

SUPREME COURT OF NOVA SCOTIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
RSC 1985, C C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF CFFI VENTURES INC.**

**THIRD REPORT OF FTI CONSULTING CANADA INC.
IN ITS CAPACITY AS MONITOR OF
CFFI VENTURES INC.**

June 1, 2026

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IN ITS CAPACITY AS MONITOR OF
CFFI VENTURES INC.

A. INTRODUCTION

1. On February 17, 2026, CFFI Ventures Inc. (“**CFFI**”) was granted a preliminary interim order pursuant to s. 130 of the *Companies Act*¹ (the “**Preliminary Interim Order**”) by the Honourable Justice Keith of the Supreme Court of Nova Scotia (Halifax court file number 551005) (such proceeding, the “**Companies Act Proceeding**”). The *Companies Act* Proceeding was brought for the purpose of advancing a plan of arrangement (the “**Companies Act Plan**”) under s. 130 of the *Companies Act*.
2. On March 13, 2026, the Supreme Court of Nova Scotia (the “**Court**”) granted an initial order (the “**Initial Order**”) under the *Companies' Creditors Arrangement Act*² (the “**CCAA**”) with respect to CFFI which, *inter alia*:
 - (a) declared that CFFI is a party to which the CCAA applies;
 - (b) appointed FTI Consulting Canada Inc. (“**FTI**”) as the Court-appointed monitor of CFFI (in this capacity, the “**Monitor**”);
 - (c) granted an initial stay of proceedings in favour of CFFI until March 23, 2026;

¹ RSNS 1989, c 81.

² RSC 1985, C C-36.

- (d) extended the stay of proceedings to any Person (as defined in the Initial Order) in which CFFI holds a direct or indirect equity interest (the “**Non-Filing Affiliates**”), or any of their current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof, as a result of the CCAA application or applicable related matters;
 - (e) granted the following charges (the “**Charges**”) over CFFI’s Property, which charges rank in priority to all other security interests, trusts, liens, charges and encumbrances in favour of any person:
 - (i) *first* – an Administration Charge to the maximum amount of \$250,000, as security for the payment of professional fees and disbursements incurred and to be incurred by the Monitor, counsel to the Monitor, and counsel to CFFI; and
 - (ii) *second* – a Directors’ Charge to the maximum amount of \$100,000, as security for an indemnity provided to the D&Os in connection with obligations and liabilities that they may incur as directors or officers of CFFI after the commencement of the CCAA proceeding, except to the extent that the obligation or liability was incurred as a result of the D&Os’ gross negligence or wilful misconduct.
3. When Justice Keith granted the Initial Order, he ordered that the affidavit sworn by Brittany Bartlett on February 14, 2026 (“**Bartlett Affidavit #1**”) in support of the *Companies Act* Plan be admitted as evidence in the CCAA proceeding.
4. A comeback hearing took place on March 23, 2026 (the “**Comeback Hearing**”). At the Comeback Hearing, the Court granted an amended and restated Initial Order (the “**ARIO**”) that, *inter alia*:
- (a) extended the stay of proceedings granted under the Initial Order as regards CFFI (“**Stay Period**”) until May 29, 2026;

- (b) extended the limited stay of proceedings granted under the Initial Order as regards certain Non-Filing Affiliates (as defined in the ARIO);
 - (c) maintained the Charges granted under the Initial Order; and
 - (d) confirmed FTI's appointment as Monitor in these proceedings.
5. At the Comeback Hearing, Justice Keith indicated his preference that the *Companies Act* Proceeding be discontinued. The Monitor is advised by CFFI that it has not yet submitted a draft discontinuance order to the Court for consideration.
6. Since the Comeback Hearing, the Court has held case conferences on April 7, 2026, and April 30, 2026. Following the April 30, 2026 case conference, the Court, amongst other things: (a) scheduled a case management call on May 22, 2026; and (b) scheduled a half-day hearing on June 9, 2026, to consider matters related to CFFI's sales and investment solicitation process (the "SISP").
7. During the May 22, 2026 case management call, this Court granted an order extending the Stay Period to June 15, 2026. The Court also removed OpenScreen Inc. from the definition of Non-Filing Affiliates.
8. The current list of Non-Filing Affiliates, along with the direct and indirect equity interests held by CFFI (the "Equity Investments"), is set out in the chart attached hereto at **Appendix "A"**.

B. PURPOSE OF THIS REPORT

9. This Third Report of the Monitor (the "**Report**") has been prepared for the purpose of providing this Court with information regarding the matters set out in **Appendix "B"** hereto. Appendix "B" sets forth the scope of work that the Court directed the Monitor to address in this Report pursuant to the Court's direction dated May 1, 2026 (such scope of work, the "**Scope of Work**"). A copy of the Court's direction is attached hereto as **Appendix "C"**.

10. This Report is not intended to provide a comprehensive review of all material facts related to the *Companies Act* Proceeding or the CCAA proceeding. Documents and information related to this CCAA proceeding are posted periodically on the webpage established by the Monitor at cfcanada.fticonsulting.com/CFFI (the “**Monitor’s Webpage**”).

C. TERMS OF REFERENCE

11. In preparing this Report, the Monitor has relied upon various sources of information including, *inter alia*, audited and unaudited financial information of CFFI’s books and records, certain financial information and forecasts prepared by CFFI, and discussions with various parties, including senior management (“**Management**”) of, and advisors to, CFFI (collectively, the “**Information**”).
12. Except as otherwise described in this Report:
- (a) the Monitor has not audited, reviewed or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook;
 - (b) the Monitor has not examined or reviewed the financial forecasts or projections referred to in this Report in a manner that would comply with the procedures described in the Chartered Professional Accountants of Canada Handbook; and
 - (c) the Monitor’s understanding of factual matters expressed in this Report concerning CFFI and its business is based on the Information, and not independent factual determinations made by the Monitor.
13. Future-oriented financial information referred to or relied on in this Report is based on Management’s assumptions regarding future events. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, even if the assumptions materialize, and the variations could be significant.

14. The Monitor has prepared this Report in furtherance of the Court’s direction described in paragraph 9 above. This Report should not be relied on for any other purpose.
15. Unless otherwise stated, all monetary amounts contained herein are expressed in Canadian dollars.

D. BACKGROUND

16. CFFI is a holding company that exists under the laws of the Province of Nova Scotia. Its registered office is at 1-741 Bedford Highway in Halifax, Nova Scotia. Until recently, Mr. John Risley was the chairperson, a director, and the chief executive officer of CFFI.
17. CFFI owns and manages a portfolio of equity investments in various sectors, including financial services, marine services, skincare, biotechnology, renewable energy development, and construction and maintenance.
18. CFFI has an extensive corporate structure on account of it holding equity in a large number of businesses. The chart at Appendix “A” sets out CFFI’s Equity Investments.³
19. CFFI commenced this CCAA proceeding on account of, amongst other things, its debt levels and the maturity of some of that debt. CFFI’s secured indebtedness arises from the following instruments:
 - (a) a note purchase and guarantee agreement dated as of October 23, 2017, as amended and restated on April 25, 2019 (as amended, restated, amended and restated or otherwise modified from time to time, the “**Note Purchase Agreement**”), by and among CFFI (as borrower), certain affiliates of CFFI (as guarantors), HPS Investment Partners, LLC (“**HPS**”) as agent and lead arranger, and each of MP III Offshore Master Lux, L.P., Mezzanine Partners III, L.P., and AP Mezzanine Partners III L.P. (collectively, the “**HPS Secured Creditors**”, and together with HPS, the “**HPS Parties**”), as secured creditors;

³ The chart at Appendix “A” contains two key differences from an earlier version of the chart that was attached to the First Report of the Monitor dated March 19, 2026, and the Second Report of the Monitor dated May 19, 2026. First, OpenScreen Inc. is no longer designated as a Non-Filing Affiliate. Second, Northern Private Capital Employee GP Inc. has been added as one of CFFI’s direct equity interests.

- (b) a secured guarantee dated as of May 24, 2022 (the “**CFFI Guarantee**”), pursuant to which CFFI has guaranteed the due and punctual payment and performance of all obligations of Cormorant Utility Services Limited (“**Cormorant**”) to certain secured creditors under an amended and restated credit agreement dated March 28, 2025, among Cormorant (as borrower), and SFPC Quantum LP (“**SFPC Quantum**”) (as both lender and agent) (as amended, restated, amended and restated or otherwise modified from time to time, the “**Cormorant Credit Agreement**”); and
 - (c) a secured demand promissory note dated as of October 6, 2023 (the “**FPR Promissory Note**”) issued to FPR Financial Corporation (“**FPR Financial**”).
20. CFFI has been offside certain loan covenants under the Note Purchase Agreement since June 28, 2019. On October 23, 2022, the Note Purchase Agreement matured. Amounts owing thereunder remain outstanding. CFFI has been incurring an elevated interest rate on outstanding amounts as CFFI remains in default of the Note Purchase Agreement and interest continues to accrue post-maturity.
21. The Monitor understands that prior to commencing this CCAA proceeding, CFFI attempted to exit one or more significant investments with the intent to use the proceeds therefrom to pay amounts outstanding under the Note Purchase Agreement, but few transactions materialized (such transactions are described below in Section I (*CFFI’s Material Asset Dispositions*)).

The Companies Act Plan

22. In an effort to resolve its financial difficulties, CFFI commenced the *Companies Act* Proceeding. The *Companies Act* Proceeding was intended to advance the *Companies Act* Plan, which in broad terms provided for the following:
- (a) substantially all of CFFI’s assets would be transferred to 4761218 Nova Scotia Limited (“**AcquireCo**”), a company indirectly owned and controlled by the HPS Parties and formed for the purpose of implementing the *Companies Act* Plan;

- (b) AcquireCo would assume certain secured debt and other obligations from CFFI in an amount based on the fair market value of the assets transferred to AcquireCo; and
 - (c) holders of claims against CFFI that are not assumed would receive certain contingent value rights.
23. Amongst the assets proposed to be transferred to AcquireCo as part of the *Companies Act* Plan are the “Transferred Equity Interests”, which are a subset of the Equity Investments. The Transferred Equity Interests are labelled in Appendix “A” (the Equity Investments that are not Transferred Equity Interests are the “**Other Equity Investments**”).
24. In support of the *Companies Act* Plan, CFFI’s board of directors procured an opinion from Ernst & Young LLP (“**EY**”) dated March 5, 2026 (the “**Fairness Opinion**”) that, *inter alia*, commented on (a) the fairness of the *Companies Act* Plan; and (b) the treatment of creditors under the *Companies Act* Plan as compared to a scenario in which CFFI is liquidated.
25. Certain stakeholders, including the Canada Revenue Agency (“**CRA**”) and Mr. Brendan Paddick, raised concerns with the *Companies Act* Plan. CFFI, in turn, commenced this CCAA proceeding. The initial purpose for this CCAA proceeding was to advance a plan of arrangement similar to the *Companies Act* Plan (the “**CCAA Plan**”) under the CCAA. The CCAA Plan was expected to be substantially the same as the *Companies Act* Plan.
26. No CCAA Plan has been proposed by CFFI. Certain stakeholders have expressed a preference for CFFI’s assets being dealt with pursuant to a sales process rather than the CCAA Plan.

The Scope of Work and the Sales Process

27. At the Comeback Hearing, stakeholders identified questions they considered necessary to address in order to make informed decisions about how this CCAA proceeding should move forward. Those questions related to a broad range of topics, including the following:
- (a) the reliability of the Fairness Opinion;

- (b) the size of the debt owing to HPS;
 - (c) CFFI's assets, including details related to recent dispositions;
 - (d) the validity of the security held by CFFI's secured creditors; and
 - (e) whether HPS, when voting on the anticipated CCAA Plan, should be considered a "related" creditor for the purposes of s. 22(3) of the CCAA.
28. This Court directed the Monitor to consider the questions raised by stakeholders and propose a scope of work, which scope of work would form the basis for this Report.
29. On March 27, 2026, the Monitor's counsel sent a letter to the Court setting out the Monitor's preliminary proposed scope of work. Certain stakeholders subsequently provided the Monitor with comments on the proposed scope of work. On April 2, 2026, the Monitor's counsel sent a second letter to the Court setting out a revised proposed scope of work.
30. On April 7, 2026, this Court held a case conference at which further discussions on the scope of work took place. Following that case conference, the Monitor's counsel submitted a third letter to the Court with a further revised proposed scope of work that took into account the discussions at the case conference.
31. The Monitor received further comments from stakeholders on its proposed scope of work. Prior to the Monitor addressing those comments, on April 28, 2026, counsel for CFFI sent a letter to the Court advising of its intention to implement a restructuring via a sale and investment solicitation process ("**SISP**") in lieu of the CCAA Plan. CFFI advised that it would bring a motion "within the next 30 days seeking the approval of a [SISP], which will be administered by the Monitor."
32. As a result of the change in the proposed restructuring path, the Monitor's proposed scope of work also had to be amended. Accordingly, on April 29, 2026, the Monitor's counsel submitted a fourth letter to the Court with a further revised proposed scope of work that took into account the SISP. On May 1, 2026, the Court approved the Monitor's scope of work as set out in its April 29, 2026 letter.

33. The Scope of Work forms the focus of this Report. The particulars of the Scope of Work, as approved by the Court, are set out in Appendix “B”.
34. Sections E (*Commentary on the Fairness Opinion*) through I (*CFFI’s Material Asset Dispositions*) of this Report address each of the topics covered by the approved Scope of Work.

E. COMMENTARY ON THE FAIRNESS OPINION

35. This section is divided into the following subsections:
 - *Overview*, which contains an overview of the Monitor’s analysis and the work performed by the Valuation Team (as defined below) and summary opinion on the reasonableness of the EY Fairness Opinion;
 - *Necessary Context for Business Valuation*, which provides necessary and more general background information on business valuations;
 - *The Valuation Team’s Analysis*, which is divided into two sections: (a) *Information Gathering*, which discusses how the Valuation Team gathered information necessary for its analysis, and (b) *Analysis*, which discusses how the Valuation Team analyzed the information it gathered; and
 - *Considerations Related to CFFI’s Artwork*, which discusses considerations related to CFFI’s artwork.

Overview

36. As described in greater detail below, and subject to standard limiting conditions and disclaimers, the Monitor is satisfied that the fair market values assigned to the Transferred Equity Interests in the Fairness Opinion are reasonable.
37. The Fairness Opinion was created in the context of the *Companies Act* Plan. As stated in the Fairness Opinion, a copy of which is attached hereto as **Appendix “D”**, the transaction contemplated by the *Companies Act* Plan provides that the portion of HPS debt to be assumed “is to be equal to the fair market value of the acquired assets of \$367.0 million.” The Fairness Opinion included in an appendix a list of the assets being transferred to AcquireCo, being the Transferred Equity Interests and artwork (together with the

Transferred Equity Interests, the “**Transferred Assets**”). The Fairness Opinion concluded as follows:

On the basis of our review and subject to the assumptions and limitations noted herein, it is our opinion that:

- the Proposed Transaction is fair from a financial point of view to CFFI;
- CFFI's shareholders would not be in a worse position, from a financial point of view, under the Proposed Transaction than if CFFI was liquidated; and
- CFFI's Secured Creditors and Unsecured Creditors would be in a better position, from a financial point of view, under the Proposed Transaction than if CFFI was liquidated.

38. As part of the Scope of Work, the Monitor was directed to review the Fairness Opinion and:
- (a) comment on the methodology and assumptions behind the Fairness Opinion and reasonableness of same;
 - (b) comment on EY's conclusion that the fair market value of the Transferred Assets is \$367 million;
 - (c) conduct any additional analysis in respect of the fair market value of the Transferred Assets, if needed; and
 - (d) opine on the reasonableness of the Fairness Opinion.
39. For greater certainty, the Monitor was not directed to prepare an independent valuation of the Transferred Assets. The focus was on determining the reasonableness of the fair market values assigned by EY to the Transferred Assets.
40. To support its efforts, the Monitor engaged FTI's Valuation & Financial Advisory Services team (the “**Valuation Team**”). The Valuation Team was led by Mr. Bradley Henn, a Senior Managing Director at FTI and the leader of FTI's Valuation & Financial Advisory Services practice in New York, New York. Mr. Henn holds a bachelor's degree in finance and marketing from Syracuse University and a master's degree in business administration from

Fordham University. Attached hereto as **Appendix “E”** is a copy of Mr. Henn’s curriculum vitae.

41. The Valuation Team conducted the analysis described in the below subsection titled *The Valuation Team’s Analysis* (such analysis, the “**Valuation Analysis**”) and provided the Monitor with its opinion on the fair market value of the Transferred Equity Interests.
42. The Valuation Team concluded that, subject to standard limiting conditions and disclaimers, the fair market values assigned to the Transferred Equity Interests in the Fairness Opinion were reasonable. The Monitor is satisfied that the Valuation Team implemented a structured and iterative review process focused on understanding, evaluating, and testing the reasonableness of the Fairness Opinion, as described below.
43. The Valuation Analysis was limited to an opinion on the reasonableness of EY’s assessment of the fair market value of the Transferred Equity Interests. The Valuation Analysis did not consider other components of the Fairness Opinion, such as (a) whether creditors are any worse off with the *Companies Act* Plan as opposed to a liquidation, and (b) whether EY’s assessment of the fair market value of CFFI’s artwork was reasonable. The Monitor has included in the below subsection titled *Considerations Related to CFFI’s Artwork* its opinion with respect to CFFI’s artwork.
44. The Monitor does not include in this Report information related to the individual estimated values for each Transferred Equity Interest. At CFFI’s request, the Monitor has agreed not to disclose such information unless (a) CFFI consents to such disclosure; or (b) the Monitor is ordered to make such disclosure by the Court. The Monitor is supportive of keeping valuation particulars for individual Transferred Equity Interests confidential in light of the SISF that CFFI is preparing to bring.

Necessary Context for Business Valuation

45. As background for the Court, the Monitor observes that there are different methods of valuing a business. Each method has a different way of assessing economic worth. Three common methods are as follows:

- (a) the **income-based approach** focuses on the future earning potential of the business. This approach calculates the cash flows that the business is expected to generate over time, which is then discounted using an appropriate rate to determine the net present value;
 - (b) the **market-based approach** derives value by reference to the prices at which comparable businesses have been sold or traded. This approach requires identifying comparable businesses in the marketplace, identifying valuation multiples based on factors such as earnings or revenue, and then applying those multiples to the business being valued; and
 - (c) the **asset-based approach** (or **cost approach**) determines value by separately valuing each component of the business, including its liabilities. This approach is based upon the concept of replacement as an indicator of value. The total value is arrived at by subtracting the total value of liabilities from the total value of assets.
46. In the Monitor’s experience, valuation professionals tend not to rely on a single methodology in isolation. This is because any one methodology has its strengths and limitations. Valuation professionals tend to apply more than one methodology, and they then use their professional judgement to reconcile the resulting indications of value to arrive at a value range. Because different valuation methods may produce different results, the valuation professional must use their discretion to decide the weight to be given to each approach.
47. In some circumstances, it is reasonable for valuation professionals to rely on a single methodology. For example, early-stage start-ups often have limited assets (frequently with a bias towards intangible assets, such as human capital and intellectual property), little or no revenue or earnings history, and a unique and unproven business model. This can make it challenging to use methodologies such as the asset-based approach or the market-based approach. In such cases, it may be appropriate to limit the valuation to the approach that best aligns with the nature of the business and available data.

48. Business valuation is not a mechanical exercise that results in a single objectively “correct” answer. Many of the inputs that go into a valuation are premised on assumptions and factors that involve some degree of discretion, such as projected growth rates, discount rates, and comparable business selection. The outputs of valuation models are sensitive to these inputs. As a result, valuation professionals may arrive at different but nevertheless reasonable conclusions of value when valuing the same business.

The Valuation Team’s Analysis

a. Information Gathering

49. To facilitate the Monitor’s review of the Fairness Opinion, the Monitor entered into an agreement with EY dated April 1, 2026, establishing a framework pursuant to which EY agreed to share with the Monitor its internal analyses (the “**EY Analyses**”) prepared in connection with the Fairness Opinion. EY further agreed to participate in discussions with the Monitor about the EY Analyses.
50. The agreement entered into between EY and the Monitor imposes certain confidentiality obligations on the Monitor. Amongst other things, the Monitor is generally restricted from circulating, quoting, disclosing, or distributing any of the EY Analyses, any information contained therein, any information communicated by EY in its discussions with the Monitor, or any summary or abstract of any thereof. Certain exceptions apply to the Monitor’s confidentiality obligations; in particular, the Monitor is permitted to disclose, without restriction, its opinion of the Fairness Opinion.
51. With the information sharing agreement in place, the Monitor and the Valuation Team had a project initiation call with EY and CFFI on April 2, 2026. At this call, the parties discussed a process by which EY would share information with the Valuation Team. This information sharing process included EY giving presentations to the Monitor and the Valuation Team at which EY and CFFI would discuss matters including (a) the Transferred Equity Interests in general; and (b) EY’s methodology for valuing each of the Transferred Equity Interests. With respect to (a), the Valuation Team sought information related to the Transferred Equity Interests generally (and not solely information pertaining to EY’s valuation methodology) because it needed to understand the business conducted by each

of the entities comprising the Transferred Equity Interests to properly assess the reasonableness of inputs, assumptions and judgement calls made by EY.

52. The first EY presentation took place on April 7, 2026, and further presentations took place in the following days. Presentations were typically one to two hours long. Some presentations were limited to one Transferred Equity Interest; other presentations discussed two or more Transferred Equity Interests. The presentation time allotted to each Transferred Equity Interest depended on its complexity. Representatives of CFFI attended these presentations and participated in them by providing background information and context.
53. Each presentation involved in-depth discussions in which EY explained its analytical approach and the Valuation Team posed technical questions and sought clarification regarding assumptions, inputs, and outputs. Emphasis was put on the valuation methods applied by EY (the income-based approach, the market-based approach, and the asset-based approach), and why EY may have given greater weight to one approach over another when valuing a Transferred Equity Interest. Through these discussions, the Valuation Team developed an understanding of the rationale underlying the Fairness Opinion, which enabled the Valuation Team to assess the internal consistency and coherence of EY's valuation process.
54. In addition to the formal presentations led by EY, the Valuation Team engaged in written correspondence with EY and CFFI. The Valuation Team was provided with documents and records related to, amongst other things, historical and projected financial information, comparable company data, transaction data, and valuation reports prepared by third parties. EY provided the Valuation Team with copies of materials underlying the Fairness Opinion, including valuation memoranda, financial models, the key assumptions underpinning EY's analyses (including discount rates, cost of capital inputs, and terminal value assumptions), and other supporting documentation.

b. Analysis

55. The Valuation Team engaged in what can be considered an independent challenge of the Fairness Opinion. It tested EY's analyses through detailed questioning, requested

additional supporting materials where required, and conducted follow-up discussions to address outstanding issues. The scope and depth of these procedures were informed by considerations of materiality, with particular focus placed on the Transferred Equity Interests contributing the most value to CFFI's portfolio.

56. The Valuation Team undertook a focused review of the key inputs and assumptions underlying the Fairness Opinion. This included assessing historical and projected financial performance, cash flow assumptions, the selection and application of market multiples, the discount rates applied in present value calculations, and additional minority interest discounts. The Valuation Team performed analytical procedures, compared certain inputs to available market data, and engaged directly with EY to understand the basis for significant assumptions.
57. The Valuation Team evaluated how EY used, as applicable, each of the income-based approach, the market-based approach, and the asset-based approach to arrive at a value range for each of the Transferred Equity Interests. The Valuation Team considered whether the selection and application of these methodologies were appropriate given the nature of the underlying Transferred Equity Interest, and it assessed whether multiple approaches were used, where appropriate, to support the resulting valuation ranges.
58. In many cases, EY used only one valuation methodology to value the Transferred Equity Interests. The Valuation Team considered whether it was appropriate to only use one valuation methodology in the instances where EY did so.
59. For greater certainty, the Valuation Team's analysis did not consist of independently determining the fair market value of the Transferred Equity Interests. Relatedly, the Valuation Team did not prepare or issue its own fairness opinion or solvency opinion in connection with the Transferred Equity Interests.
60. The Valuation Team's work is subject to certain limitations. In particular, the Valuation Team relied on information provided by EY and CFFI that it assumes to be materially accurate and complete.

Considerations Related to CFFI's Artwork

61. EY included the value of CFFI's artwork in its Fairness Opinion when considering the fair market value of the Transferred Assets. The Valuation Team, in contrast, only considered the value of the Transferred Equity Interests. It did not take the value of CFFI's artwork into account in the Valuation Analysis.
62. EY relied on the guidance of a Canadian art consulting firm, The Kalaman Group, to determine the estimated resale value of CFFI's artwork collection. The Kalaman Group is a Canadian art consulting firm that provides services to corporate, private, and institutional collectors. CFFI first engaged The Kalaman Group in 2023 to provide art consulting services, including cataloguing collection records, conducting physical reviews of the majority of objects in the collection, organizing acquisition documentation and provenance records, and coordinating collection logistics and custody transitions. In February 2026, The Kalaman Group prepared a memorandum for CFFI titled "Directional Fair Market Value Commentary – CFFI Art Collection" (the "**Artwork Memo**").
63. The Artwork Memo estimated a cumulative resale value for a portion of the artwork recorded in CFFI's books and records; however, it excluded a subset of the collection that remains subject to an ownership determination with John Risley (as further discussed below). The Kalaman Group did not analyze the collection on a piece-by-piece basis, and the Artwork Memo is not a formal appraisal. The Kalaman Group's directional fair market valuation was based on, *inter alia*, an assessment of the artist composition of the collection, recent comparable market sales data, CFFI's recent dispositions, and trends in the broader Canadian art market.
64. EY's analysis started with The Kalaman Group's estimated resale value and deducted selling costs, notional taxes and a discount factor to account for the timelines required to dispose of the collection. EY's assessment of the fair market value of the artwork was not a material component of the total fair market value of CFFI's assets.
65. The Monitor did not engage an independent art appraiser or otherwise conduct a valuation of CFFI's artwork. The Monitor has, however, reviewed (a) an inventory of the artwork that includes artist names, titles, acquisition dates, acquisition prices, current locations and

insured values; (b) CFFI’s financial reporting related to the artwork; and (c) the Artwork Memo. The Monitor is still in the process of reviewing the artwork collection and determining whether to engage an independent appraiser, including to potentially appraise only certain pieces.

a. Overview and Ownership of CFFI’s Artwork Collection

66. CFFI advised the Monitor that, at certain times in its operations, the distinction between the corporate expenses of CFFI and the personal expenses of Mr. Risley, its ultimate shareholder, was not strictly maintained.
67. Beginning in or around 2024, CFFI engaged in an effort to separate Mr. Risley and his personal entities from CFFI. These efforts resulted in Mr. Risley and CFFI initiating negotiations regarding the ownership of certain pieces of CFFI’s artwork in or around 2025. The Monitor is advised that these discussions resulted in a general agreement that all artwork purchased prior to July 1, 2004, and certain other artwork gifted to Mr. Risley, would be owned by Mr. Risley personally, and artwork purchased after July 1, 2004, would be owned by CFFI (such agreement, the “**Art Ownership Allocation**”). The Art Ownership Allocation remains subject to continued negotiations, is not formally documented and may be subject to certain approvals.
68. CFFI has advised the Monitor that the allocation negotiations remain ongoing. The following table sets out the size of CFFI’s artwork collection and the proposed allocation between parties based on the Art Ownership Allocation as at the CCAA filing date, March 13, 2026:

Category	# of Pieces
Proposed Allocation to CFFI	742
Proposed Allocation to Mr. Risley	539
Total	1,281

b. Value of CFFI’s Artwork

69. Accounting records continue to show CFFI as the owner of all artwork, notwithstanding the Art Ownership Allocation described in the preceding subsection. This is due to the Art Ownership Allocation not being finalized and therefore not reflected in accounting records.

70. CFFI’s balance sheets for 2023, 2024, and 2025 show artwork information including opening book values, additions, disposals, and impairments. These records, however, are not broken down based on the Art Ownership Allocation. Based on the unaudited financial statements dated December 31, 2025, the net book value of CFFI’s “Artwork, Antiques, and Collectibles” was approximately \$8.1 million. This net book value represents a significant downward adjustment from 2024, which showed a net book value of \$26.8 million. The downward adjustment in the net book value of CFFI’s artwork in 2025 appears to be attributed to:

- (a) an impairment adjustment of \$11.2 million on the book value of CFFI’s artwork. This impairment adjustment is in line with the Artwork Memo’s finding that the acquisition costs of CFFI’s artwork exceeded its current fair market value; and
- (b) CFFI sold certain pieces of artwork in 2025 for total proceeds of \$2.66 million and incurred a net loss of \$4.87 million on these sales.

71. The Art Ownership Allocation is supported by detailed listings of artworks included in each of the two categories. The listing’s details include, *inter alia*, artist, title, and acquisition details, where available. CFFI advised that it was unable to locate historical acquisition cost information in respect of these pieces. A summary of the available cumulative acquisition costs as at the CCAA filing date, March 13, 2026, is approximately as follows:

Category	# of Pieces with identified Acq. Cost	# of Pieces with no identified Acq. Cost	Cumulative identified Acq. Costs (\$million)
Proposed Allocation to CFFI	701	41	10.36
Proposed Allocation to J. Risley	95	444	1.80
Total	796	485	12.16

72. The Monitor does not have the acquisition cost for all of CFFI’s artwork. CFFI advised that it is unable to locate historical acquisition costs in respect of 41 pieces of artwork that were proposed to be allocated to CFFI under the Art Ownership Allocation, and 444 pieces of artwork proposed to be allocated to Mr. Risley under the Art Ownership Allocation. As

a result, the acquisition costs set out in the preceding paragraph only pertain to 796 pieces of artwork (out of a total of 1,281 pieces).

73. Notwithstanding uncertainty regarding the value of CFFI’s artwork, the Monitor is of the view that any deviations in the value of the artwork from its 2025 net book value (\$8.1 million) are likely to have only a minimal impact on the total value of the Transferred Assets. For this reason, the Monitor has not engaged an independent art appraiser to review CFFI’s artwork; however, the Monitor continues to investigate this matter.

F. GENERAL INVENTORY OF CFFI’S SALEABLE ASSETS

74. The following table breaks down CFFI’s saleable assets by category, with each category explained in greater detail in the subsequent paragraph. Note that this table is primarily based on the book value of CFFI’s saleable assets as of December 31, 2025. The total book value of CFFI’s saleable assets is approximately \$287.6 million. Note that the book value reflects an asset’s historical cost on the balance sheet (often with depreciation factored in). It is not equal to fair market value, which reflects the current saleable price of an asset.

Category	Approx. Value (\$millions)	Basis
Cash and Restricted Cash	9.4	Current cash balances
Accounts Receivable	1.1	December 31, 2025 book value
Corporate Life Insurance Policy	0.4	December 31, 2025 book value
Long-Term Advances	142.5	December 31, 2025 book value
Investments and Beneficial Investments ⁴	126.1	December 31, 2025 book value
Artwork, Antiques, and Collectibles	8.1	December 31, 2025 book value
Equipment	0.0	December 31, 2025 book value
Total	287.6	

75. CFFI’s assets are comprised of the following:

⁴ The amount shown in this chart reflects the book value of Investments and Beneficial Investments. It is not the fair market value. This amount should not be directly compared to the amount in EY’s Fairness Opinion because the amount in the Fairness Opinion reflects (a) fair market value and (b) only the Transferred Equity Interests, not all Equity Investments.

- (a) **Cash and Restricted Cash:** As at the date of this Report, CFFI's cash and restricted cash total approximately \$9.4 million;
- (b) **Accounts Receivable:** The book value of accounts receivable as at December 31, 2025 was approximately \$1.1 million, including (i) a receivable-in-kind in the amount of approximately \$672,000 related to a put option agreement between CFFI and Sumac Corporation Limited, an unrelated party; and (ii) other receivables totalling approximately \$452,000, including \$64,000 of related party receivables. Between 2024 and 2025, CFFI has recognized impairment losses exceeding \$2.8 million related to the receivable-in-kind. The accounts receivable remain subject to further review; however, the Monitor is of the preliminary view that the accounts receivable will not be saleable assets. Any recoveries through collection remain uncertain;
- (c) **Corporate Life Insurance Policy:** CFFI owns a corporate life insurance policy with a cash surrender value of approximately \$405,000 as at December 31, 2025. The Monitor anticipates recovering this value for the benefit of creditors;
- (d) **Long-Term Advances:** These are loans made by CFFI. CFFI's long-term advances as at December 31, 2025, are detailed in the following table:

	Book Value (\$millions)
<i>Advances to Related Parties (with no fixed terms)</i>	
CFFI UK Ventures (Barbados) Limited	0.04
FP Resources Holdings LP	0.03
Subtotal	0.07
<i>Advances to related parties (with terms)</i>	
Horizon Maritime Offshore A/S	137.06
CFFI USA Holdings Inc.	3.03
MARA Renewables Corporation	2.24
Subtotal	142.33
<i>Advances to unrelated parties</i>	0.06
Total	142.46

The Monitor notes that in 2025, CFFI recognised an impairment of approximately \$261.6 million on long-term advances and forgave an additional \$5.8 million of long-term advances. Notably, approximately \$118.5 million of the 2025 impairment relates to the advance made to Horizon Maritime Offshore A/S, which is CFFI’s largest remaining long-term advance. The Monitor understands that the Horizon Maritime Offshore A/S impairment was intended to bring the book value of the advance closer to the recoverable value of the loan. The long-term advances remain subject to further review; however, the Monitor is of the preliminary view that the long-term advances are unlikely to be saleable assets. Any recoveries through collection or settlement arrangement remain uncertain;

- (e) **Investments and Beneficial Investments:** This refers to the Equity Investments, which are set out in Appendix “A”. Equity Investments are comprised of the Transferred Equity Interests and Other Equity Interests. Transferred Equity Interests are discussed above in Section E (*Commentary on the Fairness Opinion*). Note that the table immediately above reflects book value and not fair market value, which is why there is a discrepancy with the Fairness Opinion. With respect to Other Equity Interests, the Monitor reviewed the following information provided

by CFFI: (i) a listing of the Other Equity Interests, including CFFI’s interest in each of the respective Other Equity Interests; (ii) the business activities or function of each of the Other Equity Interests; and (iii) where available, copies of the most recent financial statements for each of the Other Equity Interests. The Monitor is of the view that the Transferred Equity Interests are saleable assets. The Other Equity Interests remain subject to further review; however, the Monitor is of the preliminary view that the Other Equity Interests largely consist of inactive and/or insolvent entities, which makes them harder to monetize;

Artwork, Antiques, and Collectibles: The book value of Artwork, Antiques, and Collectibles recorded on CFFI’s balance sheet as at December 31, 2025, is approximately \$8.1 million. The book value includes amounts that remain subject to the Art Ownership Allocation. The Monitor’s review of the Artwork, Antiques, and Collectibles (including ownership concerns) is further discussed above in a subsection of Section E (*Commentary on the Fairness Opinion – Considerations Related to CFFI’s Artwork*);

- (f) **Equipment:** Aircraft have historically comprised the vast majority of equipment; however, the last aircraft assets were sold in 2024. The current book value of equipment is approximately \$1,000 and is immaterial.

G. SECURITY REVIEW

- 76. The Monitor instructed Stikeman Elliott LLP (“**Stikeman**”), its independent counsel, to obtain legal opinions from local and conflict counsel on the validity, perfection and enforceability of:
 - (a) security granted by CFFI and certain related entities to the HPS Parties in respect of the Note Purchase Agreement. The Note Purchase Agreement is secured by, among other things, an amended and restated pledge and security agreement (as amended from time to time) governed by the laws of the Province of Nova Scotia, certain share pledges over shares in Horizon Maritime Offshore AS governed by the laws of Norway, and a shares charge and a debenture governed by the laws of Barbados;

- (b) CFFI's guarantee of obligations of Cormorant Utility Services Limited under an amended and restated credit agreement dated March 28, 2025 (as amended from time to time, the "ARCA") in favour of SFPC Quantum. CFFI's guarantee is supported by, among other things, a general security agreement and a securities pledge agreement governed by the laws of the Province of Ontario; and
 - (c) Security granted by CFFI to FPR Financial in respect of the FPR Promissory Note. The FPR Promissory Note is secured by, among other things, a pledge agreement governed by the laws of the Province of Nova Scotia.
- 77. Local counsel provided legal opinions with respect to the laws of Nova Scotia, Norway and Barbados. Conflict counsel provided the legal opinion in respect of the Ontario law governed security granted by CFFI in favour of SFPC Quantum in connection with the ARCA, and Stikeman provided an Ontario and Alberta legal opinion in respect of the security registrations in favour of the HPS Parties in connection with the Note Purchase Agreement.
- 78. Based on the legal opinions received by the Monitor, which opinions are limited to their respective jurisdictions and subject to the customary assumptions, exclusions and qualifications set out therein:
 - (a) the respective security agreements entered into between CFFI and (i) the HPS Parties and (ii) SFPC Quantum and (iii) FPR Financial, constitute legal, valid and binding agreements of CFFI, enforceable against CFFI in accordance with their terms;
 - (b) the security granted by CFFI to (i) the HPS Parties and (ii) SFPC Quantum was properly registered in the jurisdictions noted in the relevant opinions;
 - (c) the security granted by CFFI to (i) the HPS Parties and (ii) SFPC Quantum create valid security interests in the personal property of CFFI, as described in the relevant security documents in favour of (i) the HPS Parties and (ii) SFPC Quantum, as applicable; and

(d) FPR Financial does not appear to have properly registered its security interest in the personal property of CFFI. Nova Scotia counsel advises that, in the absence of registration and unless perfection by possession under the Nova Scotia PPSA can be established, the relevant security would be unperfected. Subject to that qualification, the relevant security agreements entered into between CFFI and FPR Financial create valid security interests in the personal property of CFFI described therein in favour of FPR Financial.

