarantors. The obligations of each Global Guarantor under this Article X shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each Global Guarantor agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including the reasonable fees, charges and disbursements of counsel) incurred by such Person in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar Law.



---

(b) Foreign Guarantors. The obligations of each Foreign Guarantor under this Article X shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Foreign Obligations is rescinded or must be otherwise restored by any holder of any of the Foreign Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and each of the Foreign Guarantors agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including the reasonable fees, charges and disbursements of counsel) incurred by such Person in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar Law.

(c) Domestic Borrower. The obligations of the Domestic Borrower under this Article X shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of any Person in respect of the Foreign Obligations is rescinded or must be otherwise restored by any holder of any of the Foreign Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Domestic Borrower agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including the reasonable fees, charges and disbursements of counsel) incurred by such Person in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar Law.

10.04 Subrogation and Contribution. The Domestic Borrower and each Guarantor agrees that it shall have no right of recourse to security for the Obligations, except through the exercise of rights of subrogation pursuant to Section 10.02 and through the exercise of rights of contribution pursuant to Section 10.06.

#### 10.05 Remedies.

(a) Global Guarantors. Each of the Global Guarantors agrees that, to the fullest extent permitted by Law, as between the Global Guarantors, on the one hand, and holders of the Obligations, on the other hand, the Obligations may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 8.02) for purposes of Section 10.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Obligations being deemed to have become automatically due and payable), the Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Global Guarantors for purposes of Section 10.01. The Global Guarantors acknowledge and agree that their obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Obligations may exercise their remedies thereunder in accordance with the terms thereof.

---

(b) Foreign Guarantors. Each of the Foreign Guarantors agrees that, to the fullest extent permitted by Law, as between the Foreign Guarantors, on the one hand, and the holders of the Foreign Obligations, on the other hand, the Foreign Obligations may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 8.02) for purposes of Section 10.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Foreign Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Foreign Obligations being deemed to have become automatically due and payable), the Foreign Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Foreign Guarantors for purposes of Section 10.01. Each of the Foreign Guarantors acknowledges and agrees that its obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Foreign Obligations may exercise their remedies thereunder in accordance with the terms thereof.

(c) Domestic Borrower. The Domestic Borrower agrees that, to the fullest extent permitted by Law, as between the Domestic Borrower, on the one hand, and the holders of the Foreign Obligations, on the other hand, the Foreign Obligations may be declared to be forthwith due and payable as provided in Section 8.02 (and shall be deemed to have become automatically due and payable in the circumstances provided in said Section 8.02) for purposes of Section 10.01 notwithstanding any stay, injunction or other prohibition preventing such declaration (or preventing the Foreign Obligations from becoming automatically due and payable) as against any other Person and that, in the event of such declaration (or the Foreign Obligations being deemed to have become automatically due and payable), the Foreign Obligations (whether or not due and payable by any other Person) shall forthwith become due and payable by the Domestic Borrower for purposes of Section 10.01. The Domestic Borrower acknowledges and agrees that its obligations hereunder are secured in accordance with the terms of the Collateral Documents and that the holders of the Foreign Obligations may exercise their remedies thereunder in accordance with the terms thereof.

#### 10.06 Rights of Contribution.

(a) Global Guarantors. The Domestic Borrower and the Global Guarantors hereby agree as among themselves that, in connection with payments made under this Article X, each Global Guarantor shall have a right of contribution from each other Global Guarantor and the Domestic Borrower (with respect to its guaranty under Section 10.01(c)) in accordance with applicable Law. Such contribution rights shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Global Guarantors shall exercise any such contribution rights until the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

(b) Foreign Guarantors. The Domestic Borrower, the Global Guarantors and the Foreign Guarantors hereby agree as among themselves that, in connection with payments made under this Article X, the Foreign Guarantors shall have a right of contribution from the Domestic Borrower (with respect to its guaranty under Section 10.01(c)) and each other Guarantor in accordance with applicable Law. Such contribution rights shall be subordinate and subject in right of payment to the Obligations until such time as the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated, and none of the Foreign Guarantors shall exercise any such contribution rights until the Obligations have been irrevocably paid in full and the commitments relating thereto shall have expired or been terminated.

---

10.07 Guarantee of Payment; Continuing Guarantee.

(a) Global Guarantors. The guarantee given by the Global Guarantors in this Article X is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Obligations whenever arising.

(b) Foreign Guarantors. The guarantee given by the Foreign Guarantors in this Article X is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Foreign Obligations whenever arising.

(c) Domestic Borrower. The guarantee given by the Domestic Borrower in this Article X is a guaranty of payment and not of collection, is a continuing guarantee, and shall apply to all Foreign Obligations whenever arising.

10.08 Additional Guarantor Waivers and Agreements. (a) Each Loan Party understands and acknowledges that if the Secured Parties foreclose judicially or nonjudicially against any real property security for the Obligations, that foreclosure could impair or destroy any ability that such Loan Party may have to seek reimbursement, contribution, or indemnification from any other Loan Party or others based on any right such Loan Party may have of subrogation, reimbursement, contribution, or indemnification for any amounts paid by such Loan Party under this Guaranty. Each Loan Party further understands and acknowledges that in the absence of this paragraph, such potential impairment or destruction of such Loan Party's rights, if any, may entitle such Loan Party to assert a defense to this Guaranty based on Section 580d of the California Code of Civil Procedure as interpreted in Union Bank v. Gradsky, 265 Cal. App. 2d 40 (1968). By executing this Guaranty, each Loan Party freely, irrevocably, and unconditionally: (i) waives and relinquishes that defense and agrees that such Loan Party will be fully liable under this Guaranty even though the Secured Parties may foreclose, either by judicial foreclosure or by exercise of power of sale, any deed of trust securing the Obligations; (ii) agrees that such Loan Party will not assert that defense in any action or proceeding which the Secured Parties may commence to enforce this Guaranty; (iii) acknowledges and agrees that the rights and defenses waived by such Loan Party in this Guaranty include any right or defense that such Loan Party may have or be entitled to assert based upon or arising out of any one or more of §§ 580a, 580b, 580d, or 726 of the California Code of Civil Procedure or § 2848 of the California Civil Code; and (iv) acknowledges and agrees that the Secured Parties are relying on this waiver in creating the Obligations, and that this waiver is a material part of the consideration which the Secured Parties are receiving for creating the Obligations.

(b) Each Loan Party waives all rights and defenses that such Loan Party may have because any of the Obligations is secured by real property. This means, among other things: (i) the Secured Parties may collect from any Loan Party without first foreclosing on any real or personal property collateral pledged by the other Loan Parties; and (ii) if the Secured Parties foreclose on any real property collateral pledged by the other Loan Parties: (A) the amount of the Obligations may be reduced only by the price for which that collateral is sold at the foreclosure

sale, even if the collateral is worth more than the sale price, and (B) the Secured Parties may collect from any Loan Party even if the Secured Parties, by foreclosing on the real property collateral, have destroyed any right such Loan Party may have to collect from the other Loan Parties. This is an unconditional and irrevocable waiver of any rights and defenses each Loan Party may have because any of the Obligations is secured by real property. These rights and defenses include, but are not limited to, any rights or defenses based upon § 580a, 580b, 580d, or 726 of the California Code of Civil Procedure.

(c) Each Loan Party waives any right or defense it may have at law or equity, including California Code of Civil Procedure § 580a, to a fair market value hearing or action to determine a deficiency judgment after a foreclosure.

10.09 Appointment of Domestic Borrower. Each of the Loan Parties hereby appoints the Domestic Borrower to act as its agent for all purposes of this Agreement, the other Loan Documents and all other documents and electronic platforms entered into in connection herewith and agrees that (a) the Domestic Borrower may execute such documents and provide such authorizations on behalf of such Loan Parties as the Domestic Borrower deems appropriate in its sole discretion and each Loan Party shall be obligated by all of the terms of any such document and/or authorization executed on its behalf, (b) any notice or communication delivered by the Administrative Agent, L/C Issuer or a Lender to the Domestic Borrower shall be deemed delivered to each Loan Party and (c) the Administrative Agent, L/C Issuer or the Lenders may accept, and be permitted to rely on, any document, authorization, instrument or agreement executed by the Domestic Borrower on behalf of each of the Loan Parties.

10.10 Keepwell. Each Loan Party that is a Qualified ECP Guarantor at the time the Guaranty or the grant of a Lien under the Loan Documents, in each case, by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this Article X voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this Section shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

## **ARTICLE XI MISCELLANEOUS**

11.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by any Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that no such amendment, waiver or consent shall:

- 
- (a) waive any condition set forth in Section 4.01(a) without the written consent of each Lender;
- (b) waive any condition set forth in Section 4.02 as to any Credit Extension under the Revolving Credit Facility without the written consent of the Required Revolving Lenders;
- (c) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 8.02) without the written consent of such Lender;
- (d) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments, if any) 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 affected thereby;
- (e) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 11.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to amend the definition of “Default Rate” or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (ii) 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 Borrowing or to reduce any fee payable hereunder;
- (f) change (i) Section 8.03 in a manner that would alter the pro rata sharing of payments required thereby without the written consent of each Lender or (ii) the order of application of any reduction in the Commitments or any prepayment of Loans among the Facilities from the application thereof set forth in the applicable provisions of Section 2.05 or 2.06 in any manner that materially and adversely affects the Lenders under a Facility without the written consent of (A) if such Facility is an Incremental Term Facility, the Required Incremental Term Lenders, and (B) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders;
- (g) change (i) any provision of this Section or 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 (other than the definitions specified in clause (ii) of this Section 11.01(g)), without the written consent of each Lender or (ii) the definition of “Required Revolving Lenders” or “Required Incremental Term Lenders” without the written consent of each Lender under the applicable Facility;
- (h) release all or substantially all of the Collateral in any transaction or series of related transactions, without the written consent of each Lender;

---

(i) release all or substantially all of the value of the Guaranty without the written consent of each Lender, except to the extent the release of any Guarantor is permitted pursuant to Section 9.10 (in which case such release may be made by the Administrative Agent acting alone);

(j) impose any greater restriction on the ability of any Lender under a Facility to assign any of its rights or obligations hereunder without the written consent of (i) if such Facility is an Incremental Term Facility, the Required Incremental Term Lenders, and (ii) if such Facility is the Revolving Credit Facility, the Required Revolving Lenders; or

(k) amend Section 1.06 or the definition of “Alternative Currency” without the written consent of each Revolving Credit Lender;

and provided, further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the L/C Issuer in addition to the Lenders required above, affect the rights or duties of the L/C Issuer under this Agreement or any Issuer Document 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 Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line 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; and (iv) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Administrative Agent, each Lender that is providing new or increased Commitments pursuant to Sections 2.17 or Section 2.18, as applicable, and the Borrowers (i) to add one or more additional revolving credit or incremental term loan facilities to this Agreement, in each case subject to the applicable limitations in Section 2.17 and Section 2.18 and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder; and (ii) in connection with the foregoing, to permit the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder.