79. Copies of the legal opinions received by the Monitor can be made available to the Court upon request.

H. REVIEW OF THE NOTE PURCHASE AGREEMENT

Overview of the Note Purchase Agreement

80. The Note Purchase Agreement is between CFFI, CVI Holdings Inc. (“**CVI Holdings**”), certain affiliates of CFFI (as guarantors), the purchasers party thereto, and HPS, as agent and lead arranger. The Note Purchase Agreement has gone through multiple amendments, with each amendment resulting in a new series of notes being issued by CFFI as summarized in the following table:

Note Purchase Agreement Version	Date	Note Placement⁵	Note Status
Note Purchase and Guarantee Agreement (the “ Original Note Purchase Agreement ”)	October 23, 2017	US\$150 million (the “ Initial Notes ”)	Outstanding
Amended and Restated Note Purchase and Guarantee Agreement (the “ Amended Note Purchase Agreement ”)	March 16, 2018	US\$50 million (the “ Additional Notes ”)	Outstanding
Second Amended and Restated Note Purchase and Guarantee Agreement (the “ Second Amended Note Purchase Agreement ”)	April 25, 2019	US\$50 million (the “ Second Additional Notes ”)	Outstanding
Amendment No. 1 to the Second Amended and Restated	November 15, 2019	US\$5 million (the “ Cognition Notes ”)	Repaid on June 30, 2023

⁵ “Note Placement” refers to the aggregate principal amount of notes purchased by the purchasers under each iteration of the Note Purchase Agreement.

Note Purchase Agreement Version	Date	Note Placement⁵	Note Status
Note Purchase and Guarantee Agreement (the “ First NPA Amendment ”)			
Amendment No. 2 to the Second Amended and Restated Note Purchase and Guarantee Agreement (the “ Second NPA Amendment ”)	August 11, 2020	US\$7.5 million (the “ Third Additional Notes ”).	Repaid on January 28, 2021

81. A copy of the Second NPA Amendment, being the most recent iteration of the Note Purchase Agreement, is attached hereto as **Appendix “F”**.
82. The Initial Notes, the Additional Notes, and the Second Additional Notes, which remain outstanding, are in an aggregate principal amount of US\$250 million.
83. The Initial Notes, the Additional Notes, and the Second Additional Notes and the Third Additional Notes matured upon the earlier of (a) October 23, 2022 and (b) the date that they became due and payable in full, whether by acceleration or otherwise. The Cognition Notes matured upon the earlier of (a) December 31, 2020; and (b) the date that they became due and payable in full, whether by acceleration or otherwise.

Interest Rates Under the Note Purchase Agreement

84. Notes issued under the Note Purchase Agreement carry regular interest at the following rates:

Note Series	Regular Interest
Initial Notes; Additional Notes; Second Additional Notes	8% per annum (payable in cash on each “Interest Payment Date”) ⁶ plus “PIK Interest” ⁷ at a rate of 5% per annum (which is payable in kind on each Interest Payment Date as PIK Interest until maturity, at which date all PIK Interest is payable in full in cash)
Cognition Notes; Third Additional Notes	20% per annum (which is payable in kind on each Interest Payment Date as PIK Interest until maturity, at which date all PIK Interest is payable in full in cash)

85. Upon the occurrence and during the continuation of an event of default, default interest is applied to the notes. Default interest is *not* dependent upon the formal issuance of a default notice; it merely requires the occurrence and continuation of an event of default.
86. There are two different default interest rates. The applicable default interest rate depends on the nature of the triggering event of default:
- (a) in the case of an event of default under s. 8.1(a) of the Note Purchase Agreement (being CFFI’s failure to make any interest payment on an Interest Payment Date), interest automatically and without further action is deemed to have accrued at a rate that is 20% per annum payable on such Interest Payment Date in the form of PIK Interest (the “**PIK Default Rate**”); or
 - (b) in the case of any other event of default, interest at a rate that is 2% per annum in excess of the interest rate otherwise payable is applied to the principal amount of all outstanding notes and any interest payments on the notes or any fees or other amounts owing (the “**2% Premium Default Rate**”).
87. Default interest is paid by capitalizing such interest and adding such capitalized interest to the then outstanding principal amount of the notes, in each case, on each Interest Payment Date as PIK Interest.

⁶ “**Interest Payment Date**” is defined in the Note Purchase Agreement to mean (i) the last Business Day of each fiscal quarter of CFFI, commencing December 31, 2017 (in respect of the Initial Notes), June 30, 2018 (in respect of the Additional Notes), June 30, 2019 (in respect of the Second Additional Notes) and, December 31, 2019 (in respect of the Cognition Notes) and September 30, 2020 (in respect of the Third Additional Notes), and (ii) the Maturity Date.

⁷ “**PIK Interest**” is defined in the Note Purchase Agreement to mean any interest paid by capitalizing such interest and adding such capitalized interest to the then outstanding principal amount of the notes, which capitalized interest thereafter bears interest as if it had originally been a part of the outstanding principal of the notes

88. Section 2.6 of the Note Purchase Agreement provides that if a precipitating event of default is not cured or waived in accordance with the Note Purchase Agreement, then the default interest rate increases by an additional 0.5% per annum at each six-month anniversary date of the initial occurrence of such event of default until such event of default is cured or waived (the “**Stepped Default Interest**”). It is not plain and obvious, based on the language of the Note Purchase Agreement, whether the Stepped Default Interest applies *only* to the 2% Premium Default Rate, or to *both* the PIK Default Rate and the 2% Premium Default Rate. This is because the Stepped Interest Rate concept is contained in a lengthy sentence that begins with a subclause (a) (regarding the PIK Default Rate) and proceeds without any semi-colon to subclause (b) (regarding the 2% Premium Default Rate), which is then followed by a semi-colon and “provided”, at which point the concept of the Stepped Interest Rate is introduced. Based on sentence structure, it is possible that the Stepped Interest Rate is intended to modify both subclauses (a) and (b). The Monitor notes that the description of the Stepped Interest Rate contains a capitalized term, “Initial Default Interest Rate”, which is itself not defined but it is similar to “Initial Default Rate”, a defined term that appears to be associated with the 2% Premium Default Rate. This could suggest that the Stepped Interest Rate is only intended to only modify subclause (b). The exact wording in the Note Purchase Agreement is copied below, with the Stepped Interest Rate portion highlighted:

2.6 Default Interest

Upon the occurrence and during the continuance of (a) any Event of Default pursuant to Section 8.1(a) resulting from the failure of Company to make any interest payment in respect of the Notes (other than the Cognition Notes and the Third Additional Notes) on any Interest Payment Date, to the extent not prohibited by Applicable Law, interest for the Fiscal Quarter of Company in respect of which such interest payment is due on such Interest Payment Date shall, automatically and without further action by any party, be deemed to have accrued at a rate that is 20% per annum and shall be paid on such Interest Payment Date in the form of PIK Interest (which such amount shall be paid in kind on such Interest Payment Date as PIK Interest until the Maturity Date, at which date, all such PIK Interest shall be payable in full in cash) or (b) (i) any Event of Default pursuant to Section 8.1(a) resulting from the failure of Company to make any interest payment in respect of the Cognition Notes or the Third Additional Notes on any Interest

Payment Date or (ii) any other Event of Default, in each case, to the extent not prohibited by Applicable Law, the principal amount of all Notes outstanding and any interest payments on the Notes or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Insolvency Laws) at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Notes (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the highest interest rate otherwise payable hereunder for any Note) (such rate, the “Initial Default Rate”); provided that, if a precipitating Event of Default has not been cured or waived in accordance with the terms of this Agreement, then the Initial Default Interest Rate⁸ shall increase by an additional 0.5% per annum at each six-month anniversary date of the initial occurrence of such Event of Default until such Event of Default is cured or waived in accordance with the terms of this Agreement. All interest payable at the increased rate of interest provided for under this Section 2.6 shall be paid by capitalizing such interest and adding such capitalized interest to the then outstanding principal amount of the Notes, in each case, on each Interest Payment Date as PIK Interest, which PIK Interest shall thereafter bear interest as if it had originally been a part of the outstanding principal of the Notes. Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Purchaser.

89. It also bears noting that Section 2.6 of the Note Purchase Agreement is silent as to what happens if there are overlapping events of default that trigger both subclause (a) (regarding the PIK Default Rate) and subclause (b) (regarding the 2% Premium Default Rate). These subclauses are separated by the term “or”, meaning that it could be interpreted that only one of the PIK Default Rate or 2% Premium Default Rate is to apply. However, given that the 2% Premium Default Rate is layered on top of the rate that is “highest interest rate otherwise payable hereunder”, it could be interpreted that it should be layered on top of the PIK Default Rate (i.e., 20% + 2% in the event that both types of default interest are triggered). The CFFI Debt Calculations layer the 2% Premium Default Rate on top of the

⁸ This term is not defined in the Note Purchase Agreement.

PIK Default Rate. CFFI and HPS have advised that this is their interpretation of the Note Purchase Agreement and the intent of the parties.

90. If Section 2.6 of the Note Purchase Agreement is interpreted such that the lowest possible interest rate applies (i.e., only the PIK Default rate without layering in the 2% Premium Default Rate or the Stepped Default Interest), then the total outstanding balance under the Note Purchase Agreement could be approximately US\$790.3 million. This amount is approximately US\$327.4 million lower than what the Monitor calculates as owing when the 2% Premium Default Rate is layered on top of the PIK Default Rate, as further in paragraph 128 below.

Relevant Dates and Events Under the Note Purchase Agreement

91. The Monitor has reviewed certain documents, agreements, notices, and spreadsheets provided by CFFI related to the Note Purchase Agreement. The Monitor has also engaged in correspondence and calls with representatives of CFFI. The Monitor has used this information to understand how the balance owing by CFFI to HPS came to be. Below is a short chronology of the key events under the Note Purchase Agreement, which contributed to the accumulation of interest on the principal amounts advanced by HPS:⁹
- (a) in the quarter ended June 30, 2019, CFFI stopped paying the cash component of its regular interest obligations. This is an event of default under s. 8.1(a) of the Note Purchase Agreement, which triggered the PIK Default Rate;
 - (b) also in the quarter ended June 30, 2019, CFFI breached its loan-to-value covenant ratio under s. 6.6(b) of the Note Purchase Agreement. This is an event of default that triggered the 2% Premium Default Rate. CFFI has advised the Monitor that this particular event of default has not been remedied;
 - (c) on December 28, 2019 (being sixth months after the 2% Premium Default Rate was triggered), CFFI applied the Stepped Default Interest to its interest calculations for

⁹ The information in this chronology is based on information provided to the Monitor by CFFI. The Monitor does not purport to provide any views on the legal interpretation of any of the contractual provisions referenced herein.

the first time. Due to interest payments being recorded quarterly and in arrears, the first Stepped Default Interest payment is recorded in March 2020;

- (d) on September 30, 2022, HPS issued a notice of default / reservations of rights under the Note Purchase Agreement (the “**First Default Notice**”) that set out three categories of events of default, including the loan-to-value covenant ratio breach, but not the missed interest payments from the quarter ended June 30, 2019; and
 - (e) on October 31, 2022, HPS issued a second notice of default / reservations of rights under the Note Purchase Agreement.
92. The Monitor observes that there was a more than three-year gap between the June 2019 events of default and the First Default Notice. As mentioned in paragraph 91(d) above, the First Default Notice refers to an event of default on or before the June 2019 reporting period regarding the breach of a financial covenant which triggered the 2% Premium Default Rate.
93. CFFI did not make the second quarterly interest payment due in June 2019, so it applied the PIK Default Rate at the end of June 2019 to the preceding quarter (i.e., the PIK Default Rate was applied to the quarter ending June 30, 2019). The loan-to-value covenant ratio was breached by the end of the quarter ended June 30, 2019, but the application of the 2% Premium Default Rate was first seen in the payment made in the quarter ended September 2019, being the first quarter after the event of default was established (i.e., the 2% Premium Default Rate was applied prospectively).
94. The application of the Stepped Default Interest first took place in the quarter ended March 2020, being six months after the quarter ended September 2019. This would suggest that the Stepped Default Interest was applied in connection with the event of default tied to the loan-to-value covenant ratio breach and not the missed cash component of CFFI’s regular interest obligations. As described above in paragraph 89, Section 2.6 of the Note Purchase Agreement is not explicit as to which event of default the Stepped Default Interest is to attach. If the Stepped Default Interest attaches to the non-payment of the cash component of CFFI’s regular interest obligations, then it could have first been applied in the quarter ended December 31, 2019.

95. CFFI recorded the first application of the Stepped Default Interest in March 2020. The Stepped Default Interest was booked every six months thereafter, in September and March of each year. The Monitor discusses how CFFI applied the various default interest rates to its interest calculations in further detail beginning at paragraph 116 below.
96. The Monitor observes that CFFI first reported the impact of any default interest in its December 31, 2023 audited financial statements—being the fiscal year *after* the First Default Notice and the Second Default Notice were received, and four years after the actual occurrence of the event of default in 2019. The 2023 financial statements showed that the cumulative impact of default interest for the period June 2019 to December 2022 was approximately \$68 million (the 2022 comparables were restated to take this into account), and the impact of default interest in 2023 was approximately \$53 million.

The Call Option Agreement

97. On the same day that the Original Note Purchase Agreement was entered into (October 23, 2017), CFFI and CFFI Holdings s.à r.l. (“**SARL**”) entered into a call option agreement (as amended, restated, amended and restated, or otherwise modified from time to time, the “**Call Option Agreement**”). The Call Option Agreement was amended and restated on March 16, 2018, April 25, 2019, and August 11, 2020 (the same dates as the Amended Note Purchase Agreement, the Second Amended Note Purchase Agreement, and the Second NPA Amendment, respectively).
98. A copy of the Call Option Agreement (dated August 11, 2020) is attached hereto as **Appendix “G”**.
99. The Monitor is advised by HPS’s counsel that SARL is affiliated with HPS and capitalized by the purchasers of the notes issued under the Note Purchase Agreement.
100. Under the Call Option Agreement, CFFI granted to SARL options (“**Call Options**”) to acquire a portion¹⁰ of CFFI’s equity interests in certain Equity Investments. The Call

¹⁰ The Call Option Agreement originally provided SARL with the option to purchase 15% of CFFI’s equity interest in certain of the Equity Investments. In later amendments, SARL was granted the option to purchase either 20% or 30% of CFFI’s equity interest in certain of the Equity Investments (the specific percentage varied depending on the Equity Investment).

Option Agreement had the effect of providing HPS (via SARL) with the opportunity to benefit in some equity upside in certain of the Equity Investments.

101. In the event that SARL exercised a Call Option, it would have to pay to CFFI the amount prescribed by the Call Option Agreement that corresponded to that specific Equity Investment. Each Equity Investment subject to a Call Option had a different exercise price.
102. As consideration for the Call Options, SARL agreed to pay consideration of \$9.5 million to CFFI. The Monitor is advised by CFFI that this \$9.5 million was included in HPS's initial US\$150 million note purchase under the Note Purchase Agreement that took place in October 2017, and that the consideration for Call Options did not change the principal owing under the Note Purchase Agreement.
103. The Call Options are only exercisable at prescribed times, such as in connection with CFFI disposing of its interests in an Equity Investment or upon repayment of the notes. As noted below, the Call Options were never exercised; however, CFFI adjusted the balance owing under the Note Purchase Agreement as if the "True Up" provision in the Call Option Agreement (the "**True-up Mechanism**") applied.
104. The True-up Mechanism connects the Call Option Agreement to the Note Purchase Agreement. It appears to have been intended to ensure that SARL's¹¹ overall return from the Note Purchase Agreement and the Call Option Agreement falls within a pre-determined range.
105. The True-up Mechanism, in brief, provides that "following the settlement of all Call Options exercised pursuant to" the Call Option Agreement, the parties are to calculate whether the value received by SARL under the Call Option Agreement:

¹¹ SARL is not a party to the Note Purchase Agreement. There appears to be a conflation between HPS and SARL in the Call Option Agreement. The term "SARL" is used here because that is how the Call Option Agreement is drafted; however, it may be the case that the Call Option Agreement is supposed to refer to SARL and HPS together.

- (a) exceeds the level required for SARL to achieve an internal rate of return of 24% following the payment of all amounts owing under the Note Purchase Agreement and the settlement of all Call Options (resulting in an “Excess Amount”); or
 - (b) falls short of the level required for SARL to achieve the greater of (i) an internal rate of return of 16% and (ii) a cash-on-cash (“CoC”) return of 1.5x following the payment of all amounts owing under the Note Purchase Agreement and the settlement of all Call Options (resulting in a “Shortfall Amount”).
106. In the event there is an Excess Amount, then SARL is to pay CFFI an amount equal to the Excess Amount. In the event there is a Shortfall Amount, then CFFI is to pay SARL an amount equal to the Shortfall Amount. This true-up exercise effectively provides a ceiling and a floor on how much value SARL can receive in connection with the Note Purchase Agreement and the Call Option Agreement.
107. The Monitor makes the following two observations with respect to the Call Option Agreement:
- (a) first, the Call Option Agreement is with SARL (not HPS), whereas the Note Purchase Agreement is with HPS (not SARL). The Call Option Agreement does not consistently recognize this distinction. This issue may stem from the fact that the Call Option Agreement defines CFFI Holdings s.à r.l. as “HPS”, but has no defined term for HPS Investment Partners, LLC. The Call Option Agreement appears to use “HPS” as a collective term for both SARL and HPS. For example, the Call Option Agreement refers to “HPS’s internal rate of return with respect to the transactions contemplated by the Note Purchase Agreement”, and “value received [...] by HPS under the Note Purchase Agreement”. Strictly interpreted, “HPS” in both of these excerpts means SARL, but SARL is not party to the Note Purchase Agreement and therefore ought not to receive a return under the Note Purchase Agreement. The Monitor has not seen a document that reconciles the conflation of defined terms between HPS and SARL; and

(b) second, the Call Option Agreement expressly limits any true-up exercise to the period “following the settlement of all Call Options exercised”. The Monitor has consulted with CFFI, and CFFI has advised the Monitor that no Call Options have been exercised. If no call options have been exercised, then the Monitor would expect that there is no period “following the settlement of Call Options exercised” and therefore no right to apply the True-up Mechanism.

108. CFFI applied the True-up Mechanism when calculating the debt owing to HPS, as described below in paragraph 122.

Repayment of the Cognition Notes and Third Additional Notes

109. The Cognition Notes and the Third Additional Notes were repaid by CFFI. The Initial Notes, the Additional Notes, and the Second Additional Notes remain outstanding.

110. The Note Purchase Agreement includes the concept of “Applicable Premiums” that are make-whole payments made by CFFI to HPS upon the occurrence of certain events (referred to as “Applicable Premium Trigger Events”) that broadly include voluntary or mandatory prepayments, accelerations following default, or payments in an insolvency or restructuring process. Different Applicable Premium Trigger Events trigger different Applicable Premiums.

111. Section 2.9(b)(i) of the Note Purchase Agreement characterizes any Applicable Premium payable as equal to liquidated damages resulting from the occurrence of the Applicable Premium Trigger Event. As part of the Note Purchase Agreement, CFFI agreed that the Applicable Premium is reasonable and is the product of an arm’s length transaction between sophisticated business people, ably represented by counsel.

112. Applicable Premium Trigger Events include the full repayment of the Cognition Notes or Third Additional Notes before or after an event of default or the commencement of insolvency proceedings. The Applicable Premium in such circumstances is:

- (a) with respect to the Cognition Notes, the positive difference, if any, between (i) a cash-on-cash return¹² of 2.0x following the payment of all amounts owing with respect to the Cognition Notes and (ii) the aggregate amount of interest actually paid on the aggregate principal amount of the Cognition Notes as of the date of the Applicable Premium Trigger Event; and
 - (b) with respect to the Third Additional Notes, the positive difference, if any, between (i)(A) a cash-on-cash return of 1.25x during the first year after placing the Third Additional Notes; and (B) thereafter, a cash-on-cash return of 1.50x and (ii) the aggregate amount of interest actually paid on the aggregate principal amount of the Third Additional Notes as of the date of such Applicable Premium Trigger Event.
113. The Applicable Premium with respect to the Cognition Notes and the Third Additional Notes effectively sets a floor for HPS's cash-on-cash return upon settlement of either of these notes.
114. HPS purchased the Cognition Notes on November 15, 2019, for US\$5 million. CFFI fully repaid the Cognition Notes on June 30, 2023 in the aggregate amount of US\$11,304,444 (US\$5,000,000 principal + US\$6,304,444 in interest).¹³ This repayment was an Applicable Premium Trigger event; however, no Applicable Premium applied because the total repayment amount on the Cognition Notes, including principal and interest, was greater than the minimum 2.0x cash-on-cash return stipulated under the Applicable Premium formula.
115. HPS purchased the Third Additional Notes on August 11, 2020 for US\$7.5 million. CFFI fully repaid the Third Additional Notes on January 28, 2021. This repayment was an Applicable Premium Trigger Event, and because it occurred within the first year of the Third Additional Notes being placed, a minimum cash-on-cash return of 1.25x was applicable pursuant to the Applicable Premium formula. As at the date of the repayment, the total outstanding principal and interest on the Third Additional Notes was

¹² Cash-on-cash return is the ratio of annual cash flow to the total amount of cash invested.

¹³ The regular interest rate on the Cognition Notes was 20% per annum (payable as PIK Interest). The applicable default interest rate was the 2% Premium Default Rate and the Stepped Default Interest.

approximately US\$8.2 million. Since the outstanding balance was lower than the minimum 1.25x cash-on-cash return stipulated under the Applicable Premium formula, the Applicable Premium was applied and HPS was repaid US\$9.375 million, calculated as 1.25 multiplied by the US\$7.5 million advanced under the Third Additional Notes. Note that the cash-on-cash return of 1.25x in less than six months represents an annualized rate of return in excess of 50%.

Assessment of the Balance Owing to HPS

116. According to Bartlett Affidavit #1, the balance owing to HPS under the Note Purchase Agreement as of February 10, 2026, was US\$776,784.25. As noted in Bartlett Affidavit #1, this amount included the application of the PIK Default Rate but not the 2% Premium Default Rate or the Stepped Interest.
117. The Monitor has received a more recent spreadsheet from CFFI setting out its calculations with respect to the balance owing to HPS (the “**CFFI Debt Calculations**”). Based on the CFFI Debt Calculations, CFFI believes that as of March 13, 2026, it owes the aggregate amount of approximately US\$1.04 billion to HPS under the Note Purchase Agreement (including default interest).
118. Based on the Monitor’s review of the relevant records, the Monitor is of the view that the aggregate balance owing by CFFI to HPS is somewhat higher, approximately US\$1.12 billion. The following table breaks down the line items that form this aggregate balance and shows the differences between the CFFI Debt Calculations and the Monitor’s calculations:

Category	Amount (US\$million)		
	CFFI Calculation	Monitor Calculation	Difference
Principal	250.0	250.0	-
Repayments to HPS	(102.4)	(102.4)	-
Regular PIK Interest (5%)	12.7	12.7	-
PIK Default Rate Interest (20%)	725.8	739.7	13.9
Stepped Default Interest	213.3	218.4	5.1
True-up Mechanism	(61.0)	-	61.0
Total Outstanding Balance	1,038.3	1,118.3	80.0

Regular Cash Interest (8%) paid	(23.4)	(23.4)	-
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119. The Monitor notes, as a preliminary matter, that the CFFI Debt Calculations are based solely on CFFI's calculations. The CFFI Debt Calculations have not been fully reconciled with HPS. The Monitor understands that the reconciliations that have taken place between CFFI and HPS were limited to reconciling the principal, regular interest and PIK Default Rate Interest. Stepped Default Interest and the application of any true-up under the Call Option Agreement have not been reconciled.
120. The main point of difference between the CFFI Debt Calculations and the Monitor's calculations in paragraph 118 is with respect to the application of the True-up Mechanism. The CFFI Debt Calculations apply the True-up Mechanism on the basis that there is an "Excess Amount" under the Call Option Agreement which, if true, would entitle CFFI to a credit. In reliance on this Excess Amount, the CFFI Debt Calculations reduced the aggregate amount owing by CFFI to HPS by approximately US\$61 million.
121. The Monitor questions the applicability of the True-up Mechanism. As discussed in paragraph 107(b), the Monitor is of the view that the True-up Mechanism was not triggered because no Call Options were exercised under the Call Option Agreement. If the aggregate credits of approximately US\$61 million were reversed from the CFFI Debt Calculations, then there would be an increase in the balance owing to HPS. As at March 13, 2026, that increase would amount to approximately US\$80 million due to the effect of compound

interest (the differences in the PIK Default Rate and the Stepped Default Interest flow from the effect of compound interest on the True-up Mechanism).

a. Notes on the Monitor's Calculations

122. The following subparagraphs are intended to provide context to the table at paragraph 118:

- (a) **Principal:** The Monitor uses US\$250 million as the principal amount owing under the Note Purchase Agreement on the basis that this is what is provided for in the Note Purchase Agreement.
- (b) **Repayments:** CFFI made occasional repayments to HPS. These repayments included a lump sum payment following the sale of MDA common shares in 2026, as discussed beginning at paragraph 139.
- (c) **Regular PIK Interest:** The Note Purchase Agreement provides for the payment of regular interest that includes, as one component, PIK Interest at a rate of 5% per annum. Regular PIK Interest was paid from October 2017 to March 2019, after which point default interest applied.
- (d) **PIK Default Rate Interest:** The Note Purchase Agreement provides for the PIK Default Rate, which is PIK Interest at 20%. This rate applies starting in April 2019.
- (e) **Stepped Default Interest:** The CFFI Debt Calculations apply the 2% Premium Default Rate on the 20% PIK Default Rate beginning June 2019, when CFFI failed to meet a financial covenant as discussed in paragraph 91(d) above. The CFFI Debt Calculations then began applying the Stepped Default Interest beginning in December 2019 (and increasing 0.5% each six months thereafter). The Monitor's calculations apply the Stepped Default Interest in the same manner, although as discussed in paragraph 89 above there is some ambiguity around whether and how the 2% Premium Default Rate should be added to the PIK Default Rate. Likewise, there is some ambiguity around the application of the Stepped Default Interest to the PIK Default Rate, as addressed in paragraph 88.

- (f) **Regular Cash Interest:** CFFI made regular cash interest payments to HPS from the commencement of the Note Purchase Agreement until March 2019. CFFI made a one-off cash interest payment in September 2019, but this payment was not enough to make up for the arrears owing by that point. With this single exception, no cash interest payments were made from April 2019 onwards.
123. The Monitor observes as a general matter that it has identified certain components of the CFFI Debt Calculations that may not be accurate, but which are not described in this report because the cumulative net impact would be less than approximately \$500,000. This includes how numbers in the CFFI Debt Calculations are rounded.
- b. Impact of Compound Interest on the Outstanding Balance¹⁴**
124. Based on the Monitor's calculations, the aggregate interest (regular interest + default interest + Stepped Default Interest) accrued on the notes is approximately US\$970.7 million. This represents a significant amount relative to a principal amount of US\$250 million. The reason for this is a combination of (a) high interest rates resulting from defaults;(b) compound growth; and (c) interest continuing to occur for over three years post-maturity of the loan. Accrued interest is added to the principal, and future interest is then calculated on this increased amount, creating a situation where interest is being charged on interest.
125. The Note Purchase Agreement goes back to October 23, 2017 (over eight and a half years ago), and it has been in default since the quarter ended June 30, 2019 (nearly seven years ago). The PIK Default Rate is 20%, which has been applied since the quarter ended June 30, 2019, and the Stepped Default Interest rate added an additional 2% interest beginning the date of the default at the end of June 2019 and an incremental 0.5% step-up for each six-month period that has elapsed since. As of the start of this CCAA proceeding, the effective interest rate applicable to the Note Purchase Agreement was 28.5%, including 20% in relation to the PIK Default Rate and 8.5% in relation to the Stepped Default Interest.

¹⁴ The figures presented in this subsection are based on the CFFI Debt Calculations.

126. The table below shows the impact of compound interest on the outstanding balance of the Initial Notes, the Additional Notes, and the Second Additional Notes (which are in an aggregate principal amount of US\$250 million). This table does not show linear growth because instances of CFFI’s repayments impact such linear growth. This table further does not take into account cash interest payments.

Year	Amount (US\$millions)			
	Advances	Repayments	Interest & Adjustments	Year End Balance
23-Oct to 31-Dec-2017	150.0	-	1.4	151.4
2018	50.0	(48.1)	9.2	162.5
2019	50.0	-	38.3	250.9
2020	-	-	62.7	313.6
2021	-	-	80.9	394.6
2022	-	-	105.6	500.1
2023	-	(1.7)	138.6	637.1
2024	-	(0.6)	186.3	822.8
2025	-	-	224.4	1,047.2
1-Jan to 13-Mar-2026	-	(52.1)	43.2	1,038.3

127. HPS’s effective internal rate of return through March 13, 2026, under the Note Purchase Agreement would be approximately 24%. This amount was calculated based on the timing and quantum of the advances, interest payments, repayments and the outstanding balance.

c. Sensitizing the Outstanding Balance

128. The Monitor’s calculations until now have followed CFFI’s approach of layering default interest, resulting in PIK Default Rate + 2% Premium Default Rate + Stepped Default Interest. In the event that section 2.6 of the Note Purchase Agreement is interpreted differently than how CFFI and HPS have interpreted it, the Monitor has calculated the impact of what it considers to be the scenario with the lowest possible interest rate: only the PIK Default Rate (20%). The following chart shows the impact of this scenario:

Category	Amount (US\$million)		
	Monitor Calculation (Original)	Lowest Possible Interest Rate Scenario	Difference
Principal	250.0	250.0	-
Repayments to HPS	(102.4)	(102.4)	-
Regular PIK Interest (5%)	12.7	12.7	-
PIK Default Rate Interest (20%)	739.7	630.0	(109.7)
Stepped Default Interest	218.4	-	(218.4)
True-up Mechanism	-	-	-
Total Outstanding Balance	1,118.3	790.3	(327.4)

Regular Cash Interest (8%) paid	(23.4)	(23.4)	-
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129. In a scenario with the lowest possible interest rate, the total outstanding balance under the Note Purchase Agreement would be approximately US\$790.3 million. This would reduce the outstanding balance by approximately US\$327.4 million as compared to the Monitor's calculation of the outstanding balance.

I. CFFI'S MATERIAL ASSET DISPOSITIONS

130. The Scope of Work provides that the Monitor is to review and comment on any dispositions by CFFI of assets over \$100,000 in a single or series of transactions in the two years preceding the CCAA proceeding and the application of any proceeds therefrom. The Monitor has not investigated the propriety of these dispositions.
131. CFFI has provided the Monitor with details of the following asset dispositions that have value of over \$100,000:

Date	Value	Description
August 19, 2024	\$44,901,159	Transfer of 2,900,000 common shares of MDA Space Ltd. ("MDA") and the cash proceeds of \$1,493,750 from the sale of 100,000 MDA common shares to G2S2 Capital Inc. ("G2S2"). This is discussed in further detail below.

September 6, 2024	\$533,880	Transfer of 36,000 common shares as payment in kind to a CFFI executive in lieu of cash. This is discussed in further detail below.
September 18, 2024	US\$2,000,000 + sales tax	<p>Sale of an aircraft and certain related equipment.</p> <p>The aircraft broker received a commission of US\$65,992 (including taxes). The amount of US\$1,724,704 was paid to LBC Capital Inc. in satisfaction of a loan that it had provided to CFFI Aviation Inc. (an affiliate of CFFI) in connection with the aircraft. The loan appears to have been secured by the aircraft. The net proceeds of US\$309,304 were paid to CFFI and applied to (a) the remittance of US\$100,000 of sales taxes collected on the sale; (b) the repayment of \$273,940 in relation to a short-term loan made by Mr. Stan Spavold; and (c) CFFI working capital needs for the remaining balance of approximately \$10,000.</p>
September 23, 2024	US\$18,500,000 + flight costs from Nova Scotia to the Purchaser	<p>Sale of an aircraft.</p> <p>The aircraft broker received a commission of US\$300,000. Escrow fees were US\$11,100. The amount of US\$18,000,000 was paid in satisfaction of a loan that it had provided to an affiliate of CFFI in connection with the aircraft. The loan appears to have been secured by the aircraft. US\$9,167 was credited to CFFI in connection with the cost of the inflight system. The net proceeds of US\$210,748.49 were paid to CFFI and applied as follows: (a) CFFI aviation costs of approximately \$239,000; (b) expenses in the amount of approximately \$47,000 incurred on behalf of Lobster Point Holdings Limited (“Lobster Point”), an indirect parent company of CFFI (incurred for the benefit of Mr. Risley); and (c) expenses in the amount of approximately \$7,000 incurred for the benefit of Mr. Risley directly.</p>
Various dates, 2024-2026	\$90,794,935	Open-market sale of MDA’s common shares. This is discussed in further detail below.
Various dates, 2024-2025	\$4,103,500	Various artwork sales using The Kalamian Group, AK Prakash, Heffel, and Cowley as brokers of sale. The value of \$4,103,500 excludes \$1,820,865 of sales where ownership of the artwork is attributed to Mr. Risley pursuant to the Art Ownership Allocation. This is discussed in further detail below.

August 22, 2025	\$3,000,000	CFFI sold its partnership interests in Riffli Hitch Lodge Limited Partnership concurrent with Lobster Point selling its interest in the share capital of RH Management Services Inc. (the general partner of Riffli Hitch Lodge Limited Partnership) for an aggregate \$3 million. This is discussed in further detail below.
December 8, 2025	\$209,685	Sale of shares in Circadian Positioning Systems, Inc. (“ Circadian ”) to Ms. Sarah Risley. The Monitor understands that Circadian is a business with a specialty in sleep/wake cycles and circadian patterns. Ms. Risley is the daughter of Mr. Risley. The proceeds of this sale were paid to CFFI and applied to CFFI’s general working capital needs.

The MDA Common Share Dispositions

132. There were multiple dispositions of MDA’s common shares. For the purposes of this Report, the Monitor has put these dispositions into three subcategories:

- (a) disposition of shares as repayment of the G2S2 debt;
- (b) disposition of shares in lieu of cash payment to an executive-level employee; and
- (c) disposition of shares for cash in an open-market sale.

a. Repayment of G2S2 Debt

133. The first category of MDA share dispositions relates to dispositions in satisfaction of debts owing to G2S2. CFFI and others were indebted to G2S2 pursuant to the terms of:

- (a) a loan agreement between CFFI (as borrower), Mr. Risley (as guarantor), and G2S2 (as lender) dated May 1, 2023 (the “**CFFI MDA Loan**”);
- (b) a loan agreement between Mr. Risley (as borrower), Northern Private Capital Holdings Ltd. (“**NPC**”), Emscote Holdings Limited, and Lobster Point (as guarantors), and G2S2 (as lender) dated July 13, 2023 (the “**Risley MDA Loan**”); and

- (c) an amended and restated loan agreement between Mr. Risley (as borrower), Lobster Point and Emscote Holdings Limited (as guarantors), and G2S2 (as lender) dated April 18, 2024.
134. The Monitor does not have the particulars of the CFFI MDA Loan or the Risley MDA Loan, and it is not clear if NPC or Emscote Holdings Limited are related parties. Lobster Point is affiliated with Mr. Risley.
135. CFFI held shares in MDA. CFFI pledged 3,233,331 common shares of MDA in favour of G2S2. NPC also held shares in MDA. As part of NPC's guarantee, it pledged 1,245,999 common shares in favour of G2S2.
136. On or around August 19, 2024, 2,900,000 common shares of MDA and the cash proceeds of \$1,493,750 from the sale of 100,000 MDA common shares were transferred to G2S2, and G2S2 agreed to terminate, amongst other things, the CFFI MDA Loan and the Risley MDA Loan and release the related security. CFFI continued to hold MDA common shares after this transaction. G2S2 released its security in those shares, as set out in a payout, release and consent letter dated February 26, 2025 from G2S2. The remaining MDA common shares were then subject to a control agreement in favour of HPS.
137. The aggregate value of the cash paid and MDA common shares transferred to G2S2 was \$44,901,159. Of this amount, \$35,344,783 was applied to the CFFI MDA Loan and \$9,556,376 was applied to the Risley MDA Loan. These sums included a repayment premium that was calculated as 30% of the value of the pledged MDA common shares in excess of a share price of the lesser of (a) \$7 per share and (b) the share price on May 1, 2023 (which appears to be the date when the loan with G2S2 closed). The share price on May 1, 2023, was \$6.56, so this price was used to calculate the premium.

b. Management Incentive Plan

138. On or around September 6, 2024, in lieu of making a cash payment under CFFI's management incentive program to an executive-level employee, CFFI transferred 36,000 common shares of MDA to that employee in lieu of a cash payment. The value of the transfer was \$533,880.

c. Open-Market Sale of Shares

139. The third category of share dispositions relates to open-market sales of MDA’s common shares by CFFI. Between September 3, 2024, and January 20, 2026, CFFI disposed of 2,597,350 common shares, which generated net proceeds of \$90,794,935. The majority of dispositions occurred in the latter half of 2025. The proceeds of these dispositions were allocated to the following uses:

Use	Amount
Payment to Greypoint Capital Investments 4 LP in connection with a short term loan	\$2,976,416
Payment to HPS in connection with the Note Purchase Agreement	\$72,439,272
CFFI’s operations	\$5,391,346
Restructuring costs	\$2,855,368
Discontinued operations, including winding down CFFI’s aviation department	\$633,125
Payments to or for the benefit of Mr. Risley or Lobster Point	\$900,000
Subtotal	\$85,195,528
Held for future working capital	\$5,599,407

140. The payment to Greypoint Capital Investments 4 LP (“**Greypoint**”) was in connection with a short-term loan agreement between Greypoint and NPC dated February 26, 2025. CFFI has advised that this loan was required to meet an equity commitment owing to Mara Renewables Corp. As security for the obligations under this loan agreement, NPC pledged one million shares of MDA in favour of Greypoint.