---

11.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (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 facsimile or e-mail transmission as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to any Borrower or any other Loan Party, the Administrative Agent, the L/C Issuer or the Swing Line Lender, to the address, facsimile number, e-mail address or telephone number specified for such Person on Schedule 11.02; and

(ii) if to any other Lender, to the address, facsimile number, e-mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications. Notices and other communications to the Administrative Agent, the Lenders, the Swing Line Lender and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FPML messaging 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, the Swing Line Lender or the L/C Issuer pursuant to Article II if such Lender, the Swing Line Lender or the L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, the L/C Issuer or the Borrowers may each, 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 and other communications posted to an Internet or intranet website shall be deemed received by the intended recipient 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 address or other written acknowledgement) indicating that such notice or communication is available and identifying the website address therefor; provided that for both clauses (i) and (ii), if such notice or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

---

(c) The Platform. THE PLATFORM IS PROVIDED “AS IS” AND “AS AVAILABLE.” THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM 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. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to any Borrower, any Lender, the L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Borrower’s, any Loan Party’s or the Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or electronic messaging service, or through the Internet.

(d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the L/C Issuer and the Swing Line Lender may change its address, facsimile or telephone number or e-mail address for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number or e-mail address for notices and other communications hereunder by notice to the Domestic Borrower, the Administrative Agent, the L/C Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and e-mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and applicable Law, including United States Federal and state securities Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrowers or their respective securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders. The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic notices, Committed Loan Notices, Letter of Credit Applications, Notices of Loan Prepayment and Swing Line Loan Notices) purportedly given by or on behalf of any Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrowers shall, jointly and severally, indemnify the Administrative Agent, the L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and



---

liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of a Loan Party. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, the L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

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 Loan Parties or any of them 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 8.02 for the benefit of all the Lenders and the L/C Issuer; provided that the foregoing shall not prohibit (a) 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, (b) the L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party 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 (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13, 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.

11.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses. Each Borrower and each other Loan Party shall, jointly and severally, pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable fees, charges and disbursements of counsel for the Administrative Agent), in connection with the syndication of the credit facilities provided for herein, 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 out-of-pocket expenses incurred by the L/C Issuer 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 Lender or the L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer) 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. Each Borrower and each other Loan Party shall, jointly and severally, indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (including the fees, charges and disbursements of any counsel for any Indemnitee) incurred by any Indemnitee or asserted against any Indemnitee by any Person (including any Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the L/C Issuer 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 any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE ;** provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (x) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (y) result from a claim brought by any Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee’s obligations hereunder or under any other Loan Document, if such Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction. Without limiting the provisions of Section 3.01(c), this Section 11.04(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 Borrowers or other Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the L/C Issuer, the Swing Line 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), the L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the aggregate unused Revolving Credit Commitments plus the Total Outstandings (with the aggregate amount of each Revolving Credit Lender's risk participation and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Revolving Credit Lender) at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lenders' Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), 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), the L/C Issuer or the Swing Line 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), the L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, no Loan Party shall assert, and each Loan Party hereby waives, and acknowledges that no other Person shall have, 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. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Foreign Borrower/Foreign Guarantors. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the obligations of the Foreign Borrower and the Foreign Guarantors with respect to the indemnification and expense reimbursement obligations set forth in this Section 11.04 and Section 11.02(e) shall, to the extent reasonably ascertainable, be limited to losses, claims, damages, liabilities, costs and expenses arising out of or relating to the obligations of Foreign Borrower and the Foreign Guarantors under this Agreement and the other Loan Documents (including the enforcement thereof) and the Foreign Borrower's use or proposed use of the proceeds of any Loan made to the Foreign Borrower or Letter of Credit issued for the account of the Foreign Borrower or Foreign Guarantor.

---

(g) Survival. The agreements in this Section and the indemnity provisions of Section 11.02(e) shall survive the resignation of the Administrative Agent, the L/C Issuer and the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

11.05 Payments Set Aside. To the extent that any payment by or on behalf of any Borrower is made to the Administrative Agent, the L/C Issuer or any Lender, or the Administrative Agent, the L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, the L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the L/C Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect in the applicable currency of such recovery or repayment. The obligations of the Lenders and the L/C Issuer under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

11.06 Successors and Assigns.

(a) Successors and Assigns Generally. The provisions of this Agreement and the other Loan Documents shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective successors and assigns permitted hereby, except that neither the Borrowers nor any other Loan Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (except as otherwise permitted pursuant to Section 7.04) 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 subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (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 subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuer 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 and the other Loan Documents (including all or a portion of its Commitment(s) and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that (in each case with respect to any Facility) any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

---

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and/or the Loans at the time owing to it (in each case with respect to any 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 subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the 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, in the case of any assignment in respect of the Revolving Credit Facility, or \$1,000,000, in the case of any assignment in respect of any Incremental Term Facility, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Domestic Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) 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 and the other Loan Documents with respect to the Loans and/or the Commitment assigned, except that this clause (ii) shall not (A) apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-pro rata basis;

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Domestic Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided that the Domestic Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five (5) 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) any Revolving Credit Commitment if such assignment is to a Person that is not a Revolving Credit Lender, an Affiliate of such Revolving Credit Lender or an Approved Fund with respect to such Revolving Credit Lender or (ii) any Incremental Term Loan (if any), if in each case, such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

---

(C) the consent of the L/C Issuer and the Swing Line Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) 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 in the amount of \$3,500; provided that 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.

(v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Borrower or any of its Affiliates or Subsidiaries, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural person).

(vi) 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 Domestic 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 (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable 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 subsection (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 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, subject to Sections 9.06(a) and 11.06 but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05, and 11.04 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. Upon request, each Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrowers (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations 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 Borrowers, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit for a natural Person, a Defaulting Lender or the Domestic Borrower or any of the Domestic Borrower's Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the L/C Issuer 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 11.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. The Loan Parties agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section (it being understood that the documentation required under Section 3.01(e) shall be delivered to the

---

Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Sections 3.06 and 11.13 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 3.01 or 3.04, with respect to any participation, than the Lender from whom it acquired the applicable participation 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 such Borrower's request and expense, to use reasonable efforts to cooperate with such Borrower to effectuate the provisions of Section 3.06 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of such Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(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 (including under its Note or Notes, if any) 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) Resignation as L/C Issuer or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Revolving Credit Commitment and Revolving Credit Loans pursuant to subsection (b) above, Bank of America may, (i) upon 30 days' notice to the Domestic Borrower and the Lenders, resign as L/C Issuer and/or (ii) upon 30 days' notice to the Domestic Borrower, resign as Swing Line Lender. In the event of any such resignation as L/C Issuer or Swing Line Lender, the Domestic Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer or Swing Line Lender hereunder; provided that no failure by the Domestic Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer or Swing Line Lender, as the case may be. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of the L/C Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate



---

Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor L/C Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as the case may be, and (b) the successor L/C Issuer 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 Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

11.07 Treatment of Certain Information; Confidentiality. Each of the Administrative Agent, the Lenders and the L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (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 or any Eligible Assignee invited to be a Lender pursuant to Section 2.17(c) and Section 2.18(b) or (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 a Borrower and its respective obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating a Borrower or its Subsidiaries or the credit facilities provided hereunder, (ii) the provider of any Platform or other electronic delivery service used by the Administrative Agent, the L/C Issuer or the Swing Line Lender to deliver Borrower Materials or notices to the Lenders or (iii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided hereunder, (h) with the consent of the Domestic Borrower or (i) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, the L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Domestic Borrower. For purposes of this Section, "Information" means all information received from the Domestic Borrower or any Subsidiary thereof relating to the Domestic 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 the L/C Issuer on a nonconfidential basis prior to disclosure by the Domestic Borrower or any Subsidiary thereof, provided that, in the case of information received from the Domestic 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. In addition, to the extent such information is public information, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Administrative Agent and the Lenders in connection with the administration of this Agreement, the other Loan Documents and the Commitments.

Each of the Administrative Agent, the Lenders and the L/C Issuer acknowledges that (a) the Information may include material non-public information concerning the Domestic Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including United States Federal and state securities Laws.

The Loan Parties consent to the publication by the Administrative Agent or any Lender of customary advertising material relating to the transactions contemplated hereby using the name, product photographs, logo or trademark of the Loan Parties.

11.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, after obtaining the prior written consent of the Administrative Agent, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the L/C Issuer or any such Affiliate to or for the credit or the account of any Borrower or any other Loan Party against any and all of the obligations of such Borrower or such Loan Party now or hereafter existing under this Agreement or any other Loan Document to such Lender or the L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of such Borrower or such Loan Party may be contingent or unmatured, secured or unsecured, or are owed to a branch, office or Affiliate of such Lender or the L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the L/C Issuer or their respective Affiliates may have. Each Lender and the L/C Issuer agrees to notify the Domestic 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.

11.09 Interest Rate Limitation. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the "Maximum Rate"). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the applicable Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

11.10 Counterparts; Integration; Effectiveness. This Agreement and each of the other Loan Documents 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, the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent or the L/C Issuer, 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 4.01, 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 or any other Loan Document, or any certificate delivered thereunder, by facsimile or e-mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement or such other Loan Document or certificate. Without limiting the foregoing, to the extent a manually executed counterpart is not specifically required to be delivered under the terms of any Loan Document, upon the request of any party, such facsimile transmission or e-mail transmission shall be promptly followed by such manually executed counterpart.

11.11 Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

11.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which

comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.13 Replacement of Lenders. If the Domestic Borrower is entitled to replace a Lender pursuant to the provisions of Section 3.06, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Domestic 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 11.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) 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:

(a) the Domestic Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 11.06(b);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Laws; and

(e) in the case of an 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 Domestic Borrower to require such assignment and delegation cease to apply.

11.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND ANY CLAIMS, 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. EACH BORROWER AND EACH OTHER LOAN PARTY 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 LENDER, THE L/C ISSUER, 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 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 OR THE L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY BORROWER OR ANY OTHER LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY 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 AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

---

11.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 California Judicial Reference. If any action or proceeding is filed in a court of the State of California by or against any party hereto in connection with any of the transactions contemplated by this Agreement or any other Loan Document, (a) the court shall, and is hereby directed to, make a general reference pursuant to California Code of Civil Procedure Section 638 to a referee (who shall be a single active or retired judge) to hear and determine all of the issues in such action or proceeding (whether of fact or of law) and to report a statement of decision, provided that at the option of any party to such proceeding, any such issues pertaining to a "provisional remedy" as defined in California Code of Civil Procedure Section 1281.8 shall be heard and determined by the court, and (b) without limiting the generality of Section 11.04, the Domestic Borrower shall be solely responsible to pay all fees and expenses of any referee appointed in such action or proceeding.

11.17 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Borrower and each other Loan Party acknowledges and agrees, and acknowledges their respective Affiliates' understandings, that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent and any Affiliate thereof, the Arranger, and the Lenders are arm's-length commercial transactions between each Borrower, each other Loan Party and their respective Affiliates, on the one hand, and the Administrative Agent and, as applicable, its Affiliates (including the Arranger), and the Lenders and their Affiliates (collectively, solely for purposes of this Section, the "Lenders"), on the other hand, (B) each Borrower and each other Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Borrower and each other Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent and its Affiliates (including the Arranger) and each Lender each is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Borrower, or any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any of its Affiliates (including the Arranger) nor any Lender has any obligation to any Borrower, any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the

---

Administrative Agent and its Affiliates (including the Arranger) and the Lenders may be engaged in a broad range of transactions that involve interests that differ from those of any Borrower, any other Loan Party and their respective Affiliates, and neither the Administrative Agent, any of its Affiliates (including the Arranger), nor any Lender has any obligation to disclose any of such interests to any Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, each Borrower and each other Loan Party hereby waives and releases any claims that it may have against the Administrative Agent, any of its Affiliates (including the Arranger) or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

11.18 Electronic Execution of Assignments and Certain Other Documents. The words “delivery,” “execute,” “execution,” “signed,” “signature,” and words of like import in any Loan Document or any other document executed in connection herewith shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that notwithstanding anything contained herein to the contrary the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it; provided further without limiting the foregoing, upon the request of the Administrative Agent, any electronic signature shall be promptly followed by such manually executed counterpart.