Rifflin’ Hitch Lodge

141. CFFI sold its interest in Rifflin Hitch Lodge Limited Partnership in 2025. The business underlying this sale is the Rifflin’ Hitch Lodge, a fly-fishing property consisting of three fishing lodges in Labrador. The purchaser was a related party.
142. The sales process was initiated by CFFI following a request from HPS. The sales process was described by CFFI as informal and involved connecting with potentially interested parties within CFFI’s network.
143. Four offers were received. Three offers were declined:

- (a) one offer was for only a portion of the business, leaving CFFI with a continued, partial interest in the business and responsible for continued operating costs;
 - (b) one offer was for only one of three lodges;
 - (c) one offer was for the lodges that, in CFFI's view, undervalued the lodges and had many conditions. This offer also provided for the transfer of a floatplane that was not owned by the Rifflin' Hitch Lodge business entity.
144. The proceeds of the sale (after deducting legal costs) were transferred to CFFI and used to fund CFFI working capital.

Artwork Dispositions

145. The above Section E (*Commentary on the Fairness Opinion – Considerations Related to CFFI's Artwork*) discusses the Art Ownership Allocation, which according to CFFI provides that artwork purchased prior to July 1, 2004, and certain other artwork gifted to Mr. Risley, is owned by Mr. Risley personally, and artwork purchased after July 1, 2004, is owned by CFFI.
146. During the period from March 13, 2024 to March 13, 2026, the sale of artwork generated proceeds of \$5,924,365. Based on the Art Ownership Allocation, sale proceeds of \$1,820,865 are attributable to artwork owned by Mr. Risley and proceeds of \$4,103,500 are attributable to artwork owned by CFFI.
147. CFFI has reported that the proceeds of artwork sales were applied as follows:
- (a) proceeds totalling approximately \$260,000, which were generated from the sale of certain artwork brokered by The Kalaman Group, were applied directly against The Kalaman Group's fees in connection with an "art cataloguing project";
 - (b) proceeds totalling approximately \$1.5 million were distributed to CFFI and used for working capital requirements, including corporate and aviation costs;
 - (c) proceeds totalling approximately \$1.1 million were distributed directly to restricted CFFI accounts controlled by HPS; and

- (d) proceeds totalling approximately \$3.0 million were applied by CFFI against expenses incurred for the benefit of Mr. Risley or Lobster Point, for the benefit of Mr. Risley. Proceeds used for the benefit of Mr. Risley or Lobster Point were recorded in the respective shareholder and related party receivable accounts.

J. CONCLUSION

148. This Report was prepared in accordance with the Scope of Work approved by this Court on May 1, 2026, as set out in Appendix “B” hereto. The Monitor’s key findings are as follows:

- (a) with respect to the Fairness Opinion (Section E), the Monitor, with the assistance of the Valuation Team, has concluded that (subject to standard limiting conditions and disclaimers), the fair market values assigned to the Transferred Equity Interests are reasonable;
- (b) with respect to the general inventory of CFFI’s saleable assets (Section F), CFFI has saleable assets with a total book value of approximately \$287.6 million. The Transferred Equity Interests are amongst these saleable assets. Other assets, including long-term advances, remain subject to further review;
- (c) with respect to the security review (Section G), the security granted by CFFI to (i) the HPS Parties and (ii) SFPC Quantum was properly registered in the jurisdictions noted in the relevant opinions, and such security created valid security interests in the personal property of CFFI. FPR Financial does not appear to have properly registered its security interest in the personal property of CFFI;
- (d) with respect to the review of the Note Purchase Agreement (Section H), the amount owing by CFFI to HPS is in excess of US\$1 billion. The Monitor’s estimate of the outstanding balance is slightly higher than the CFFI Debt Calculations due to the Monitor reversing the True-up Mechanism, which the Monitor does not believe was triggered; and

- (e) with respect to CFFI's material asset dispositions (Section I), the Monitor has reviewed asset dispositions over \$100,000 in the two years preceding this CCAA proceeding. Material dispositions include the sale of MDA common shares, CFFI's interest in the Rifflin' Hitch Lodge, and artwork sales. The proceeds of these dispositions have been allocated to, amongst other things, payments to G2S2, payments to HPS, payments to Mr. Risley and related entities, and CFFI's operations.

All of which is respectfully submitted this 1st day of June, 2026.

FTI Consulting Canada Inc.

solely in its capacity as Monitor of CFFI Ventures Inc. and not in its personal or corporate capacity



Jeffrey Rosenberg
Senior Managing Director

APPENDIX “A”

[ATTACHED]

**Direct and Indirect Interests held by
CFFI Ventures Inc.**

Subject to Further Review and Investigation

Name	Direct / Indirect Interest	Direct Equity Interest¹⁵	Non-Filing Affiliate¹⁶	Transferred Equity Interest¹⁷	HPS Guarantor¹⁸
Aspire Food Group Limited ¹⁹	Direct	Unknown			
BIOX Holdings, LLC	Direct	100%	●	●	●
BIOX USA Limited	Direct	100%	●	●	●
AltAir Paramount, LLC	Indirect				
Inset IQ, LLC	Indirect				
Par49 Holdings, LLC	Indirect		●		
Par49 Management, LLC	Indirect				
Paramount Pipeline, LLC	Indirect				
WMG Services, LLC	Indirect				
World Asset Management, LLC	Indirect				
World Energy Canadian Holdings, Inc.	Indirect				
World Energy Clean Fuels, LLC	Indirect				
World Energy Elk Grove, LLC	Indirect				
World Energy Estill, LLC	Indirect				
World Energy Harrisburg, LLC	Indirect				
World Energy Holdings, LLC	Indirect		●		
World Energy Houston, LLC	Indirect				
World Energy Los Angeles, LLC	Indirect				
World Energy Mojave, LLC	Indirect				
World Energy Natchez, LLC	Indirect				
World Energy Net Zero Services, LLC	Indirect				
World Energy Rome, LLC	Indirect				
World Energy Sustainable Products, LLC	Indirect		●		
World Energy, LLC	Indirect		●		

¹⁵ Equity interests shown are based on the issued and outstanding shares and not on a fully diluted basis.

¹⁶ This column flags whether an entity is considered a “Non-Filing Affiliate” for the purposes of the proposed ARIQ. If an entity is a Non-Filing Affiliate, then it benefits from a limited stay of proceedings under the proposed ARIQ.

¹⁷ This column flags whether an entity is considered a “Transferred Equity Interest” under the *Companies Act* Plan.

¹⁸ This column flags whether an entity has guaranteed debt owing under the Note Purchase Agreement.

¹⁹ Equity interest unclear. Aspire Food Group Limited was made the subject of a receivership order on May 6, 2025.

Name	Direct / Indirect Interest	Direct Equity Interest ¹⁵	Non-Filing Affiliate ¹⁶	Transferred Equity Interest ¹⁷	HPS Guarantor ¹⁸
World Management Group, LLC	Indirect				
Boomerswork Employment Services Inc.	Direct	2.70%	●	●	
CFFI MPLP Holdings Inc. ²⁰	Direct	100%		●	
CFFI NPCLP Holdings Inc. ²¹	Direct	100%		●	
CFFI NPCSP Holdings Inc. ²²	Direct	100%		●	
CFFI SPVFLP Holdings Inc. ²³	Direct	100%		●	
CFFI UK Ventures (Barbados) Ltd.	Direct	100%	●	●	●
CB Growth Holdings Limited	Indirect				
ClearBank Europe B.V.	Indirect				
ClearBank Group Holdings Limited	Indirect				
ClearBank Limited	Indirect				
RTGS Global Inc. (USA)	Indirect				
RTGS Global Ltd. (UK)	Indirect				
RTGS Group Ltd.	Indirect				
RTGS Limited (Jersey)	Indirect				
RTGS Technologies Ltd. (UK)	Indirect				
CFFI USA Holdings Inc.	Direct	100%	●	●	
Cormorant Utility Services Limited	Direct	52.2%	●	●	
Cormorant Infinity Power Solutions Limited	Indirect		●		
Cormorant Utilities Development Corp. Ltd.	Indirect		●		
Cormorant-ECS Inc.	Indirect		●		
Energio Power Solutions Inc.	Indirect		●		
Eptcon Bondco Inc.	Indirect		●		
Eptcon Canpower Inc.	Indirect		●		
Eptcon Ltd.	Indirect		●		
Eptcon USA II Inc.	Indirect		●		
Pouvoir Nord Inc.	Indirect		●		
PowerTel Utilities Contractors Limited	Indirect		●		

²⁰ Assetless entity formed for the purposes of implementing the *Companies Act* Plan.

²¹ Assetless entity formed for the purposes of implementing the *Companies Act* Plan.

²² Assetless entity formed for the purposes of implementing the *Companies Act* Plan.

²³ Assetless entity formed for the purposes of implementing the *Companies Act* Plan.

Name	Direct / Indirect Interest	Direct Equity Interest ¹⁵	Non-Filing Affiliate ¹⁶	Transferred Equity Interest ¹⁷	HPS Guarantor ¹⁸
Powertraxx Vehicles Inc.	Indirect		●		
CVI Capital Investments (Barbados) Inc.	Direct	100%	●		
DeNova Inc.	Direct	1.95%	●	●	
Enlighten Innovations Inc.	Direct	0.82%	●	●	
FP Acquisition Holdings LLC	Direct	100%	●		●
FP Resources Holdings LP	Direct	98.6%	●		●
FP Resources USA Inc.	Indirect	100%	●		●
FPR Financial Corporation	Indirect	100%	●		●
FPR Global LLC	Indirect				●
FPR Lending Corporation	Indirect				●
The National Collegiate Funding II, LLC	Indirect				●
GIT Coatings Inc. ²⁴	Direct	2.156%	●	●	
HealthHub Holdings Inc.	Direct	45.64%			
HealthHub Patient Engagement Solutions Inc.	Indirect				
HealthHub Solutions Inc.	Indirect				
Horizon Maritime Offshore A/S	Direct	100%	●	●	
Horizon Maritime Services Ltd.	Direct	100%	●	●	
Ampelmann Canada Inc.	Indirect		●		
Bourbon Horizon AS	Indirect		●		
Bourbon Horizon Inc.	Indirect		●		
Heiltsuk Horizon Maritime Services LP	Indirect		●		
Heiltsuk Horizon Maritime Services Ltd.	Indirect		●		
Horizon Atlantic Maritime Services Ltd.	Indirect		●		
Horizon Maritime Facility Services Ltd.	Indirect		●		
Horizon Maritime Northern Services Ltd.	Indirect		●		
Horizon Maritime Offshore Ltd.	Indirect		●		
Horizon Pacific Maritime Services Ltd.	Indirect		●		

²⁴ Previously referenced in some documents as “Graphite Innovation and Technologies Inc.” The current name is GIT Coatings Inc.

Name	Direct / Indirect Interest	Direct Equity Interest ¹⁵	Non-Filing Affiliate ¹⁶	Transferred Equity Interest ¹⁷	HPS Guarantor ¹⁸
KOTUG Canada Inc.	Indirect		●		
Miawpukek Horizon Maritime Services LP	Indirect		●		
Miawpukek Horizon Maritime Services Ltd.	Indirect		●		
Ironbound Holdings Limited	Direct	100%	●		
Mara Renewables Corp.	Direct	47.19%	●	●	
Algorithm Ingredients Inc.	Indirect				
Humanativ Limited	Indirect				
Mara Renewables (Asia Pacific) Pte. Limited	Indirect				
Mara Renewables GmbH	Indirect				
Metric Partners Limited Partnership	Direct	100%	●	●	
Northern Private Capital Employee GP Inc. ²⁵	Direct	50%			
Northern Private Capital Fund I Limited Partnership	Direct	20%	●	●	
Northern Private Capital GP I Ltd.	Direct	50%	●	●	
Northern Private Capital Ltd.	Direct	50%	●	●	
Northern Private Capital Holdings Limited Partnership	Direct	50%	●	●	
Northern Private Capital Holdings GP Ltd.	Direct	50%	●	●	
OpenScreen Holdings Inc.	Direct	50%	●	●	
OpenScreen Inc.	Indirect	10.8%			
Sandpiper Ventures Fund Limited Partnership	Direct	1.2%	●	●	
Skinfix Inc.	Direct	32.3%	●	●	
Tracking Ventures Limited	Direct	100%	●		
Valent Low-Carbon Technologies Inc.	Direct	26.2%	●	●	
World Energy GH2 Inc.	Direct	30%		●	
91558 Newfoundland and Labrador Inc.	Indirect				
Port Harmon Authority Ltd.	Indirect				
Port of Stephenville Holdings Ltd.	Indirect				

²⁵ Northern Private Capital Employee GP Inc. was not included in the earlier versions of this chart that were attached to the Monitor's previous reports. The Monitor is advised that this entity has no assets.

Name	Direct / Indirect Interest	Direct Equity Interest¹⁵	Non-Filing Affiliate¹⁶	Transferred Equity Interest¹⁷	HPS Guarantor¹⁸
Viking Industrial Inc.	Indirect				
Viking Marine Enterprises Inc.	Indirect				
WEGH2 GP Inc.	Indirect				
WEGH2 Holdings Inc.	Indirect				
World Energy GH2 Limited Partnership	Indirect				

APPENDIX “B”

[ATTACHED]

The Monitor's Scope of Work

The scope of work for the Monitor's Third²⁶ Report is to be directed towards the following efforts:

1. Reviewing the Fairness Opinion and:
 - (a) commenting on the methodology and assumptions behind the Fairness Opinion and reasonableness of same;
 - (b) commenting on EY's conclusion that the fair market value of the assets proposed to be transferred from CFFI to AcquireCo under the *Companies Act* Plan is \$367 million;
 - (c) conducting any additional analysis in respect of the fair market value of the assets proposed to be transferred from CFFI to AcquireCo, if needed; and
 - (d) opining on the reasonableness of the Fairness Opinion.
2. With respect to CFFI's saleable assets that are not captured in the Fairness Opinion, conducting a general inventory of such assets and understanding the particulars of such assets, in each case with a view to including such assets in a sales and investment solicitation process. The Monitor may apply a materiality threshold that it determines at its discretion when deciding which assets to include in its inventory, and the Monitor may exclude assets that it considers *de minimis* from its inventory.
3. With respect to the Note Purchase Agreement, the CFFI Guarantee, and the FPR Promissory Note:
 - (a) opining on the validity of the security granted by CFFI; and
 - (b) commenting on the relative priority of each secured creditor.

For greater certainty, the Monitor's opinion on the validity of the security granted by CFFI will include a review of the relevant security documents, including any guarantee agreements and any subordination agreements.
4. Reviewing and commenting on the quantum of debt outstanding under the Note Purchase Agreement. For greater certainty, the Monitor will take into account factors including (a) the original principal advanced; (b) the application of payment-in-kind interest and default interest, and the appropriateness of such interest; (c) fees and expenses added to the outstanding balance; and (d) payments applied to the outstanding balance.
5. Reviewing and commenting on any dispositions by CFFI of CFFI's assets over \$100,000 in a single or series of transactions in the two years preceding the CCAA proceeding and

²⁶ Originally this scope of work was expected to form the basis of the Monitor's Second Report.

the application of proceeds therefrom. Should the Monitor determine that a further look back period is warranted, the Monitor will promptly advise the service list and the Court.

APPENDIX “C”

[ATTACHED]



Justice John A. Keith

Phone: (902) 424-6940

Fax: (902) 424-0524

The Supreme Law Courts
1815 Upper Water Street
Halifax, Nova Scotia
B3J 1S7

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May 1, 2026

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Nanci Rorabeck

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Dear Counsel:

RE: HFX 551716 - Application of CFFI Ventures Inc for creditor protection under the CCAA and other relief

This letter will confirm the key procedural directions established during our case management call on April 30, 2026.

Note that I subsequently received an email from Mr. Kingston indicating that one party identified a scheduling conflict with the hearing set for June 11, 2026, after our call was

concluded. Mr. Kingston asked that the hearing be rescheduled to June 9, 2026 at 9:30 a.m.. I am prepared to accommodate this change and have revised the schedule below accordingly. Please advise immediately if there are any concerns, errors or omissions.

The two most significant, recent developments which helped frame the discussion are:

1. CFFI will no longer be pursuing a plan of arrangement but, instead, will be seeking approval of a Sale and Investment Solicitation (“SISP”) process with respect to all of its assets; and
2. With this shift to a SISP, many disputes between the parties have been resolved. While certain significant disputes may remain, the parties indicated that the tenor of the proceeding has become somewhat more collaborative with a renewed, shared focus on preserving and maximizing value for all stakeholders.

As to the go-forward plan:

1. I approved the Monitor's scope of work as most recently articulated in Schedule “A” to Ms. Konyukhova's letter dated April 29, 2026. For clarity and convenience, a copy of Schedule “A” is attached. The Monitor indicated that CFFI and EY (who prepared the original Fairness Opinion) are cooperating and continuing to deliver the information required by the Monitor to complete the attached scope of work. The Monitor expects to deliver its report between May 8 - 22, 2026. SFPC Quantum, CRA and Mr. Paddick reserve their right to ask that the Monitor conduct additional work not otherwise covered by this scope. The parties may return to Court to resolve any disputes as to what work or work product is reasonably including within the attached scope and, as well, to address any requests for the Monitor to complete additional or extra work which they believe may be reasonably required in the circumstances.
2. On May 15, 2026, CFFI will file any and all motion materials for a Second Amended and Restated Initial Order (“ARIO”) which, among other things, is required to extend the current stay which expires on May 29, 2026. It is anticipated that the Second ARIO will amend or lift the stay in respect of an entity known as Open Stream Inc. The parties are discussing other potential areas or entities where the Stay of Proceedings may narrow. Finally, the parties expressed confidence that the Second ARIO would likely be put forward on consent. I indicated that I was prepared to process the Second ARIO in a more administrative and efficient manner (i.e. without necessarily requiring significant supporting documentation otherwise if the matter is moving forward on consent). However, if the matter is not moving forward on consent, motion materials must be filed with any responding materials due on or before May 20, 2026.
3. On May 22, 2022, a further case management call will proceed at 2 p.m. (Atlantic). The agenda items for this call will include:
 - a. Determining the Motion for a Second ARIO;

- b. Setting a filing schedule for the Motion on June 11, 2026 to approve a SISP. I expect to receive submissions regarding a proposed schedule - hopefully on consent and ideally a draft schedule could be provided to me in advance of the call. With respect to the anticipated SISP, the parties will continue their discussions and affirmed the advantages of moving forward in a reasonably cooperative way in terms of finalizing the terms for the proposed SISP. To that end, I understand that the parties currently hope to develop a shared approach to the SISP or, at least, narrow and focus the areas where they disagree - bearing in mind, of course, the Monitor and CFFI ultimately must take a lead role in finalizing the terms of the SISP for which they seek Court approval; and
 - c. Discuss any issues which have arisen in the interim and require the Court's attention. For example, that the parties reserved their right to pursue concerns regarding allegations that HPS is a related parties which bearing in mind that the frame of reference for considering that issue has changed given CFFI's decision to pivot into a SISP. In addition, I understand the parties are discussing the impact of SPFC Quantum's security (including its priority over certain assets and a related guarantee) on the SISP process. If there are any other issues which the parties seek to raise on May 22, 2026 and, while not discussed during our call, I would be grateful for some advance notice as to the nature of these issue - perhaps by May 20, 2026.
4. On June 9, 2026 (changed from June 11, 2026, as indicated), the Motion to approve the SISP is scheduled for a ½ day hearing beginning at 9:30 a.m. (Atlantic)

Sincerely,



John A. Keith
Justice
JAK/mej

APPENDIX “D”

[ATTACHED]

March 5, 2026

PRIVATE AND CONFIDENTIAL

CFFI Ventures Inc.
741 Bedford Highway
Halifax, Nova Scotia
B3M 2M1

Attention: Special Committee of the Board of Directors

Dear Mr. Stan Spavold, Director & President
Ms. Brittany Bartlett, Vice President & Chief Financial Officer

Re: CFFI Ventures Inc. Proposed Plan of Arrangement Transaction

Introduction

Ernst & Young LLP ("EY") understands that CFFI Ventures Inc. ("CFFI") is pursuing a recapitalization transaction (the "Proposed Transaction") by way of a Plan of Arrangement (the "Plan") under Section 130 of the Nova Scotia Companies Act (the "Act").

The terms of the Proposed Transaction are set forth in the draft proposed Plan of Arrangement dated February 17, 2026.

EY has been engaged by McInnes Cooper ("MC") to provide fairness opinion services to the CFFI Board of Directors in connection with the Proposed Transaction in accordance with the terms and conditions of our engagement letter dated January 6, 2026.

This fairness opinion has been prepared in conformity with the Practice Standards of the Canadian Institute of Chartered Business Valuators.

All currency amounts stated herein are in Canadian dollars, unless otherwise noted.

The Proposed Transaction

EY understands and assumes the information set out below with respect to the Proposed Transaction¹

HPS (as defined below) will establish a new corporation ("AcquireCo") that will acquire substantially all of the assets of CFFI, including various equity interests, cash, receivables, and art in exchange for the assignment of various liabilities and obligations, including debt of CFFI which ranks in priority to amounts owing to HPS, along with a portion of the HPS debt (the "HPS Debt"), and the "contingent value rights" that are proposed to be provided

¹ See the draft proposed Plan of Arrangement dated February 17, 2026 for the transaction details.

to applicable secured and unsecured creditors (such that AcquireCo would be responsible for any payments thereunder). The portion of the HPS Debt to be assumed pursuant to the Proposed Transaction (the "HPS Assumed Debt") is to be equal to the fair market value of the acquired assets of \$367.0 million. HPS will own 100% of the equity of AcquireCo.

Classes of Creditors

There are two classes of creditors contemplated under the Plan:

1. "Secured Creditors" comprised of:

- i. Three HPS funds (MP III Offshore Master Lux, L.P., Mezzanine Partners III, L.P., AP Mezzanine Partners III L.P.) collectively, "HPS"), holding the HPS Debt, which totals approximately \$1,076 million.
- ii. FPR Financial Corporation, a related party of CFFI, holding a claim of approximately \$2.9 million pursuant to a promissory note (the "FPR Note"), secured against certain potential equity distributions to CFFI on a subordinate basis.
- iii. SFPC Quantum LP, holding a guarantee (the "SFPC Guarantee") from CFFI for a \$30.6 million loan to Cormorant Utility Services Limited ("Cormorant") (in which CFFI holds an equity interest). The loan matures January 4, 2027 and is secured on a subordinate basis other than with respect to CFFI's equity interest in Cormorant, for which HPS is subordinate.

2. "Unsecured Creditors" comprised of all creditors that are not holders of secured claims, including:

- i. Trade creditors.
- ii. The counterparty to a put option liability (approximately \$3.0 million).
- iii. Two individuals owed approximately \$24.9 million in aggregate.
- iv. Canada Revenue Agency, with an alleged corporate income tax claim of approximately \$332 million, which is disputed by CFFI.
- v. Three HPS funds (MP III Offshore Master Lux, L.P., Mezzanine Partners III, L.P., AP Mezzanine Partners III L.P.), holding the HPS Debt that is not part of the HPS Assumed Debt will be treated as unsecured under the Plan (the "Impaired HPS Debt").

Unsecured creditors holding a claim of \$15,000 or less ("Convenience Class Creditors") will be paid in full in cash. We understand that approximately 2/3rds of unsecured creditors will be deemed to be Convenience Class Creditors.

CFFI shareholders, Secured Creditors, and Unsecured Creditors are collectively referred to as the "CFFI Parties" below.

Treatment of Claims

The HPS Assumed Debt and claims in priority to the HPS Assumed Debt (i.e., the SFPC Guarantee, solely with respect to CFFI's interest in Cormorant's equity) (collectively, the "Priority Secured Debt") will be assumed by AcquireCo.

Secured claims that are subordinate to the Priority Secured Debt (i.e., the FPR Note and the SFPC Guarantee with respect to assets other than CFFI's interest in Cormorant's equity) (collectively, the "Subordinate Secured Debt") will receive Contingent Value "A" Rights (as described below) in exchange for full and final settlement of their Subordinate Secured Debt.

Convenience Class Creditors will be paid in full in cash from a \$250,000 convenience class pool (the "Convenience Class Pool"), leaving approximately \$170,000 in the Convenience Class Pool. Other unsecured creditors can elect to receive a \$15,000 payment from the remaining portion of the Convenience Class Pool, in which case they shall be deemed to vote in favour of the Plan, provided that, to the extent the Convenience Class Pool is oversubscribed to, such electing unsecured creditors will receive a pro rata share of the remainder of the Convenience Class Pool based on relative claim value.

Unsecured creditors (other than Convenience Class Creditors and those electing to receive payment from the Convenience Class Pool) will receive Contingent Value "B" Rights (as described below) in exchange for full and final settlement of their unsecured claims.

The "Contingent Value "A" Rights" and "Contingent Value "B" Rights" are based on the form appended to the Plan in Schedules E and F.

Purpose of the Engagement

In connection with the Proposed Transaction to be filed with the Supreme Court of Nova Scotia, the CFFI Board of Directors, (the "Board") has requested that EY provide an opinion (the "Opinion") as to, on the basis our review and subject to the assumptions and limitations noted herein:

- Whether the Proposed Transaction is fair from a financial point of view to CFFI.
- The treatment of the CFFI Parties under the Plan compared to a liquidation of CFFI.

The Opinion has been prepared to provide information for consideration by the Board and the CFFI Parties of CFFI with respect to the Proposed Transaction, but does not constitute a recommendation to any party as to any course of action they might take. Despite any conclusions reached herein, the circumstances of any individual CFFI Party will necessarily determine what course of action they will take in responding to the Plan.

Independence of EY

EY has developed this Opinion on the basis of an independent review and analysis of CFFI. The analysis herein and the valuation conclusions reached are those of the professionals within EY.

EY is independent of all “interested parties” to the Proposed Transaction, in accordance with the requirements of MI 61-101² and EY’s professional standards:

- Over the past three years EY has not performed any professional services to CFFI. EY performs financial statement audit services for one CFFI investee entity, World Energy GH2 Inc., and advisory services for one CFFI investee entity, Cormorant Utility Services Limited. No professional services were provided to Mr. John Risley during the past three years.
- EY has no financial interest in CFFI or in the outcome of the Proposed Transaction.
- EY has not conducted a prior valuation of CFFI.
- There are no understandings or agreements between EY and CFFI or its associates or affiliates, with respect to future business dealings.
- EY’s fees are not contingent on the completion of the Proposed Transaction or on the conclusions expressed herein.

Scope of Review

In developing this Opinion, EY has had discussions with the management of CFFI (“Management”), conducted the procedures noted below, and relied on information obtained from these general procedures, among others:

1. Reviewed the draft Plan of Arrangement dated February 17, 2026 for an understanding of the terms of the Proposed Transaction.
2. Reviewed the unaudited historical annual financial statements of CFFI for the year ended December 31, 2025 and the annual financial statements for the year ended December 31, 2024 with accompanying review engagement report prepared by BDO Canada LLP to obtain an understanding of the cost, revenue, investment and financing structure, and the results of operations in terms of revenues, profits, and cash flows.
3. In order to assess value of CFFI’s financial interests in holding companies, operating companies, and investment funds (collectively, the “Investee Entities”), we have reviewed information on each Investee Entity. The assets to be transferred to AcquireCo including the information reviewed for the Investee Entities has included:
 - a. CFFI management internally prepared calculations of fair market value for each Investee Entity.

² While the Proposed Transaction does not fall under MI 61-101 Protection of Minority Security Holders in Special Transactions, EY has applied its guidance in assessing independence.

- b. Background materials concerning the businesses, as well as industry data and information considered relevant to formulating a view of the fair market value.
 - c. Historical financial statements.
 - d. Financial projections, to the extent they are available, to obtain an understanding of future prospects, initiatives, risks, and opportunities.
 - e. Board of Director presentations.
 - f. A range of economic, investment, stock market trading, and acquisition transaction data in the process of developing factors and rates of return relevant to estimating the fair market value.
 - g. Shareholder agreements.
 - h. Organization charts, capitalization tables, share issuance agreements, or other information to obtain an understanding of the relative ownership interests.
4. Applied the valuation approaches and methods we deemed most appropriate in the circumstances for each Investee Entity and each Investee Entities' investments in additional entities.
5. Reviewed an independent expert report from a qualified, experienced third party expert on the fair market value of the portfolio of artwork as at February 19, 2026.
6. Obtained a letter of representation as to certain factual matters and the completeness and accuracy of certain information upon which our fairness opinion is based, addressed to us and dated as of the date hereof, provided by Management (the "Management Representation Letter").
7. Evaluated the Proposed Transaction on the basis of fairness from a financial point of view to CFFI.
8. Evaluated the Proposed Transaction on the basis of fairness from a financial point of view to the CFFI Parties relative to a liquidation.

Assumptions and Limitations

EY has relied upon the completeness, accuracy and fair presentation of all of the financial and other information obtained from public sources and from CFFI for purposes of developing this Opinion. The Opinion is conditional upon the completeness and accuracy of such information. Subject to the exercise of professional judgement and except as expressly described herein, we have not attempted to verify the completeness, accuracy or fair presentation of any of the information relied upon in developing this assessment of financial fairness. The attached Schedule of Limiting Conditions in Appendix B includes additional assumptions concerning the information reviewed.

Management of CFFI has represented to us that, the information provided by CFFI is true and correct in all material respects, and there have been no changes in facts subsequent to the provision of such information that is material to the conclusion herein.

This Opinion has been prepared for the specific purpose identified above and it is not to be used in any other context without the express written consent of EY. This Opinion has been developed as of the date of this letter on the basis of identifiable information and EY has not undertaken to update it to any other date. Should information relevant to our conclusions become available to EY subsequent to the date of this letter, EY reserves the right, but will be under no obligation, to revise our Opinion.

In completing this Opinion, EY has made numerous assumptions with respect to economic, industry, and company performance and expectations that are matters over which EY has no control.

Going concern business value and associated evaluations of transaction fairness are inherently and inescapably a matter of implicit or explicit perceptions of the potential future economic performance of the business under consideration and the environment in which that performance will take place. Recognizing that those perceptions are developed under conditions where neither contractual nor other bases exist to ensure that actual operating results will conform to the assumptions employed for valuation purposes, this analysis necessarily works with contingent and uncertain information and there is a corresponding degree of uncertainty in the resultant estimates of value. It must accordingly be recognized that CFFI and EY do not warrant that the projections and estimates employed in developing this Opinion represent commitments as to what the future performance of the business will be.

This Opinion is considered to be a reasonable evaluation on the basis of the information and assumptions upon which they are predicated and as of the time when they were developed. However, should significant deviations from these assumptions emerge in the future, the evaluation may cease to be representative.

EY believes that an evaluation of the fairness of a proposed transaction from a financial point of view must be considered as a whole and that selecting portions of the analysis without considering the other factors and analyses may create a misleading view of the evaluation process.

Value Standard

In assessing the adequacy of financial value, EY has applied the concept of fair market value as the relevant assessment benchmark on a basis consistent with the guidance of Multilateral Instrument 61-101 - Protection of Minority Security Holders in Special Transactions ("MI 61-101"). Fair market value is defined in MI 61-101 as:

"The monetary consideration that, in an open and unrestricted market, a prudent and informed buyer would pay to a prudent and informed seller, each acting at arm's length with the other and under no compulsion to act."

Financial Fairness Considerations

Depending on circumstances and the nature of the transaction under review, the reasonability of transaction values may be assessed through valuation analyses and the comparison of financial metrics and factors implied by the transaction. For example: implied transaction multiples may be compared to public company trading and transaction data; and implied internal rates of return may be compared to return expectations for the subject business (or underlying investee businesses), in light of risk profile.

As part of our review, EY has conducted independent analyses relating to individual values assigned to underlying CFFI investments, including valuation modelling and review of implied transaction multiples and implied rates of return, relative to public data and our analyses, among other factors.

Depending on circumstances and the nature of each Investee Entity, we applied the approaches and methods deemed most appropriate in the circumstances.

Consideration of Liquidation Alternative

EY has also assessed whether CFFI Parties would be in a better or worse position, from a financial point of view, under the Plan than if CFFI were liquidated.

EY considered a liquidation scenario that contemplates assumptions that would be required to arrive at estimated ranges of recoveries for the various assets, inclusive of investments, of CFFI in a liquidation process. EY also relied upon the discussions, documents, and materials referred to under "Scope of Review", discussed with Management the alternatives available to CFFI, and considered, among other things, the following matters:

1. In a liquidation process, prospective buyers will be aware that the seller is compelled to sell its assets within a specified timeline, which may have a negative impact on the value realized.
2. A liquidation process may have a negative impact on the value of select CFFI's Investee Entities' businesses as customers, suppliers, creditors, and employees of CFFI and its Investee Entities react to protect or enhance their interests.
3. A liquidation process would give rise to additional legal and financial advisory costs to implement the liquidation and engage in the associated insolvency proceedings. These costs would be recovered from estate proceeds otherwise available to the CFFI Parties.

4. Based on our liquidation analysis, the CFFI shareholder, Subordinate Secured Debt holders and Unsecured Creditors would not be expected to receive any recovery in a liquidation.
5. Based on our fairness review, the HPS Debt significantly exceeds the fair market value of the assets being transferred to AcquireCo.
6. The Proposed Transaction would significantly reduce the total amount of debt outstanding and would reduce the risk that AcquireCo's cash flow from operations and available liquidity would be insufficient to provide adequate funds to finance the operating expenditures necessary to execute its operating strategy and service its debt. Following the closing of the Proposed Transaction, AcquireCo would be in a better financial position to execute on a strategy to maximize value from its portfolio of Investee Entities.

Fairness Conclusion

On the basis of our review and subject to the assumptions and limitations noted herein, it is our opinion that:

- the Proposed Transaction is fair from a financial point of view to CFFI;
- CFFI's shareholders would not be in a worse position, from a financial point of view, under the Proposed Transaction than if CFFI was liquidated; and
- CFFI's Secured Creditors and Unsecured Creditors would be in a better position, from a financial point of view, under the Proposed Transaction than if CFFI was liquidated.

Sincerely,

Ernst & Young LLP

Ernst & Young LLP

APPENDIX A - ASSETS TO BE TRANSFERRED FROM CFFI TO ACQUIRECO

Equity interests in Investee Entities (including advances)	CFFI ownership interest
Horizon Maritime Services Ltd.	100.0%
Horizon Maritime Offshore A/S	100.0%
CFFI UK Ventures (Barbados) Limited	100.0%
Northern Private Capital Fund I LP	26.7%
Northern Private Capital GP 1 Ltd.	50.0%
Northern Private Capital Ltd.	50.0%
CB Growth Holdings Limited (Beneficial interest)	5.8%
Cormorant Utility Services Limited	39.8%
Biox USA Limited	100.0%
BIOX Holdings LLC	100.0%
Metric Partners LP	100.0%
CFFI USA Holdings Inc.	100.0%
OpenScreen Holdings Inc.	50.0%
Mara Renewables Corp.	36.8%
Skinfix Inc.	32.3%
World Energy GH2 Inc.	10.0%
Valent Low-Carbon Technologies Inc.	26.1%
Boomerswork Employment Services Inc.	6.5%
Graphite Innovation and Technologies Inc.	1.9%
DeNova Inc.	1.7%
Sandpiper Investment Fund Limited Partnership	1.2%
Enlighten Innovations Inc.	0.8%
Artwork	100.0%

APPENDIX B - SCHEDULE OF LIMITING CONDITIONS

1. Ernst & Young LLP ("EY") has prepared this fairness opinion solely for the purpose stated, and it should not be used for any other purpose. In carrying out our work, we have worked solely on the instructions of our client and this fairness opinion has been prepared solely for the use of CFFI and its Board of Directors. Our fairness opinion may not have considered issues relevant to third parties and EY shall have no responsibility whatsoever to any third party which obtains a copy of this fairness opinion. Any use such a third party may choose to make of this fairness opinion is entirely at its own risk.
2. Provision of valuation conclusions and/or recommendations and considerations of the issues described herein are areas of valuation practice for which we believe that we have knowledge and experience. The services provided are limited to such knowledge and experience and do not represent audit, advisory or tax-related services that may otherwise be provided by EY or another Ernst & Young member firm.
3. No investigation of the title to the subject company and subject assets has been made, and the ownership claims to the subject company and subject assets are assumed to be valid. To the extent that EY's services relate to assets, properties or business interests, EY shall assume no responsibility for matters of legal description or title, and EY shall be entitled to make the following assumptions: (i) title is good and marketable, (ii) there is full compliance with all applicable government regulations and laws (including, without limitation, zoning regulations), and (iii) all required licenses, certificates of occupancy, consents, or legislative or administrative authority from any government, private entity or organization have been or can be obtained or renewed for any use to which EY services relate.
4. The conclusions and/or recommendations contained herein are not intended to apply at any time other than the effective date that is specifically stated in this fairness opinion. Changes in market conditions could materially impact the analysis. We assume no responsibility for changes in market conditions or for the inability to realize the values stated herein.
5. No responsibility is assumed for information furnished by others (including management), and such information is believed to be reliable.
6. In the course of our analysis, we were provided with written information, oral information, and data in electronic form, related to the structure, operation, and financial performance of the subject company and subject assets. We have relied upon this information in our analyses and in the preparation of this fairness opinion and have not independently verified its accuracy or completeness.
7. Certain historical financial data used in our engagement were derived from unaudited financial statements and are the responsibility of management. These financial statements may not have included disclosures required by generally accepted accounting principles. We have not independently verified the accuracy or completeness of the data provided and do not express an opinion or offer any form of assurance regarding its accuracy or completeness.
8. The estimates of cash flow data underlying the analysis herein is solely for use in the valuation analysis. We have not performed an examination or compilation of the underlying cash flow data in accordance with standards prescribed by the Canadian Institute of Chartered Professional Accountants, and, accordingly, do not express an opinion or offer any form of assurance on the underlying cash flow data or their underlying assumptions. Furthermore,

there will usually be differences between estimated and actual results because events and circumstances frequently do not occur as expected, and those differences may be material.