11.19 USA PATRIOT Act. Each Lender that is subject to the Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), it is required to obtain, verify and record information that identifies each Loan Party, which information includes the name and address of each Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify each Loan Party in accordance with the Act. Each Borrower and each Loan Party shall, promptly following a request by the Administrative Agent or any Lender, provide all such other documentation and information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

**11.20 ENTIRE AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.**

---

11.21 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of each Loan Party in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the "Agreement Currency"), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from any Loan Party in the Agreement Currency, such Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to such Loan Party (or to any other Person who may be entitled thereto under applicable law).

11.22 Parallel Debt.

(a) In this Section the following definitions have the following meanings:

- (i) "Foreign Corresponding Debt" means the Foreign Obligations, other than the Foreign Parallel Debt;
- (ii) "Foreign Parallel Debt" means any amount which a Loan Party owes to the Administrative Agent under Section 11.22(b)(ii);
- (iii) "Parallel Debts" means, collectively, the Foreign Parallel Debt and the U.S. Parallel Debt;
- (iv) "U.S. Corresponding Debt" means the Obligations, other than the U.S. Parallel Debt; and
- (v) "U.S. Parallel Debt" means any amount which a Loan Party owes to the Administrative Agent under Section 11.22(b)(i).

(b)

(i) Each Loan Party irrevocably and unconditionally undertakes to pay to the Administrative Agent amounts equal to, and in the currency or currencies of, its U.S. Corresponding Debt from time to time.



---

(ii) Each Foreign Loan Party irrevocably and unconditionally undertakes to pay to the Administrative Agent amounts equal to, and in the currency or currencies of, its Foreign Corresponding Debt from time to time.

(iii) The U.S. Parallel Debt of each Loan Party:

(A) shall become due and payable at the same time as its U.S. Corresponding Debt;

(B) is independent and separate from, and without prejudice to, its U.S. Corresponding Debt, it being understood, in each case, that the amount which may become payable by a Loan Party as its U.S. Parallel Debt shall never exceed the total of the amounts which are payable under or in connection with the U.S. Corresponding Debt of that Loan Party.

(iv) The Foreign Parallel Debt of each Foreign Loan Party:

(A) shall become due and payable at the same time as its Foreign Corresponding Debt;

(B) is independent and separate from, and without prejudice to, its Foreign Corresponding Debt, it being understood, in each case, that the amount which may become payable by a Loan Party as its Foreign Parallel Debt shall never exceed the total of the amounts which are payable under or in connection with the Foreign Corresponding Debt of that Loan Party.

(c) For purposes of this Section, the Administrative Agent:

(i) is the independent and separate creditor of each of the Parallel Debts;

(ii) acts in its own name and not as agent, representative or trustee of the Secured Parties and its claims in respect of each of the Parallel Debts shall not be held on trust; and

(iii) shall have the independent and separate right to demand payment of each of the Parallel Debts in its own name (including, without limitation, through any suit, execution, enforcement of security, recovery of guarantees and applications for and voting in any kind of insolvency proceeding).

(d) Upon irrevocable receipt by the Administrative Agent of any amount in payment of the U.S. Parallel Debt (a "Received Amount"), the U.S. Corresponding Debt of a Loan Party towards the Secured Parties shall be reduced, if necessary pro rata in respect of each Secured Party individually, by amounts totaling an amount (a "Deductible Amount") equal to the Received Amount in the manner as if the Deductible Amount were received by the Secured Parties as a payment of the U.S. Corresponding Debt owed by that Loan Party on the date of receipt by the Administrative Agent of the Received Amount.

---

(e) Upon irrevocable receipt by the Administrative Agent of any amount in payment of the Foreign Parallel Debt (a “Received Amount Foreign”), the Foreign Corresponding Debt of a Loan Party towards the Secured Parties shall be reduced, if necessary pro rata in respect of each Secured Party individually, by amounts totaling an amount (a “Deductible Amount Foreign”) equal to the Received Amount Foreign in the manner as if the Deductible Amount Foreign were received by the Secured Parties as a payment of the Foreign Corresponding Debt owed by that Loan Party on the date of receipt by the Administrative Agent of the Received Amount Foreign.

(f) All amounts received or recovered by the Administrative Agent in connection with this Section, to the extent permitted by applicable law, shall be applied in accordance with Section 8.3.

(g) This Section applies for the purpose of determining the secured obligations in any Collateral Document and is for the purpose of the Collateral Documents governed by Netherlands law.

[SIGNATURE PAGES FOLLOW]

---

*IN WITNESS WHEREOF*, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**DOMESTIC BORROWER:**

DIODES INCORPORATED

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**FOREIGN BORROWER:**

DIODES INTERNATIONAL B.V.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Managing Director A

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Managing Director B

**GLOBAL GUARANTORS:**

DIODES INVESTMENT COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

DIODES FABTECH INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FOREIGN GUARANTORS:**

DIODES HOLDINGS UK LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DIODES ZETEX LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**BANK OF AMERICA, N.A., as  
Administrative Agent**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**BANK OF AMERICA, N.A.**, as a Lender, L/C Issuer and  
Swing Line Lender

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**COMPASS BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**CITIBANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement



---

**HSBC BANK USA, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**REGIONS BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**SILICON VALLEY BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**CAPITAL ONE BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**COMERICA BANK**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

---

**MUFG UNION BANK, N.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Diodes Incorporated  
Signature Page  
Credit Agreement

**COMMITMENTS  
AND APPLICABLE PERCENTAGES**

<b>Lender</b>	<b>Revolving Credit Commitment</b>	<b>Revolving Credit Applicable Percentage</b>	<b>2015 Incremental Term Loan Commitment</b>	<b>2015 Incremental Term Applicable Percentage</b>
Bank of America, N.A.	\$ 85,800,000.00	21.450000000%	\$ 24,200,000.00	24.200000000%
Citibank, N.A.	\$ 46,600,000.00	11.650000000%	\$ 13,400,000.00	13.400000000%
Compass Bank	\$ 44,700,000.00	11.175000000%	\$ 11,300,000.00	11.300000000%
Regions Bank	\$ 46,100,000.00	11.525000000%	\$ 12,900,000.00	12.900000000%
Capital One, National Association	\$ 31,100,000.00	7.775000000%	\$ 12,900,000.00	12.900000000%
MUFG Union Bank, N.A.	\$ 31,100,000.00	7.775000000%	\$ 12,900,000.00	12.900000000%
Comerica Bank	\$ 27,000,000.00	6.750000000%	\$ 8,000,000.00	8.000000000%
HSBC Bank USA, N.A.	\$ 35,000,000.00	8.750000000%	\$ 0.00	0.00%
Silicon Valley Bank	\$ 35,000,000.00	8.750000000%	\$ 0.00	0.00%
Wells Fargo Bank, N. A.	\$ 17,600,000.00	4.400000000%	\$ 4,400,000.00	4.400000000%
<b>Total</b>	<b>\$400,000,000.00</b>	<b>100.000000000%</b>	<b>\$ 100,000,000</b>	<b>100.000000000%</b>

## FORM OF COMMITTED LOAN NOTICE

Date: \_\_\_\_\_, \_\_\_\_\_

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of January 8, 2013 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among Diodes Incorporated, a Delaware corporation (the "Domestic Borrower"), Diodes International B.V., a *besloten vennootschap met beperkte aansprakelijkheid* organized under the laws of the Netherlands, having its statutory seat in Amsterdam, the Netherlands and registered with the trade register of the Chambers of Commerce in the Netherlands under number 34274981 (the "Foreign Borrower" and together with the Domestic Borrower, the "Borrowers" and each, individually, a "Borrower"), certain Subsidiaries of the Domestic Borrower identified on the signature pages thereto as guarantors, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

The Domestic Borrower hereby [requests][confirms a prior telephonic request of] on behalf of [itself][the Foreign Borrower] (select one):

A Borrowing

A conversion of [Eurocurrency Rate Loans][Base Rate Loans] to [Eurocurrency Rate Loans][Base Rate Loans]

A continuation of Eurocurrency Rate Loans

1. On \_\_\_\_\_ (a Business Day).

2. In the principal amount of \$ \_\_\_\_\_<sup>1</sup>

3. Comprised of \_\_\_\_\_  
[Type of Loan requested]

4. In the following currency: \_\_\_\_\_<sup>2</sup>

<sup>1</sup> For a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans must be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof (or, in connection with any conversion or continuation of an Incremental Term Loan, if less, the entire principal thereof then outstanding); for a Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof (or, in connection with any conversion or continuation of an Incremental Term Loan, if less, the entire principal thereof then outstanding).

<sup>2</sup> Such currency shall be either in Dollars or an Alternative Currency to the extent the Loans requested herein may be made in such currency in accordance with the Credit Agreement.



---

5. For Eurocurrency Rate Loans: with an Interest Period of \_\_\_\_\_months.<sup>3</sup>

The Revolving Credit Borrowing requested herein complies with the proviso to the first sentence of Section 2.01(b) of the Credit Agreement.

[The Domestic Borrower hereby represents and warrants that the conditions specified in Section 4.02 shall be satisfied on and as of the date of the requested Credit Extension described herein.]<sup>4</sup>

DIODES INCORPORATED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

---

<sup>3</sup> Must be one, two, three or six months.

<sup>4</sup> Include in the case of a Request for Credit Extension (other than a conversion of Loans to another Type or a continuation of a Eurocurrency Rate Loan).

## FORM OF COMPLIANCE CERTIFICATE

Financial Statement Date: \_\_\_\_\_, 201\_

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of January 8, 2013 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"; the terms defined therein being used herein as therein defined), among Diodes Incorporated, a Delaware corporation (the "Domestic Borrower"), Diodes International B.V., a *besloten vennootschap met beperkte aansprakelijkheid* organized under the laws of the Netherlands, having its statutory seat in Amsterdam, the Netherlands and registered with the trade register of the Chambers of Commerce in the Netherlands under number 34274981 (the "Foreign Borrower" and together with the Domestic Borrower, the "Borrowers" and each, individually, a "Borrower"), certain Subsidiaries of the Domestic Borrower identified on the signature pages thereto as guarantors, the Lenders from time to time party thereto and Bank of America, N.A., as Administrative Agent, Swing Line Lender and L/C Issuer.

The undersigned Responsible Officer hereby certifies, solely in his/her capacity as a Responsible Officer and not in his/her individual capacity, as of the date hereof that he/she is the \_\_\_\_\_ of the Domestic Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to the Administrative Agent on the behalf of the Domestic Borrower, and that:

*[Use following paragraph 1 for fiscal year-end financial statements]*

1. The Domestic Borrower has delivered (i) the year-end audited financial statements required by Section 6.01(a) of the Credit Agreement for the fiscal year of the Domestic Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section and (ii) the consolidated and consolidating balance sheet of the Domestic Borrower and its Subsidiaries as at the end of such fiscal year and the related consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such fiscal year.