9. Our fairness opinion assumes full compliance with all applicable federal, provincial, local, and other zoning, usage, environmental and similar laws and regulations, unless otherwise stated.
10. We assume no responsibility for any financial and tax reporting decisions, which are appropriately those of management. It is our understanding that management accepts the responsibility for any financial statement and tax reporting issues with respect to the subject assets.
11. We reserve the right (but will not be obligated) to revise this fairness opinion in light of any relevant information (that we consider material to this fairness opinion) that comes to our attention after the date of issuance.

APPENDIX “E”

[ATTACHED]

Curriculum Vitae – Bradley Henn

Bradley Henn is a Senior Managing Director and Leader of the Valuation & Financial Advisory Services practice. Mr. Henn has extensive expertise in a range of financial advisory roles, including enterprise, equity, fixed income and intangible asset valuations, fairness opinions and solvency opinions. This includes valuation of all classes of equity, including preferred stock, common stock, stock options and warrant agreements.

Mr. Henn has broad industry experience as well, providing valuation services across industries including aerospace and defense, agriculture, automotive, business and professional services, construction, energy and power products, financial services, healthcare, infrastructure, hospitality, industrials, information technology, life sciences, mining, real estate management, retail and consumer goods, telecommunications, transportation and logistics.

Assignments that Mr. Henn has led include preparing valuations for transaction support, accounting, tax compliance, restructuring and litigation support purposes for both domestic and international entities. He has substantial experience in valuations for financial reporting purposes, including ASC 820 Fair Value Measurement, ASC 805 Business Combinations and ASC 350 Goodwill Impairment and tax valuation opinions consistent with fair market value standards under IRS Revenue Ruling 59-60.

Mr. Henn is also routinely engaged by capital market participants, including the preparation of quarterly and year-end fair value analyses to assist private equity firms with accounting and investor reporting requirements, and he assists banks and other lenders by preparing independent collateral valuations. Additionally, Mr. Henn has served as an expert witness in United States Bankruptcy Court.

Prior to joining FTI Consulting, Mr. Henn worked in the Business Valuation group at Deloitte Financial Advisory Services in New York. Mr. Henn holds a B.S. in finance and marketing from the Martin J. Whitman School of Management at Syracuse University and an M.B.A. from Fordham Graduate School of Business at Fordham University.

A summary of Mr. Henn's representative engagement experience is provided below:

- Provided enterprise valuation of an energy services company to large national bank acting as agent to a lender group to assist the lender group with evaluating the subject company and meeting regulatory compliance requirements.
- Rendered fairness opinion to the board of directors of publicly-traded bank as part of the approval process to acquire another publicly-traded bank.
- Served as valuation expert witness in U.S. Bankruptcy Court on behalf of debtors in the aviation industry to assist with court approval of its plan of reorganization.
- Served as valuation expert witness in arbitration between a publicly-traded mortgage REIT and its external manager.
- Provide recurring fair value services to large, international private equity firm to assist with the firms quarterly reporting requirements for privately-held investments across several industries.
- Developed a series of solvency analyses to assist publicly-traded energy company with a corporate reorganization and subsequent divestment of multi-billion dollar asset, ultimately delivering nine separate solvency opinions to the company's board of directors.
- Assisted management of food manufacturing and distribution business with the valuation of acquired intangible assets to prepare the purchase price allocation ("PPA") required for financial reporting purposes.
- Prepared valuation of preferred stock as part of a complex equity structure of a technology firm to assist management of a target in evaluating an acquisition offer with consideration to be paid in the form of preferred stock in the buyer.

In addition, a summary of Mr. Henn's expert testimony provided in the past five years is provided below:

- **Deposed:** Strougo v. Tivity Health, Inc., United States District Court, M.D. Tennessee, Nashville Division, Civil Action No. 3:20-cv-00165.
- **Deposed:** The Bankruptcy Estate of Norske Sogindustrier ASA, v. Cyrus Capital Partners, L.P., et al., United States Bankruptcy Court for the Southern District of New York.
- **Deposed & Testified:** Confidential arbitration.
- **Testified:** Confidential arbitration.
- **Submitted Expert Declaration that did not require testimony:** PHI, Inc., et al, United States Bankruptcy Court for the Northern District of Texas, Dallas Division.
- **Submitted Expert Declaration that did not require testimony:** Internap Holdings LLC and its Debtor Affiliates, United States Bankruptcy Court for the District of Delaware.
- **Testified:** Confidential arbitration.
- **Expert Report:** Millenkamp Cattle, Inc., et al., United States Bankruptcy Court for the District of Idaho.

APPENDIX “F”

[ATTACHED]

**AMENDMENT NO. 2
TO SECOND AMENDED AND RESTATED NOTE PURCHASE AND GUARANTEE
AGREEMENT**

AMENDMENT NO. 2 TO SECOND AMENDED AND RESTATED NOTE PURCHASE AND GUARANTEE AGREEMENT, dated as of August 11, 2020 (this "Amendment"), to the Second Amended and Restated Note Purchase and Guarantee Agreement, dated as of April 25, 2019 (as amended, restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement"), by and among CFFI Ventures Inc. ("Company"), CVI Holdings Inc. ("Holdings"), certain Affiliates of Company, as "Guarantors", "Limited Guarantor" or "Personal Guarantor", the purchasers from time to time party thereto (each a "Purchaser" and, collectively, the "Purchasers") and HPS Investment Partners LLC, as agent (in such capacity, together with its successors and assigns in such capacity, "Agent") and lead arranger.

WHEREAS, the Note Parties have requested that Agent and Purchasers amend certain terms and conditions of the Note Purchase Agreement; and

WHEREAS, Agent and Purchasers are willing to amend such terms and conditions of the Note Purchase Agreement on the terms and conditions set forth herein.

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

1. Definitions. All terms used herein that are defined in the Note Purchase Agreement and not otherwise defined herein shall have the meanings assigned to them in the Note Purchase Agreement.

2. Amendments. The Note Purchase Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the bold and double-underlined text (indicated textually in the same manner as the following example: **bold and double-underlined text**) as set forth on the pages of the Note Purchase Agreement attached as Annex A hereto.

3. Representations and Warranties. Each Note Party, Limited Guarantor and Personal Guarantor hereby represents and warrants to Agent and Purchasers as follows:

(a) Representations and Warranties; No Event of Default. The representations and warranties herein, in Section 4 of the Note Purchase Agreement and in each other Note Document, made by or on behalf of each Note Party, Limited Guarantor and Personal Guarantor to Agent and each Purchaser pursuant to the Note Purchase Agreement or any other Note Document on or immediately prior to the Second Amendment Closing Date are true and correct and no Default or Event of Default has occurred and is continuing as of the Second Amendment Closing Date or would result from this Amendment becoming effective in accordance with its terms.

(b) Organization; Requisite Power and Authority; Qualification. Each of the Note Parties (i) is duly organized, validly existing and in good standing under the laws of

its jurisdiction of organization, (ii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into this Amendment and each other Note Document to which it is a party and to carry out the transactions contemplated hereby and thereby, (iii) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect, and (iv) has all Governmental Authorizations from or by, and has made all filings with, and has given all notices to, all Governmental Authorities having jurisdiction, which are necessary or desirable in respect of the operation and conduct of the business of such Note Party or the ownership by such Note Party of any interest in asset or property including the operation and occupation of the Facilities and the ownership of the Collateral, except where the absence thereof could not reasonably be expected to have a Material Adverse Effect.

(c) No Conflict. The execution, delivery and performance by the Note Parties, Limited Guarantor and Personal Guarantor of this Amendment and each other Note Document to which they are parties and the consummation of the transactions contemplated by this Amendment and the other Note Documents do not and will not (i) violate any provision of any Applicable Law, any of the Organizational Documents of the Note Parties or Limited Guarantor, or any order, judgment or decree of any Governmental Authority binding on any of the Note Parties, Limited Guarantor or Personal Guarantor; (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of any of the Note Parties, Limited Guarantor or Personal Guarantor; (iii) result in or require the creation or imposition of any Lien upon any of the properties or assets of any of the Note Parties or, in the case of Limited Guarantor, in the Limited Guarantor Property (other than any Liens created under any of the Note Documents in favor of Agent, on behalf of Secured Parties); or (iv) require any approval or consent of stockholders, members, holders or partners or any consent or approval of, nor notice to, or other action by, any Person under any Contractual Obligation of any of the Note Parties, Limited Guarantor or Personal Guarantor, except for those which will be obtained on or before the Second Amendment Closing Date and disclosed in writing to Purchasers.

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

(e) Governmental Consents. The execution, delivery and performance by Note Parties, Limited Guarantor and Personal Guarantor of this Amendment and the Note Documents to which they are parties and the consummation of the transactions contemplated by this Amendment and the Note Documents do not and will not require any Governmental Authorization or registration or filing with, consent or approval of, notice to, or other action by, any Governmental Authority except for those which have been obtained, made, given or done, as the case may be, on or before the Second Amendment Closing Date.

4. Conditions to Effectiveness of the Amendment. This Amendment shall become effective only upon satisfaction in full, in a manner reasonably satisfactory to the Agent, of the following conditions precedent (the first date upon which all such conditions shall have been satisfied (or waived) being hereinafter referred to as the "Second Amendment Closing Date"):

- (a) Third Additional Note Documents. Agent shall have received sufficient copies of this Amendment and each Third Additional Note Document originally executed and duly delivered by each applicable Note Party, Limited Guarantor, Personal Guarantor or other Person party thereto for Agent and each Purchaser.
- (b) Organizational Documents; Incumbency. Agent shall have received, in respect of each Note Party and Limited Guarantor (i) sufficient copies of each Organizational Document, certified as of the Second Amendment Closing Date or a recent date prior thereto by the appropriate Governmental Authority, for Agent and each Purchaser; (ii) signature and incumbency certificates of the officers of such Note Party and Limited Guarantor; (iii) resolutions of the board of directors or similar governing body of such Note Party and Limited Guarantor approving and authorizing the execution, delivery and performance of this Agreement and the other Third Additional Note Documents to which it is a party or by which it or its assets may be bound as of the Second Amendment Closing Date, certified as of the Second Amendment Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a certificate of status, certificate of compliance or other certificate of good standing from the applicable Governmental Authority of such Note Party's, and Limited Guarantor's jurisdiction of incorporation, organization, amalgamation or formation and in each other jurisdiction in which it is qualified to do business, each dated the Second Amendment Closing Date or a recent date prior thereto; and (v) such other documents as Agent may reasonably request.
- (c) Governmental Authorizations and Consents. Each Note Party and the Personal Guarantor shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by this Amendment and the Third Additional Note Documents to which it or any of its Affiliates is a party or by which it or its respective assets may be bound as of the Second Amendment Closing Date and each of the foregoing shall be in full force and effect and in form and substance satisfactory to Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by this Amendment and Third Additional Note Documents to which any Note Party, Limited Guarantor or Personal Guarantor or any of their respective Affiliates is a party or by which it or its respective assets may be bound as of the Second Amendment Closing Date and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

- (d) Opinions of Counsel. Purchasers and their respective counsel shall have received originally executed copies of the favorable written opinions of McInnes Cooper, counsel for the Note Parties, Limited Guarantor, and Personal Guarantor and Clark Hill PLC, New York counsel for the Note Parties and Limited Guarantor, in each case, as to such matters as Agent may request, dated as of the Second Amendment Closing Date and otherwise in form and substance satisfactory to Agent.
- (e) Expenses. Company shall have paid to Agent all expenses payable pursuant to Section 10.2 which have accrued to the Second Amendment Closing Date.
- (f) Know Your Customer. Agent shall have received satisfactory documentation and other information that is required by any Purchaser under applicable “know your customer” and anti-money-laundering rules and regulations, including without limitation the USA PATRIOT Act.
- (g) Solvency Certificate. On the Second Amendment Closing Date, Agent shall have received a Solvency Certificate from each Note Party, Limited Guarantor and Personal Guarantor, dated as of the Second Amendment Closing Date and addressed to Agent and Purchasers, and in form, scope and substance satisfactory to Agent.
- (h) Closing Date Certificate. Company shall have delivered to Agent an originally executed Closing Date Certificate, together with all attachments thereto.
- (i) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, individually or in the aggregate, materially impairs the transactions contemplated by this Amendment or any of the transactions contemplated by the Note Purchase Agreement and the other Note Documents, or could result in a Material Adverse Effect.
- (j) No Material Adverse Effect. Since December 31, 2016, no event, circumstance or change shall have occurred that has caused or evidences a Material Adverse Effect.
- (k) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Agent and its counsel shall be satisfactory in form and substance to Agent and such counsel, and Agent and such counsel shall have received all such counterpart originals or certified copies of such documents as Agent may request.
- (l) Purchase Notice. Agent shall have received a fully executed and delivered Purchase Notice in accordance with the terms of the Note Purchase Agreement.

- (m) Representations and Warranties. The representations and warranties contained herein, in the Note Purchase Agreement and in the other Note Documents shall be true and correct on and as of the Second Amendment Closing Date.
- (n) No Default. No event shall have occurred and be continuing or would result from the purchase and sale of the Third Additional Notes or the other transactions contemplated by this Amendment that would constitute an Event of Default or a Default.
- (o) Call Option Agreement. Agent shall have received the Third Amended and Restated Call Option Agreement, in form and substance satisfactory to Agent, duly executed by the parties thereto

5. Condition Subsequent. On or before the date that is 30 days after the Second Amendment Closing Date, Agent shall have received the Rockport Equity Documents, in form and substance satisfactory to Agent, duly executed by the parties thereto.

6. Continued Effectiveness of the Note Purchase Agreement and Other Note Documents. Each Note Party, Limited Guarantor and Personal Guarantor hereby (a) acknowledges and consents to this Amendment, (b) confirms and agrees that the Note Purchase Agreement and each other Note Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that on and after the Second Amendment Closing Date, all references in any such Note Document to "the Note Purchase Agreement", the "Agreement", "thereto", "thereof", "thereunder" or words of like import referring to the Note Purchase Agreement shall mean the Note Purchase Agreement as amended by this Amendment, (c) confirms and agrees that, to the extent that any such Note Document purports to assign or pledge to Agent, for the benefit of Agent and Purchasers, or to grant to Agent, for the benefit of Agent and Purchasers, a security interest in or Lien on any Collateral as security for the Obligations of the Note Parties from time to time existing in respect of the Note Purchase Agreement (as amended hereby) and the other Note Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects, and (d) with respect to each Note Party that is a Guarantor and Limited Guarantor and Personal Guarantor, confirms and agrees that all of the provisions of and its obligations under its Guaranty are hereby ratified and confirmed in all respects (and specifically confirms and agrees (without limiting any provisions of Sections 7.1 and 7.3 of the Note Purchase Agreement) that the Obligations in respect of the Third Additional Notes shall constitute part of the Guaranteed Obligations). This Amendment does not and shall not affect any of the obligations of the Note Parties, other than as expressly provided herein, including, without limitation, the Note Parties' obligations to repay the Notes in accordance with the terms of Note Purchase Agreement or the obligations of the Note Parties under any Note Document to which they are a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of Agent or any Purchaser under the Note Purchase Agreement or any other Note Document nor constitute a waiver of any provision of the Note Purchase Agreement or any other Note Document.

7. No Novation. Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Note Purchase Agreement or instruments securing the same, which shall remain in full force and effect, except as modified hereby.

8. No Representations by Agent or Purchasers. Each Note Party, Limited Guarantor and Personal Guarantor hereby acknowledges that it has not relied on any representation, written or oral, express or implied, by Agent or any Purchaser, other than those expressly contained herein, in entering into this Amendment.

9. Release. Each Note Party, Limited Guarantor and Personal Guarantor hereby acknowledges and agrees that: (a) neither it nor any of its Subsidiaries has any claim or cause of action against Agent or any Purchaser (or any of the directors, officers, employees, agents, attorneys or consultants of any of the foregoing) and (b) Agent and Purchasers have heretofore properly performed and satisfied in a timely manner all of their obligations to the Note Parties, and all of their Subsidiaries and Affiliates. Notwithstanding the foregoing, Agent and Purchasers wish (and the Note Parties, Limited Guarantor and Personal Guarantor agree) to eliminate any possibility that any past conditions, acts, omissions, events or circumstances would impair or otherwise adversely affect any of their rights, interests, security and/or remedies. Accordingly, for and in consideration of the agreements contained in this Amendment and other good and valuable consideration, each Note Party, Limited Guarantor and Personal Guarantor (for itself and its Subsidiaries and Affiliates and the successors, assigns, heirs and representatives of each of the foregoing) (collectively, the "Releasors") does hereby fully, finally, unconditionally and irrevocably release, waive and forever discharge Agent and Purchasers, together with their respective Affiliates and Related Funds, and each of the directors, officers, employees, agents, attorneys and consultants of each of the foregoing (collectively, the "Released Parties"), from any and all debts, claims, allegations, obligations, damages, costs, attorneys' fees, suits, demands, liabilities, actions, proceedings and causes of action, in each case, whether known or unknown, contingent or fixed, direct or indirect, and of whatever nature or description, and whether in law or in equity, under contract, tort, statute or otherwise, which any Releasor has heretofore had or now or hereafter can, shall or may have against any Released Party by reason of any act, omission or thing whatsoever done or omitted to be done, in each case, on or prior to the Second Amendment Closing Date arising out of, connected with or related to this Amendment, the Note Purchase Agreement or any other Note Document, or any act, event or transaction related or attendant thereto, or the agreements of Agent and Purchasers contained therein, or the possession, use, operation or control of any of the assets of any Note Party, or the purchase of any Notes, or the management of such Notes or the Collateral. Each Note Party represents and warrants that it has no knowledge of any claim by any Releasor against any Released Party or of any facts or acts or omissions of any Released Party which on the date hereof would be the basis of a claim by any Releasor against any Released Party which would not be released hereby.

10. Further Assurances. The Note Parties, Limited Guarantor and Personal Guarantor shall execute any and all further documents, agreements and instruments, and take all further actions, as may be required under Applicable Law or as Agent may reasonably request, in order to effect the purposes of this Amendment.

11. Miscellaneous.

(a) This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment by facsimile or electronic mail shall be equally effective as delivery of an original executed counterpart of this Amendment.

(b) Section and paragraph headings herein are included for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(c) This Amendment shall be governed by, and construed in accordance with, the laws of the State of New York.

(d) Each Note Party, Limited Guarantor and Personal Guarantor hereby acknowledges and agrees that this Amendment constitutes a "Note Document" under the Note Purchase Agreement. Accordingly, it shall be an Event of Default under the Note Purchase Agreement, as and when provided in Section 8.1 of the Note Purchase Agreement and subject to any applicable grace periods as set forth therein, if (i) any representation or warranty made by a Note Party, Limited Guarantor or Personal Guarantor under or in connection with this Amendment shall have been incorrect in any material respect when made, or (ii) a Note Party, Limited Guarantor or Personal Guarantor shall fail to perform or observe any term, covenant or agreement contained in this Amendment.

(e) Any provision of this Amendment that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

(f) Note Parties will pay on demand all reasonable and documented out-of-pocket fees, costs and expenses of Agent in connection with the preparation, execution and delivery of this Amendment to the extent payable under the Note Purchase Agreement, including, without limitation, reasonable and documented fees, costs and expenses of Schulte Roth & Zabel LLP, counsel to Agent.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed and delivered as of the date set forth on the first page hereof.

HOLDINGS:

CVI HOLDINGS INC.

By: Nanci Rorabeck
Name: Nanci Rorabeck
Title: Assistant Secretary

NOTE PARTIES:

CFFI TELECOMMUNICATIONS HOLDINGS LTD.

By: Nanci Rorabeck
Name: Nanci Rorabeck
Title: Assistant Secretary

CFFI UK VENTURES (BARBADOS) LTD.

By: _____
Name: Elizabeth McEwen
Title: Director

CFFI VENTURES INC.

By: Nanci Rorabeck
Name: Nanci Rorabeck
Title: Secretary

BIOX HOLDINGS, LLC

By: Nanci Rorabeck
Name: Nanci Rorabeck
Title: Assistant Secretary

FP RESOURCES LIMITED

By: Nanci Rorabeck
Name: Nanci Rorabeck
Title: Secretary

BIOX USA LIMITED

By: Nanci Rorabeck
Name: Nanci Rorabeck
Title: Assistant Secretary

FP ACQUISITION HOLDINGS LLC

By: _____
Name: Stan Spavold
Title: Secretary

FP RESOURCES HOLDINGS LP

By: _____
Name: Stan Spavold
Title: Secretary

FP RESOURCES USA INC.

By: Nanci Rorabeck
Name: Nanci Rorabeck
Title: Assistant Secretary

COGNITION FINANCIAL CORPORATION

By: _____
Name: Grant Butler
Title: Executive Vice-President

COGNITION LENDING CORPORATION

By: _____
Name: Kevin Kerrigan
Title: Secretary

THE NATIONAL COLLEGIATE FUNDING II, LLC

By: _____
Name: Grant Butler
Title: Secretary

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Name: Kevin Kerrigan
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THE NATIONAL COLLEGIATE FUNDING II, LLC

By: _____
Name: Grant Butler
Title: Secretary

**FIRST MARBLEHEAD
EDUCATION LOAN SERVICES
LLC**

By: Seth Gelber
Name: Seth Gelber
Title: Manager

COGNITION GLOBAL LLC

By: Seth Gelber
Name: Seth Gelber
Title: Manager

LIMITED GUARANTOR:

**HORIZON MARITIME HOLDINGS
LTD.**

By: Sean Leet
Name: Sean Leet
Title: President

PERSONAL GUARANTOR:

SIGNED, SEALED & DELIVERED

In the presence of:



Witness



John C. Risley

AGENT AND LEAD ARRANGER:

HPS INVESTMENT PARTNERS LLC,
as Agent and Lead Arranger

By: Shant Babikian

Name: Shant Babikian

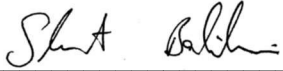
Title: Managing Director

PURCHASERS:

Mezzanine Partners III, L.P.

By: HPS Mezzanine Management III, LLC, as investment manager

By: HPS Investment Partners, LLC, its sole and managing member



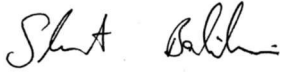
Name: Shant Babikian

Title: Managing Director

MP III Offshore Master Lux, L.P.

By: HPS Mezzanine Management III, LLC, as investment manager

By: HPS Investment Partners, LLC, its sole and managing member



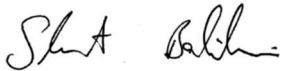
Name: Shant Babikian

Title: Managing Director

AP Mezzanine Partners III, L.P.

By: HPS Mezzanine Management III, LLC, as investment manager

By: HPS Investment Partners, LLC, its sole and managing member



Name: Shant Babikian

Title: Managing Director

ANNEX A

Amendments to Second Amended and Restated Note Purchase and Guarantee Agreement

(To be attached)

**ANNEX A TO AMENDMENT NO. ~~1~~2 TO SECOND AMENDED AND RESTATED
NOTE PURCHASE AND GUARANTEE AGREEMENT**

**SECOND AMENDED AND RESTATED NOTE PURCHASE AND GUARANTEE
AGREEMENT**

dated as of April 25, 2019

among

CFFI VENTURES INC.,

**CERTAIN AFFILIATES OF CFFI VENTURES INC.,
as Guarantors, Limited Guarantor or Personal Guarantor,**

VARIOUS PURCHASERS

and

**HPS INVESTMENT PARTNERS LLC,
as Agent and Lead Arranger**

~~\$255,000,000~~\$262,500,000 Senior Secured Notes

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SECOND AMENDED AND RESTATED NOTE PURCHASE AND GUARANTEE AGREEMENT

This **SECOND AMENDED AND RESTATED NOTE PURCHASE AND GUARANTEE AGREEMENT**, dated as of April 25, 2019, is entered into by and among **CFFI VENTURES INC. (“Company”)**, **CVI HOLDINGS INC. (“Holdings”)**, **CERTAIN AFFILIATES OF COMPANY**, as Guarantors, Limited Guarantor or Personal Guarantor, the Purchasers party hereto from time to time and **HPS INVESTMENT PARTNERS LLC (“HPS”)**, as agent (in such capacity, **“Agent”**), and lead arranger (in such capacity, **“Lead Arranger”**).

RECITALS:

WHEREAS, capitalized terms used in these Recitals shall have the respective meanings set forth for such terms in Section 1.1 hereof;

WHEREAS, Company, Holdings, the guarantors party thereto, the purchasers party thereto (the **“Original Purchasers”**), and HPS, as agent and lead arranger, are party to that certain Note Purchase and Guarantee Agreement, dated as of October 23, 2017 (the **“Original Note Purchase Agreement”**);

WHEREAS, pursuant to the Original Note Purchase Agreement, Purchasers purchased Initial Notes in the aggregate principal amount of \$150,000,000 on the Original Closing Date (as such amount may be increased by PIK Interest);

WHEREAS, Company, Holdings, the guarantors party thereto, the purchasers party thereto (the **“Additional Purchasers”**), and HPS, as agent and lead arranger, are party to that certain Amended and Restated Note Purchase and Guarantee Agreement, dated as of March 16, 2018 (the **“Amended and Restated Note Purchase Agreement”**);

WHEREAS, pursuant to the Amended and Restated Note Purchase Agreement, Purchasers purchased Additional Notes in the aggregate principal amount of \$50,000,000 on the Additional Closing Date (as such amount may be increased by PIK Interest);

WHEREAS, Purchasers have agreed to purchase the Second Additional Notes from Company, in an aggregate principal amount not to exceed \$50,000,000, on the Second Additional Closing Date (as such amount may be increased by PIK Interest) ~~and~~, the Cognition Notes from Company, in an aggregate principal amount not to exceed \$5,000,000, on the First Amendment Closing Date (as such amount may be increased by PIK Interest) and the Third Additional Notes from Company, in an aggregate principal amount not to exceed \$7,500,000, on the Second Amendment Closing Date (as such amount may be increased by PIK Interest);

WHEREAS, each Note Party has agreed to secure all of its Obligations by granting to Agent, for the benefit of the Secured Parties, a First Priority Lien on all of its assets, including a

pledge of all of the Capital Stock of each of its Subsidiaries, subject to the exceptions and limitations set forth herein; and

WHEREAS, each of the parties hereto wishes to amend and restate the Amended and Restated Note Purchase Agreement on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto agree as follows:

SECTION 1 DEFINITIONS AND INTERPRETATION

1.1 Definitions.

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

“Acceptable Bank” means one of the following commercial banking institutions or investment banking institutions (or, in each case, their respective Affiliates): Barclays Bank PLC, Citigroup Global Markets Inc., J.P. Morgan Securities LLC, Bank of Montreal, Credit Suisse Securities (USA) LLC, Morgan Stanley Senior Funding, Inc., Bank of America, N.A., Goldman Sachs Bank USA, Wells Fargo Bank, National Association, RBC Capital Markets, The Bank of Nova Scotia and Islandsbanki HF.

“Additional Closing Date” means March 16, 2018.

“Additional Note Commitment” means the commitment of a Purchaser to purchase Additional Notes and **“Additional Note Commitments”** means such commitments of all Purchasers in the aggregate. The amount of each Purchaser’s Additional Note Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Additional Note Commitments as of the Additional Closing Date is \$50,000,000.

“Additional Note Documents” means any of the Amended and Restated Note Purchase Agreement, the Additional Notes, the BIOX Pledge and Security Agreement Joinder, the Call Option Agreement, the Collateral Documents, the Funds Flow Agreement dated as of the Additional Closing Date and all other documents, certificates, instruments or agreements executed and delivered by or on behalf or at the request of a Note Party, Limited Guarantor or Personal Guarantor for the benefit of Agent or any Purchaser in connection with the sale, purchase and issuance of the Additional Notes, as in effect on the Additional Closing Date.

“Additional Purchasers” as defined in the recitals hereto.

“**Additional Notes**” means the \$50,000,000 aggregate principal amount of Notes issued under the Amended and Restated Note Purchase Agreement on the Additional Closing Date pursuant to Section 2.1(b).

“**Adverse Proceeding**” means any action, suit, proceeding, hearing (in each case, whether administrative, judicial or otherwise), governmental investigation or arbitration (whether or not purportedly on behalf of any Note Party) under Applicable Law, or before or by any Governmental Authority (including any Environmental Claims), whether pending or, to the knowledge of any Note Party, threatened against or affecting any Note Party or any property of any Note Party.

“**Affiliate**” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 10% or more of the Securities having ordinary voting power for the election of directors of such Person or (ii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, Agent and each Purchaser shall be deemed not to be an Affiliate of any Note Party or any Affiliate thereof.

“**Agent**” as defined in the preamble hereto.

“**Agent’s Account**” means a Deposit Account in the name (or for the benefit) of Agent at a financial institution selected by Agent.

“**Aggregate Amounts Due**” as defined in Section 2.14.

“**Agreement**” means this Second Amended and Restated Note Purchase and Guarantee Agreement (including each schedule, appendix or exhibit attached hereto), dated as of April 25, 2019, as it may be further amended, supplemented, restated or otherwise modified from time to time.

“**AltAir**” means, collectively, AltAir Paramount, Paramount Petroleum Corporation and Paramount Pipeline.

“**AltAir Acquisitions**” means, collectively, the acquisitions by (i) World Energy of 100% of the Capital Stock of AltAir Paramount pursuant to the AltAir Membership Purchase Agreement, (ii) AltAir Paramount of certain assets including refinery assets from the sellers thereof pursuant to the Refinery Asset Purchase Agreement, and (iii) Paramount Pipeline of certain assets including pipeline assets from the sellers thereof under the Pipeline Asset Purchase Agreement.

“**AltAir Acquisition Documents**” means, collectively, (i) the Membership Interest Purchase Agreement by and among World Energy, as buyer, Alon Renewable Fuels, Inc. and AltAir Project I, LLC, as sellers, and AltAir Paramount, as the company, dated as of

March 16, 2018, in respect of all of the issued and outstanding membership interests of AltAir Paramount (the “**AltAir Membership Purchase Agreement**”), (ii) the Refinery Asset Purchase and Sale Agreement by and between AltAir Paramount, as buyer, and Paramount Petroleum Corporation, as seller, dated as of March 16, 2018, in respect of the assets transferred pursuant to the terms and conditions thereof (the “**Refinery Asset Purchase Agreement**”), (iii) the Pipeline/Tank Farm Asset Purchase and Sale Agreement by and between Paramount Pipeline, as buyer, and Paramount Petroleum Corporation, as seller, dated as of March 16, 2018, in respect of the assets transferred pursuant to the terms and conditions thereof (the “**Pipeline Asset Purchase Agreement**”), and (iv) all exhibits, schedules and disclosure letters executed or delivered in connection with any of the foregoing agreements.

“**AltAir Agent**” means AltAir Holdings Onshore, LLC, as agent under the AltAir Note Purchase Agreement.

“**AltAir Funding Conditions**” means (i) Agent shall have completed and shall be satisfied with the results of its due diligence with respect to AltAir’s business, operations, management, prospects, books and records, financial position and assets and the tax, accounting, legal and other issues relevant to the Note Parties and Personal Guarantor and the Note Parties’ and Personal Guarantor’s business, (ii) Agent shall be satisfied with the AltAir Acquisition Documents, (iii) BIOX Holdings shall become a Guarantor hereunder (by execution and delivery of this Agreement) and a Grantor under the Pledge and Security Agreement (by execution and delivery of the Pledge and Security Agreement Joinder) and otherwise take all actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates requested by Agent, in each case, in accordance with Section 5.10, (iv) Agent shall be satisfied with the corporate reorganization contemplated under the World Energy Restructuring, and each of the World Energy Investment Agreement and the World Energy LLC Agreement shall have been duly executed and delivered by the parties thereto in form and substance satisfactory to Agent, and World Energy shall have been capitalized in accordance with the respective terms and conditions of the World Energy LLC Agreement and the World Energy Investment Agreement, (v) no event shall have occurred and be continuing or would result from the consummation of the AltAir Acquisitions (and the transactions related thereto) that would constitute an Event of Default or a Default, (vi) after giving pro forma effect to the consummation of the AltAir Acquisitions (and the transactions related thereto), the Note Parties shall be in compliance with the covenants set forth in Section 6.6, (vii) the representations and warranties contained herein and in the other Note Documents shall be true and correct on and as of the Additional Closing Date, (viii) Agent shall have received, in respect of each Note Party (including each Person becoming a Note Party on the Additional Closing Date) an officer’s or secretary’s certificate, with attachments thereto of Organizational Documents, an incumbency certificate, resolutions approving and authorizing the execution, delivery and performance of this Agreement and the other applicable Note Documents by such Note Party, and a certificate of good standing from the applicable Governmental Authority of such Note Party’s jurisdiction of incorporation, organization, amalgamation or formation, each dated the Additional Closing Date or a recent date prior

thereto, (ix) Purchasers and their respective counsel shall have received originally executed copies of the favorable written opinions of McInnes Cooper and Clark Hill PLC, each as counsel for the Note Parties, in each case, as to such matters as Agent may request, dated as of the Additional Closing Date and otherwise in form and substance satisfactory to Agent (and each Note Party hereby instructs such counsel to deliver such opinions to Agent and Purchasers), (x) Agent shall have received the AltAir Note Documents, executed and delivered by the parties thereto, and the issuers under the AltAir Note Purchase Agreement shall have received, substantially contemporaneously with the issuance of the Additional Notes hereunder on the Additional Closing Date, no less than \$50,000,000 in gross proceeds from the notes issued under the AltAir Note Purchase Agreement (without giving effect to any original issue discount), (xi) Company shall have paid to Agent all expenses payable pursuant to Section 10.2 which have accrued to the Additional Closing Date, and (xii) Company and/or its applicable Affiliates shall have pledged or otherwise granted a lien on all of the assets they acquire in connection with the AltAir Acquisitions (including the Capital Stock they own in respect of AltAir Paramount), in favor of AltAir Agent, for the benefit of AltAir Agent and the other secured parties under the AltAir Note Documents.

“AltAir Intercreditor Agreement” means the Intercreditor Agreement, dated as of March 16, 2018, by and among Agent, AltAir Agent and Company.

“AltAir Membership Purchase Agreement” as defined in the definition of AltAir Acquisition Documents.

“AltAir Note Documents” means, collectively, the AltAir Note Purchase Agreement, the related collateral documentation entered into in connection therewith in favor of AltAir Agent, and the other documents, certificates, instruments or agreements executed and delivered in connection therewith.

“AltAir Note Parties” means AltAir Paramount and its affiliates listed as “Note Parties” on the signature pages to the AltAir Note Purchase Agreement.

“AltAir Note Purchase Agreement” means the Note Purchase and Guarantee Agreement, dated as of the Additional Closing Date, executed by the AltAir Note Parties and AltAir Agent.

“AltAir Notes” means the notes issued under the AltAir Note Purchase Agreement.

“AltAir Paramount” means Altair Paramount, LLC.

“Amended and Restated Note Purchase Agreement” as defined in the recitals hereto.

“Anti-Corruption Laws” means, with respect to any Person, all laws of any jurisdiction applicable to such Person from time to time concerning or relating to bribery or corruption, including, without limitation, the *Corruption of Foreign Public Officials Act* (Canada) and *Freezing Assets of Corrupt Foreign Public Officials Act* (Canada) and the

United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.

“Anti-Money Laundering Laws” means all laws of any jurisdiction applicable to such Person from time to time concerning or relating to terrorism or money laundering, including (i) the *Criminal Code* (Canada) and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), and any rules, regulations, guidelines and orders thereunder and any other applicable anti-money laundering, anti-terrorist financing, economic sanction and “know your customer” laws of Canada, and (ii) the USA PATRIOT Act and the Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12U.S.C. §§ 1818(s), 1820(b) and §§ 1951-1959), and the rules and regulations thereunder.

“Applicable Law” means any and all current and future applicable laws (including common law and equity), statutes, by-laws, rules, regulations, orders, determinations, ordinances, protocols, codes, guidelines, treaties, policies, notices, directions, directives, decrees, restrictions, standards, orders-in-council, judgments, decisions, awards or requirements, in each case, of, from or required by any Governmental Authority and, in each case, whether having the force of law or not.

“Applicable Premium” means, as of the date of the occurrence of an Applicable Premium Trigger Event specified in the definition thereof (it being understood and agreed that an Applicable Premium may be payable under multiple clauses below based on one or more (or the same) Applicable Premium Trigger Events):

(a) as of the date of the occurrence of the Applicable Premium Trigger Event specified in clause (b) of the definition thereof, an amount equal to 3.00% times the aggregate amount of the Notes being paid (or required to be paid) on such date;

(b) on or prior to October 23, 2020 (other than in any case where clause (a) of this definition applies), an amount equal to (i) the difference between (A) the aggregate amount of interest (including interest payable in cash, in kind or deferred) which would have otherwise been payable on the amount of the principal prepayment from the date of prepayment until October 23, 2020, minus (B) the aggregate amount of interest Purchasers would earn if the prepaid or reduced principal amount were reinvested for the period from the date of prepayment or reduction until October 23, 2020 at the Treasury Rate, plus (ii) an amount equal to the Applicable Premium that would otherwise be payable as if such prepayment had occurred on October 24, 2020;

(c) during the period from October 23, 2020 but on or prior to October 23, 2021 (other than in any case where clause (a) of this definition applies), an amount equal to 4.00% times the aggregate amount of the Notes being paid (or required to be paid) on such date;

(d) during the period from October 23, 2021 but prior to the Scheduled Maturity Date (other than in any case where clause (a) of this definition applies), an

amount equal to 1.00% times the aggregate amount of the Notes being paid (or required to be paid) on such date;

(e) as of the date of the occurrence of the Applicable Premium Trigger Event specified in clause (e) of the definition thereof, an amount equal to the Cognition Make-Whole Amount; ~~and~~

(f) as of the date of the occurrence of the Applicable Premium Trigger Event specified in clause (f) of the definition thereof, an amount equal to the Third Additional Note Make-Whole Amount; and

(g) ~~(f)~~ on the Scheduled Maturity Date (other than in any case where clause (a) of this definition applies), an amount equal to 0.00% times the aggregate amount of the Notes being paid (or required to be paid) on such date.

“Applicable Premium Trigger Event” means:

(a) any payment by any Note Party of all, or any part, of the principal balance of any Note for any reason (including, without limitation, any optional prepayment or mandatory prepayment, other than (i) any prepayment made with the proceeds of any Bourbon Arctic Note Repayment under clause (b) below and (ii) any prepayment of additional Notes issued by Company to HPS Entities pursuant to Section 5.1(p)) whether before or after (1) the occurrence of an Event of Default, or (2) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations;

(b) any payment by any Note Party of all, or any part, of the principal balance of any Note for any reason (including, without limitation, any optional prepayment or mandatory prepayment), made with the proceeds of any Bourbon Arctic Note Repayment whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations;

(c) the acceleration of the Obligations for any reason, including, without limitation, acceleration in accordance with Section 8.1 or Section 8.2, including, without limitation, as a result of the commencement of an Insolvency Proceeding;

(d) the satisfaction, release, payment, restructuring, reorganization, replacement, reinstatement, defeasance or compromise of any of the Obligations in any Insolvency Proceeding, foreclosure (whether by power of judicial proceeding or otherwise) or deed in lieu of foreclosure or the making of a distribution of any kind in any Insolvency Proceeding to an Agent, for the account of Purchasers, in full or partial satisfaction of the Obligations;

(e) any payment by any Note Party of all of the principal balance of the Cognition Notes for any reason (including, without limitation, any optional prepayment or mandatory prepayment) whether before or after (i) the occurrence of an

Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations; ~~or~~

(f) any payment by any Note Party of all of the principal balance of the Third Additional Notes for any reason (including, without limitation, any optional prepayment or mandatory prepayment other than pursuant to Section 2.10(h)) whether before or after (i) the occurrence of an Event of Default, or (ii) the commencement of any Insolvency Proceeding, and notwithstanding any acceleration (for any reason) of the Obligations; or

(g) ~~(f)~~ the termination of this Agreement for any reason.

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

“Asset Sale” means, in respect of any Person, a sale, lease or sub lease (as lessor or sublessor), sale and leaseback, assignment, conveyance, exclusive license (as licensor or sublicense), transfer or other disposition to, or any exchange of property, in one transaction or a series of transactions, of all or any part of such Person’s businesses, assets or properties of any kind, whether real, personal, or mixed and whether tangible or intangible, whether now owned or hereafter acquired, leased or licensed, other than inventory (or other assets) sold, leased or licensed out in the ordinary course of business (excluding any such sales, leases or licenses out by operations or divisions discontinued or to be discontinued). For purposes of clarification, “Asset Sale” shall include (x) the sale or other disposition for value of any contracts, (y) the early termination or modification of any contract resulting in the receipt by such Person of a cash payment or other consideration in exchange for such event (other than payments in the ordinary course for accrued and unpaid amounts due through the date of termination or modification), or (z) any sale of merchant accounts (or any rights thereto (including any rights to any residual payment stream with respect thereto)) by such Person.

“Assignment Agreement” means an Assignment and Assumption Agreement substantially in the form of Exhibit E, with such amendments or modifications as may be approved by Agent.

“Authorized Officer” means, as applied to any Person, any individual holding the position of chairman of the board (if an officer), chief executive officer, president or one of its vice presidents (or the equivalent thereof), and such Person’s chief financial officer or treasurer.

“Bankruptcy Code” means Title 11 of the United States Code, as amended from time to time and any successor statute or any similar federal or state law for the relief of debtors.

“**Barbados Collateral Documents**” means the agreements, instruments and other documents governed by the laws of Barbados, substantially in the forms of Exhibit I.

“**Beneficiary**” means Agent and each Purchaser.

“**BIA**” means the *Bankruptcy and Insolvency Act* (Canada).

“**BIOX Holdings**” means BIOX Holdings, LLC, a limited liability company incorporated pursuant to the laws of the State of Delaware.

“**BIOX Members**” means, collectively, BIOX USA, BIOX Holdings and Drive.

“**BIOX Pledge and Security Agreement Joinder**” means the joinder agreement dated as of the Additional Closing Date executed by BIOX Holdings, substantially in the form of Exhibit A to the Pledge and Security Agreement.

“**BIOX USA**” means BIOX USA Limited, a corporation incorporated pursuant to the laws of the State of Delaware.

“**BMO Credit Agreement**” means that certain Credit Agreement dated as of July 10, 2017 among, *inter alios*, CVI Seafood Holdings Limited, as borrower, Company, as guarantor, and Bank of Montreal, as lender.

“**BMO Intercreditor Agreement**” means the **Intercreditor Agreement, dated as of April 6, 2020, by and among Agent, Bank of Montreal and Lobster Point Holdings Limited.**

“**Bourbon Arctic Note Collateral Assignment Documents**” means, collectively, (i) that certain Collateral Assignment of Note, Liens and Note Documents, dated as of the Second Additional Closing Date, by and between Company, as assignor, and Agent, as assignee, (ii) that certain Omnibus Assignment of Note Purchase Agreement, Note and Other Note Documents, dated as of the Second Additional Closing Date, by and between Company, as assignor, and Agent, as assignee, and (iii) that certain Allonge relating to the Bourbon Arctic Note Documents, duly executed in blank by Company.

“**Bourbon Arctic Note Documents**” means, collectively, the Bourbon Arctic Note Purchase Agreement, the related collateral documentation entered into in connection therewith in favor of Company, and the other documents, certificates, instruments or agreements executed and delivered in connection therewith (including the Bourbon Arctic Note Collateral Assignment Documents), in each case, in form and substance satisfactory to Agent.

“**Bourbon Arctic Note Purchase Agreement**” means the Note Purchase and Guarantee Agreement, dated as of the Second Additional Closing Date, executed by Horizon Norway and certain of its Affiliates, as note parties, the purchasers party thereto, and Company, as agent.

“Bourbon Arctic Note Repayment” means any repayment (in full or in part) of the notes issued under the Bourbon Arctic Note Purchase Agreement.

“Business Day” means (i) any day excluding Saturday, Sunday and any day which is a legal holiday under the laws of the Province of Ontario or the State of New York or is a day on which banking institutions located in such jurisdictions are authorized or required by law or other governmental action to close, and (ii) with respect to all notices, determinations, fundings and payments or other matters in connection with duties and obligations of Agent, the term “Business Day” shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required to close.

“Call Option Agreement” means that certain Second Amended and Restated Call Option Agreement dated as of the Second Additional Closing Date by and between Company and the HPS Entities party thereto.

“Capital Lease” means, as applied to any Person, any lease of any property (whether real, personal or mixed) by that Person as lessee that, in conformity with GAAP, is or should be accounted for as a capital lease on the balance sheet of that Person.

“Capital Stock” means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, any and all equivalent ownership interests in a Person (other than a corporation), including partnership interests, membership interests and units or other interests in a trust, and any and all warrants, rights or options to purchase, convertible instruments or other arrangements or rights to acquire any of the foregoing.

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

“Cash Equivalents” means, as at any date of determination, (i) marketable securities (a) issued or directly and unconditionally guaranteed as to interest and principal by the Government of Canada or the government of any province of Canada, or (b) issued by any agency of the Government of Canada or of the government of any province of Canada, the obligations of which are backed by the full faith and credit of such government, in each case maturing within three months after such date and having, at the time of the acquisition thereof, a rating of at least A1 from S&P or at least P1 from Moody’s; (ii) certificates of deposit or bankers’ acceptances maturing within three months after such date and issued or accepted by any Purchaser or by any of the five largest banks listed on Schedule I of the *Bank Act* (Canada), measured by total assets under management; and (iii) shares of any money market mutual fund that (a) has substantially all of its assets invested continuously in the types of investments referred to in clauses (i) or (ii) above, (b) has net assets of not less than \$500,000,000, and (c) has the highest rating obtainable from either S&P or Moody’s.

“CBCA” means the *Canada Business Corporations Act*.

“CCAA” means the *Companies’ Creditors Arrangement Act* (Canada).

“CDN” means the lawful money of Canada.

“CFFI Barbados” means CFFI UK Ventures (Barbados) Ltd.

“**Change of Control**” means, at any time, (i) Company shall cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the economic or voting interest in the Capital Stock of any other Note Party (other than Holdings); (ii) Company and Limited Guarantor shall, together, cease to beneficially own and control, directly or indirectly, 100% on a fully diluted basis of the economic or voting interests in the Capital Stock of Horizon Norway, (iii) the majority of the seats (other than vacant seats) on the board of directors (or similar governing body) of any Note Party cease to be occupied by Persons who either (a) were members of the board of directors of such Note Party on the Second Additional Closing Date, or (b) were nominated for election by the board of directors of such Note Party, a majority of whom were directors on the Second Additional Closing Date or whose election or nomination for election was previously approved by a majority of such directors; (iv) Holdings shall cease to beneficially own or control 100% on a fully diluted basis of the economic and voting interest in the Capital Stock of Company; (v) Personal Guarantor shall cease to own or control, directly or indirectly, on a fully diluted basis, (a) 100% of the voting interest in the Capital Stock of Holdings or (b) less than the portion of the economic interest in the Capital Stock of Holdings that Personal Guarantor held on the Second Additional Closing Date; or (vi) any event, transaction or occurrence as a result of which Personal Guarantor shall for any reason cease to be actively engaged in the day-to-day management of Company in the role Personal Guarantor serves on the Second Additional Closing Date, unless an interim or permanent successor acceptable to Agent is immediately appointed (it being understood and agreed that, for purposes of this clause (v), Agent expressly and irrevocably approves Stan Spavold or Brendan Paddick as an interim or permanent successor to Personal Guarantor).

“ClearBank” means ClearBank Ltd. (formerly, CB Infrastructure Ltd.).

“Clearwater Sale” means the sale of the Capital Stock or assets of CSI and its Subsidiaries.

“Closing Date Certificate” means a Closing Date Certificate substantially in the form of Exhibit F-1.

“CoC” means the cash-on-cash return of Agent and Purchasers with respect to the purchase by Purchasers of the Cognition Notes or the Third Additional Notes, as applicable, as calculated by Agent, in its sole discretion.

“Cognition” means Cognition Financial Corporation, a Delaware corporation.

"Cognition Joinder Agreement" means the Joinder Agreement to the Note Purchase Agreement, duly executed by FP Acquisition Holdings, FP Resources Holdings, FP Resources USA, Cognition and their respective Subsidiaries.

"Cognition Make-Whole Amount" means, in the case of the Applicable Premium Trigger Event described in clause (e) of the definition thereof, an amount equal to the positive difference, if any, between (a) a CoC of 2.0x following the payment of all amounts owing with respect to the Cognition Notes under this Agreement and (b) the aggregate amount of interest (including, without limitation, interest payable in cash, in kind or deferred) actually paid on the aggregate principal amount of the Cognition Notes as of the date of such Applicable Premium Trigger Event.

~~**"Cognition Scheduled Maturity Date"** means June 30, 2020.~~

"Cognition Note Commitment" means the commitment of a Purchaser to purchase Cognition Notes and **"Cognition Note Commitments"** means such commitments of all Purchasers in the aggregate. The amount of each Purchaser's Cognition Note Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Cognition Note Commitments as of the First Amendment Closing Date is \$5,000,000.

"Cognition Note Documents" means any of this Agreement, the First Amendment, the Cognition Notes, the Cognition Joinder, the Collateral Documents and all other documents, certificates, instruments or agreements executed and delivered by or on behalf or at the request of a Note Party, Limited Guarantor or Personal Guarantor for the benefit of Agent or any Purchaser in connection with the sale, purchase and issuance of the Cognition Notes, as in effect on the First Amendment Closing Date.

"Cognition Notes" means the \$5,000,000 aggregate principal amount of Notes issued under this Agreement on the First Amendment Closing Date pursuant to Section 2.1(b).

"Cognition Obligations" means all obligations, whether vested or contingent, matured or unmatured and of every nature and kind of each Note Party, Limited Guarantor and Personal Guarantor from time to time owed to Agent (including former Agents), any Purchaser or any of their respective Affiliates or Related Funds under any Cognition Note Document, whether for principal, interest, fees, expenses, indemnification or otherwise (including, for the avoidance of doubt, the Applicable Premium, if any).

"Cognition Pledge and Security Agreement Joinder" means the joinder agreement dated as of the First Amendment Closing Date executed by FP Acquisition Holdings, FP Resources Holdings, FP Resources USA, Cognition and their respective Subsidiaries, substantially in the form of Exhibit A to the Pledge and Security Agreement.

"Cognition Sale" as defined in Section 5.19.

“Cognition Scheduled Maturity Date” means December 31, 2020.

“**Collateral**” means, collectively, all of the real and personal property (including Capital Stock) in which Liens are purported to be granted pursuant to the Collateral Documents as security for the Obligations.

“**Collateral Documents**” means the Pledge and Security Agreement, the Barbados Collateral Documents, the Norwegian Collateral Documents, the Bourbon Arctic Note Documents, any Mortgages, any Control Agreements and all other instruments, documents and agreements delivered by or on behalf or at the request of any Note Party pursuant to this Agreement or any of the other Note Documents in order to grant to, or perfect, preserve or protect in favor of, Agent, for the benefit of Secured Parties, a Lien on any Collateral of that Note Party as security for the Obligations or to protect or preserve the interests of Agent or the Secured Parties therein (including, for the avoidance of doubt, the BIOX Pledge and Security Agreement Joinder and the Cognition Pledge and Security Agreement Joinder).

“**Collections**” means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, proceeds of cash sales, rental proceeds, and tax refunds).

“**Company**” as defined in the preamble hereto.

“**Compliance Certificate**” means a Compliance Certificate substantially in the form of Exhibit C.

“**Contractual Obligation**” means, in respect of any Person, any provision of any Security issued by that Person or of any indenture, mortgage, deed of trust, lease, contract, undertaking, agreement or other instrument to which that Person is a party or by which it or any of its properties is bound or to which it or any of its properties is subject.

“**Control Agreement**” means a three-party agreement, in form and substance satisfactory to Agent, entered into by a Note Party, Agent and a Securities Intermediary or other financial institution which maintains one or more Securities Accounts or Deposit Accounts for such Note Party pursuant to which such Securities Intermediary or other financial institution, in respect of the related Securities Accounts or Deposit Accounts, agrees that it will comply with Entitlement Orders or other instructions that are originated by Agent without the further consent of such Note Party or which agreement is otherwise effective to grant “**control**” (as defined under the applicable UCC) over such Securities Accounts or Deposit Accounts to Agent.

“**Controlled Account**” means a Securities Account or Deposit Account maintained by a Note Party at a Securities Intermediary or other financial institution satisfactory to Agent and which is subject to a Control Agreement that is in full force and effect.

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

“CSI” means Clearwater Seafoods Inc.

“CTDI Loan Agreement” means the Loan Agreement, dated as of December 13, 2019, by and among Jona Holdings Inc., V16OCT54 Limited and Turcotte Family Holdings Inc., as the lenders, and CFFI Technology Development Inc., as the borrower.

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

“Default Rate” means the applicable rate of interest payable pursuant to Section 2.6.

“Defined Benefit Plan” means any Pension Plan which contains a “defined benefit provision” as defined in subsection 147.1(1) of the *Income Tax Act* (Canada).

“Deposit Account” means a demand, time, savings, passbook or like account with a bank, savings and loan association, credit union or like organization, other than an account evidenced by a negotiable certificate of deposit, and includes all balances and deposits held therein and all certificates and instruments, if any, representing or evidencing such Deposit Account.

“Dollar Equivalent” means, for purposes of Section 2.3(a) on the applicable date of determination with respect to any amount denominated in British Pounds Sterling, the equivalent amount thereof in U.S. Dollars as determined by Agent at such time on the basis of the rate of conversion for the purchase of U.S. Dollars with British Pounds Sterling (provided that Agent may obtain such rate of currency conversion from a financial institution designated by Agent as necessary to obtain such rate of currency conversion).

“Drive” means Drive Properties, LLC, a limited liability company incorporated pursuant to the laws of the State of Delaware.

“Effective Yield” means, with respect to any Indebtedness, as of any date of determination, the sum of (i) the stated interest rate or coupon for such Indebtedness (inclusive of any interest rate floor) and (ii) the amount of original issue discount and upfront fees thereon (converted to yield assuming a four-year average life and without any present value discount).

“Eligible Assignee” means (i) any Purchaser, any Affiliate of any Purchaser and any Related Fund, and (ii) any other Person (other than a natural Person) approved by Company (so long as no Default or Event of Default has occurred and is continuing) and Agent.

“Employee Benefit Plans” means all plans, arrangements, agreements, programs, policies, practices or undertakings, whether oral or written, formal or informal, funded or unfunded, insured or uninsured, registered or unregistered to which a Note Party is a party or bound or in which its employees participate or under which a Note Party has, or

will have, any liability or contingent liability, or pursuant to which payments are made, or benefits are provided to, or an entitlement to payments or benefits may arise with respect to any of its employees or former employees, directors or officers, individuals working on contract with a Note Party or other individuals providing services to a Note Party of a kind normally provided by employees (or any spouses, dependents, survivors or beneficiaries of any such persons), but does not include the Canada Pension Plan or the Québec Pension Plan maintained by the Government of Canada and the Province of Québec, respectively.

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

“Environmental Laws” means Applicable Law relating to (i) environmental matters, including those relating to any Hazardous Materials Activity; (ii) the generation, use, storage, transportation or disposal of Hazardous Materials; or (iii) occupational safety and health, industrial hygiene, land use or the protection of the environment (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata), natural resources or human, plant or animal safety, health or welfare, in any manner applicable to any Note Party or any Facility.

“Environmental Permits” means all Governmental Authorizations under any Environmental Law.

“Entitlement Order” means an entitlement order as defined in the STA.

“Environmental Affiliate” means, as applied to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “control” (including, with correlative meanings, the terms “controlling,” “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power (i) to vote 20% or more of the Securities having ordinary voting power for the election of directors of such Person, (ii) to appoint a member to the board of directors of such Person or (iii) to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. Notwithstanding the foregoing, Agent and each Purchaser shall be deemed not to be an Environmental Affiliate of any Note Party or any Affiliate thereof.

“Equivalent Amount” in one currency on any day means the amount of such currency that would result from Agent converting into such currency another currency at approximately 12:00 p.m. (noon) on such day in accordance with Agent’s customary practice for commercial loans being administered by it.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended from time to time.

“**Event of Default**” means each of the conditions or events set forth in Section 8.1.

“**Excluded Subsidiary**” means each of (i) Skinfix Inc. and CFFI Technology Development Inc. and each of their respective Subsidiaries (unless and to the extent any such Person is subsequently designated by Company as a Subsidiary that does not constitute an Excluded Subsidiary with the consent of Agent (such consent not to be unreasonably withheld)), (ii) the Student Loan Trusts and (iii) any other Person created or acquired after the Original Closing Date that is an operating company and that becomes a non-wholly-owned Subsidiary of any Note Party and is designated by Company at the time of the creation or acquisition thereof as an “Excluded Subsidiary” with the prior written consent of Agent (such consent not to be unreasonably withheld); provided that, for the avoidance of doubt, Agent shall not consent to the designation of any Subsidiary as an Excluded Subsidiary unless (w) prior to receiving the consent of Agent to the designation of such Subsidiary as an “Excluded Subsidiary”, no Note Party shall have restricted or limited their ability to pledge or encumber the Capital Stock of such Subsidiary in favor of Agent, (x) after giving effect to creation or acquisition of such Subsidiary, all of the Capital Stock of such Subsidiary that is owned by Company and its Affiliates shall be held by a Note Party that is a Wholly-Owned Note Party Subsidiary of Company with no material assets or liabilities other than its ownership interest in the Capital Stock of such Subsidiary (any such entity, a “**Holdco Parent**”), (y) either the Capital Stock of such Subsidiary or the Capital Stock of the Holdco Parent that holds the Capital Stock of such Subsidiary shall be pledged as Collateral in favor Agent for the benefit of the Secured Parties and (z) after giving effect to the creation or acquisition of such Subsidiary, no default or change of control shall occur or would result under the joint venture, partnership or other similar constitutive documents governing the rights of shareholders in the Capital Stock of such Subsidiary in connection with the exercise of remedies by Agent in respect of the Capital Stock of such Subsidiary or Holdco Parent pledged in favor Agent pursuant to the foregoing clause (y).

“**Facility**” means any real property (including all buildings, fixtures or other improvements located thereon) now, hereafter or heretofore owned, leased, operated or used by any Note Party or any of their respective predecessors or Environmental Affiliates.

“**Financial Officer Certification**” means, with respect to the financial statements for which such certification is required, the certification of the chief financial officer of a Note Party that such financial statements fairly present, in all material respects, the financial condition of such Note Party as at the dates indicated.

“**Financial Asset**” means a financial asset as defined in the STA.

| **“First Amendment”** means Amendment No. 1 to Second Amended and Restated Note Purchase and Guarantee Agreement, dated as of November 15, 2019, among the Note Parties, Purchasers and Agent.

| **“First Amendment Closing Date”** as defined in Section 4 of the First Amendment.

“First Priority” means, with respect to any Lien purported to be created in any Collateral pursuant to any Collateral Document, that such Lien is the only Lien to which such Collateral is subject, other than any Permitted Lien.

“Fiscal Quarter” means a fiscal quarter of any Fiscal Year.

“Fiscal Year” means the fiscal year of the Note Parties ending on December 31 of each calendar year.

“Foreign Sovereign Immunities Act” means the US Foreign Sovereign Immunities Act of 1976 (28 U.S.C. Sections 1602-1611), as amended.

| **“FP Acquisition Holdings”** means FP Acquisition Holdings LLC, a Delaware corporation.

“FP Resources” means FP Resources Limited.

“FP Resources Holdings” means FP Resources Holdings LP, a Delaware limited partnership.

| **“FP Resources USA”** means FP Resources USA Inc., a Delaware corporation.

“Funds Flow Agreement” as defined in the definition of Purchase Notice.

“GAAP” means, subject to the limitations on the application thereof set forth in Section 1.2, generally accepted accounting principles in effect in Canada as of the date of determination thereof as recommended in the Handbook of the Chartered Professional Accountants of Canada.

“Governmental Authority” means any federal, state, provincial, territorial, municipal, national or other government, governmental department, commission, board, bureau, court, agency, organization, central bank, tribunal or instrumentality or political subdivision thereof or any other entity or officer exercising executive, legislative, judicial, regulatory, governmental (or quasi-governmental) or administrative functions of or pertaining to any government or any court or central bank, in each case whether associated with a province or territory of Canada, Canada, or a foreign entity or government.

“Governmental Authorization” means any permit, license, approval, authorization, plan, directive, direction, certificate, accreditation, registration, notice, agreement,

consent order or consent decree or other like instrument of, from or required by any Governmental Authority.

“**Grantor**” as defined in the Pledge and Security Agreement.

“**Greypoint Bridge Financing**” means the credit facility governed by that certain Credit and Guarantee Agreement, dated as of September 22, 2017, by and among Company and certain affiliates thereof, the lenders party thereto and Greypoint Capital Inc., as administrative agent, collateral agent and lead arranger, and the related loan documentation entered into in connection therewith.

“**Guaranteed Obligations**” as defined in Section 7.1.

“**Guarantors**” means, collectively, the Note Parties (other than Company), Limited Guarantor and Personal Guarantor.

“**Guarantee**” means the guarantee of each Guarantor set forth in Section 7.

“**Hazardous Materials**” means any chemical, material or substance: (i) which is prohibited, limited, restricted or otherwise regulated under Environmental Laws (ii) which may or could pose a hazard to the health and safety of the owners, occupants or any Persons in the vicinity of any Facility or to the indoor or outdoor environment, or (iii) which is or hereafter is included in the concept or definition of “hazardous substance”, “waste”, “hazardous waste”, “hazardous material”, “toxic substance”, “pollutant”, “polluting substance”, “contaminant”, “contamination”, “dangerous good”, “deleterious substance” or words of similar import under any Environmental Law.

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

“**Highest Lawful Rate**” means, with respect to Agent or any Purchaser, the maximum non-usurious interest rate, if any, that at any time or from time to time may be contracted for, taken, reserved, charged or received on the Obligations under laws applicable to Agent or such Purchaser which are currently in effect or, to the extent allowed by law, under such applicable laws which may hereafter be in effect and which allow a higher maximum non-usurious interest rate than applicable laws now allow.

“**Historical Financial Statements**” means as of the Original Closing Date, (a) the audited non-consolidated financial statements of Company for the Fiscal Year ended December 31, 2016, consisting of the non-consolidated balance sheet and the related non-consolidated statements of income, stockholders’ equity and cash flows for such Fiscal Year, and (b) for the interim period from December 31, 2016 to the Original

Closing Date, internally prepared, unaudited non-consolidated financial statements of Company, consisting of a non-consolidated balance sheet and the related non-consolidated statements of income, stockholders' equity and cash flows for each Fiscal Quarter completed prior to the Original Closing Date, in the case of each of clauses (a) and (b), prepared in accordance with GAAP.

“**Holdings**” as defined in the preamble hereto.

“**Horizon Holdings**” means Horizon Maritime Holdings Ltd., a corporation incorporated pursuant to the laws of Canada.

“**Horizon Maritime Services**” means Horizon Maritime Services Ltd., a corporation incorporated pursuant to the laws of Canada.

“**Horizon Norway**” means Horizon Maritime Offshore A/S, a corporation incorporated pursuant to the laws of Norway.

“**HPS**” as defined in the preamble hereto.

“**HPS Entities**” means HPS, together with its Affiliates.

“**Indebtedness**,” as applied to any Person, means, without duplication, (i) all indebtedness for borrowed money; (ii) that portion of obligations with respect to Capital Leases that is properly classified as a liability on a balance sheet in conformity with GAAP; (iii) notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money; (iv) any obligation owed for all or any part of the deferred purchase price of property or services, which purchase price is (a) due more than six months from the date of incurrence of the obligation in respect thereof or (b) evidenced by a note or similar written instrument; (v) any obligation, matured or contingent, in respect of any Capital Stock of such Person other than common equity; (vi) all indebtedness secured by any Lien on any property or asset owned or held by that Person regardless of whether the indebtedness secured thereby shall have been assumed by that Person or is nonrecourse to the credit of that Person; (vii) the face amount of any letter of credit or banker's acceptance issued or accepted, as the case may be, for the account of that Person or as to which that Person is otherwise liable for reimbursement of drawings or otherwise; (viii) the direct or indirect guarantee, endorsement (otherwise than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the obligation of another; (ix) any obligation of such Person the primary purpose or intent of which is to provide assurance to an obligee that the obligation of the obligor thereof will be paid or discharged, or any agreement relating thereto will be complied with, or the holders thereof will be protected (in whole or in part) against loss in respect thereof; (x) any liability of such Person for an obligation of another through any agreement (contingent or otherwise) (a) to purchase, repurchase or otherwise acquire such obligation or any security therefor, or to provide funds for the payment or discharge of such obligation (whether in the form of loans, advances, stock purchases, capital contributions or otherwise) or (b) to maintain the solvency or any balance sheet item,

level of income or financial condition of another if, in the case of any agreement described under subclauses (a) or (b) of this clause (x), the primary purpose or intent thereof is as described in clause (ix) above; and (xi) all obligations of such Person in respect of any exchange traded or over the counter derivative transaction, whether entered into for hedging or speculative purposes or otherwise.

“Indemnified Liabilities” means, collectively, any and all liabilities, obligations, losses, damages (expectation, consequential, reliance or otherwise, and including natural resource damages), penalties, fines, actions, judgments, orders, suits, claims (including Environmental Claims), costs (including the costs of any investigation, study, sampling, testing, abatement, cleanup, removal, remediation or other response action necessary to remove, remediate, clean up or abate any Hazardous Materials Activity), expenses and disbursements of any kind or nature whatsoever (including the fees and disbursements of counsel reasonably incurred by Indemnitees in connection with any investigative, administrative or judicial proceeding or order commenced or threatened by any Person, whether or not any such Indemnitee shall be designated as a party or a potential party thereto, and any fees or expenses incurred by Indemnitees in enforcing this indemnity), whether direct, indirect or consequential and whether based on any Applicable Law or on contract or otherwise, that may be issued to, imposed on, incurred or suffered by, or asserted against any such Indemnitee, in any manner relating to or arising out of (i) this Agreement or the other Note Documents, the Related Agreements or the transactions contemplated hereby or thereby (including Purchasers’ agreement to purchase the Notes or the use or intended use of the proceeds thereof, or any enforcement of any of the Note Documents (including any sale of, collection from, or other realization upon any of the Collateral or the enforcement of the Guarantee)); (ii) the statements contained in the commitment letter delivered by any Purchaser to Company with respect to the transactions contemplated by this Agreement; or (iii) any Environmental Claim or any Hazardous Materials Activity, including such claims or activities relating to or arising from, directly or indirectly, any past or present activity, operation, land ownership, occupation, practice or use of any Note Party or any Affiliate thereof.

“Indemnitee” as defined in Section 10.3.

“Indemnitee Agent Party” as defined in Section 9.5.

“Initial Note Commitment” means the commitment of a Purchaser to purchase Initial Notes and **“Initial Note Commitments”** means such commitments of all Purchasers in the aggregate. The amount of each Purchaser’s Initial Note Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Initial Note Commitments as of the Original Closing Date is \$150,000,000.

“Initial Notes” means the \$150,000,000 aggregate principal amount of Notes issued under the Original Note Purchase Agreement on the Original Closing Date pursuant to Section 2.1(b).

“Insolvency Laws” means any of the Bankruptcy Code, the BIA, the CCAA, the WURA, the CBCA, and any other applicable insolvency, corporate arrangement or restructuring or other similar law of any jurisdiction including any law of any jurisdiction permitting a debtor to obtain a stay or a compromise of the claims of its creditors against it.

“Insolvency Proceeding” means any case or proceeding pursuant to, governed by or in respect of any Insolvency Law.

“Intellectual Property” means all intellectual property, including copyrights, designs, patents, trademarks and any license therefor.

“Intercompany Intercreditor Agreement” means an intercompany intercreditor agreement among Company, FP Resources, Northern Star Charters Holdings Ltd., Telecommunications, CVI Seafood Holdings Limited, Slanmhor Pharmaceutical Inc. and Agent in form and substance satisfactory to Agent.

“Intercreditor Agreements” means, collectively, the AltAir Intercreditor Agreement² ~~means and the BMO Intercreditor Agreement, dated as of March 16, 2018, by and among Agent, AltAir Agent and Company.~~

“Interest Payment Date” means (i) the last Business Day of each fiscal quarter of Company, commencing December 31, 2017 (in respect of the Initial Notes), June 30, 2018 (in respect of the Additional Notes), June 30, 2019 (in respect of the Second Additional Notes) ~~and~~, December 31, 2019 (in respect of the Cognition Notes) and September 30, 2020 (in respect of the Third Additional Notes), and (ii) the Maturity Date.

“Interim Sale” as defined in Section 5.18.

“Investment” means (i) any direct or indirect purchase or other acquisition by any Person of, or of a beneficial interest in, any of the Securities of any other Person; and (ii) any direct or indirect loan, advance or capital contributions by any Person to any other Person. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustments for increases or decreases in value, or write ups, write downs or write offs with respect to such Investment.

“Investment Assets” means the Investments listed on Schedule 6.5(ii)(b), as such schedule may be amended from time to time to include Investments that are acquired with Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds or Net Capital Return Proceeds reinvested in accordance with Section 2.10(a), (b) or (d), respectively, after giving effect to any amounts payable to the applicable HPS Entities under the Call Option Agreement in connection therewith.

“**Islandsbanki Credit Agreement**” means that certain Credit Agreement dated as of July 10, 2017 among, *inter alios*, CVI Seafood Holdings Limited, as borrower, Company, as guarantor, and Islandsbanki HF., as administrative agent and lender.

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

“**LBTY**” means the Capital Stock of Liberty Global Group listed on the Nasdaq National Market as LBTYA and LBTYK.

“**LiLAC**” means the Capital Stock of Liberty Global Group listed on the Nasdaq National Market as LILA and LILAK.

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

“**Lien**” means any mortgage, deed of trust, pledge, hypothecation, adverse claim, assignment, deposit arrangement, lien, lease or other right of use or occupation, charge, claim, security interest, right of detention or seizure, right of set-off or consolidation, deemed trust, mechanics’ or repairers’ lien, right of distraint, easement or encumbrance, call or similar right, option to purchase, right of first refusal, conditional sale or other title retention agreement, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever having a similar economic effect as any of the foregoing (including an agreement to give any of the foregoing).

“**Limited Guarantor**” means Horizon Holdings.

“**Limited Guarantor Property**” means all right, title and interest of Horizon Holdings in, to, under and with respect to the Capital Stock of Horizon Norway.

“**LTV Ratio (FMV)**” means the ratio of (x) all outstanding Obligations accrued or payable pursuant to the Note Documents to (y) Share Value (FMV), as at any date of determination.

“**Margin Loan**” means the BMO Credit Agreement, the Islandsbanki Credit Agreement or any Permitted Refinancing Indebtedness in respect thereof or any other Indebtedness having a financial covenant based on loan to value ratio, loan coverage ratio, senior loan coverage ratio or similar term or concept.

“**Maritime Mortgage**” means the Mortgage (Form 7) dated as of August 1, 2017, executed by Company in favor of Greypoint Capital Inc. as mortgagee, as it may be amended, supplemented or otherwise modified from time to time.

“**Material Adverse Effect**” means (i) a material adverse effect on and/or material adverse developments with respect to (a) the business, operations, properties, assets,

condition (financial or otherwise) of the Note Parties taken as a whole or of Company, (b) the ability of any Note Party or Personal Guarantor to fully and timely perform its Obligations, or (c) the rights, remedies and benefits available to, or conferred upon, Agent, any Purchaser or any Secured Party under any Note Document (and the impairment of such rights or remedies in respect of access to, inspection of or enforcement of Liens relating to Collateral having a book value of more than \$2,500,000 shall be deemed to constitute a material adverse effect on such rights and remedies), (d) the legality, validity, binding effect, or enforceability against a Note Party, Limited Guarantor or Personal Guarantor of a Note Document to which it is a party, or (e) the validity, priority or scope of Agent's Liens on Collateral having a book value of more than \$2,500,000; (ii) the aggregate amount that Agent likely would receive (after giving consideration to delays in payment and costs of enforcement) in the liquidation of Collateral is reduced by more than \$5,000,000; or (iii) the imposition on one or more of the Note Parties of fines or penalties by Governmental Authorities in excess of \$2,000,000 in respect of a breach of Environmental Laws or any other matter, in each case, in the aggregate from the Original Closing Date to the date of determination. In determining whether an individual event or set of circumstances has had or could reasonably be expected to have a Material Adverse Effect, notwithstanding that such event or set of circumstances has not or could not individually reasonably be expected to have such an effect, such event or set of circumstances shall be deemed to have had or reasonably be expected to have a Material Adverse Effect if the cumulative effect of such event or set of circumstances and all other then-existing events or circumstances have had or could reasonably be expected to have a Material Adverse Effect. The determination of whether or not an individual event or set of circumstances has had or could reasonably be expected to have a Material Adverse Effect shall be the sole determination of Agent acting in good faith.