*[Use following paragraph 1 for fiscal quarter-end financial statements]*

1. The Domestic Borrower has delivered the unaudited financial statements required by Section 6.01(b) of the Credit Agreement for the fiscal quarter of the Domestic Borrower ended as of the above date. Such consolidated and consolidating financial statements fairly present the financial condition, results of operations, shareholders' equity and cash flows of the Domestic Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes and such consolidating financial statements are fairly stated in all material respects when considered in relation to the consolidated financial statements of the Domestic Borrower and its Subsidiaries.

---

2. The undersigned has reviewed and is familiar with the terms of the Credit Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of the Borrowers and the other Loan Parties during the accounting period covered by such financial statements.

3. A review of the activities of the Borrowers during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period the Borrowers performed and observed all their respective Obligations or Foreign Obligations, as applicable, under the Loan Documents, and

*[select one:]*

[to the best knowledge of the undersigned, during such fiscal period the Borrowers performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default has occurred and is continuing.]

—or—

[to the best knowledge of the undersigned, during such fiscal period the following covenants or conditions have not been performed or observed and the following is a list of each such Default and its nature and status:]

4. The representations and warranties of the Loan Parties contained in Article V of the Credit Agreement and all representations and warranties of each Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection with the Loan Documents, are true and correct on and as of the date hereof, except that to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Compliance Certificate, the representations and warranties contained in subsections (a) and (b) of Section 5.05 of the Credit Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 of the Credit Agreement, including the statements in connection with which this Compliance Certificate is delivered.

5. The financial covenant analyses and information set forth on Schedules 1 and 2 attached hereto are true and accurate on and as of the last day of the fiscal [quarter][year] covered by this Certificate.

[Signature Page Follows]

---

*IN WITNESS WHEREOF*, the undersigned has executed this Certificate as of \_\_\_\_\_, 201 .

DIODES INCORPORATED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

D-3

SCHEDULE 1  
to the Compliance Certificate  
(\$ in 000's)

I. Section 7.11 (a) – Consolidated Leverage Ratio.

A. Consolidated Funded Indebtedness at Statement Date:	\$ _____
B. Consolidated EBITDA for Subject Period (Line II.A.9 below):	\$ _____
C. Consolidated Leverage Ratio (Line I.A ÷ Line I.B):	_____ to 1.00
<i>Maximum permitted:</i>	2.50 to 1.00
For the fiscal quarter of the Domestic Borrower ended September 30, 2015 and each fiscal quarter thereafter	
Upon the 2015 Incremental Term Draw Date, for each fiscal quarter of the Domestic Borrower ended during the period from the 2015 Incremental Term Draw Date through and including September 30, 2016	3.00 to 1.00

II. Section 7.11(b) – Consolidated Fixed Charge Coverage Ratio

A. Consolidated EBITDA for Measurement Period on above date (“ <u>Subject Period</u> ”):	
1. Consolidated Net Income for Subject Period:	\$ _____
2. Consolidated Interest Charges for Subject Period:	\$ _____
3. Provision for income taxes for Subject Period:	\$ _____
4. Depreciation expenses for Subject Period:	\$ _____
5. Fees, expenses, costs or charges related to the Pericom Acquisition <sup>1</sup> :	\$ _____
6. Non-cash stock compensation expense, non-cash impairments of assets and intangibles and other non-cash charges <sup>2</sup> :	\$ _____

<sup>1</sup> Up to an aggregate amount not to exceed \$1,500,000.

<sup>2</sup> Excluding write-downs of accounts receivables, write-downs of inventory and any other non-cash expense to the extent it represents an accrual of or a reserve for cash expense in any future period.

---

7. Amortization expenses for Subject Period:	\$ _____
8. Non-cash adjustments in accordance with GAAP purchase accounting rules under FASB Statement No. 141 and EITF Issue No. 01-33:	\$ _____
9. Non-recurring non-cash reductions of Consolidated Net Income for Subject Period:	\$ _____
10. Income Tax credits for Subject Period:	\$ _____
11. Non-cash increases to Consolidated Net Income for Subject Period:	\$ _____
12. Consolidated EBITDA (Lines II.A.1 + 2 + 3 + 4 + 5 + 6 + 7 + 8 + 9 - 10 - 11):	\$ _____
B. Capital Expenditures for Subject Period <sup>4</sup> :	\$ _____
C. Consolidated Interest Charges Paid in Cash for Subject Period:	\$ _____
D. Scheduled Principal Payments, etc. for Subject Period:	\$ _____
E. Restricted Payments, etc. for Subject Period:	\$ _____
F. Taxes paid in cash for Subject Period:	\$ _____
G. Consolidated Fixed Charge Coverage Ratio ([Line II.A.12 – Line II.B] ÷ [Line II.C + Line II.D + Line II.E + Line II.F]):	_____
<i>Minimum required:</i>	1.35 to 1.00

---

<sup>3</sup> Solely with respect to any acquisitions permitted under Sections 7.03(g) and (i), and solely in the event that such an adjustment is required, in each case, as determined in accordance with GAAP.

<sup>4</sup> Other than the amount of Capital Expenditures made by the Domestic Borrower and its Subsidiaries with respect to the Chengdu Site Development during the applicable Measurement Period in an aggregate amount for all Measurement Periods not to exceed \$90,000,000.

For the Quarter/Year ended \_\_\_\_\_, \_\_\_\_\_ (“Statement Date”)

SCHEDULE 2  
to the Compliance Certificate  
(\$ in 000's)

**Consolidated EBITDA**  
(in accordance with the definition of Consolidated EBITDA  
as set forth in the Agreement)

<b>Consolidated EBITDA</b>	<u>Quarter Ended</u>	<u>Quarter Ended</u>	<u>Quarter Ended</u>	<u>Quarter Ended</u>	<u>Twelve Months Ended</u>
Consolidated Net Income					
+ Consolidated Interest Charges					
+ income taxes					
+ depreciation expense					
+ fees, expenses, costs or charges related to the Pericom Acquisition up to an aggregate amount not to exceed \$1,500,000					
+ non-cash stock compensation expense, non-stock impairments of assets and intangibles and other non- cash charges					
+ amortization expense					
+ purchase accounting non- cash adjustments					
+ non-recurring non-cash expenses					

---

- income tax credits  
- non-cash income  
= Consolidated EBITDA

D-7



---

EXHIBIT B

PERICOM JOINDER AGREEMENT

THIS JOINDER AGREEMENT (this "Agreement"), dated as of September , 2015, is by and among PERICOM SEMICONDUCTOR CORPORATION, a California corporation ("Pericom"), DIODES INCORPORATED, a Delaware corporation (the "Domestic Borrower"), Diodes International B.V., a *besloten vennootschap met beperkte aansprakelijkheid* organized under the laws of the Netherlands, having its statutory seat in Amsterdam, the Netherlands and registered with the trade register of the Chambers of Commerce in the Netherlands under number 34274981 (the "Foreign Borrower" and together with the Domestic Borrower, the "Borrowers" and each, individually, a "Borrower"), certain Subsidiaries of the Domestic Borrower (the "Subsidiary Guarantors") and Bank of America, N.A., in its capacity as administrative agent (in such capacity, the "Administrative Agent") under that certain Credit Agreement, dated as of January 8, 2013 (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Credit Agreement") among the Borrowers, the Subsidiary Guarantors, the Lenders thereto and the Administrative Agent. Capitalized terms used herein but not otherwise defined shall have the meanings provided in the Credit Agreement.

Pericom is a Domestic Subsidiary of a Loan Party, and, consequently, the Domestic Borrower is required by Section 6.12 of the Credit Agreement to cause Pericom to become a "Guarantor" under the Guaranty and a "Grantor" under the Collateral Agreement.

Accordingly, Pericom and the Borrowers hereby agree as follows with the Administrative Agent, for the benefit of the Secured Parties:

1. Guaranty Supplement.

(a) Pericom hereby acknowledges, agrees and confirms that, by its execution of this Agreement, it is a Guarantor under the Guaranty as if it were a signatory thereof on the Closing Date of the Credit Agreement, and (i) shall comply with, and be subject to, and have the benefit of, all of the terms, conditions, covenants, agreements and obligations set forth in the Credit Agreement (including the Guaranty) and (ii) hereby makes each representation and warranty set forth in the Credit Agreement (including the Guaranty).

(b) Each Borrower, each other Loan Party and Pericom hereby agrees that each reference to a "Global Guarantor", "Global Guarantors", "Guarantor" or the "Guarantors" in the Credit Agreement (including the Guaranty) and the other Loan Documents shall include Pericom, and each reference to the "Guaranty" as used therein shall mean the Guaranty as supplemented hereby.

2. Collateral Agreement Supplement.

(a) In order to secure the Credit Agreement in accordance with the terms thereof, and to secure the payment and performance of all of the Obligations, (A) Pericom hereby grants and pledges to the Administrative Agent, for the ratable benefit of itself and the Lenders, on the terms set forth in the Collateral Agreement, a continuing security interest in and to all of its right, title and interest in and to all Collateral whether now or hereafter owned or acquired by it or in which it now has or hereafter has or acquires any rights, and wherever located (excluding, however, all Equity Interests in Subsidiaries of Pericom that are Foreign Subsidiaries) (all such Collateral, the "New Collateral") and (B) the Borrowers and the Guarantors each hereby confirms and reaffirms the security interests in and to all of the Collateral of such Borrower or such Guarantor, as applicable, granted to the Administrative Agent, for the ratable benefit of itself and the Lenders, under the Collateral Agreement.

(b) The security interests in the Collateral are granted as security only and shall not subject the Administrative Agent or any Lender to, or transfer to the Administrative Agent or any Lender, or in any way affect or modify, any obligation or liability of the Borrowers or Pericom with respect to any of the New Collateral or any transaction in connection therewith.

(c) Each Borrower, each other Loan Party and Pericom each hereby agrees that by execution of this Agreement Pericom is a party to the Collateral Agreement as if it were a signatory thereof as a Grantor on the Closing Date of the Credit Agreement, and Pericom shall (A) comply with, and be subject to, and have the benefit of, all of the terms, covenants, conditions, agreements and obligations set forth in the Collateral Agreement and (B) hereby makes each representation and warranty set forth in the Collateral Agreement applicable to a "Grantor". The Loan Parties and Pericom each hereby agrees that each reference to a "Grantor" or the "Grantors" in the Collateral Agreement and the other Loan Documents shall include Pericom.

(d) Each Borrower, each other Loan Party and Pericom each hereby agrees that "Collateral" as used in the Collateral Agreement and the Credit Agreement shall include all New Collateral and "Collateral Agreement" or "Agreement" as used therein shall mean the Collateral Agreement as supplemented hereby.

(e) Each Borrower, each other Loan Party and Pericom each hereby agrees that they shall deliver to the Administrative Agent such certificates and other documents (including, without limitation, UCC-1 Financing Statements) and take such action as the Administrative Agent shall reasonably request in order to effectuate the terms hereof and the Collateral Agreement.