“Material Contract” means any contract or other arrangement to which any Note Party is a party (other than the Note Documents) for which breach, non-performance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect, together with those contracts and arrangements listed on Schedule 4.16, and including for the avoidance of doubt, the AltAir Note Purchase Agreement (upon execution and delivery thereof), the Bourbon Arctic Note Purchase Agreement and the other Related Agreements.

“Material Real Estate Asset” means (i) (a) any fee-owned Real Estate Asset having a fair market value in excess of \$2,500,000, and (b) all Leasehold Properties other than those with respect to which the aggregate payments under the term of the lease are less than \$500,000 per annum, or (ii) any Real Estate Asset that the Requisite Purchasers have determined is material to the business, operations, properties, assets, condition (financial or otherwise) or prospects of any Note Party.

“Maturity Date” means, (i) in the case of the Cognition Notes, the earlier of (a) the Cognition Scheduled Maturity Date and (b) the date that the Cognition Notes shall become due and payable in full hereunder, whether by acceleration or otherwise or (ii) in the case of all other Notes, the earlier of (a) the Scheduled Maturity Date and (b) the date

that all such Notes shall become due and payable in full hereunder, whether by acceleration or otherwise, as applicable.

“**MidStar Agent**” means MidStar Lending Corp., as agent under the MidStar Credit Agreement.

“**MidStar Credit Agreement**” means that certain credit agreement dated as November 20, 2018, among Horizon Maritime Services, as borrower, MidStar Agent, as agent and the lenders party thereto.

“**MidStar Limited Recourse Guarantee**” means that certain Limited Recourse Guarantee dated as of November 20, 2018, made by Company in favor of MidStar Agent.

“**MidStar Pledge Agreement**” means that certain Pledge Agreement dated as of November 20, 2018, by and between Company and MidStar Agent.

“**Moody’s**” means Moody’s Investors Service, Inc., and any successor thereto.

“**Mortgage**” means a mortgage in form and substance satisfactory to Agent.

“**Multi-Employer Plan**” means all Defined Benefit Plans to which any Note Party is required to contribute pursuant to a collective agreement and which are not maintained or administered by a Note Party.

“**Net Asset Sale Proceeds**” means, with respect to any Asset Sale, an amount equal to: (i) all Cash payments received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by any Note Party in respect of such Asset Sale, minus (ii) any bona fide direct costs incurred in connection with such Asset Sale to the extent paid or payable to non-Affiliates. For the avoidance of doubt, Net Asset Sale Proceeds shall not include Net Capital Return Proceeds (application of which to the Notes shall be governed by Section 2.10(d)).

“**Net Capital Return Proceeds**” means (a) all Cash dividends and other Cash distributions received (directly or indirectly) by a Note Party in respect of any Investment Assets, Joint Venture or other Investment previously made by such Note Party or (b) all Cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by any Note Party in respect of the sale or other disposition of Investment Assets, Joint Ventures or other Investment previously made by such Note Party (in the case of any Current Investment (as defined in the Call Option Agreement), that constitutes Retained Gross Proceeds), after giving effect to any payments made in connection with such sale or other disposition that are permitted hereunder and that are required to be made by Note Parties in respect of Indebtedness (other than the Notes) secured by such asset as a result of such event.

“Net Insurance/Condemnation Proceeds” means an amount equal to: (i) all Cash payments or proceeds received (directly or indirectly) from time to time (whether as initial payments or deferred payments) by any Note Party (a) under any casualty, business interruption or “key man” insurance policies in respect of any covered loss thereunder, or (b) as a result of the taking of any assets of any Note Party by any Person pursuant to the power of eminent domain, condemnation or otherwise, or pursuant to a sale of any such assets to a purchaser with such power under threat of such a taking, minus (ii) any actual and reasonable costs incurred by any Note Party in connection with the adjustment or settlement of any claims of such Note Party in respect thereof. For the avoidance of doubt, Net Insurance/Condemnation Proceeds shall not include Net Capital Return Proceeds (application of which to the Notes shall be governed by Section 2.10(d)).

“Net Residual Value” means, as at any date of determination, the result of (i) the aggregate value of the Investments of the Note Parties in LBTY, LiLAC and CSI (excluding the Investments of the Note Parties in LBTY and LiLAC that are subject to the PRISM Agreement), calculated using the average trading price of each such Investment for the 20 consecutive trading day period immediately preceding such date, minus (ii) the Total Liabilities of the Note Parties secured by such Investments under the BMO Credit Agreement, the Islandsbanki Credit Agreement or any Permitted Refinancing Indebtedness in respect thereof as at such date.

“Norwegian Collateral Documents” means the agreements, instruments and other documents governed by the laws of Norway, substantially in the forms of Exhibit J.

“Note Commitment” means, each Initial Note Commitment, each Additional Note Commitment, each Second Additional Note Commitment ~~and~~, each Cognition Note Commitment and each Third Additional Note Commitment of a Purchaser and **“Note Commitments”** means such commitments of all Purchasers in the aggregate.

“Note Document” means any of the Original Note Documents, the Additional Note Documents, the Second Additional Note Documents, the Cognition Note Documents, the Third Additional Note Documents and all other documents, certificates, instruments or agreements executed and delivered by or on behalf or at the request of a Note Party or Personal Guarantor for the benefit of Agent or any Purchaser in connection herewith.

“Note Exposure” means, with respect to any Purchaser, as of any date of determination, the outstanding principal amount of the Notes of such Purchaser; provided, at any time prior to the issuance and purchase of Notes, the Note Exposure of any Purchaser shall be equal to such Purchaser’s Note Commitment in respect of such Notes.

“Note Parties” means, collectively, Holdings and the Subsidiaries of Holdings identified as “Note Parties” on the signature pages to this Agreement or that from time to time become Guarantors pursuant to Section 5.10.

“Notes” means, collectively, the Initial Notes, the Additional Notes, the Second Additional Notes ~~and~~, the Cognition Notes and the Third Additional Notes.

“Obligations” means all obligations, whether vested or contingent, matured or unmatured and of every nature and kind of each Note Party, Limited Guarantor and Personal Guarantor from time to time owed to Agent (including former Agents), any Purchaser or any of their respective Affiliates or Related Funds under any Note Document, whether for principal, interest, fees, expenses, indemnification or otherwise. For the avoidance of doubt, Obligations shall include Cognition Obligations.

“Obligee Guarantor” as defined in Section 7.6.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organizational Documents” means (i) with respect to any corporation or company, its certificate, memorandum or articles of incorporation, organization, association or amalgamation, its letters patent or other constitutive documents, in each case, as amended, and its by-laws, as amended, (ii) with respect to any limited partnership, its certificate or declaration of limited partnership, as amended, and its partnership agreement, as amended, (iii) with respect to any general partnership, its partnership agreement, as amended, and (iv) with respect to any limited liability company, its articles of organization, as amended, and its operating agreement, as amended. In the event any term or condition of this Agreement or any other Note Document requires any Organizational Document to be certified by a Governmental Authority, the reference to any such “Organizational Document” shall only be to a document of a type customarily certified by such Governmental Authority.

“Original Closing Date” means October 23, 2017.

“Original Note Document” means any of the Original Note Purchase Agreement, the Initial Notes, the Collateral Documents, the Intercompany Intercreditor Agreement, the Call Option Agreement the Funds Flow Agreement dated as of the Original Closing Date and all other documents, certificates, instruments or agreements executed and delivered by or on behalf or at the request of a Note Party or Personal Guarantor for the benefit of Agent or any Purchaser in connection herewith, as in effect on the Original Closing Date.

“Original Note Purchase Agreement” as defined in the recitals hereto.

“Original Purchaser” as defined in the recitals hereto.

“Paramount Pipeline” means Paramount Pipeline, LLC.

“PCTFA” as defined in Section 4.24.

“Pension Plan” means each Employee Benefit Plan that is a pension, supplementary pension, retirement savings or other retirement income plan or arrangement of any kind,

registered or non-registered, established, maintained or contributed to by any Note Party for its employees or former employees.

“Pension Plan Termination Event” means an event which would entitle a Person (without the consent of a Note Party) to wind up or terminate a Pension Plan in full or in part, or the institution of any steps by any Person to withdraw from, terminate participation in, wind up or order the termination or wind-up of, in full or in part, any Pension Plan, or the receipt by a Note Party of correspondence from a Governmental Authority relating to a potential or actual, partial or full, termination or wind-up of any Pension Plan, or an event respecting any Pension Plan which would result in the revocation of the registration of such Pension Plan or which could otherwise reasonably be expected to adversely affect the tax status of any such Pension Plan.

“Pension Plan Unfunded Liability” means an unfunded liability in respect of any Pension Plan, including a going concern unfunded liability, a solvency deficiency or wind-up deficiency.

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

“Permitted Refinancing Indebtedness” means the extension of maturity, refinancing or modification of the terms of Indebtedness so long as:

(a) after giving effect to such extension, refinancing or modification, the amount of such Indebtedness is not greater than the amount of Indebtedness outstanding immediately prior to such extension, refinancing or modification;

(b) such extension, refinancing or modification does not result in a shortening of the average weighted maturity (measured as of the extension, refinancing or modification) of the Indebtedness so extended, refinanced or modified;

(c) such extension, refinancing or modification is pursuant to terms that are not less favorable to the Note Parties and Purchasers than the terms of the Indebtedness (including, without limitation, terms relating to the collateral (if any) and subordination (if any)) being extended, refinanced or modified;

(d) the Indebtedness that is extended, refinanced or modified is not recourse to any Note Party or any of its Subsidiaries that is liable on account of the obligations other than those Persons which were obligated with respect to the Indebtedness that was refinanced, renewed, or extended; and

(e) the Effective Yield of such Indebtedness shall not exceed the Effective Yield of the Indebtedness that is extended, refinanced or modified by more than 1.50% as of the date of such extension, refinancing or modification (excluding increases resulting from interest at the default rate).

Notwithstanding anything to the contrary contained in this Agreement, Permitted Refinancing Indebtedness in respect of any Margin Loan shall include any refinancing

Indebtedness incurred by Company the proceeds of which are used to refinance in full any additional Notes issued by Company to HPS Entities pursuant to Section 5.1(p) in respect of such Margin Loan so long as such refinancing Indebtedness satisfies the criteria set forth above as applied to such Margin Loan without giving effect to the refinancing thereof with the proceeds of such additional Notes issued by Company to HPS Entities pursuant to Section 5.1(p).

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

“**Personal Guarantor**” means John C. Risley.

“**PIK Interest**” means any interest paid by capitalizing such interest and adding such capitalized interest to the then outstanding principal amount of the Notes, which capitalized interest shall thereafter bear interest as if it had originally been a part of the outstanding principal of the Notes.

“**Pipeline Asset Purchase Agreement**” as defined in the definition of AltAir Acquisition Documents.

“**Pledge and Security Agreement**” means the Amended and Restated Pledge and Security Agreement executed by each Note Party and the Limited Guarantor on the Second Additional Closing Date, substantially in the form of Exhibit H, as it may be amended, supplemented or otherwise modified from time to time.

“**PPSA**” means the *Personal Property Security Act* (Ontario), provided, however, if the validity, attachment, perfection (or opposability), effect of perfection or of non-perfection or priority of Agent’s security interest in any Collateral are governed by the personal property security laws or laws relating to movable property of any jurisdiction other than the Province of Ontario, PPSA shall also include those personal property security laws or laws relating to personal or movable property in such other jurisdiction for the purpose of the provisions hereof relating to such validity, attachment, perfection (or opposability), effect of perfection or of non-perfection or priority and for the definitions related to such provisions.

“**Pre-Funded Interest Funds**” as defined in Section 2.3.

“**Principal Office**” means Agent’s Principal Office as set forth on Appendix B, or such other office as Agent may from time to time designate in writing to Company and each Purchaser.

“**PrISM Agreement**” means, collectively, that certain master confirmation dated as of May 20, 2016 by and among JPMorgan Chase Bank, National Association, London Branch and certain of its Affiliates and Telecommunications, setting forth certain terms

and conditions of one or more share forward transactions that may be entered into from time to time among Telecommunications and JPMorgan Chase Bank, National Association, London Branch and certain of its Affiliates, together with any supplemental confirmations and trade notifications with respect the subject transactions related thereto.

“**Process Agent**” as defined in Section 10.15(b).

“**Pro Rata Share**” means with respect to all payments, computations and other matters relating to the Note of any Purchaser, the percentage obtained by dividing (a) the Note Exposure of that Purchaser, by (b) the aggregate Note Exposure of all Purchasers. For all other purposes with respect to each Purchaser, “**Pro Rata Share**” means the percentage obtained by dividing (A) an amount equal to the Note Exposure of that Purchaser, by (B) an amount equal to the sum of the aggregate Note Exposure of all Purchasers.

“**Purchase Notice**” means a written notice given by Company to Agent and the applicable Purchasers, in form and substance acceptable to Agent, of the proposed date of the sale and purchase of Notes (which shall be a Business Day), which notice shall be satisfied by the execution and delivery of the flow of funds agreement dated as of the Original Closing Date (in the case of the sale and purchase of the Initial Notes), Additional Closing Date (in the case of the sale and purchase of the Additional Notes), Second Additional Closing Date (in the case of the sale and purchase of the Second Additional Notes), ~~or~~ First Amendment Closing Date (in the case of the sale and purchase of the Cognition Notes) or Second Amendment Closing Date (in the case of the sale and purchase of the Third Additional Notes), by and among, *inter alios*, Company, Agent and the applicable Purchasers (each, a “**Funds Flow Agreement**”).

“**Purchaser**” means each Original Purchaser, each Additional Purchaser, each other financial institution listed on the signature pages hereto as a Purchaser, and any other Person that becomes a Purchaser hereto pursuant to an Assignment Agreement.

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

“**Record Document**” means, with respect to any Leasehold Property, (i) the lease evidencing such Leasehold Property or a memorandum thereof, executed and acknowledged by the owner of the affected real property, as lessor, or (ii) if such Leasehold Property was acquired or subleased from the holder of a Recorded Leasehold Interest, the applicable assignment or sublease document, executed and acknowledged by such holder, in each case in form sufficient to give such constructive notice upon recordation and otherwise in form reasonably satisfactory to Agent.

“**Recorded Leasehold Interest**” means a Leasehold Property with respect to which a Record Document has been recorded in all places necessary or desirable, in Agent’s reasonable judgment, to give constructive notice of such Leasehold Property to third-party purchasers and encumbrancers of the affected real property.

“Refinancing” means the repayment in full, termination of all commitments and release of all liens (including the release of liens encumbered by the Maritime Mortgage) and guarantees under each of (i) the Greypoint Credit Facility and (ii) the Greypoint Bridge Financing.

“Refinery Asset Purchase Agreement” as defined in the definition of AltAir Acquisition Documents.

“Register” as defined in Section 2.4(b).

“Related Agreements” means those agreements and other documents listed in Schedule 1.1, including the AltAir Note Documents and the Bourbon Arctic Note Documents.

“Related Fund” means, with respect to any Purchaser that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Purchaser or by an Affiliate of such investment advisor.

“Release” means any release, spill, emission, emanation, leaking, pumping, pouring, injection, spraying, escaping, deposit, disposal, discharge, dispersal, dumping, abandonment, placing, exhausting, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Material), including the movement of any Hazardous Material through the air, soil, surface water or groundwater.

“Requisite Purchasers” means one or more Purchasers having or holding Note Exposure and representing more than 50% of the aggregate Note Exposure of all Purchasers.

“Restricted Junior Payment” means (i) any dividend or other distribution, direct or indirect, on account of any shares of any class of Capital Stock of any Note Party now or hereafter outstanding, except a dividend payable solely in shares of that class of Capital Stock to the holders of that class; (ii) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any shares of any class of Capital Stock of any Note Party now or hereafter outstanding; (iii) any payment made to retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire shares of any class of Capital Stock of any Note Party now or hereafter outstanding; (iv) any management or similar fees payable to any Note Party, Personal Guarantor or any of their Affiliates, other than management fees charged by Company to its Affiliates for accounting and administrative services on fair market terms; and (v) any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in substance or legal defeasance), sinking fund or similar payment with respect to, any Indebtedness by any Note Party (other than such payments required by the terms of Scheduled Indebtedness to Persons other than a Note Party or any Affiliate thereof).

“**Restricted NCRP Amounts**” as defined in Section 2.10(d).

“**Retained Gross Proceeds**” has the meaning ascribed thereto in the Call Option Agreement.

“**Rockport Equity Documents**” means, collectively, (a) the subscription agreement, by and among Rockport Networks Inc. (“Rockport”), as the company, and Northern Private Capital Fund I Limited Partnership (“NPC”) and Northern Private Capital Fund I Non-Resident Limited Partnership (“NPC NR”), as the purchasers, (b) the repurchase right agreement, by and between Rockport, as the company, and Northern Private Capital GP I Ltd., as general partner of NPC and NPC NR, as shareholders, (c) the registration rights agreement, by and among Rockport, as the company, and NPC and NPC NR, as series c investors, (d) the third amended and restated right of first refusal and co-sale agreement, by and among, *inter alia*, Rockport, as the company, and NPC and NP NR, as shareholders, (e) the third amended and restated voting agreement, by and among, *inter alia*, Rockport, as the company, and NPC and NP NR, as shareholders and (f) all other documents entered into by any Note Party, Rockport, NPC or NP NR in connection with the Rockport Equity Investment.

“**Rockport Equity Investment**” means Investments made in Northern Private Capital Fund I Limited Partnership by Company so that Northern Private Capital Fund I Limited Partnership can purchase the equity interests of Rockport Networks Inc. pursuant to the Rockport Equity Documents after the Second Amendment Closing Date with the proceeds of the Third Additional Notes in an aggregate amount not to exceed \$4,500,000.

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

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by the United States government (including without limitation, OFAC), the United Nations Security Council, the European Union or any European Union member state, Canada, or the United Kingdom, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person described in clause (a) or (b).

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States government (including without limitation, OFAC), (b) the United Nations Security Council, (c) the European Union, (d) any European Union member state, (e) Her Majesty’s Treasury of the United Kingdom, or (f) Canada.

“**S&P**” means S&P Global Ratings, and any successor thereto.

“**Scheduled Indebtedness**” means the Indebtedness described in Schedule 6.1.

“**Scheduled Maturity Date**” means October 23, 2022.

“**Second Additional Closing Date**” means April 25, 2019.

“**Second Additional Note Commitment**” means the commitment of a Purchaser to purchase Second Additional Notes and “**Second Additional Note Commitments**” means such commitments of all Purchasers in the aggregate. The amount of each Purchaser’s Second Additional Note Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Second Additional Note Commitments as of the Second Additional Closing Date is \$50,000,000.

“**Second Additional Note Documents**” means any of this Agreement, the Second Additional Notes, the Call Option Agreement, the Collateral Documents, the Funds Flow Agreement dated as of the Second Additional Closing Date and all other documents, certificates, instruments or agreements executed and delivered by or on behalf or at the request of a Note Party, Limited Guarantor or Personal Guarantor for the benefit of Agent or any Purchaser in connection with the sale, purchase and issuance of the Second Additional Notes, as in effect on the Second Additional Closing Date.

“**Second Additional Notes**” means the \$50,000,000 aggregate principal amount of Notes issued under this Agreement on the Second Additional Closing Date pursuant to Section 2.1(b).

[“**Second Amendment**” means Amendment No. 2 to Second Amended and Restated Note Purchase and Guarantee Agreement, dated as of August 11, 2020, among the Note Parties, Purchasers and Agent.](#)

[“**Second Amendment Closing Date**” as defined in Section 4 of the Second Amendment.](#)

“**Secured Parties**” has the meaning assigned to that term in the Pledge and Security Agreement.

“**Secured Property**” has the meaning assigned to that term in the Pledge and Security Agreement.

“**Securities**” means any Capital Stock, bonds, debentures, notes, or other evidences of indebtedness, secured or unsecured, convertible, subordinated or otherwise, or in general any instruments commonly known as “securities” or any certificates of interest, shares or participations in temporary or interim certificates for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing.

“**Securities Account**” means an account to which a Financial Asset is or may be credited in accordance with an agreement under which the Securities Intermediary maintaining the account undertakes to treat the Person for whom the account is maintained as entitled to exercise the rights that comprise the Financial Asset, and includes all of the Financial

Assets credited to such account, all related securities entitlements and the agreements with the respective Securities Intermediary governing such account.

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

“**Securities Intermediary**” means a Person, including a bank or broker, that in the ordinary course of its business, maintains Securities Accounts for others and is acting in that capacity.

“**Share Value (FMV)**” means, as at any date of determination, the sum of (i) the value of the Investment Assets held by or for the benefit of the Note Parties, with each such Investment Asset valued as at such date based on the most recent of the following valuations thereof: (a) the value of such Investment Asset set forth in an independent third party letter of intent with respect thereto satisfactory to Agent in its sole discretion, (b) the value of such Investment Asset as determined by reference to an independent third party Investment therein or (c) the value of such Investment Asset as determined by reference to a binding third party purchase and sale agreement; provided that (1) if no such valuation of any Investment Asset has been obtained within 12 months of such date of determination, then the value of such Investment Asset shall be determined in a manner mutually agreed upon by Agent and Company but if Agent and Company cannot so mutually agree then the value of such Investment Asset shall either be the cost basis of such Investment Asset or, if so elected by Agent in its sole discretion, the value of such Investment Asset as determined by reference to a valuation of such Investment Asset by an accounting firm, appraisal firm, investment banking firm or consultant of nationally recognized standing that is qualified to perform such valuation and that is disinterested with respect to the applicable transaction (which such valuation shall be at Company’s expense) selected according to the following methodology: (i) Company shall select an appraiser that, in the good faith judgment of Company, meets the criteria set forth in this definition (the “**Ventures Selected Firm**”), which Ventures Selected Firm Agent may approve or decline in its good faith judgment, (ii) in the event Agent declines the Ventures Selected Firm pursuant to clause (i), Agent shall select an appraiser that, in the good faith judgment of Agent, meets the criteria set forth in this definition (the “**HPS Selected Firm**”), which HPS Selected Firm Company may approve or decline in its good faith judgment, and (iii) in the event that Company declines the HPS Selected Firm as the appraiser pursuant to clause (ii), the Ventures Selected Firm and the HPS Selected Firm shall mutually select a third party appraiser that meets the criteria set forth in this definition to perform the valuation, which selection shall be final, conclusive, non-appealable and binding for all purposes hereunder (or, if the Ventures Selected Firm and the HPS Select Firm cannot or do not so select such a third party appraiser reasonably promptly, Company and Agent shall mutually agree upon a third party appraiser that meets the criteria set forth in this definition to perform the valuation); and (2) the value of any Investment Asset obtained by any Note Party after the Original Closing Date shall, for the 3 month period following the date on which such Investment Asset is obtained, be the cost basis of such Investment Asset, plus (ii) Net Residual Value as at such date.

“**Solvency Certificate**” means a Solvency Certificate of the chief financial officer of each Note Party substantially in the form of Exhibit F-2.

“**Solvent**” means, with respect to any Person, that as of the date of determination, (i) the property of such Person is sufficient, if disposed of at a fairly conducted sale under legal process, to enable payment of all its obligations, due and accruing due, (ii) the property of such Person is, at a fair valuation, greater than the total amount of liabilities, including contingent liabilities, of such Person; and (iii) such Person has not ceased paying its current obligations in the ordinary course of business as they generally become due. The amount of contingent liabilities (such as litigation, guaranties and pension plan liabilities) at any time shall be computed as the amount that, in light of all the facts and circumstances existing at the time, represents the amount that can be reasonably be expected to become an actual or matured liability.

“**STA**” means the *Securities Transfer Act* (Ontario); provided, however, if the rules governing the transfer, holding or control of securities or other financial assets or interests therein which are Secured Property are governed by the laws of any jurisdiction other than the Province of Ontario, STA shall include such laws for the purpose of the provisions hereof relating to the transfer, holding and control of such Secured Property or interests therein and for the definitions related to such provisions.

“**Student Loan Account**” means any Deposit Account or other account with a financial institution that is a “participation account” or other similar account created pursuant to a loan program agreement with such financial institution.

“**Student Loan Trusts**” means, collectively, (i) Cognition Student Loan Trust, a Delaware statutory trust, (ii) The National Collegiate Student Loan Trust 2009-1, a Delaware statutory trust, (iii) MG Student Loan Trust 2010-1 and (iv) MG Student Loan Trust 2012-1, a Delaware statutory trust.

“**Subsidiary**” means, with respect to any Person, any corporation, company, partnership, limited liability company, unlimited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, legally or beneficially, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; provided, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“**Tax**” means any present or future tax, levy, impost, duty, assessment, charge, fee, deduction or withholding imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Telecommunications**” means CFFI Telecommunications Holdings Ltd.

“Third Additional Note Commitment” means the commitment of a Purchaser to purchase Third Additional Notes and “Third Additional Note Commitments” means such commitments of all Purchasers in the aggregate. The amount of each Purchaser’s Third Additional Note Commitment, if any, is set forth on Appendix A or in the applicable Assignment Agreement, subject to any adjustment or reduction pursuant to the terms and conditions hereof. The aggregate amount of the Third Additional Note Commitments as of the Second Amendment Closing Date is \$7,500,000.

“Third Additional Note Documents” means any of this Agreement, the Third Additional Notes, the Collateral Documents, the Funds Flow Agreement dated as of the Second Amendment Closing Date and all other documents, certificates, instruments or agreements executed and delivered by or on behalf or at the request of a Note Party, Limited Guarantor or Personal Guarantor for the benefit of Agent or any Purchaser in connection with the sale, purchase and issuance of the Third Additional Notes, as in effect on the Second Amendment Closing Date.

“Third Additional Note Make-Whole Amount” means, in the case of the Applicable Premium Trigger Event described in clause (f) of the definition thereof, an amount equal to the positive difference, if any, between (a) (i) during the period from and after the Second Amendment Closing Date up to and including the date that is the first anniversary of the Second Amendment Closing Date, a CoC of 1.25x following the payment of all amounts owing with respect to the Third Additional Notes under this Agreement and (ii) thereafter, a CoC of 1.50x following the payment of all amounts owing with respect to the Third Additional Notes under this Agreement and (b) the aggregate amount of interest (including, without limitation, interest payable in cash, in kind or deferred) actually paid on the aggregate principal amount of the Third Additional Notes as of the date of such Applicable Premium Trigger Event.

“Third Additional Notes” means the \$7,500,000 aggregate principal amount of Notes issued under this Agreement on the Second Amendment Closing Date pursuant to Section 2.1(b).

“**Total Liabilities**” means, in respect of any Person as at any date of determination, the total Indebtedness and all other liabilities as at such date of such Person determined in conformity with GAAP.

“**Treasury Rate**” means, with respect to any prepayment, a rate per annum (computed on the basis of actual days elapsed over a year of 360 days) equal to the rate determined by Agent on the date 3 Business Days prior to the date of such prepayment, to be the yield expressed as a rate listed in The Wall Street Journal for United States Treasury securities having a term of not greater than 36 months.

“UCC” means the Uniform Commercial Code.

“U.S. Dollars” and the sign “\$” mean the lawful money of the United States.

“USA PATRIOT Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (PATRIOT) Act of 2001 (Title III of Pub. L. 107-56, Oct. 26, 2001)) as amended by the USA Patriot Improvement and Reauthorization Act of 2005 (Pub. L. 109-177, March 9, 2006) and as the same may have been or may be further renewed, extended, amended, or replaced.

“UXP” means UXP Systems Inc.

“Wholly-Owned Note Party Subsidiary” means any corporation, company, partnership, limited liability company, unlimited liability company, association, joint venture or other business entity of which 100% of the Capital Stock thereof is owned or controlled, directly or indirectly, legally or beneficially, by a Note Party or one or more Note Parties.

“WMG Holdings” means WMG Holdings, LLC, a limited liability company incorporated pursuant to the laws of the Commonwealth of Massachusetts.

“World Energy” means World Energy, LLC, a limited liability company incorporated pursuant to the laws of the State of Delaware owned jointly on the Additional Closing Date by BIOX USA, BIOX Holdings, Drive and WMG Holdings.

“World Energy Investment Agreement” means the Master Investment Agreement, dated as of March 16, 2018, by and among, *inter alia*, Company, BIOX USA, BIOX Holdings, Drive and WMG Holdings.

“World Energy LLC Agreement” means the World Energy, LLC Limited Liability Company Agreement, dated as of March 16, 2018, by and among World Energy, BIOX USA, BIOX Holdings, Drive and WMG Holdings.

“World Energy Restructuring” means a corporate reorganization which effects the contribution of the Investments of the Note Parties in BIOX Holdings, BIOX USA and AltAir to a Joint Venture owned in part by BIOX Holdings, BIOX USA and Drive pursuant to the World Energy LLC Agreement and the World Energy Investment Agreement; provided that (a) the proportion of the Investments of the Note Parties in BIOX Holdings, BIOX USA, Drive and AltAir pledged in favor of Agent shall be no less than prior to such corporate reorganization, (b) the guarantees of the Obligations and security interests granted in favor of Agent for the benefit of Secured Parties shall not be adversely effected by such corporate reorganization (as determined in the discretion of Agent) and (c) such corporate reorganization, including the terms and conditions of the World Energy LLC Agreement and the World Energy Investment Agreement, shall otherwise be acceptable to Agent.

“WURA” means the *Winding-Up and Restructuring Act (Canada)*.

1.2 Accounting Terms

Except as otherwise expressly provided herein, all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements and other information required to be delivered to Purchasers pursuant to Sections 5.1(a), 5.1(b) and 5.1(c) shall be prepared in accordance with GAAP. Subject to the foregoing, calculations in connection with the definitions, covenants and other provisions hereof shall utilize accounting principles and policies in conformity with those used to prepare the Historical Financial Statements.

1.3 Interpretation, etc.

Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference. References herein to any Section, Appendix, Schedule or Exhibit shall be to a Section, an Appendix, a Schedule or an Exhibit, as the case may be, hereof unless otherwise specifically provided. The use herein of the word “include” or “including,” when following any general statement, term or matter, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not no limiting language (such as “without limitation” or “but not limited to” or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that fall within the broadest possible scope of such general statement, term or matter. A reference to a statute includes all regulations made pursuant to such statute and, unless otherwise specified, the provisions of any statute or regulation which amends, revises, restates, supplements or supersedes any such statute or any such regulation. In this Agreement, where the terms “continuing”, “continuance” or words to similar effect are used in relation to a Default or an Event of Default, the terms shall mean only, in the case of a Default, that the applicable event or circumstance has not been waived or, if capable of being cured, cured, prior to the event becoming or resulting in an Event of Default, and in the case of an Event of Default, that such event or circumstance has not been waived. For greater certainty, an obligation that is required to be satisfied or performed prior to a prescribed date or within a prescribed period, and which has not been, shall not be curable. All references to the determination, satisfaction, approval, request, discretion or like terms of Agent shall be to such in Agent’s sole determination in good faith, as applicable. Unless otherwise specified, all references to a time of day shall be a reference to New York City time applicable.

1.4 Permitted Liens

The inclusion of references to Permitted Liens in any Note Document is not intended to subordinate and shall not subordinate, and shall not be interpreted as subordinating, any Lien created by any of the Note Documents to any Permitted Lien.

SECTION 2 NOTES

2.1 Notes.

- (a) Authorization of the Notes. Company will authorize the issue and sale of (i) on the Original Closing Date, \$150,000,000 aggregate principal amount of Initial Notes, (ii) on the Additional Closing Date, \$50,000,000 aggregate principal amount of Additional Notes, (iii) on the Second Additional Closing Date, \$50,000,000 aggregate principal amount of Second Additional Notes ~~and~~, (iv) on the First Amendment Closing Date, \$5,000,000 aggregate principal amount of Cognition Notes and (v) on the Second Amendment Closing Date, \$7,500,000 aggregate principal amount of Third Additional Notes. The Notes shall be substantially in the form of Exhibit B.
- (b) Sales of the Notes. Subject to the terms and conditions hereof, Company will issue and sell to each Purchaser, and each Purchaser will purchase from Company, (i) on the Original Closing Date, subject to the conditions set forth in Section 3.1, in the principal amount specified opposite such Purchaser's name on Appendix A under the column "Initial Note Commitment", (ii) on the Additional Closing Date, subject to the conditions set forth in Section 3.2, in the principal amount specified opposite such Purchaser's name on Appendix A under the column "Additional Note Commitment", in each case at a purchase price of 100% of the principal amount thereof, (iii) on the Second Additional Closing Date, subject to the conditions set forth in Section 3.3, in the principal amount specified opposite such Purchaser's name on Appendix A under the column "Second Additional Note Commitment", in each case at a purchase price of 100% of the principal amount thereof, ~~and~~ (iv) on the First Amendment Closing Date, subject to the conditions set forth in the First Amendment, in the principal amount specified opposite such Purchaser's name on Appendix A under the column "Cognition Note Commitment", in each case at a purchase price of 100% of the principal amount thereof and (v) on the Second Amendment Closing Date, subject to the conditions set forth in the Second Amendment, in the principal amount specified opposite such Purchaser's name on Appendix A under the column "Third Additional Note Commitment", in each case at a purchase price of 100% of the principal amount thereof. Purchasers' obligations hereunder are several and not joint obligations and no Purchaser shall have any liability to any Person for the performance or non-performance of any obligation by any other Purchaser hereunder.
- (c) Payment for the Notes. Payment for each Initial Note shall be made by the relevant Purchaser thereof to Agent not later than 12:00 p.m. (noon) on the Original Closing Date, by wire transfer of same day funds in U.S. Dollars to Agent. Upon satisfaction or waiver of the applicable conditions precedent specified herein, Agent shall make all such requested proceeds of the Initial Notes available to Company on the Original Closing Date by causing the proceeds of all such Initial Notes received by Agent from Purchasers to be paid by wire transfer

as provided in the relevant Purchase Notice. Payment for each Additional Note shall be made by the relevant Purchaser thereof to Agent not later than 12:00 p.m. (noon) on the Additional Closing Date, by wire transfer of same day funds in U.S. Dollars to Agent. Upon satisfaction or waiver of the applicable conditions precedent specified herein, Agent shall make all such requested proceeds of the Additional Notes available to Company on the Additional Closing Date by causing the proceeds of all such Additional Notes received by Agent from Purchasers to be paid by wire transfer as provided in the relevant Purchase Notice. Payment for each Second Additional Note shall be made by the relevant Purchaser thereof to Agent not later than 12:00 p.m. (noon) on the Second Additional Closing Date, by wire transfer of same day funds in U.S. Dollars to Agent. Upon satisfaction or waiver of the applicable conditions precedent specified herein, Agent shall make all such requested proceeds of the Second Additional Notes available to Company on the Second Additional Closing Date by causing the proceeds of all such Second Additional Notes received by Agent from Purchasers to be paid by wire transfer as provided in the relevant Purchase Notice. Upon satisfaction or waiver of the applicable conditions precedent specified in the First Amendment, Agent shall make all such requested proceeds of the Cognition Notes available to Company on the First Amendment Closing Date by causing the proceeds of all such Cognition Notes received by Agent from Purchasers to be paid by wire transfer as provided in the relevant Purchase Notice. Upon satisfaction or waiver of the applicable conditions precedent specified in the Second Amendment, Agent shall make all such requested proceeds of the Third Additional Notes available to Company on the Second Amendment Closing Date by causing the proceeds of all such Third Additional Notes received by Agent from Purchasers to be paid by wire transfer as provided in the relevant Purchase Notice.

- (d) Maturity Date and Commitment Termination. All amounts owed hereunder with respect to the Notes shall be paid in full no later than the Maturity Date. Each Purchaser's Initial Note Commitment shall terminate immediately and without further action on the Original Closing Date after giving effect to the funding of such Purchaser's Initial Note Commitment on such date. Each Purchaser's Additional Note Commitment shall terminate immediately and without further action on the Additional Closing Date after giving effect to the funding of such Purchaser's Additional Note Commitment on such date. Each Purchaser's Second Additional Note Commitment shall terminate immediately and without further action on the Second Additional Closing Date after giving effect to the funding of such Purchaser's Second Additional Note Commitment. Each ~~Purchaser's~~ Purchaser's Cognition Note Commitment shall terminate immediately and without further action on the First Amendment Closing Date after giving effect to the funding of such Purchaser's Cognition Note Commitment. Each Purchaser's Third Additional Note Commitment shall terminate immediately and without further action on the Second

[Amendment Closing Date after giving effect to the funding of such Purchaser's Third Additional Note Commitment.](#)

2.2 [Intentionally Deleted].

2.3 Use of Proceeds.

- (a) The proceeds of the Initial Notes shall be applied by Company to fund the transactions contemplated in the Note Documents and Related Agreements, including, on the Original Closing Date, to (a) fund, directly or indirectly, cash equity contributions to the Agent's Account of \$5,000,000 in respect of pre-funded interest on the Notes (such funds, the "**Pre-Funded Interest Funds**"), (b) fund, directly or indirectly, cash equity contribution investments in the form of the Capital Stock of ClearBank held by CFFI Barbados in an amount up to the Dollar Equivalent of £10,000,000, (c) fund the Refinancing, (d) fund the prepayment of \$5,000,000 of Indebtedness outstanding under the BMO Credit Agreement, (e) [reserved], (f) pay fees and expenses related to the transactions contemplated in the Note Documents and the Related Agreements and (g) the excess after giving effect to the foregoing clauses (a) through (f), to Company for general corporate purposes and other purposes permitted hereunder (including to make Investments pursuant to Section 6.5).
- (b) The proceeds of the Additional Notes (to be funded upon the satisfaction of the AltAir Funding Conditions), together with the proceeds from the notes issued under the AltAir Note Purchase Agreement on the Additional Closing Date and the proceeds from the cash equity contributions or investments of CFFI and/or its Affiliates and the other members party to the World Energy LLC Agreement and/or the World Energy Investment Agreement on or about the Additional Closing Date, shall be applied by Company and the other relevant parties to the World Energy LLC Agreement, World Energy Investment Agreement and the AltAir Acquisition Documents (and/or their respective designees) on the Additional Closing Date to (i) fund the capitalization of World Energy in connection with the World Energy Restructuring, (ii) fund the AltAir Acquisitions, (iii) pay fees and expenses related to the transactions contemplated under the Additional Note Documents occurring on or about the Additional Closing Date and (iv) the excess, after giving effect to the foregoing clauses (i) through (iii), to Company for general corporate purposes and other purposes permitted hereunder (including to make Investments pursuant to Section 6.5).
- (c) The proceeds of the Second Additional Notes shall be applied by Company to (i) fund the Company's purchase of the notes issued under the Bourbon Arctic Note Purchase Agreement on the Second Additional Closing Date, (ii) pay fees and expenses related to the transactions contemplated under the Second Additional Note Documents occurring on or about the Second Additional Closing Date and (iii) the excess, after giving effect to the foregoing clauses (i) and (ii), to

Company for general corporate purposes and other purposes permitted hereunder (including to make Investments pursuant to Section 6.5).

- (d) The proceeds of the Cognition Notes shall be applied by Company to (i) make an investment in Cognition, as expressly permitted pursuant to Section 6.5(viii) and (ii) pay fees and expenses related to the transactions contemplated under the Cognition Note Documents occurring on or about the First Amendment Closing Date.
- (e) The proceeds of the Third Additional Notes shall be applied by Company to (i) repay the obligations under the CTDI Loan Agreement, (ii) make the Rockport Equity Investment, (iii) pay fees and expenses related to the transactions contemplated under the Third Additional Note Documents occurring on or about the Second Amendment Closing Date and (iv) the excess, after giving effect to the foregoing clauses (i) through (iii), to Company for general corporate purposes and other purposes permitted hereunder.

2.4 Evidence of Debt; Register; Purchasers' Books and Records.

- (a) Purchasers' Evidence of Debt. Each Purchaser shall maintain on its internal records an account or accounts evidencing the Obligations of Company to such Purchaser, including the amounts of the Notes purchased by it and each repayment and prepayment in respect thereof. Any such recordation shall be conclusive and binding on Company, absent manifest error; provided, that the failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any applicable Notes; and provided further, in the event of any inconsistency between the Register and any Purchaser's records, the recordations in the Register shall govern.
- (b) Register. Agent shall maintain at one of its offices a register for the recordation of the names and addresses of Purchasers and ~~Notes~~the Note Commitments and Notes (including the principal amounts of the Notes and any stated interest thereon) of each Purchaser (the "**Register**"). The Register shall be available for inspection by Company or any Purchaser at any reasonable time and from time to time upon reasonable prior notice. Agent shall record in the Register the Notes, and each repayment or prepayment in respect of the principal amount of the Notes, and any such recordation shall be conclusive and binding on Company and each Purchaser, absent manifest error; provided, failure to make any such recordation, or any error in such recordation, shall not affect Company's Obligations in respect of any Notes. The entries in the Register shall be conclusive absent manifest error, and the Company, Agent and the Purchasers shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Purchaser hereunder for all purposes of this Agreement. Company hereby designates the entity serving as Agent to serve as Company's non-fiduciary agent solely for purposes of maintaining the Register as provided in this Section 2.4, and Company hereby agrees that, to the extent

such entity serves in such capacity, the entity serving as Agent and its officers, directors, employees, agents and affiliates shall constitute “Indemnitees.” To the extent of any discrepancies between the accounts maintained by the Purchasers’ pursuant to Section 2.4(a) and the Register, the Register shall control.

2.5 Interest on Notes.

- (a) Except as otherwise set forth herein, (i) each Note (other than a Cognition Note or a Third Additional Note) shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof at a rate per annum of 8.0% (which such amount shall be payable in cash on each Interest Payment Date), plus PIK Interest at a rate per annum equal to 5.0% (which such amount shall be paid in kind on each Interest Payment Date as PIK Interest until the Maturity Date, at which date, all PIK Interest shall be payable in full in cash) and (ii) each Cognition Note and each Third Additional Note shall bear interest on the unpaid principal amount thereof from the date made through repayment (whether by acceleration or otherwise) thereof at a rate per annum of 20% (which such amount shall be paid in kind on each Interest Payment Date as PIK Interest until the Maturity Date, at which date, all PIK Interest shall be payable in full in cash).
- (b) Interest payable pursuant to Section 2.5(a) shall be computed on the basis of a 360 day year, in each case for the actual number of days elapsed in the period during which it accrues. In computing interest on any Note, the date of the issuance of such Note shall be included and the date of payment of such Note shall be excluded; provided, if a Note is repaid on the same day on which it is issued, one day’s interest shall be paid on that Note.
- (c) Except as otherwise set forth herein, interest on each Note shall be payable in U.S. Dollars and payable in arrears on and accrue to (i) each Interest Payment Date; and (ii) the date upon which any repayment of that Note is made, whether voluntary or mandatory, to the extent accrued on the amount being repaid.

2.6 Default Interest.

Upon the occurrence and during the continuance of (a) any Event of Default pursuant to Section 8.1(a) resulting from the failure of Company to make any interest payment in respect of the Notes (other than the Cognition Notes and the Third Additional Notes) on any Interest Payment Date, to the extent not prohibited by Applicable Law, interest for the Fiscal Quarter of Company in respect of which such interest payment is due on such Interest Payment Date shall, automatically and without further action by any party, be deemed to have accrued at a rate that is 20% per annum and shall be paid on such Interest Payment Date in the form of PIK Interest (which such amount shall be paid in kind on such Interest Payment Date as PIK Interest until the Maturity Date, at which date, all such PIK Interest shall be payable in full in cash) or (b) (i) any Event of Default pursuant to Section 8.1(a) resulting from the failure of Company to make any interest payment in respect of the Cognition Notes or the Third Additional Notes on any

Interest Payment Date or (ii) any other Event of Default, in each case, to the extent not prohibited by Applicable Law, the principal amount of all Notes outstanding and any interest payments on the Notes or any fees or other amounts owed hereunder, shall thereafter bear interest (including post-petition interest in any proceeding under Insolvency Laws) at a rate that is 2% per annum in excess of the interest rate otherwise payable hereunder with respect to the applicable Notes (or, in the case of any such fees and other amounts, at a rate which is 2% per annum in excess of the highest interest rate otherwise payable hereunder for any Note) (such rate, the “**Initial Default Rate**”); provided that, if a precipitating Event of Default has not been cured or waived in accordance with the terms of this Agreement, then the Initial Default Interest Rate shall increase by an additional 0.5% per annum at each six-month anniversary date of the initial occurrence of such Event of Default until such Event of Default is cured or waived in accordance with the terms of this Agreement. All interest payable at the increased rate of interest provided for under this Section 2.6 shall be paid by capitalizing such interest and adding such capitalized interest to the then outstanding principal amount of the Notes, in each case, on each Interest Payment Date as PIK Interest, which PIK Interest shall thereafter bear interest as if it had originally been a part of the outstanding principal of the Notes. Payment or acceptance of the increased rates of interest provided for in this Section 2.6 is not a permitted alternative to timely payment and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Purchaser.

2.7 [Intentionally Deleted].

2.8 Agent’s Account.

The Purchase Notice delivered in respect of the funding to occur on the Original Closing Date shall direct that \$5,000,000 of the proceeds of the Notes be advanced to Agent and held in the Agent’s Account to be applied by Agent, in its sole discretion, to the payment of cash interest accrued and payable on the Notes to Purchasers in accordance with their Pro Rata Shares on any applicable Interest Payment Date (until no Pre-Funded Interest Funds remain in the Agent’s Account), in the event that Agent determines that the amount of unrestricted cash on hand of Company and its Subsidiaries after giving effect to such cash interest payment would be less than \$5,000,000.

Any Net Asset Sale Proceeds (other than as specifically permitted under Section 2.10(a)), Net Insurance/Condemnation Proceeds and (other than as specifically permitted under Section 2.10(d) for the payment of cash interest accrued and payable on the Notes) Net Capital Return Proceeds shall be deposited by Company in the Agent’s Account within the relevant time periods specified in Section 2.10, with such net proceeds (a) to be disbursed to Company upon delivery to Agent, no later than 180 days after the original receipt of such net proceeds, of a certificate of an Authorized Officer of Company specifying the amount of proceeds Company requests be disbursed from the Agent’s Account and the proposed use of such proceeds, the disbursement by Agent of which shall be made in Agent’s sole discretion or (b) if not disbursed to Company on or prior to the date that is 180 days after the original receipt of such net proceeds, to be applied by Agent to the prepayment of the Notes as set forth in Section 2.11 in an aggregate amount

equal to such net proceeds that remain in the Agent's Account immediately prior to such application (together with the Applicable Premium, if any).

All amounts held in the Agent's Account and any proceeds thereof shall constitute security for payment and performance of the Obligations.

2.9 Voluntary Prepayments.

(a) Voluntary Prepayments.

- (i) Any time and from time to time, Company may prepay the Notes on any Business Day in whole or in part, in an aggregate minimum amount of \$5,000,000, as applicable, and integral multiples of \$100,000, as applicable, in excess of that amount.
- (ii) All such prepayments shall be made upon not less than one Business Day's prior notice given to Agent by 12:00 p.m. (noon) on the date required (and Agent will promptly transmit such notice to each Purchaser). Upon the giving of any such notice, the principal amount of the Notes specified in such notice shall become due and payable on the prepayment date specified therein. Any such voluntary prepayment shall be applied as specified in Section 2.11.

(b) Applicable Premium. Upon the occurrence of an Applicable Premium Trigger Event, Company shall pay to Agent, for the benefit of Purchasers in accordance with their Pro Rata Shares, an amount equal to the Applicable Premium.

(i) Any Applicable Premium payable in accordance with this Section 2.9(b) shall be presumed to be equal to the liquidated damages sustained by Purchasers as the result of the occurrence of the Applicable Premium Trigger Event and the Note Parties agree that it is reasonable under the circumstances currently existing. THE NOTE PARTIES EXPRESSLY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING APPLICABLE PREMIUM IN CONNECTION WITH ANY ACCELERATION.

(ii) The Note Parties expressly agree that: (A) the Applicable Premium is reasonable and is the product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the Applicable Premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between Purchasers and the Note Parties giving specific consideration in this transaction for such agreement to pay the Applicable Premium; (D) the Note Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph; (E) their agreement to pay the Applicable Premium is a material inducement to Purchasers to provide the Note Commitments and purchase the Notes, and (F) the Applicable Premium represents a good faith, reasonable estimate and calculation of the lost profits or damages of Agent and Purchasers and that it would be impractical and extremely difficult to ascertain the actual amount of

damages to Agent and Purchasers or profits lost by Agent and Purchasers as a result of such Applicable Premium Trigger Event.

(iii) Nothing contained in this Section 2.9(b) shall permit any prepayment of the Notes or reduction of the Note Commitments not otherwise permitted by the terms of this Agreement or any other Note Document.

2.10 Mandatory Prepayments.

- (a) Asset Sales. No later than the first Business Day following the date of receipt by any Note Party of any Net Asset Sale Proceeds (other than (i) the Cognition Sale pursuant to clause (f) below ~~or~~, (ii) the Clearwater Sale pursuant to clause (g) below, or (iii) up to \$5,000,000 of Net Asset Sale Proceeds from the sale of UXP, which net proceeds are used for working capital purposes of Company and its Subsidiaries not otherwise prohibited by this Agreement, provided that the remaining Net Asset Sale Proceeds from the sale of UXP are or were deposited in the Agent's Account), Company shall deposit such Net Asset Sale Proceeds in the Agent's Account for disbursement or application in accordance with Section 2.8. Payment or acceptance of such prepayment provided for in this Section 2.10(a) or Section 2.8 is not a permitted alternative to, if applicable, compliance with Section 6.7 and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Purchaser.
- (b) Insurance/Condemnation Proceeds. No later than the first Business Day following the date of receipt by any Note Party, or Agent as loss payee, of any Net Insurance/Condemnation Proceeds, Company shall deposit such Net Insurance/Condemnation Proceeds in the Agent's Account for disbursement or application in accordance with Section 2.8.
- (c) Issuance of Debt; Bourbon Arctic Note Repayment. On the date of receipt (directly or indirectly) by any Note Party of any Cash proceeds from (i) the incurrence of any Indebtedness of such Note Party (other than with respect to any Indebtedness permitted to be incurred pursuant to Section 6.1) or (ii) any Bourbon Arctic Note Repayment, Company shall prepay the Notes as set forth in Section 2.11 in an aggregate amount equal to 100% of such proceeds (together with the Applicable Premium, if any). Payment or acceptance of such prepayment provided for in this Section 2.10(c) is not a permitted alternative to, if applicable, compliance with Section 6.1 and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Purchaser.
- (d) Net Capital Return Proceeds. No later than the first Business Day following the date of receipt by any Note Party of any Net Capital Return Proceeds (other than Net Capital Return Proceeds designated in writing by Company to Agent to be applied to the payment of cash interest accrued and payable on the Notes to Purchasers in accordance with their Pro Rata Shares on any applicable Interest Payment Date, and which proceeds are so applied), Company shall deposit such

Net Capital Return Proceeds in the Agent's Account for disbursement or application in accordance with Section 2.8. Payment or acceptance of such prepayment provided for in this Section 2.10(d) or Section 2.8 is not a permitted alternative to, if applicable, compliance with Section 6.7 and shall not constitute a waiver of any Event of Default or otherwise prejudice or limit any rights or remedies of Agent or any Purchaser.

- (e) Prepayment Certificate. Concurrently with any prepayment of the Notes (or, as applicable, deposit into the Agent's Account) pursuant to Sections 2.10(a) through 2.10(d), Company shall deliver to Agent (at least one (1) Business Day prior to the date of prepayment or deposit, as applicable) a certificate of an Authorized Officer demonstrating the calculation of the amount of the applicable net proceeds. In the event that Company shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Company shall promptly make an additional prepayment of the Notes (or, if applicable, deposit an additional amount in the Agent's Account for disbursement or application as set forth in Section 2.8) in an amount equal to such excess, and Company shall concurrently therewith deliver to Agent a certificate of an Authorized Officer demonstrating the derivation of such excess.
- (f) Cognition Sale. No later than the first Business Day following the date of receipt by any Note Party of any Net Asset Sale Proceeds or Net Capital Return Proceeds from the Cognition Sale pursuant to Section 5.19, Company shall prepay the Cognition Notes as set forth in Section 2.11 in an aggregate amount equal to 100% of such proceeds (together with the Applicable Premium, if any).
- (g) Clearwater Sale. Subject to the terms of the BMO Intercreditor Agreement, no later than the first Business Day following the date of receipt by any Note Party of any Net Asset Sale Proceeds or Net Capital Return Proceeds from the Clearwater Sale, Company shall prepay the Third Additional Notes as set forth in Section 2.11 in an aggregate amount equal to 100% of such proceeds (together with the Applicable Premium, if any).
- (h) Rockport Equity Investment. If the Rockport Equity Investment has not been consummated on or prior to September 10, 2020, then no later than the first Business Day following such date, Company shall prepay the Third Additional Notes as set forth in Section 2.11 in an aggregate amount equal to \$4,500,000 plus any accrued interest on the Third Additional Notes as of such date.
- (i) ~~(g)~~ 2020 Prepayment. During the period from November 15, 2019 until ~~June 30~~December 31, 2020, Company shall prepay the Notes in cash as set forth in Section 2.11 in the aggregate amount of \$100,000,000.

2.11 Application of Prepayments.

Any prepayment of the Notes pursuant to Section 2.8, any voluntary prepayment of the Notes pursuant to Section 2.9 and any mandatory prepayment of the Notes pursuant to Section 2.10 shall be applied as follows:

first, to the payment of all fees, and all expenses specified in Section 10.2, to the full extent thereof;

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

third, to the payment of the Applicable Premium, if any;

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

fifth, to prepay Notes on a pro rata basis (in accordance with the respective outstanding principal amounts thereof); provided that, (a) in the case of any mandatory prepayment of the Notes pursuant to Section 2.10(f), such mandatory prepayment shall be applied **first** to prepay the Cognition Notes (but not any other Notes) **and (b) in the case of any mandatory prepayment of the Notes pursuant to Sections 2.10(g) or (h), such mandatory prepayment shall be applied first to prepay the Third Additional Notes (but not any other Notes), in each case,** on a pro rata basis (in accordance with the respective outstanding principal amounts thereof) as set forth in this Section 2.11 until paid in full.

2.12 General Provisions Regarding Payments.

- (a) All payments by Company of principal, interest, fees and other Obligations shall be made in U.S. Dollars in same day funds, without defense, recoupment, setoff or counterclaim, free of any restriction or condition, and delivered to Agent not later than 12:00 p.m. (noon) on the date due at Agent's Principal Office for the account of Purchasers.
- (b) All payments in respect of the principal amount of any Note shall be accompanied by payment of accrued interest on the principal amount being repaid or prepaid.
- (c) Agent shall promptly distribute to each Purchaser at such address as such Purchaser shall indicate in writing, such Purchaser's applicable Pro Rata Share of all payments and prepayments of principal and interest due hereunder, together with all other amounts due thereto, including all fees payable with respect thereto, to the extent received by Agent.
- (d) Agent may deem any payment by or on behalf of Company hereunder that is not made in same day funds prior to 12:00 p.m. (noon) to be a non-conforming payment. Any such payment may not be deemed to have been received by Agent until the later of (i) the time such funds become available funds, and (ii) the applicable next Business Day. Agent shall give prompt notice to Company and each applicable Purchaser if any payment is non-conforming. Any non-

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

- (e) If an Event of Default shall have occurred and not otherwise been waived, and the maturity of the Obligations shall have been accelerated pursuant to Section 8.1 or Section 8.2, all payments or proceeds received by Agent hereunder or under any Collateral Document in respect of any of the Obligations, including, but not limited to all proceeds received by Agent in respect of any sale, any collection from, or other realization upon all or any part of the Collateral, shall be applied in full or in part as follows: first, to the payment of all costs and expenses of such sale, collection or other realization, including reasonable compensation to Agent and its agents and counsel, and all other expenses, liabilities and advances made or incurred by Agent in connection therewith, and all amounts for which Agent is entitled to indemnification hereunder or under any Collateral Document (in its capacity as Agent and not as a Purchaser) and all advances made by Agent under any Collateral Document for the account of the applicable Note Party, and to the payment of all costs and expenses paid or incurred by Agent in connection with the exercise of any right or remedy hereunder or under any Collateral Document, all in accordance with the terms hereof or thereof; second, to the extent of any excess of such proceeds, to the payment of all other Obligations for the ratable benefit of Purchasers; and third, to the extent of any excess of such proceeds, to the payment to or upon the order of such Note Party or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct; provided that, in the case of any acceleration as a result of an Event of Default under Section 8.1(l), such proceeds shall be applied first to the payment of the Cognition Obligations until paid in full.

2.13 [Intentionally Deleted].

2.14 Ratable Sharing.

Purchasers hereby agree among themselves that, except as otherwise provided in the Collateral Documents with respect to amounts realized from the exercise of rights with respect to Liens on the Collateral, if any of them shall, whether by voluntary payment (other than a voluntary prepayment of Notes made and applied in accordance with the terms hereof), through the exercise of any right of set-off, consolidation or banker's lien, by counterclaim or cross action or by the enforcement of any right under the Note Documents or otherwise, or as adequate protection of a deposit treated as cash collateral under the Insolvency Laws, receive payment or reduction of a proportion of the aggregate amount of principal, interest, fees and other amounts then due and owing to such Purchaser hereunder or under the other Note Documents (collectively, the "**Aggregate Amounts Due**" to such Purchaser) which is greater than the proportion received by any other Purchaser in respect of the Aggregate Amounts Due to such

other Purchaser, then the Purchaser receiving such proportionately greater payment shall (a) notify Agent and each other Purchaser of the receipt of such payment and (b) apply a portion of such payment to purchase participations (which it shall be deemed to have purchased from each seller of a participation simultaneously upon the receipt by such seller of its portion of such payment) in the Aggregate Amounts Due to the other Purchasers so that all such recoveries of Aggregate Amounts Due shall be shared by all Purchasers in proportion to the Aggregate Amounts Due to them; provided, if all or part of such proportionately greater payment received by such purchasing Purchaser is thereafter recovered from such Purchaser upon the bankruptcy or reorganization of Company or otherwise, those purchases shall be rescinded and the purchase prices paid for such participations shall be returned to such purchasing Purchaser ratably to the extent of such recovery, but without interest. Company expressly consents to the foregoing arrangement and agrees that any holder of a participation so purchased may exercise any and all rights of banker's lien, consolidation, set-off or counterclaim with respect to any and all monies owing by Company to that holder with respect thereto as fully as if that holder were owed the amount of the participation held by that holder.

2.15 Increased Costs; Capital Adequacy.

- (a) Compensation For Increased Costs. Subject to the provisions of Section 2.16 (which shall be controlling with respect to the matters covered thereby), in the event that any Purchaser shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that the adoption, effectiveness, phase-in or applicability after the Original Closing Date of any Applicable Law, or any change therein or in the interpretation, application or administration thereof, by any Governmental Authority, or compliance by any Purchaser (or its applicable lending office) with any Applicable Law, has or would have the effect of increasing the cost to such Purchaser or any corporation controlling such Purchaser as a consequence of, or with reference to, such Purchaser agreeing to purchase or purchasing, funding or maintaining any Note or otherwise fulfilling any other obligations hereunder, then from time to time, within five Business Days after receipt by Company from such Purchaser of the statement referred to in the next sentence, Company shall pay to such Purchaser such additional amount or amounts as will compensate such Purchaser or such controlling corporation on an after-tax basis for such increased costs. Such Purchaser shall deliver to Company (with a copy to Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to Purchaser under this Section 2.15(a), which statement shall be conclusive and binding upon all parties hereto absent manifest error.
- (b) Capital Adequacy Adjustment. Subject to the provisions of Section 2.16 (which shall be controlling with respect to the matters covered thereby), in the event that any Purchaser shall determine (which determination shall, absent manifest error, be final and conclusive and binding upon all parties hereto) that the adoption, effectiveness, phase-in or applicability after the Original Closing Date of any Applicable Law regarding capital adequacy, reserve requirements or similar requirements, or any change therein or in the interpretation, application or administration thereof, by any Governmental Authority, or compliance by any

Purchaser (or its applicable lending office) with any Applicable Law regarding capital adequacy, reserve requirements or similar requirements, has or would have the effect of reducing the rate of return on the capital of such Purchaser or any corporation controlling such Purchaser as a consequence of, or with reference to, such Purchaser agreeing to purchase or purchasing, funding or maintaining any Note or other fulfilling any other obligations hereunder to a level below that which such Purchaser or such controlling corporation could have achieved but for such adoption, effectiveness, phase-in, applicability, change or compliance (taking into consideration the policies of such Purchaser or such controlling corporation with regard to capital adequacy), then from time to time, within five Business Days after receipt by Company from such Purchaser of the statement referred to in the next sentence, Company shall pay to such Purchaser such additional amount or amounts as will compensate such Purchaser or such controlling corporation on an after-tax basis for such reduction. Such Purchaser shall deliver to Company (with a copy to Agent) a written statement, setting forth in reasonable detail the basis for calculating the additional amounts owed to such Purchaser under this Section 2.15(b), which statement shall be conclusive and binding upon all parties hereto absent manifest error.

- (c) Dodd-Frank. For greater certainty, notwithstanding anything herein to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, guidelines or directives promulgated thereunder shall be deemed to be a law that becomes effective after the Original Closing Date, regardless of the date enacted or adopted.
- (d) Basel III Framework. For greater certainty, notwithstanding anything herein to the contrary, all laws, regulations, rules, directives and guidelines attributable to the implementation or application of the Basel III Framework shall be deemed to be a law that becomes effective after the Original Closing Date, regardless of the date enacted or adopted. In this Agreement, “**Basel III Framework**” means the global regulatory standards on bank capital adequacy and liquidity referred to by the Basel Committee on Banking Supervision (“**BCBS**”) as “Basel III” or the “Basel III Framework” published in December 2010, together with any further guidance or standards in relation to “Basel III” or the “Basel III Framework” published or to be published by the BCBS.

2.16 Taxes; Withholding, etc.

- (a) Payments to Be Free and Clear. All sums payable by any Note Party, Limited Guarantor or Personal Guarantor hereunder and under the other Note Documents shall (except to the extent required by Applicable Law) be paid free and clear of, and without any deduction or withholding on account of, any Tax imposed, levied, collected, withheld or assessed by or within Canada or any political subdivision in or of Canada or any other jurisdiction from or to which a payment is made by or on behalf of any Note Party or by any federation or organization of which Canada or any such jurisdiction is a member at the time of payment.

- (b) Withholding of Taxes. If any Note Party or any other Person is required by Applicable Law to make any deduction or withholding on account of any such Tax from any sum paid or payable by any Note Party, Limited Guarantor or Personal Guarantor to or for the benefit of Agent, any Purchaser or other Secured Party under any of the Note Documents: (i) Company shall notify Agent of any such requirement or any change in any such requirement as soon as Company becomes aware of it; (ii) Company shall pay any such Tax before the date on which penalties attach thereto, such payment to be made (if the liability to pay is imposed on any Note Party, Limited Guarantor or Personal Guarantor) for its own account or (if that liability is imposed on Agent or such Purchaser, as the case may be) on behalf of and in the name of Agent or such Purchaser; (iii) the sum payable by such Note Party, Limited Guarantor or Personal Guarantor in respect of which the relevant deduction, withholding or payment is required shall be increased to the extent necessary to ensure that, after the making of that deduction, withholding or payment, Agent, such Purchaser or other Secured Party, as the case may be, receives on the due date a net sum equal to what it would have received had no such deduction, withholding or payment been required or made; and (iv) within 30 days after paying any sum from which it is required by law to make any deduction or withholding, and within 30 days after the due date of payment of any Tax which it is required by clause (ii) above to pay, Company shall deliver to Agent evidence satisfactory to the other affected parties of such deduction, withholding or payment and of the remittance thereof to the relevant taxing or other authority.
- (c) Payment of Taxes. In addition, each Note Party, Limited Guarantor and Personal Guarantor agrees to pay any Tax (other than a Tax on the overall net income of Agent, any Purchaser or other Secured Party) that arise from any payment made under any of the Note Documents or from the execution, sale, transfer, delivery or registration of, or otherwise with respect to, any of the Note Documents. Agent and each Purchaser agrees that, as promptly as reasonably practicable after it becomes aware of any circumstances referred to above which would result in additional payments under this Section 2.16(c), it shall notify Company thereof. Each Note Party, Limited Guarantor and Personal Guarantor hereby indemnifies Agent, each Purchaser and other Secured Party for the full amount of any Tax (other than Taxes on the overall net income of Agent, such Purchaser or other Secured Party) paid by Agent, such Purchaser or other Secured Party and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Tax was correctly or legally asserted.

2.17 Limitation on Interest (Canada).

If any provision of this Agreement or of any of the other Note Documents would obligate Company to make any payment of interest or other amount payable to Agent or any Purchaser in an amount or calculated at a rate which would result in a receipt by Agent or such Purchaser of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would

not result in a receipt by Agent or such Purchaser of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) firstly, by reducing the amount or rate of interest required to be paid to Agent or such Purchaser under Section 2.5, and (2) thereafter, by reducing any fees, commissions, premiums and other amounts required to be paid to Agent or such Purchaser which would constitute “**interest**” for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if an Agent or Purchaser shall have received an amount in excess of the maximum permitted by that section of the *Criminal Code* (Canada), Company shall be entitled, by notice in writing to Agent or such Purchaser, to obtain reimbursement from Agent or such Purchaser in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by Agent or such Purchaser to Company. Any amount or rate of interest referred to in this Section 2.17 shall be determined in accordance with GAAP as an effective annual rate of interest over the term that the applicable Note remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of “**interest**” (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the Original Closing Date to the Scheduled Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by Agent shall be conclusive for the purposes of such determination.

2.18 Interest Act (Canada).

For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Note Documents (and stated herein or therein, as applicable, to be computed on the basis of a 360 day year or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or the actual number of days in such other period of time, respectively.

SECTION 3 CONDITIONS PRECEDENT

3.1 Original Closing Date.

The obligation of each Original Purchaser to purchase Initial Notes on the Original Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Original Closing Date:

- (a) Note Documents. Agent shall have received sufficient copies of each Original Note Document originally executed and duly delivered by each applicable Note Party, Personal Guarantor or other Person party thereto for Agent and each Original Purchaser.
- (b) Organizational Documents; Incumbency. Agent shall have received, in respect of each Note Party (i) sufficient copies of each Organizational Document, certified as of the Original Closing Date or a recent date prior thereto by the appropriate Governmental Authority, for Agent and each Original Purchaser; (ii) signature

and incumbency certificates of the officers of such Note Party; (iii) resolutions of the board of directors or similar governing body of such Note Party approving and authorizing the execution, delivery and performance of the Original Note Purchase Agreement and the other Original Note Documents and the Related Agreements to which it is a party or by which it or its assets may be bound as of the Original Closing Date, certified as of the Original Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a certificate of status, certificate of compliance or other certificate of good standing from the applicable Governmental Authority of such Note Party's jurisdiction of incorporation, organization, amalgamation or formation and in each other jurisdiction in which it is qualified to do business, each dated the Original Closing Date or a recent prior thereto; and (v) such other documents as Agent may reasonably request.

- (c) Organizational and Capital Structure. The organizational structure and capital structure of the Note Parties and the capital structure of Holdings and its Subsidiaries shall be as set forth on Schedule 4.1.
- (d) [Reserved].
- (e) Consummation of Transactions Contemplated by Related Agreements.
 - (i) (1) All conditions to the transactions contemplated in the Related Agreements to which any Note Party or any of its Affiliates is a party or by which it or its respective assets may be bound as of the Original Closing Date shall have been satisfied or the fulfillment of any such conditions shall have been waived with the consent of Agent, and (2) the transactions contemplated in such Related Agreements shall have become effective in accordance with the terms of such Related Agreements.
 - (ii) Agent shall have received a fully executed or conformed copy of each Related Agreement and any documents executed in connection therewith. Each Related Agreement shall be in full force and effect, shall include terms and provisions satisfactory to Agent and no provision thereof shall have been modified or waived in any respect determined by Agent to be material, in each case without the consent of Agent.
- (f) Governmental Authorizations and Consents. Each Note Party and Personal Guarantor shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Original Note Documents and the Related Agreements to which it or any of its Affiliates is a party or by which it or its respective assets may be bound as of the Original Closing Date and each of the foregoing shall be in full force and effect and in form and substance satisfactory to Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated

by the Original Note Documents or the Related Agreements to which any Note Party or any of its Affiliates is a party or by which it or its respective assets may be bound as of the Original Closing Date and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.

- (g) Process Agent. Agent shall have received evidence satisfactory to it that a Process Agent has been properly appointed in accordance with Section 10.15(b).
- (h) Personal Property Collateral. In order to create in favor of Agent, for the benefit of Secured Parties, a valid and perfected First Priority security interest in the personal property Collateral, Agent shall have received:
 - (i) evidence satisfactory to Agent of the compliance by each Note Party of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including their obligations to file or register PPSA financing statements (or equivalent filings), to deliver originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);
 - (ii) (A) the results of a recent search, by a Person satisfactory to Agent, of all effective PPSA financing statements (or equivalent filings) made with respect to any personal property of any Note Party in each jurisdiction where Agent considers it to be necessary or desirable that such searches be conducted, together with copies of all such filings disclosed by such search, and (B) PPSA financing change statements (or similar documents) duly executed or authorized by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective PPSA financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Liens);
 - (iii) evidence satisfactory to Agent of the compliance by Company and CFFI Barbados of its obligations under the Barbados Collateral Documents;
 - (iv) opinions of counsel in each jurisdiction which governs the validity, attachment, perfection, effect of perfection or of non-perfection, or priority of any personal property Collateral in which any Note Party has an interest (which counsel shall be satisfactory to Agent) with respect to the creation, attachment, validity and perfection of the security interests in favor of Agent in such Collateral and such other matters as Agent may request, in each case in form and substance satisfactory to Agent; and
 - (v) evidence that each Note Party shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including any intercompany notes evidencing Indebtedness permitted to be incurred

pursuant to Section 6.1(b)) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Agent.

- (i) Due Diligence. Agent shall have completed and shall be satisfied with the results of its due diligence with respect to Note Parties' business, operations, management, prospects, books and records, financial position and assets and the tax, accounting, legal and other issues relevant to the Note Parties and Personal Guarantor and the Note Parties' and Personal Guarantor's business. Other than changes occurring in the ordinary course of business, no information or materials are or should have been available to the Note Parties or Personal Guarantor as of the Original Closing Date that are materially inconsistent with the material previously provided to Agent for its due diligence review of the Note Parties and Personal Guarantor.
- (j) Financial Statements. Original Purchasers shall have received the Historical Financial Statements as of the Original Closing Date.
- (k) Evidence of Insurance. Agent shall have received a certificate from the applicable Note Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming Agent, for the benefit of Secured Parties, as additional insured, loss payee and/or mortgagee thereunder to the extent required under Section 5.5.
- (l) Opinions of Counsel to Note Parties. Original Purchasers and their respective counsel shall have received originally executed copies of the favorable written opinions of McInnes Cooper, counsel for the Note Parties and Personal Guarantor, George Walton Payne & Co., Barbados counsel for the Note Parties, and Clark Hill PLC, New York counsel for the Note Parties, in each case, as to such other matters as Agent may request, dated as of the Original Closing Date and otherwise in form and substance satisfactory to Agent (and each Note Party and Personal Guarantor hereby instructs such counsel to deliver such opinions to Agent and Original Purchasers).
- (m) Expenses. Company shall have paid to Agent all expenses payable pursuant to Section 10.2 which have accrued to the Original Closing Date.
- (n) Know Your Customer. Not later than the fifth business day prior to the Original Closing Date, Agent shall have received satisfactory documentation and other information that is required by any Original Purchaser (and has been requested by such Original Purchaser not later than the tenth day prior to the Original Closing Date) under applicable "know your customer" and anti-money-laundering rules and regulations, including without limitation the USA PATRIOT Act.
- (o) Solvency Certificate. On the Original Closing Date, Agent shall have received a Solvency Certificate from each Note Party and Personal Guarantor dated as of the

Original Closing Date and addressed to Agent and Original Purchasers, and in form, scope and substance satisfactory to Agent.

- (p) Closing Date Certificate. Company shall have delivered to Agent an originally executed Closing Date Certificate, together with all attachments thereto.
- (q) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, individually or in the aggregate, materially impairs the transactions contemplated by the Related Agreements, the financing thereof or any of the other transactions contemplated by the Original Note Documents or the Related Agreements, or could result in a Material Adverse Effect.
- (r) No Material Adverse Effect. Since December 31, 2016, no event, circumstance or change shall have occurred that has caused or evidences a Material Adverse Effect.
- (s) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Agent and its counsel shall be satisfactory in form and substance to Agent and such counsel, and Agent, and such counsel shall have received all such counterpart originals or certified copies of such documents as Agent may request.
- (t) Purchase Notice. Agent shall have received the fully executed and delivered Purchase Notice in accordance with the terms of the Original Note Purchase Agreement.
- (u) Representations and Warranties. The representations and warranties contained herein and in the other Original Note Documents shall be true and correct on and as of the Original Closing Date.
- (v) No Default. No event shall have occurred and be continuing or would result from the purchase and sale of the Initial Notes or the other transactions contemplated by the Original Note Purchase Agreement that would constitute an Event of Default or a Default.

Agent or any Original Purchaser shall be entitled, but not obligated to, request and receive, prior to the purchase of any Initial Note, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of Agent or such Original Purchaser such request is warranted under the circumstances.

Each Original Purchaser, by delivering its signature page to this Agreement and purchasing an Initial Note on the Original Closing Date, shall be deemed to have acknowledged receipt of, and consented to and approved, each Original Note Document and each other document required to

be approved by Agent, Requisite Purchasers or Original Purchasers, as applicable, on the Original Closing Date.