(f) Pericom hereby acknowledges receipt of a copy of the Collateral Agreement, the Guaranty and the other Loan Documents to which it is a party and agrees for the benefit of the Administrative Agent and the Lenders to be bound thereby and to comply with the terms thereof insofar as such terms are applicable to it.

(g) Attached as Annex A are updated Schedules to the Credit Agreement and updated Schedules to the Collateral Agreement, setting forth all information required to be provided therein with respect to Pericom and its Subsidiaries (which information shall be provided as of the date hereof).

3. This Agreement 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 Agreement by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

4. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. The terms of Sections 11.14 and 11.15 of the Credit Agreement are incorporated herein by reference, mutatis mutandis, and the parties hereto agree to such terms. This Agreement shall constitute a "Loan Document" under and as defined in the Credit Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each of the Borrowers and Pericom has caused this Agreement to be duly executed by its authorized officer, and the Administrative Agent, for the benefit of the Secured Parties, has caused the same to be accepted by its authorized officer, as of the day and year first above written.

PERICOM SEMICONDUCTOR CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DOMESTIC BORROWER:**

DIODES INCORPORATED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**FOREIGN BORROWER:**

DIODES INTERNATIONAL B.V.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Director A

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Director B

[SIGNATURE PAGE TO PERICOM JOINDER]

---

**SUBSIDIARY GUARANTORS:**

DIODES INVESTMENT COMPANY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DIODES FABTECH INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DIODES HOLDINGS UK LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

DIODES ZETEX LIMITED

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO PERICOM JOINDER]

---

Acknowledged, accepted and agreed:

**BANK OF AMERICA, N.A.,**  
as Administrative Agent

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[SIGNATURE PAGE TO PERICOM JOINDER]

---

ANNEX A TO JOINDER AGREEMENT

[Schedules to the Credit Agreement]

[Schedules to the Collateral Agreement]



### Diodes Incorporated to Acquire Pericom Semiconductor Corporation

*All-Cash Transaction Valued at Approximately \$400 Million for Pericom's \$129 Million in TTM Revenue and Approximately \$129 Million of Cash Equivalents as of June 27, 2015*

**Plano, Texas and Milpitas, California, – September 3, 2015** – Diodes Incorporated (Nasdaq: DIOD), a leading global manufacturer and supplier of high-quality application specific standard products within the broad discrete, logic and analog semiconductor markets and Pericom Semiconductor Corporation (Nasdaq: PSEM), a worldwide supplier of high performance connectivity and timing solutions, today announced that Diodes Incorporated and Pericom have entered into an Agreement and Plan of Merger that provides for the acquisition of Pericom by Diodes.

#### Highlights of the transaction include:

- Combined trailing twelve months (“TTM”) reported revenue of approximately \$1.0 billion and gross profit of approximately \$337 million;
- Expected to be immediately accretive to Diodes’ GAAP earnings per share;
- Strengthens Diodes’ analog product offering and adds an extensive mixed-signal connectivity portfolio;
- Provides enhanced platform content for focused and emerging applications;
- Balances revenue contribution across target end markets;
- Enhances market and margin expansion opportunities with greater scale and value-added solutions; and
- Expected to result in operating and administrative efficiencies.

At the effective date of the merger, each share of Pericom will be converted into the right to receive \$17.00 in cash, without interest. The aggregate consideration will be approximately \$400 million. The purchase price represents a 40 percent premium to the closing price on September 2, 2015. The boards of both companies have approved the transaction, which is still subject to approval by Pericom’s shareholders, as well as other customary closing conditions and regulatory approvals. The transaction is expected to close in the fourth quarter of 2015.

Commenting on the transaction, Dr. Keh-Shew Lu, President and Chief Executive Officer of Diodes, stated, “The proposed acquisition of Pericom accelerates the attainment of Diodes’ goal of a \$1 billion annual revenue run rate with 35 percent gross margin, while being immediately accretive to earnings. This transaction broadens Diodes’ analog footprint and adds a strong mixed-signal connectivity offering that will drive expanded product content in target market applications. Also, Pericom’s extensive timing product lines complement Diodes’ standard product portfolio and broaden our analog footprint. We look forward to integrating the Pericom team into Diodes’ family as we work closely with our customers to familiarize them with our new expanded offerings.”

Also commenting on the proposed acquisition, Alex Hui, President and Chief Executive Officer of Pericom said, “Diodes’ size and scale provides an excellent platform for our products to gain access to a broader customer base and drive a higher level of growth than Pericom would be able to achieve as a standalone company. Most importantly, this transaction delivers significant value for our shareholders as well as for our employees and customers by creating the opportunity to be part of a larger organization and enabling even greater future success for Pericom.”

---

Diodes expects to fund the purchase price of the acquisition mainly by drawing down additional capital following a recent \$200 million increase to its existing credit facility. Bank of America Merrill Lynch acted as sole lead arranger for the credit facility increase and financial advisor on the transaction. Sheppard Mullin Richter & Hampton LLP acted as legal counsel to Diodes. Cowen and Company acted as exclusive financial advisor and Latham & Watkins LLP acted as legal counsel to Pericom Semiconductor.

#### **Conference Call and Slide Presentation Information**

Diodes will host a conference call today at 12:00 p.m. Central Time (1:00 p.m. Eastern Time). This conference call will be broadcast live over the Internet with a slide presentation and can be accessed by all interested parties on the Investor section of Diodes' website at <http://www.diodes.com>. On the call to discuss the proposed acquisition will be Dr. Keh-Shew Lu, Diodes' President and Chief Executive Officer, Rick White, Diodes' Chief Financial Officer, Mark King, Diodes' Senior Vice President of Sales and Marketing, Julie Holland, Diodes' Vice President of Worldwide Analog Products, Laura Mehrl, Diodes' Director of Investor Relations and Alex Hui, Pericom's President and Chief Executive Officer. Investors and analysts are invited to participate on the call. To listen to the live call, please go to the Investor section of Diodes website and click on the Conference Call link at least fifteen minutes prior to the start of the call to register, download, and install any necessary audio software.

When: Thursday, September 3, 2015  
Time: 12:00 noon CT / 1:00 p.m. ET  
Dial in: 855-232-8957; outside the U.S. +1-315-625-6979  
Participant Code: 31123932  
Live Webcast: <http://investor.diodes.com>

For those unable to participate during the live broadcast, a replay will be available shortly after the call and will be available on Diodes' website for approximately 60 days. The replay number is 855-859-2056 with a pass code of 31123932. International callers should dial +1-404-537-3406 and enter the same pass code at the prompt.

Further details of the transaction and arrangement are set out in Diodes' Current Report on Form 8-K filed with the Securities and Exchange Commission on September 3, 2015.

#### **About Diodes Incorporated**

Diodes Incorporated (Nasdaq: DIOD), a Standard and Poor's SmallCap 600 and Russell 3000 Index company, is a leading global manufacturer and supplier of high-quality application specific standard products within the broad discrete, logic and analog semiconductor markets. Diodes serves the consumer electronics, computing, communications, industrial, and automotive markets. Diodes' products include diodes, rectifiers, transistors, MOSFETs, protection devices, functional specific arrays, single gate logic, amplifiers and comparators, Hall-effect and temperature sensors; power management devices, including LED drivers, AC-DC converters and controllers, DC-DC switching and linear voltage regulators, and voltage references along with special function devices, such as USB power switches, load switches, voltage supervisors, and motor controllers. Diodes' corporate headquarters and Americas' sales office are located in Plano, Texas. Design, marketing, and engineering centers are located in Plano; San Jose, California; Taipei, Taiwan; Manchester, England; and Neuhaus, Germany. Diodes' wafer fabrication facilities



---

are located in Kansas City, Missouri and Manchester, with two additional facilities located in Shanghai, China. Diodes has assembly and test facilities located in Shanghai and in Chengdu, China, as well as in Neuhaus and in Taipei. Additional engineering, sales, warehouse, and logistics offices are located in Taipei; Hong Kong; Manchester; Shanghai; Shenzhen, China; Seongnam-si, South Korea; and Munich, Germany, with support offices throughout the world. For further information, including SEC filings, visit Diodes' website at <http://www.diodes.com>.

#### **About Pericom Semiconductor**

Pericom Semiconductor Corporation (NASDAQ: PSEM) enables serial connectivity with the industry's most complete solutions for the computing, communications, consumer and embedded market segments. Pericom's analog, digital and mixed-signal integrated circuits, along with its frequency control products are essential in the timing, switching, bridging and conditioning of high-speed signals required by today's ever-increasing speed and bandwidth demanding applications. Company headquarters is in Milpitas, California, with design centers and technical sales and support offices globally. Pericom and the Pericom logo are trademarks or registered trademarks of Pericom Semiconductor Corp in the U.S. and/or other countries. For more information, please visit <http://www.pericom.com>.

#### **Additional Information About the Merger and Where to Find It**

Pericom Semiconductor Corporation ("Pericom" or the "Company") intends to file with the Securities and Exchange Commission (the "SEC") a proxy statement in connection with its proposed acquisition by Diodes and furnish or file other materials with the SEC in connection with the proposed transaction. The definitive proxy statement will be sent or given to the shareholders of the Company and will contain important information about the proposed transaction and related matters. BEFORE MAKING ANY VOTING DECISION, PERICOM'S SHAREHOLDERS ARE URGED TO READ THE PROXY STATEMENT AND THOSE OTHER MATERIALS (INCLUDING ANY AMENDMENTS OR SUPPLEMENTS THERETO) CAREFULLY AND IN THEIR ENTIRETY WHEN THEY BECOME AVAILABLE BECAUSE THEY WILL CONTAIN IMPORTANT INFORMATION ABOUT THE PROPOSED TRANSACTION AND THE PARTIES TO THE PROPOSED TRANSACTION. The proxy statement and other relevant materials (when they become available), and any other documents filed by Pericom with the SEC, may be obtained free of charge at the SEC's website at [www.sec.gov](http://www.sec.gov). In addition, security holders will be able to obtain free copies of the proxy statement from Pericom by contacting Pericom's Investor Relations by telephone at (408) 232-9100, or by mail to Investor Relations Department, Pericom Semiconductor Corporation, 1545 Barber Lane, Milpitas, California 95035 or by going to Pericom's Investor Relations page on its corporate website at [www.pericom.com](http://www.pericom.com).

#### **Participants in the Solicitation**

Pericom, Diodes and their directors and executive officers may be deemed to be participants in the solicitation of proxies from the shareholders of Pericom in connection with the proposed transaction. Information regarding the interests of these directors and executive officers in the transaction described herein will be included in the proxy statement described above. Additional information regarding the directors and executive officers of Pericom is included in Pericom's proxy statement for its 2014 Annual Meeting, which was filed with the SEC on October 16, 2014, and is supplemented by other public filings made, and to be made, with the SEC by Pericom. Additional information regarding the directors and executive officers of Diodes is included in Diode's proxy statement for its 2015 Annual Meeting, which was filed with the SEC on April 16, 2015, and is supplemented by other public filings made, and to be made, with the SEC by Diodes.

---

**Forward-Looking Statements for Diodes**

*Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995: Any statements set forth above that are not historical facts are forward-looking statements that involve risks and uncertainties that could cause actual results to differ materially from those in the forward-looking statements. Such statements include statements as to: the expected benefits of the acquisition, including the acquisition being immediately accretive; the efficiencies, cost savings, revenues, and enhanced product offerings, market position, and design and manufacturing capabilities of Diodes after the acquisition; and other statements identified by words such as “estimates,” “expects,” “projects,” “plans,” “will” and similar expressions. Potential risks and uncertainties include, but are not limited to, such factors as: the possibility that the transaction may not be consummated, including as a result of any of the conditions precedent; the risk of superior acquisition proposal from other parties; the risk of Diodes being unable to obtain sufficient financing from lenders to complete the acquisition; the risk of global market downturn conditions and volatilities impacting the completion of the acquisition or the funding; the risk that Pericom’s business will not be integrated successfully into Diodes’; the risk that the expected benefits of the acquisition may not be realized, including the realization of the accretive effect of the acquisition; the risk that Pericom’s standards, procedures and controls will not be brought into conformance within Diodes’ operation; difficulties coordinating Diodes’ and Pericom’s new product and process development, hiring additional management and other critical personnel, and increasing the scope, geographic diversity and complexity of Diodes’ operations; difficulties in consolidating facilities and transferring processes and know-how; difficulties in reducing the cost of Pericom’s business; the diversion of our management’s attention from the management of our business; Diodes may not be able to maintain its current growth strategy or continue to maintain its current performance, costs and loadings in its manufacturing facilities; risks of domestic and foreign operations, including excessive operation costs, labor shortages, higher tax rates and Diodes’ joint venture prospects; unfavorable currency exchange rates; and the impact of competition and other risk factors relating to our industry and business as detailed from time to time in Diodes’ filings with the United States Securities and Exchange Commission.*

Recent news releases, annual reports and SEC filings are available at Diodes’ website: <http://www.diodes.com> and Pericom’s website: <http://www.pericom.com>. Written requests may be sent directly to Diodes or Pericom, or they may be e-mailed to: [diodes-fin@diodes.com](mailto:diodes-fin@diodes.com) or [ir@pericom.com](mailto:ir@pericom.com).

**Forward-Looking Statement for Pericom**

*This news release contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended and Section 21E of the Securities Exchange Act of 1934, as amended. These forward-looking statements involve certain risks and uncertainties that could cause actual results to differ materially from those indicated in such forward-looking statements, including, but not limited to, the ability of the parties to consummate the proposed transaction; satisfaction of closing conditions to the consummation of the proposed transaction; the impact of the announcement of the proposed transaction on Pericom’s relationships with its employees, existing customers or potential future customers; and such other risks and uncertainties pertaining to the Pericom’s business as detailed in its filings with the SEC on Forms 10-K and 10-Q, which are available on the SEC’s website at [www.sec.gov](http://www.sec.gov). Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date thereof. Pericom assumes no obligation to update any forward-looking statement contained in this document.*

# # #

---

**Diodes Contact:**

Diodes Incorporated  
Laura Mehrl  
Director of Investor Relations  
P: 972-987-3959  
E: [laura\\_mehrl@diodes.com](mailto:laura_mehrl@diodes.com)

**Investor Relations Contact:**

Shelton Group Leanne Sievers  
EVP, Investor Relations  
P: 949-224-3874  
E: [lsievers@sheltongroup.com](mailto:lsievers@sheltongroup.com)

**Pericom Semiconductor Contact:**

Kevin Bauer  
Chief Financial Officer  
Tel: 408-232-9100

**Call Participants:** Diodes: Dr. Keh-Shew Lu, Rick White, Mark King, Julie Holland and Laura Mehrl. Pericom Semiconductor: Alex Hui

**Operator:**

Good morning and welcome to Diodes Incorporated's conference call regarding its proposed acquisition of Pericom Semiconductor Corporation. At this time, all participants are in a listen only mode. At the conclusion of today's conference call, instructions will be given for the question and answer session. If anyone needs assistance at any time during the conference call, please press the star followed by the zero on your touchtone phone.

As a reminder, this conference call is being recorded today, Thursday, September 3, 2015. I would now like to turn the call to Shelton Group, the investor relations agency for Diodes Incorporated. Leanne, please go ahead.

**Introduction:** Leanne Sievers, EVP of Shelton Group

Good morning and thank you for joining our conference call today to discuss the proposed acquisition of Pericom Semiconductor. I'm Leanne Sievers, Executive Vice President of Shelton Group, Diodes' investor relations firm.

With us today are Diodes' President and CEO, Dr. Keh-Shew Lu; Chief Financial Officer, Rick White; Senior Vice President of Sales and Marketing, Mark King; Vice President of Worldwide Analog Products, Julie Holland and Director of Investor Relations, Laura Mehrl. Also joining us and available for questions is Pericom Semiconductor's CEO, Alex Hui.

If you have not yet received a copy of the press release, you can access a copy on Diodes' website at [www.diodes.com](http://www.diodes.com) under the Investor Relations section. There is also a slide presentation that we will be using in conjunction with this call that may be accessed through the webcast link on Diodes' website and is also posted as a PDF in the Investor Relations section.

The slide presentation and management's statements during this conference call will include discussions of certain measures and financial information in GAAP and non-GAAP terms.

*Slide 2: Safe Harbor Statement (Leanne)*

Before I turn the call over to Dr. Lu, I would like to remind our listeners that management's prepared remarks contain forward-looking statements, which are subject to risks and uncertainties, and management may make additional forward-looking statements in response to your questions. These forward-looking statements include, but are not limited to, statements related to the benefits of the proposed transaction between Diodes Incorporated and Pericom Semiconductor. These forward-looking statements are based on information available to Diodes and Pericom as of **today, September 3, 2015** and current expectations, forecasts and assumptions involve a number of risks and uncertainties. Actual results may differ materially from these forward-looking statements, and therefore we refer you to a more detailed discussion of the risks and uncertainties in the Company's filings with the Securities and Exchange Commission.

The Company claims the protection of the safe harbor for forward-looking statements that is contained in the Private Securities Litigation Reform Act of 1995, and assumes no obligation to update these projections in the future as market conditions may or may not change.

For those of you unable to listen to the entire call at this time, a recording will be available via webcast for 60 days at the Investor Relations section of Diodes' website at [www.diodes.com](http://www.diodes.com).

And now, it's my pleasure to turn the call over Diodes' President and CEO, Dr. Keh-Shew Lu.

**Dr. Keh-Shew Lu, President and CEO of Diodes**

Thank you, Leanne. Welcome everyone, and thank you for joining us today.

We are very excited about today's announcement regarding the proposed acquisition of Pericom Semiconductor by Diodes. In addition to offering substantial synergies and a compelling strategic rationale for both companies' customers, employees, and shareholders, I believe this acquisition is a key milestone on Diodes' path toward achieving our financial goals of \$1 billion revenue and 35% gross profit margin. As we will discuss today, this transaction meets all of our acquisition criteria and will also be immediately accretive to GAAP earnings per share.

As Leanne mentioned, there is a slide presentation available on our website. I have asked Julie Holland, our Vice President of Worldwide Analog Products to review this presentation with you as part of today's call before we open the call for your questions.

**Julie Holland, Vice President, Worldwide Analog Products**

Thank you, Dr. Lu. It is my pleasure to be here today.

***Slide 3: A Winning Combination***

Diodes' acquisition of Pericom Semiconductor creates a stronger global company with a greatly enhanced analog and mixed signal product offering. When looking at the strengths and expertise of each company, Diodes has:

- 1) High volume discrete, analog and logic products;
- 2) Cost-efficient packaging capabilities;
- 3) Strong global presence;
- 4) A broad product and customer base; and
- 5) An existing focus on the consumer, computing and communications markets with an emphasis on expanding products in the industrial and automotive markets.

Pericom Semiconductor has:

- 1) A broad portfolio of switches, signal integrity, connectivity and timing products;
- 2) A focus on emerging connectivity platforms;
- 3) Deep customer relationships with market-leading customers; and
- 4) A strong position in networking and data center applications with a growing presence in embedded automotive products.

When combined, there are many synergies including:

- 1) A broader product footprint including an expanded analog product line and the addition of a mixed signal connectivity portfolio;
- 2) Deeper platform content in multiple targeted applications;
- 3) Operating synergies;
- 4) Access to technology know-how that can advance the combined company's product roadmap; and
- 5) Broader participation in applications and customers within our targeted market segments.

***Slide 4: Pericom Highlights***

Let me provide an overview of Pericom's business from both a corporate and financial perspective. As a worldwide supplier of semiconductors specializing in timing, switching, signal conditioning, and bridging of high speed serial signals, Pericom has a comprehensive portfolio of products for timing and connectivity solutions in networking, data center, wireless access, and industrial applications.



The company was founded in 1990, IPO'ed in October of 1997 on Nasdaq, and is headquartered in Milpitas, California. The company has over 900 employees with sales offices in Taiwan, China, Korea, Singapore, Japan and the US. Pericom has in-house design centers across several locations in the US and Asia, plus manufacturing sites for its crystal and crystal oscillator products in Jinan, China and Jhongli, Taiwan. Pericom uses a fabless model for their ICs, with their IC packaging outsourced to partners in Taiwan, China and Malaysia.

In terms of financials, Pericom reported revenue for their fiscal year 2015, ending in the June quarter, of \$129 million with \$14 million in EBITDA and gross margin of approximately 45%. During fiscal 2015, they generated \$16.5 million in net free cash flow. Their cash and short-term investments were \$129 million as of June 27, 2015.

***Slide 5: Transaction Rationale***

Pericom's business strengths and attributes strongly support our rationale for the transaction and will greatly benefit Diodes' business and expand our product portfolio. The rationale for the transaction includes:

- 1) The strengthening of our overall product offering with an extensive mixed-signal connectivity portfolio of switching, bridging, and signal conditioning products. It expands our analog standard products line with the addition of a complete line of timing products.

- 2) It offers an expansion of our platform content and additional platform value in targeted applications such as smart phones and tablets, while increasing our presence in additional growing applications such as networking, cloud computing, and embedded automotive within our target end markets.
- 3) It allows us to capitalize on Pericom's deep customer relationships at key accounts, while Diodes' scale can be instrumental in expanding the presence and emphasis on the Pericom product line across Diodes' more extensive sales network and worldwide channel.
- 4) The transaction will provide Diodes access to Pericom's technology and design portfolio to accelerate Diodes' product development. Additionally, the transaction creates cross-selling opportunities of our complementary analog and mixed-signal product lines in several emerging applications.
- 5) There are opportunities for profitability improvement through operating and administrative efficiencies due to the combined company's enhanced scale.
- 6) And finally, it aligns with Diodes' strategy to drive growth through select acquisitions. We have a successful track record of integrating acquisitions, including FabTech in 2000, Anachip and ADP Semiconductor in 2006, Zetex in 2008, and BCD and PAM in 2013.

The terms of the acquisition include a purchase price of \$17.00 per share for a total cost of approximately \$400 million dollars. The acquisition is expected to close in the fourth quarter of this year. The boards of both companies have approved the transaction, which is still subject to approval by Pericom's shareholders, as well as other customary closing conditions and regulatory approvals.

**Slide 6: Broad Consolidated Product Offerings**

From a product perspective, the combined company offers a significant increase in the depth and breadth of Diodes' product offerings. The white areas of the chart represent Diodes' existing products, the light blue highlighted section is the extensive line of Pericom's connectivity products, which is expansionary to the Diodes' portfolio, and the light grey shaded areas represent the synergistic product portfolio. Together, the combined portfolios are complementary and enhance the product offerings available to support a larger, more diverse customer and application base. As a result, we expect to realize opportunities from the increased scale afforded by Diodes' extensive channel presence and global sales network, as well as cross-selling opportunities, which will increase the combined company's sales across the expanded application and end equipment base.

**Slide 7: Pericom Total Timing Solutions**

This transaction will enhance the Diodes' analog footprint with the addition of Pericom's line of complete clock tree solutions. This comprehensive portfolio includes clock buffers, a variety of clock generators and synthesizers, crystals, and crystal oscillators. Pericom's timing solutions support a wide variety of applications, including attractive emerging markets such as cloud computing and automotive infotainment, as well as existing target applications within the networking, storage, digital media and industrial spaces.

Pericom's crystal and crystal oscillator product lines are supported with fully automated, in-house manufacturing facilities in Taiwan and China. The Zhongli and Jinan assembly sites provide a specialized, vertically-integrated source of supply for these product lines, and are consistent with Diodes' strategy for owned manufacturing.

**Slide 8: USB Type C Connector**

The combination of Diodes' and Pericom's product portfolios will also enable us to capitalize on a highly attractive market opportunity supporting the emerging USB type C connector interface. This next generation standard will support high speed data communications, audio, video, and power all over a single cable with a reversible connector. Adoption of this standard is being driven within portable consumer electronics such as smart phone, tablets, and notebook computing, and is expected to be fanned out broadly to a wide range of applications in the storage, server, and display markets.

In addition to Diodes' existing power management products such as USB power switches, transient voltage suppressors, power controllers and power MOSFETS, Pericom's extensive line of USB connectivity products will allow us to offer an enhanced platform solution to address this exciting new standard and high-growth opportunity.

**Slide 9: Improved Segment Balance**

With Pericom's presence in networking, server, and storage applications, the combined company will have a more balanced business base across our target end markets. We will see our participation in the communications space increase to 23% of the combined company, with a stronger position in enterprise networking and wireless access. In the computing market, we will see an increase to 19% of our revenue with a shift to large and growing data center applications such as servers, storage, and cloud computing. Pericom's emerging position in embedded automotive applications will complement Diodes' strategic push to grow our automotive business.

**Slide 10: Global Manufacturing Infrastructure**

In terms of manufacturing, our global infrastructure will consist of Diodes' wafer fabs in Shanghai, China, Kansas City and Oldham, UK; and our packaging facilities in Shanghai, China, Neuhaus, Germany as well as our joint venture packaging facility in Chengdu, China. Pericom will add crystal and crystal oscillator manufacturing sites in Jinan, China and Jhongli, Taiwan.

**Slide 11: Financial Overview Post Acquisition**

This transaction provides Diodes with a larger revenue base as well as the ability to achieve operational synergies to expand our markets and accelerate margin growth. We expect this transaction to be immediately accretive. When looking at pro-forma results based on a calendar year for the combined company, revenue for 2Q15 would have been approximately

\$250 million and \$1 billion for the trailing twelve months. Gross profit for 2Q15 would expand to approximately \$84 million, with an increased gross margin of approximately 33.5%. We believe there is opportunity for further revenue expansion and margin growth through cross-selling and capitalizing on Diodes' scale advantage within the channel and global sales infrastructure.

**Slide 12: Pericom Fits Diodes' M&A Strategy**

We believe that Pericom Semiconductor is a strong strategic fit and meets the acquisition criteria that we have been consistently communicating to our shareholders and investors:

- 1) First, the proposed transaction is immediately accretive to earnings, exceeding our typical one year goal for most acquisitions.
- 2) It allows us to expand our existing analog portfolio while also expanding into the high speed connectivity product arena as well.
- 3) It will provide us with access to additional key customers, and allow us to open several attractive new markets and application spaces.
- 4) We will have opportunities for cross-selling as well as revenue expansion by leveraging Diodes' scale within the channel.
- 5) And finally, it gives us additional dedicated manufacturing capability for the crystal and crystal oscillator product lines.

**Slide 13: Diodes Strategy: Profitable Growth**

To conclude, Diodes' focus continues to be on generating profitable growth through a combination of manufacturing cost leadership, high volume end market focus, strong customer relationships, aggressive new product introductions, product portfolio expansion, innovative process and packaging technology as well as select strategic acquisitions. Pericom is another key milestone in this growth strategy, and we look forward to the combined company's success.

With that, we will now open the call for questions.

**Q&A Session**

**Upon Completion of the Q&A...**

Thank you to everyone for joining us today. We look forward to providing additional updates regarding the integration of Pericom and the expanded opportunities for Diodes.

Operator, we may now disconnect.

**Additional Information and Where to Find It**

Pericom intends to file a proxy statement in connection with the merger. Investors and security holders are urged to read the proxy statement when it becomes available because it will contain important information about the transaction. Investors and security holders may obtain free copies of these documents (when they are available) and other documents filed with the SEC at the SEC's web site at [www.sec.gov](http://www.sec.gov). Diodes, Pericom and their

directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Pericom in connection with the merger. Information regarding the special interest of these directors and executive officers in the transaction will be included in the proxy statement described above. Additional information regarding the directors and executive officers of Pericom is also included in Pericom's proxy statement for its 2014 annual meeting of shareholders, which was filed with the SEC on October 16, 2014. Additional information regarding the directors and executive officers of Diodes is also included in Diodes' proxy statement for its 2015 annual meeting of stockholders, which was filed with the SEC on April 16, 2015. These documents are available free of charge at the SEC's website at [www.sec.gov](http://www.sec.gov) and as described above.





## Diodes to Acquire Pericom Semiconductor

September 3, 2015



# Safe Harbor Statement

Safe Harbor Statement Under the Private Securities Litigation Reform Act of 1995: Any statements set forth above that are not historical facts are forward-looking statements that involve risks and uncertainties that could cause actual results to differ materially from those in the forward-looking statements. Such statements include statements as to: the expected benefits of the acquisition, including the acquisition being immediately accretive; the efficiencies, cost savings, revenues, and enhanced product offerings, market position, and design and manufacturing capabilities of Diodes after the acquisition; and other statements identified by words such as "estimates," "expects," "projects," "plans," "will" and similar expressions.

Potential risks and uncertainties include, but are not limited to, such factors as: the possibility that the transaction may not be consummated, including as a result of any of the conditions precedent; the risk of superior acquisition proposal from other parties; the risk of Diodes being unable to obtain sufficient financing from lenders to complete the acquisition; the risk of global market downturn conditions and volatilities impacting the completion of the acquisition or the funding; the risk that Pericom's business will not be integrated successfully into Diodes'; the risk that the expected benefits of the acquisition may not be realized, including the realization of the accretive effect of the acquisition; the risk that Pericom's standards, procedures and controls will not be brought into conformance within Diodes' operation; difficulties coordinating Diodes' and Pericom's new product and process development, hiring additional management and other critical personnel, and increasing the scope, geographic diversity and complexity of Diodes' operations; difficulties in consolidating facilities and transferring processes and know-how; difficulties in reducing the cost of Pericom's business; the diversion of our management's attention from the management of our business; Diodes may not be able to maintain its current growth strategy or continue to maintain its current performance, costs and loadings in its manufacturing facilities; risks of domestic and foreign operations, including excessive operation costs, labor shortages, higher tax rates and Diodes' joint venture prospects; unfavorable currency exchange rates; and the impact of competition and other risk factors relating to our industry and business as detailed from time to time in Diodes' filings with the United States Securities and Exchange Commission.

## **Additional Information and Where to Find It**

Pericom intends to file a proxy statement in connection with the merger. Investors and security holders are urged to read the proxy statement when it becomes available because it will contain important information about the transaction. Investors and security holders may obtain free copies of these documents (when they are available) and other documents filed with the SEC at the SEC's web site at [www.sec.gov](http://www.sec.gov). Diodes, Pericom and their directors and executive officers may be deemed to be participants in the solicitation of proxies from the stockholders of Pericom in connection with the merger. Information regarding the special interest of these directors and executive officers in the transaction will be included in the proxy statement described above. Additional information regarding the directors and executive officers of Pericom is also included in Pericom's proxy statement for its 2014 annual meeting of shareholders, which was filed with the SEC on October 16, 2014. Additional information regarding the directors and executive officers of Diodes is also included in Diodes' proxy statement for its 2015 annual meeting of stockholders, which was filed with the SEC on April 16, 2015. These documents are available free of charge at the SEC's website at [www.sec.gov](http://www.sec.gov) and as described above.



# A Winning Combination

## A Strong Global Partnership

**DIODES**  
INCORPORATED

2014 Revenue \$891M  
2014 Gross Margin 31.1%

- ◆ High volume Discrete, Analog and Logic products
- ◆ Cost efficient manufacturing capabilities
- ◆ Strong global presence
- ◆ Broad product and customer base
- ◆ 3 C's and industrial with emerging focus on Automotive

+

**PERICOM**

2014 Revenue \$130M  
2014 Gross Margin 42.3%

- ◆ Switches, Signal Integrity, Connectivity and Timing products
- ◆ Focus on emerging connectivity platforms
- ◆ Deep customer relationships
- ◆ Strong presence in networking and data center with growing automotive position

=

## SYNERGIES

- ◆ Broader Analog and added mixed-signal product lines
- ◆ Expanded platform content in applications where Diodes is already strong
- ◆ Operating Synergies
- ◆ Technology presence to advance Diodes product roadmap
- ◆ Customer / application space depth within target markets

**DIODES**  
INCORPORATED



# Pericom Semiconductor Highlights

## Business Overview

- Worldwide semiconductor supplier specializing in the timing, switching, signal conditioning and bridging of serial high speed signals
- Comprehensive timing and connectivity solutions for networking, computing, consumer, and industrial applications

## Corporate Overview

- Founded in 1990; IPO 1997 (PSEM) on Nasdaq
- Headquartered in Milpitas, California
- Sales offices in US, Taiwan, China, Korea, Singapore, Japan and UK
- 900 employees; over 100 patents

## Manufacturing Overview

- In-house design centers in North America and Asia
- Uses fabless/subcon assembly/test manufacturing model for IC's, in-house manufacturing for crystal/oscillator

## Financial Overview

- FY 2015 (6/30/2015) revenues of \$129 million
- FY 2015 Gross Margin of 44.9%
- FY 2015 cash and short-term investments of \$129 million



# Transaction Rationale

## Strengthen Product Offering

- ◆ Increases the analog footprint and adds a strong mixed-signal offering
- ◆ Extensive timing, switching and signal conditioning solutions
- ◆ Interface product line to complement Diodes' standard product portfolio
- ◆ New connectivity platforms and standards

## Expanded Application Presence and Depth

- ◆ Added platform value in smart phones, tablets, and notebook computing
- ◆ Increased position in networking, servers, and embedded automotive
- ◆ Capitalize on deep customer relationships in focus end equipments

## Enhanced Scale

- ◆ Potential profitability improvement through operating and manufacturing efficiencies
- ◆ Expanded customer and market presence for acquired products through Diodes' extensive sales network and channel

## Leverage Technology Position and Portfolio Breadth

- ◆ Cross-utilization of technology capability and design blocks to accelerate Diodes portfolio growth
- ◆ Cross-selling of complementary product lines in emerging applications

## Growth and Integration Opportunities

- ◆ In-line with Diodes' strategy to drive growth through select acquisitions
- ◆ Successful track record of revenue expansion, cost reduction, and business rationalization (FabTech in 2000, Anachip and APD in 2006, Zetex in 2008, BCD and PAM in 2013)



# Broad Consolidated Product Offering

Discrete		Standard Products	ASSP	
<b>Diodes</b> Schottky Diodes Zener Diodes Switching Diodes SBR <sup>®</sup> Diodes Power Zener Diodes Power Rectifier Diodes	<b>Rectifiers</b> Schottky Rectifiers Super Barrier Rectifiers Standard Rectifiers Fast Recovery Rectifiers Bridge Rectifiers	<b>Standard Linear</b> Linear Voltage Regulators Standard Linear Regulators Quasi Low Dropout Regulators Low Dropout Regulators  <b>Voltage References</b> Shunt References Micropower References  <b>Current Monitors</b> Current Output Voltage Output  <b>Operational Amplifiers</b>  <b>Comparators</b>  <b>Timing Products</b> Clocks Timer ICs Crystals Oscillators	<b>Power Management ICs</b> DC-DC Switching Regulators Buck Boost Buck/Boost/Inverter  <b>AC/DC Solutions</b> Primary-Side Regulators PWM BJT Switches Voltage  <b>Power Switches</b> Load Switches HDMI Switches  <b>USB</b> USB Switches Charging control  <b>LED Drivers</b> Charge Pump Boost Buck Linear LED Drivers LED backlighting  <b>Power Supply</b> MOSFET Controllers Active OR-ing Controllers Chargers	<b>Connectivity</b> Switches Signal Switches Mux controllers  <b>Signal Integrity</b> Repeaters ReDrivers  <b>Connectivity</b> PCIe Bridges PCIe Packet Switches UARTs  <b>Sensors</b> Hall Switches Hall Latches Smart Fan Drivers Motor Controllers Temperature Sensors Magnetic Sensors  <b>Digital Broadcast by Satellite</b> Fixed Bias Generators Switched Bias Generators Multiplex Controllers Integrated Switch Matrix DBS Interface STB Power  <b>Audio</b> Class D Amplifiers Analog Input Amplifiers
<b>MOSFETs</b> Small Signal MOSFETs Power MOSFETs Protected MOSFETs High Voltage MOSFETs Complementary Pairs H-Bridges IntelliFET <sup>™</sup>	<b>Protection Devices</b> TVS Low CJ TVS Thyristor Surge Protection Data Line Protection	<b>Standard Logic ICs</b> Single Gate Dual Gate Standard Logic Translators Analog Switches Registers		
<b>Bipolar Transistors</b> Small Signal BJT Pre-biased BJT Medium Power BJT High Power BJT Darlington Transistors Gate-Drivers Low Saturation BJT H-Bridges	<b>Function Specific Arrays</b> Relay Drivers Discrete Load Switches Discrete Voltage Regulators MOSFET Gate-Drivers			

IntelliFET and SBR are the registered trademark of Diodes Incorporated and its affiliates.





# Pericom Total Timing Solutions

## Comprehensive portfolio for complete clock tree solutions

- Highest frequency clock buffers
- Low voltage, low power clock generators
- Real time clock (RTC) generators
- Programmable crystal oscillators
- Ultra low jitter crystal oscillators
- Temperature compensated crystal oscillators

## Timing solutions for attractive markets

- Cloud computing / server storage
- Embedded automotive infotainment
- Internet of Things (IoT)

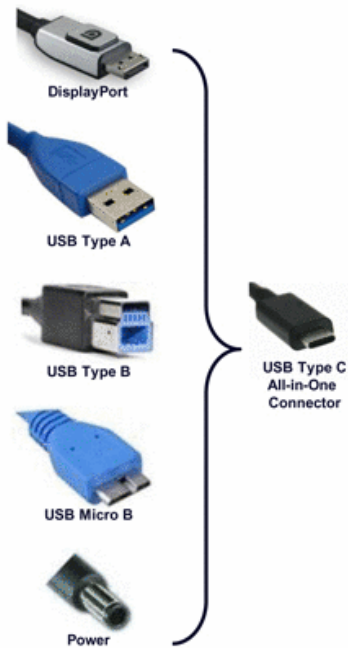


## Owned manufacturing for advantaged cost infrastructure

- Integrated operations for crystal and crystal oscillator manufacturing
- Automated and automotive-certified facility in Taiwan focuses on crystal oscillators
- Fully automated facility in Jinan, China focuses on crystal manufacturing

**DIODES**  
INCORPORATED

# USB Type C Connector



## Highly Attractive Market Opportunity

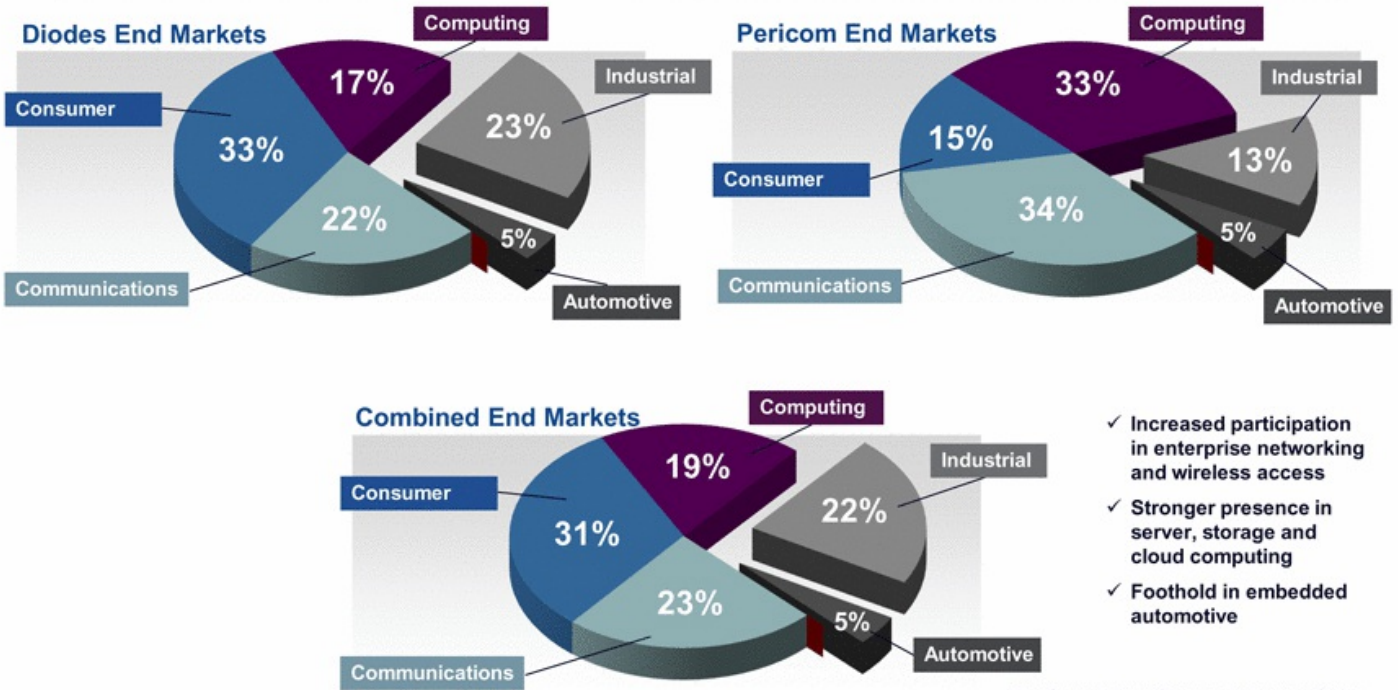
- 10Gbps reversible connector: single USB cable for data, audio, video and power
- Driven by next generation mobility platforms: notebook, smart phone, tablet, portable consumer
- Flexible "charge anywhere" approach to personal electronics
- Will drive conversion in storage, server, and Ultra HD displays

## Combined Diodes+Pericom offers complete system solution

- Extensive Pericom offering for USB connectivity:
  - High performance cross bar signal switches
  - USB3 / DisplayPort1.2 ReDrivers
  - USB charging controllers
  - High bandwidth USB3.1 multiplex/demultiplex
  - Plug orientation detectors
- Diodes USB portfolio focused on power management:
  - USB power switches
  - Transient voltage suppressors
  - ACDC primary side controllers
  - Power MOSFETs
  - Active rectifier



# Improved Segment Balance



- ✓ Increased participation in enterprise networking and wireless access
- ✓ Stronger presence in server, storage and cloud computing
- ✓ Foothold in embedded automotive

Note: Segments tie to Diodes application classification



# Global Manufacturing Infrastructure



1 **DIODES**  
INCORPORATED

1 **PERICOM**

**DIODES**  
INCORPORATED

# Financial Overview Post Acquisition

- ✓ Large revenue base with **\$1B** annual combined revenue
- ✓ Gross profit margin lift in 2Q15 to 33.5% with solid growth trend
- ✓ Immediately accretive to GAAP EPS

## Summary Pro Forma Financials

	<b>DIODES</b>		<b>PERICOM</b>		<b>Combined Company</b>	
	2Q15	2Q15 TTM	2Q15	2Q15 TTM	2Q15	2Q15 TTM
Revenue (\$M)	219.5	883.1	30.6	128.8	250.0	1011.9
Gross Profit (\$M)	69.4	278.7	14.2	57.8	83.6	336.6
Gross Profit Margin	31.6%	31.6%	46.5%	44.9%	<u>33.5%</u>	33.3%
R&D (\$M)	13.6	53.3	4.3	17.9	17.9	71.2
R&D%	6.2%	6.0%	13.9%	13.9%	7.1%	7.0%
Total OpEx (\$M)	47.4	192.8	11.7	47.9	59.1	240.7
Total OpEx%	21.6%	21.8%	38.3%	37.1%	23.7%	23.8%
PFO (\$M)	22.0	85.9	2.5	10.0	24.5	95.9
PFO%	10.0%	9.7%	8.2%	7.7%	9.8%	9.5%

Note: All dates reflect calendar quarter



## Pericom Fits Diodes' M&A Strategy

SYNERGISTIC FACTORS	Degree of FIT
Accretive in 1 year	1
Enter new product area	1
Access to new markets / new customers	1
Strengthen regional sales potential	1
Gain access to process and/or packaging technology	2
Synergistic with Diodes' packaging capabilities and capacity	2

1=Very synergistic, 2=Synergistic, 3=Fairly Synergistic





# Diodes Strategy: Profitable Growth



**Pericom is another key milestone**





# Thank you

**Company Contact:**

Diodes Incorporated  
Laura Mehrl  
Director of Investor Relations  
P: 972-987-3959  
E: [laura\\_mehrl@diodes.com](mailto:laura_mehrl@diodes.com)

**Investor Relations Contact:**

Shelton Group  
Leanne K. Sievers  
EVP, Investor Relations  
P: 949-224-3874  
E: [lsievers@diodes.com](mailto:lsievers@diodes.com)

[www.diodes.com](http://www.diodes.com)