3.2 Additional Notes.

The obligation of each Additional Purchaser to purchase Additional Notes on the Additional Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the AltAir Funding Conditions and the receipt by Agent of a fully executed and delivered Purchase Notice in accordance with the terms of this Agreement; provided that Additional Purchasers' respective Additional Note Commitments shall terminate immediately and without further action on the earliest to occur of (a) the Additional Closing Date (after giving effect to the funding of such Additional Purchaser's Additional Note Commitments on such date) and (b) the date on which Company determines that the AltAir Acquisitions will not be consummated. The Initial Notes issued on the Original Closing Date and the Additional Notes issued on the Additional Closing Date shall be treated as a single class for all purposes under this Agreement.

Agent or any Additional Purchaser shall be entitled, but not obligated to, request and receive, prior to the purchase of any Additional Note, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of Agent or such Additional Purchaser, such request is warranted under the circumstances.

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

3.3 Second Additional Notes.

The obligation of any Purchaser to purchase Second Additional Notes on the Second Additional Closing Date is subject to the satisfaction, or waiver in accordance with Section 10.5, of the following conditions on or before the Second Additional Closing Date:

- (a) Note Documents. Agent shall have received sufficient copies of each Second Additional Note Document originally executed and duly delivered by each applicable Note Party, Limited Guarantor, Personal Guarantor or other Person party thereto for Agent and each Purchaser.
- (b) Organizational Documents; Incumbency. Agent shall have received, in respect of each Note Party and Limited Guarantor (i) sufficient copies of each Organizational Document, certified as of the Second Additional Closing Date or a recent date prior thereto by the appropriate Governmental Authority, for Agent and each Purchaser; (ii) signature and incumbency certificates of the officers of such Note Party and Limited Guarantor; (iii) resolutions of the board of directors or similar governing body of such Note Party and Limited Guarantor approving and authorizing the execution, delivery and performance of this Agreement and

the other Second Additional Note Documents and the Bourbon Arctic Note Documents which it is a party or by which it or its assets may be bound as of the Second Additional Closing Date, certified as of the Second Additional Closing Date by its secretary or an assistant secretary as being in full force and effect without modification or amendment; (iv) a certificate of status, certificate of compliance or other certificate of good standing from the applicable Governmental Authority of such Note Party's and Limited Guarantor¹ jurisdiction of incorporation, organization, amalgamation or formation and in each other jurisdiction in which it is qualified to do business, each dated the Second Additional Closing Date or a recent prior thereto; and (v) such other documents as Agent may reasonably request.

- (c) Organizational and Capital Structure. The organizational structure and capital structure of the Note Parties and the capital structure of Holdings and its Subsidiaries shall be as set forth on Schedule 4.1.
- (d) Bourbon Arctic Note Documents. Agent shall have received the Bourbon Arctic Note Documents, executed and delivered by the parties thereto, and Horizon Norway shall have received, substantially contemporaneously with the issuance of the Second Additional Notes hereunder on the Second Additional Closing Date, no less than \$50,000,000 in gross proceeds from the notes issued under the Bourbon Arctic Note Purchase Agreement.
- (e) Governmental Authorizations and Consents. Each Note Party, Limited Guarantor, and the Personal Guarantor shall have obtained all Governmental Authorizations and all consents of other Persons, in each case that are necessary or advisable in connection with the transactions contemplated by the Second Additional Note Documents and the Related Agreements to which it or any of its Affiliates is a party or by which it or its respective assets may be bound as of the Second Additional Closing Date and each of the foregoing shall be in full force and effect and in form and substance satisfactory to Agent. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority which would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Second Additional Note Documents or the Bourbon Arctic Note Documents to which any Note Party, Limited Guarantor or any of their respective Affiliates is a party or by which it or its respective assets may be bound as of the Second Additional Closing Date and no action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable agency to take action to set aside its consent on its own motion shall have expired.
- (f) Process Agent. Agent shall have received evidence satisfactory to it that a Process Agent has been properly appointed in accordance with Section 10.15(b).

- (g) Personal Property Collateral. In order to create in favor of Agent, for the benefit of Secured Parties, a valid and perfected First Priority security interest in the personal property Collateral, Agent shall have received:
- (i) evidence satisfactory to Agent of the compliance by each Note Party and Limited Guarantor of their obligations under the Pledge and Security Agreement and the other Collateral Documents (including their obligations to file or register PPSA financing statements (or equivalent filings), to deliver originals of securities, instruments and chattel paper and any agreements governing deposit and/or securities accounts as provided therein);
 - (ii) (A) the results of a recent search, by a Person satisfactory to Agent, of all effective PPSA financing statements (or equivalent filings) made with respect to any personal property of any Note Party or Limited Guarantor in each jurisdiction where Agent considers it to be necessary or desirable that such searches be conducted, together with copies of all such filings disclosed by such search, and (B) PPSA financing change statements (or similar documents) duly executed or authorized by all applicable Persons for filing in all applicable jurisdictions as may be necessary to terminate any effective PPSA financing statements (or equivalent filings) disclosed in such search (other than any such financing statements in respect of Permitted Liens);
 - (iii) opinions of counsel in each jurisdiction which governs the validity, attachment, perfection, effect of perfection or of non-perfection, or priority of any personal property Collateral in which any Note Party or Limited Guarantor has an interest (which counsel shall be satisfactory to Agent) with respect to the creation, attachment, validity and perfection of the security interests in favor of Agent in such Collateral and such other matters as Agent may request, in each case in form and substance satisfactory to Agent; and
- (h) evidence that each Note Party and Limited Guarantor shall have taken or caused to be taken any other action, executed and delivered or caused to be executed and delivered any other agreement, document and instrument (including any intercompany notes evidencing Indebtedness permitted to be incurred pursuant to Section 6.1(b)) and made or caused to be made any other filing and recording (other than as set forth herein) reasonably required by Agent.
- (i) Due Diligence. Agent shall have completed and shall be satisfied with the results of its due diligence with respect to Note Parties' and Limited Guarantor's¹ business, operations, management, prospects, books and records, financial position and assets and the tax, accounting, legal and other issues relevant to the Note Parties, Limited Guarantor, and Personal Guarantor and the Note Parties', Limited ~~Guarantor's~~ Guarantor's, and Personal Guarantor's business. Other than changes occurring in the ordinary course of business, no information or materials

are or should have been available to the Note Parties, Limited Guarantor, or Personal Guarantor as of the Second Additional Closing Date that are materially inconsistent with the material previously provided to Agent for its due diligence review of the Note Parties, Limited Guarantor, and Personal Guarantor.

- (j) Financial Statements. Purchasers shall have received the Historical Financial Statements as of December 31, 2018.
- (k) Evidence of Insurance. Agent shall have received a certificate from the applicable Note Party's insurance broker or other evidence satisfactory to it that all insurance required to be maintained pursuant to Section 5.5 is in full force and effect, together with endorsements naming Agent, for the benefit of Secured Parties, as additional insured, loss payee and/or mortgagee thereunder to the extent required under Section 5.5.
- (l) Opinions of Counsel to Note Parties. Purchasers and their respective counsel shall have received originally executed copies of the favorable written opinions of McInnes Cooper, counsel for the Note Parties, Limited Guarantor, and Personal Guarantor, Clark Hill PLC, New York counsel for the Note Parties and Wikborg Rein LLP, Norwegian counsel for Agent, in each case, as to such other matters as Agent may request, dated as of the Second Additional Closing Date and otherwise in form and substance satisfactory to Agent (and each Note Party, Limited Guarantor and Personal Guarantor hereby instructs such counsel to deliver such opinions to Agent and Purchasers).
- (m) Expenses. Company shall have paid to Agent all expenses payable pursuant to Section 10.2 which have accrued to the Second Additional Closing Date.
- (n) Know Your Customer. Not later than the fifth business day prior to the Second Additional Closing Date, Agent shall have received satisfactory documentation and other information that is required by any Purchaser (and has been requested by such Purchaser not later than the tenth day prior to the Second Additional Closing Date) under applicable "know your customer" and anti-money-laundering rules and regulations, including without limitation the USA PATRIOT Act.
- (o) Solvency Certificate. On the Second Additional Closing Date, Agent shall have received a Solvency Certificate from each Note Party, Limited Guarantor and Personal Guarantor dated as of the Second Additional Closing Date and addressed to Agent and Purchasers, and in form, scope and substance satisfactory to Agent.
- (p) Closing Date Certificate. Company shall have delivered to Agent an originally executed Closing Date Certificate, together with all attachments thereto.
- (q) No Litigation. There shall not exist any action, suit, investigation, litigation or proceeding or other legal or regulatory developments, pending or threatened in any court or before any arbitrator or Governmental Authority that, individually or in the aggregate, materially impairs the transactions contemplated by this

Agreement, the financing thereof or any of the other transactions contemplated by the Second Additional Note Documents or the Bourbon Arctic Note Documents, or could result in a Material Adverse Effect.

- (r) No Material Adverse Effect. Since December 31, 2016, no event, circumstance or change shall have occurred that has caused or evidences a Material Adverse Effect.
- (s) Completion of Proceedings. All partnership, corporate and other proceedings taken or to be taken in connection with the transactions contemplated hereby and all documents incidental thereto not previously found acceptable by Agent and its counsel shall be satisfactory in form and substance to Agent and such counsel, and Agent, and such counsel shall have received all such counterpart originals or certified copies of such documents as Agent may request.
- (t) Purchase Notice. Agent shall have received the fully executed and delivered Purchase Notice in accordance with the terms of this Agreement.
- (u) Representations and Warranties. The representations and warranties contained herein and in the other Second Additional Note Documents shall be true and correct on and as of the Second Additional Closing Date.
- (v) No Default. No event shall have occurred and be continuing or would result from the purchase and sale of the Second Additional Notes or the other transactions contemplated by this Agreement that would constitute an Event of Default or a Default.

Agent or any Purchaser shall be entitled, but not obligated to, request and receive, prior to the purchase of any Second Additional Note, additional information reasonably satisfactory to the requesting party confirming the satisfaction of any of the foregoing if, in the good faith judgment of Agent or such Purchaser such request is warranted under the circumstances.

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

3.4 First Amendment Closing Date.

The obligation of each Purchaser to purchase Cognition Notes on the First Amendment Closing Date is subject to the terms of the First Amendment.

3.5 Second Amendment Closing Date.

The obligation of each Purchaser to purchase Third Additional Notes on the Second Amendment Closing Date is subject to the terms of the Second Amendment.

The Initial Notes issued on the Original Closing Date, the Additional Notes issued on the Additional Closing Date, the Second Additional Notes issued on the Second Additional Closing Date ~~and~~, the Cognition Notes issued on the First Amendment Closing Date and the Third Additional Notes issued on the Second Amendment Closing Date shall be treated as a single class for all purposes under this Agreement.

SECTION 4 REPRESENTATIONS AND WARRANTIES

In order to induce Agent and Purchasers to enter into this Agreement and to purchase the Notes to be issued hereunder, each Note Party, Limited Guarantor and Personal Guarantor represents and warrants to Agent and each Purchaser on the Original Closing Date, on the Additional Closing Date and on the Second Additional Closing Date, that the following statements are true and correct:

4.1 Organization; Requisite Power and Authority; Qualification.

Each of the Note Parties (a) is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, (b) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Note Documents to which it is a party and to carry out the transactions contemplated thereby, (c) is qualified to do business and in good standing in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and could not be reasonably expected to have, a Material Adverse Effect, and (d) has all Governmental Authorizations from or by, and has made all filings with, and has given all notices to, all Governmental Authorities having jurisdiction, which are necessary or desirable in respect of the operation and conduct of the business of such Note Party or the ownership by such Note Party of any interest in asset or property including the operation and occupation of the Facilities and the ownership of the Collateral, except where the absence thereof could not reasonably be expected to have a Material Adverse Effect. The organizational structure and capital structure of the Note Parties and the organizational structure and capital structure of Holdings are as set forth on Schedule 4.1.

4.2 Capital Stock and Ownership.

The Capital Stock of each Note Party and each of its Subsidiaries has been duly authorized and validly issued and is fully paid and non-assessable. There is no existing option, warrant, call, right, commitment or other agreement to which any Note Party or any of its Subsidiaries is a party requiring, and there is no membership interest or other Capital Stock of any Note Party or any of its Subsidiaries outstanding which upon conversion or exchange would require, the issuance by any Note Party or any of its Subsidiaries of any additional membership interests or other Capital Stock of any Note Party or any of its Subsidiaries or other Securities convertible

into, exchangeable for or evidencing the right to subscribe for or purchase, a membership interest or other Capital Stock of any Note Party or any of its Subsidiaries.

4.3 Due Authorization.

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

4.4 No Conflict.

The execution, delivery and performance by Note Parties, Limited Guarantor and Personal Guarantor of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not (a) violate any provision of any Applicable Law, any of the Organizational Documents of the Note Parties or Limited Guarantor, or any order, judgment or decree of any Governmental Authority binding on any of the Note Parties, Limited Guarantor, or Personal Guarantor; (b) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any Contractual Obligation of any of the Note Parties, Limited Guarantor, or Personal Guarantor; (c) result in or require the creation or imposition of any Lien upon any of the properties or assets of any of the Note Parties or, in the case of Limited Guarantor, in the Limited Guarantor Property (other than any Liens created under any of the Note Documents in favor of Agent, on behalf of Secured Parties); or (d) require any approval or consent of stockholders, members, holders or partners or any consent or approval of, nor notice to, or other action by, any Person under any Contractual Obligation of any of the Note Parties, Limited Guarantor or Personal Guarantor, except for those which will be obtained on or before the Original Closing Date (in respect of the Initial Notes), the Additional Closing Date (in respect of the Additional Notes), or the Second Additional Closing Date (in respect of the Second Additional Notes), and disclosed in writing to Purchasers.

4.5 Governmental Consents.

The execution, delivery and performance by Note Parties, Limited Guarantor and Personal Guarantor of the Note Documents to which they are parties and the consummation of the transactions contemplated by the Note Documents do not and will not require any Governmental Authorization or registration or filing with, consent or approval of, notice to, or other action by, any Governmental Authority except for those which have been obtained, made, given or done, as the case may be, on or before the Original Closing Date, the Additional Closing Date or the Second Additional Closing Date, as applicable.

4.6 Governmental Contracts.

No Note Party's accounts are subject to any of the requirements or proceedings applicable to assignments of accounts under the *Financial Administration Act* (Canada), the Federal Assignment of Claims Act or any other similar law.

4.7 Binding Obligation.

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

4.8 Historical Financial Statements.

The Historical Financial Statements were prepared in conformity with GAAP and fairly present, in all material respects, the financial position of the Persons described in such financial statements as at the respective dates thereof and the results of operations and cash flows of the entities described therein for each of the periods then ended, subject, in the case of any such unaudited financial statements, to changes resulting from audit and normal year-end adjustments.

4.9 No Material Adverse Effect.

Since December 31, 2016, no event, circumstance or change has occurred that has caused or evidences or could reasonably be expected to result in a Material Adverse Effect.

4.10 No Restricted Junior Payments.

Since December 31, 2016, no Note Party has directly or indirectly declared, ordered, paid or made, or set apart any sum or property for, any Restricted Junior Payment or agreed to do so except as permitted pursuant to Section 6.4.

4.11 Adverse Proceedings, etc.

There are no Adverse Proceedings, individually or in the aggregate, that could reasonably be expected to result in a Material Adverse Effect. No Note Party, Limited Guarantor or Personal Guarantor (a) is in violation of any Applicable Laws (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, or (b) is subject to or in default with respect to any Governmental Authorization or any judgment, order or decree of any Governmental Authority, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.12 Payment of Taxes.

Except as otherwise permitted under Section 5.3, all tax returns and reports of the Note Parties required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon the Note Parties and upon their respective properties, assets, income, businesses and franchises which are due and payable have been paid when due and payable. No Note Party knows of any proposed tax assessment against any Note Party which is not being actively contested by such Note Party in good faith and by appropriate proceedings; provided, such reserves or other

appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.13 Properties.

- (a) Title. Each of the Note Parties has good and marketable title to, or good and marketable leasehold interests in, all of their respective real and personal properties and assets, in each case except for assets disposed of since the Original Closing Date as permitted under Section 6.7. Except as permitted by this Agreement, all such properties and assets are free and clear of Liens.
- (b) Real Estate. As of the Second Additional Closing Date, Schedule 4.13(b) contains a true, accurate and complete list of all Material Real Estate Assets.
- (c) Location of Property. The jurisdiction of organization of each Note Party, the location of each Note Party's principal place of business, chief executive office, registered office according to its constitutive documents and premises at which any tangible personal property Collateral is located are set forth in Schedule 4.13(c).
- (d) Securities Accounts. In respect of each Securities Account held by any Note Party in which account any Collateral is held or otherwise as to which Collateral is or may be credited, the account number and name and address of the applicable Securities Intermediary are set forth in Schedule 4.13(d).
- (e) Intellectual Property. Each Note Party owns or has rights to use all Intellectual Property necessary to continue to conduct its business as now or heretofore conducted by it or proposed to be conducted by it. Each Note Party conducts its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any material respect. No Note Party is aware of any infringement claim by any other Person with respect to any Intellectual Property.
- (f) Liens. All Liens purported to be created in any Collateral pursuant to any Collateral Document in favor of Agent are First Priority Liens and the Collateral subject thereto is subject to no other Lien other than Permitted Liens. Each Permitted Lien is in good standing and no default has occurred under any Permitted Lien.

4.14 Environmental Matters.

No Note Party or any of their respective Environmental Affiliates, Facilities or operations are subject to any actual or, to any Note Party's knowledge, threatened, notice, written order, consent, decree or settlement agreement with any Person related to any Environmental Law, Hazardous Materials Activity or any Environmental Claim. No Note Party has received any notice of non-compliance with any Environmental Law. Each Facility is free from the presence of any Hazardous Materials except for such presence that, individually or in the aggregate, could

not reasonably be expected to result in a Material Adverse Effect. No Note Party or any of their respective Environmental Affiliates has caused or suffered to occur any Release of Hazardous Materials on, at, in, under, above, to or from any Facility or any other real property except for such Release of Hazardous Materials that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There are and, to each Note Party's knowledge, have been, no conditions, occurrences, or Hazardous Materials Activities which could reasonably be expected to form the basis of an Environmental Claim against any Note Party or any of their respective Environmental Affiliates except for such conditions, occurrences or activities that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Note Party and each of their respective Environmental Affiliates is and has been in compliance with all Environmental Laws, except where such non-compliance, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Each Note Party and each of their respective Environmental Affiliates has obtained, and is in compliance with, all Environmental Permits required by Environmental Laws for the operations of its businesses as presently conducted or as proposed to be conducted and all such Environmental Permits are valid, uncontested, in good standing and in full force and effect. Compliance with all current or reasonably foreseeable future requirements pursuant to or under Environmental Laws, individually or in the aggregate, could not be reasonably expected to result in a Material Adverse Effect. No event or condition has occurred or is occurring with respect to any Note Party or any of their respective Environmental Affiliates relating to any Environmental Law, any Release of Hazardous Materials, or any Hazardous Materials Activity which, individually or in the aggregate, has had, or could reasonably be expected to result in a Material Adverse Effect. There are no real properties in close proximity to any Facility which has conditions which could reasonably be expected to cause a Release to such Facility, or to create a situation of non-compliance with Environmental Laws at such Facility, or an Environmental Claim in relation to such Facility in each case which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. Each Note Party has made available to Agent true and correct copies of all existing Environmental Permits, environmental reports, reviews, studies and audits and all written information pertaining to actual or potential Environmental Claims or any Hazardous Materials Activity.

4.15 No Defaults.

No Note Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any of its Contractual Obligations, and no condition exists which, with the giving of notice or the lapse of time or both, could constitute such a default, except where the consequences, direct or indirect, of such default or defaults, if any, could not reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

4.16 Material Contracts.

Schedule 4.16 contains a true, correct and complete list of all the Material Contracts in effect on the Second Additional Closing Date, which, together with any updates provided pursuant to Section 5.1(i), all such Material Contracts are in full force and effect and no defaults currently exist thereunder (other than as described in Schedule 4.16 or in such updates).

4.17 Employee Matters.

No strikes or other material labor disputes against any Note Party are pending or, to any Note Party's knowledge, threatened. Hours worked by and payment made to employees of each Note Party comply with each federal, provincial, and local law or foreign law applicable to such matters. All material payments due from any Note Party for employee health and welfare insurance have been paid or accrued as a liability on the books of such Note Party and each Note Party has withheld all employee withholdings to be withheld by it and has made all employer contributions to be made by it pursuant to Applicable Law on account of the Canada Pension Plan and Quebec Pension Plan maintained by the Government of Canada and the Province of Quebec, respectively, employment insurance and employee income taxes. No Note Party is a party to or bound by any collective bargaining agreement, management agreement, consulting agreement, or any similar agreement or arrangement. There is no organizing activity involving any Note Party pending or, to any Note Party's knowledge, threatened by any labor union or group of employees, except where the consequences, direct or indirect, of such activity could not reasonably be expected to have a Material Adverse Effect. There are no representation proceedings pending or, to any Note Party's knowledge, threatened with any labor relations board, and no labor organization or group of employees of any Note Party has made a pending demand for certification or recognition, except where the consequences, direct or indirect, of such proceedings or demands could not reasonably be expected to have a Material Adverse Effect. There are no material complaints or charges against any Note Party pending or, to the knowledge of any Note Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment by any Note Party of any individual.

4.18 Employee Benefit Plans; Pension Plans.

No Note Party or Subsidiary of a Note Party has, or has ever, sponsored, administered, participated in or contributed to a Defined Benefit Plan or to a Multi-Employer Plan. Schedule 4.18 sets forth a complete list of all Employee Benefit Plans. The Employee Benefit Plans are, and have been, established, registered, amended, funded, invested and administered in compliance with the terms of such Employee Benefit Plans (including the terms of any documents in respect of such Employee Benefit Plans), all Applicable Law and any applicable collective agreements. There is no investigation by a Governmental Authority or claim (other than routine claims for payment of benefits) pending or, to the knowledge of a Note Party, threatened involving any Employee Benefit Plan or its assets, and no facts exist which could reasonably be expected to give rise to any such investigation or claim (other than routine claims for payment of benefits). All employer and employee payments, contributions and premiums required to be remitted, paid to or in respect of each Pension Plan have been paid or remitted in accordance with its terms and all Applicable Law. No Pension Plan Termination Event has occurred. There is no Pension Plan Unfunded Liability in respect of any Pension Plan. None of the Employee Benefit Plans, other than the Pension Plans, provide benefits beyond retirement or other termination of service to employees or former employees of a Note Party, or to the beneficiaries or dependents of such employees.

4.19 Certain Fees.

No broker's or finder's fee or commission will be payable with respect hereto or any of the transactions contemplated hereby.

4.20 Solvency.

Each Note Party, Limited Guarantor and Personal Guarantor is and, upon the incurrence of the Notes and the use of proceeds thereof, will be, Solvent.

4.21 Related Agreements.

- (a) Delivery. Company has delivered (or, in accordance with Schedule 1.1 will deliver) to Agent complete and correct copies of (i) each Related Agreement and of all exhibits and schedules thereto as of the Original Closing Date, the Additional Closing Date or the Second Additional Closing Date (as applicable), and (ii) copies of any material amendment, restatement, supplement or other modification to or waiver of each Related Agreement.
- (b) Governmental Approvals. All Governmental Authorizations and all other authorizations, approvals and consents of any other Person required by the Related Agreements or to consummate the transactions contemplated by Related Agreements have been obtained and are in full force and effect.
- (c) Conditions Precedent. On the Original Closing Date, the Additional Closing Date or the Second Additional Closing Date (as applicable), (i) all of the conditions to effecting or consummating the transactions contemplated by Related Agreements to which a Note Party or any of its Affiliates is a party or by which it or its respective assets may be bound as set forth in the applicable Related Agreements have been duly satisfied or, with the consent of Agent, waived, and (ii) the transactions contemplated by such Related Agreements have been consummated in accordance with the Related Agreements and all Applicable Laws.

4.22 Compliance with Statutes, etc.

Each of the Note Parties and each other Person, if any, on or occupying any Facility, is in compliance with all Applicable Laws and all Governmental Authorizations.

4.23 Disclosure.

No representation or warranty of any Note Party, Limited Guarantor or Personal Guarantor contained in any Note Document or in any other documents, certificates or written statements furnished to Purchasers by or on behalf of any Note Party, Limited Guarantor or Personal Guarantor for use in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances in which the same were made. Any projections and pro forma financial information contained in such materials are based upon good faith estimates and assumptions believed by Company to be

reasonable at the time made, it being recognized by Purchasers that such projections as to future events are not to be viewed as facts and that actual results during the period or periods covered by any such projections may differ from the projected results. There are no facts known (or which should upon the reasonable exercise of diligence be known) to Company (other than matters of a general economic nature) that could reasonably be expected to result in a Material Adverse Effect and that have not been disclosed herein or in such other documents, certificates and statements furnished to Purchasers for use in connection with the transactions contemplated hereby.

4.24 PCTFA.

To the extent applicable, each Note Party, Limited Guarantor and Personal Guarantor is in compliance, in all material respects, with the (i) Part II.1 of the *Criminal Code* (Canada), (ii) the *Proceeds of Crime (money laundering) and Terrorist Financing Act* (Canada) (the “PCTFA”), (iii) the *Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism* (Canada), and (iv) *United Nations Al-Qaida and Taliban Regulations* (Canada).

4.25 Anti-Corruption.

Each Note Party, Limited Guarantor and Personal Guarantor has implemented and maintains in effect policies and procedures designed to ensure compliance by such Note Party, Limited Guarantor and Personal Guarantor and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions. The Note Parties, Limited Guarantor and Personal Guarantor, their respective officers, employees, directors and agents are in compliance with Anti-Corruption Laws, Anti-Money Laundering Laws and all applicable Sanctions. None of the Note Parties, Limited Guarantor or Personal Guarantor, any of their respective directors, officers, employees or agents, is a Sanctioned Person. No part of the proceeds of the Notes will be used, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of Anti-Corruption Laws.

4.26 Student Loan Trusts.

No Student Loan Trust has any material liabilities, owns any material assets or engages in any operations or business, other than, in each case, the ownership of student loans.

4.27 Student Loan Accounts.

Schedule 4.27 sets forth all Student Loan Accounts of the Note Parties existing on the First Amendment Closing Date.

SECTION 5 AFFIRMATIVE COVENANTS

Each Note Party covenants and agrees that so long as any Note Commitment is in effect and until payment in full of all Obligations, each Note Party shall perform all covenants in this

Section 5. Personal Guarantor covenants and agrees, so long as any Note Commitment is in effect and until payment in full of all Obligations, to perform the covenant specified in Section 5.17.

5.1 Financial Statements and Other Reports.

Unless otherwise provided below, Company will deliver to Agent and Purchasers:

- (a) Monthly Reports. As soon as available, and in any event within 30 days after the end of each month (commencing with the month ending September 30, 2017), (i) projected monthly cash flows for the 12 month period immediately following such month, (ii) any operating or financial reports or prospectuses in respect of each Investment Asset (to the extent received by Company or any of its Affiliates for or during such period), and (iii) a flash report in form substantially consistent with the form previously provided to Agent;
- (b) Quarterly Reports. As soon as available, and in any event within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year, (i) the non-consolidated balance sheet of Company as at the end of such Fiscal Quarter and the related non-consolidated statements of income, stockholders' equity and cash flows of Company for such Fiscal Quarter and for the period from the beginning of the then current Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the corresponding figures for the corresponding periods of the previous Fiscal Year, all prepared in reasonable detail and in accordance with GAAP applied in a manner consistent with GAAP used in the preparation of the Historical Financial Statements, (ii) a Financial Officer Certification, and (iii) any operating or financial reports or prospectuses in respect of each Investment Asset (to the extent received by Company or any of its Affiliates for or during such Fiscal Quarter);
- (c) Annual Financial Statements. As soon as available, and in any event within 120 days after the end of each Fiscal Year, (i) the non-consolidated balance sheet of Company as at the end of such Fiscal Year and the related non-consolidated statements of income, stockholders' equity and cash flows of Company for such Fiscal Year, setting forth in each case in comparative form the corresponding figures for the previous Fiscal Year, all prepared in reasonable detail and in accordance with GAAP applied in a manner consistent with GAAP used in the preparation of the Historical Financial Statements, together with a Financial Officer Certification; and (ii) with respect to such financial statements a report thereon of KPMG LLP or other independent certified public accountants of recognized national standing selected by Company, and reasonably satisfactory to Agent (which report shall be unqualified as to going concern and scope of audit, and shall state that such financial statements fairly present, in all material respects, the financial position of Company and its Subsidiaries as at the dates indicated and the results of operations and cash flows for the periods indicated in conformity with GAAP applied on a basis consistent with the Historical Financial Statements (except as otherwise disclosed in such financial statements) and that

the examination by such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards);

- (d) Compliance Certificates. Together with each delivery of financial statements of the Note Parties pursuant to Section 5.1(b) and 5.1(c), a duly executed and completed Compliance Certificate;
- (e) Notice of Default. Promptly upon any officer of any Note Party or Personal Guarantor obtaining knowledge (i) of any condition or event that constitutes a Default or an Event of Default or that notice has been given to any Note Party with respect thereto; (ii) that any Person has given any notice to any Note Party or taken any other action with respect to any event or condition set forth in Section 8.1(b); or (iii) of the occurrence of any event or change that has caused or evidences a Material Adverse Effect, a certificate of its Authorized Officers specifying the nature and period of existence of such condition, event or change, or specifying the notice given and action taken by any such Person and the nature of such claimed Event of Default, Default, default, event or condition, and what action Company has taken, is taking and proposes to take with respect thereto;
- (f) Notice of Litigation. Promptly upon any officer of any Note Party or Personal Guarantor obtaining knowledge of (i) the institution of, or non-frivolous threat of, any Adverse Proceeding not previously disclosed in writing by Company to Agent, or (ii) any material development in any Adverse Proceeding that, in the case of either clause (i) or (ii) if adversely determined, could be reasonably expected to result in a Material Adverse Effect, or seeks to enjoin or otherwise prevent the consummation of, or to recover any damages or obtain relief as a result of, the transactions contemplated hereby, written notice thereof together with such other information as may be reasonably available to the Note Parties or Personal Guarantor to enable Purchasers and their counsel to evaluate such matters;
- (g) Related Agreements. Promptly after receipt or delivery thereof by Company or any other Note Party, copies of any notices, reports, financial statements or other written information, amendments, restatements, supplements, modifications, waivers, consents or other determinations by agent or the requisite purchasers, in each case, received or delivered under any Related Agreement.
- (h) Notice of Change in Board of Directors. With reasonable promptness, written notice of any change in the board of directors (or similar governing body) of any Note Party;
- (i) Notice Regarding Material Contracts. Promptly, and in any event within 10 Business Days (i) after any Note Party becoming aware of any default under any Material Contract by any party thereto, (ii) after any Material Contract of any Note Party is terminated or amended in any material respect, or (iii) any new Material Contract is entered into, a written statement describing such event, with copies of such material amendments or new contracts, delivered to Agent (to the

extent such delivery is not prohibited by the terms of any such Material Contract, provided, no such prohibition on delivery shall be effective if it were bargained for by a Note Party with the intent of avoiding compliance with this Section 5.1(i)), and an explanation of any actions being taken with respect thereto;

- (j) Environmental Reports and Audits. As soon as practicable following receipt thereof, copies of all environmental audits and reports with respect to environmental matters at any Facility or which relate to any environmental liabilities of any Note Party which, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect;
- (k) [Intentionally Deleted];
- (l) [Intentionally Deleted];
- (m) [Intentionally Deleted];
- (n) Employee Benefit Plans; Pension Plans. (A) Promptly upon their becoming aware of (i) a Pension Plan Termination Event; (ii) the failure to make a required contribution to or payment under any Employee Benefit Plan when due; (iii) the occurrence of any event which is reasonably likely to result in a Note Party incurring any liability, fine or penalty with respect to any Employee Benefit Plan; (iv) the existence of any report which discloses a Pension Plan Unfunded Liability; or (v) the establishment of any new Employee Benefit Plan or any change to an existing Employee Benefit Plan or the commencement of contributions to any Employee Benefit Plan to which any Note Party was not previously contributing, and (B) promptly upon receipt or filing thereof, as applicable, (i) copies of annual information returns, actuarial valuations and any other reports which have been filed with a Governmental Authority with respect to each Employee Benefit Plan and (ii) copies of any direction, order, notice, ruling or opinion that a Note Party may receive from a Governmental Authority with respect to any Employee Benefit Plan;
- (o) Interest Calculations. Promptly after each Interest Payment Date, a calculation of the amount of PIK Interest or cash interest accrued and paid on such Interest Payment Date, and the principal amount of the Notes after giving effect to the addition of PIK Interest on such Interest Payment Date;
- (p) Notices Regarding Margin Loans. Promptly (but in any case no more than two Business Days) after the date on which any Note Party (i) delivers or receives any notice of default or other material notice in respect of (including any notice that the relevant Note Party is in breach of any financial covenant contained in) any Margin Loan, a copy of such notice, (ii) obtains knowledge of compliance with, but with a cushion to the relevant covenant level of 5.0% or less, any financial covenant contained in any Margin Loan, a notice of such event or (iii) delivers or receives any notice, or obtains any knowledge of, a margin call or that the

underlying securities any Note Party has invested in under any instrument or Indebtedness are valued within 5.0% of the price at which such Note Party would be subject to a margin call under any such instrument or Indebtedness, notice of such event. In the event that any relevant Note Party is in breach of any financial covenant contained in any Margin Loan, then Company shall offer HPS Entities the irrevocable option (which no HPS Entity shall be obligated to accept) to purchase additional Notes under this Agreement on substantially the same terms and conditions as are then set forth under this Agreement in the amount necessary to refinance, and solely for the purpose of refinancing, in full (and not in part) such subject Margin Loan;

- (q) Cash Balances. As soon as available, and in any event within 5 Business Days after the end of each month, reports in form and detail satisfactory to Agent and certified by the chief financial officer of Company as being accurate and complete of the unrestricted cash balances of Company and its Subsidiaries (other than Excluded Subsidiaries) by entity (in form and substance similar to those delivered to Agent prior to the Original Closing Date); and
- (r) Other Information. Such other information and data with respect to any Note Party or Personal Guarantor as from time to time may be reasonably requested by Agent.

5.2 Existence.

Except as otherwise permitted under Section 6.7, each Note Party shall, and shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to, at all times preserve and keep in full force and effect its existence and all rights and franchises, licenses and permits material to its business.

5.3 Payment of Taxes and Claims.

Each Note Party shall, and shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises before any penalty or fine accrues thereon, and all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by Applicable Law have or may become a Lien upon any of its properties or assets, prior to the time when any penalty or fine shall be incurred with respect thereto, except where such non-payment does not exceed \$500,000 in the aggregate; provided, no such Tax or claim need be paid if it is being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as (a) adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor, and (b) in the case of a Tax or claim which has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such Tax or claim.

5.4 Maintenance of Properties.

Each Note Party shall, and shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to, maintain or cause to be maintained in good repair, working order and condition, ordinary wear and tear excepted, all material properties used or useful in the business of such Note Party or Subsidiary and from time to time will make or cause to be made all appropriate repairs, renewals and replacements thereof.

5.5 Insurance.

Each Note Party will maintain or cause to be maintained, with financially sound and reputable insurers, (i) business interruption insurance reasonably satisfactory to Agent, and (ii) casualty insurance, such public liability insurance, third-party property damage insurance with respect to liabilities, losses or damage in respect of its assets, properties and businesses as may customarily be carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses, in each case in such amounts, with such deductibles, covering such risks and otherwise on such terms and conditions as shall be customary for such Persons; provided, that each Note Party shall maintain (i) all insurance coverages, including coverage amounts as are required by Applicable Law, and (ii) insurance coverages no less comprehensive than those in effect on the Original Closing Date. Without limiting the generality of the foregoing, each Note Party will maintain or cause to be maintained replacement value casualty insurance on the Collateral under such policies of insurance, with such insurance companies, in such amounts, with such deductibles, and covering such risks as are at all times carried or maintained under similar circumstances by Persons of established reputation engaged in similar businesses. Each such policy of insurance shall (i) name Agent, on behalf of Secured Parties, as an additional insured thereunder as its interests may appear, and (ii) in the case of each casualty insurance policy, contain a loss payable and/or mortgagee clause or endorsement, satisfactory in form and substance to Agent, that names Agent, on behalf of Secured Parties, as the loss payee and/or mortgagee thereunder and provides for at least 30 days' prior written notice to Agent of any modification or cancellation of such policy.

5.6 Inspections.

- (a) Each Note Party will permit any authorized representatives designated by Agent to visit and inspect any of the properties of any Note Party, to inspect, copy and take extracts from its and their financial and accounting records, and to discuss its and their affairs, finances and accounts with its and their officers and independent public accountants, all upon reasonable notice and at such reasonable times during normal business hours and as often as may reasonably be requested.
- (b) Each Note Party shall permit Agent or a third party selected by Agent (including any appraiser, engineer, architect or inspector) to, once per each Fiscal Year or at any time either an Event of Default has occurred and is continuing or the Note Parties are in compliance with Sections 6.6(b) and 6.6(c) but with a cushion to either relevant covenant level of 2.0% or less, in each case at Company's expense, perform such reviews, appraisals or valuations as Agent may request.

- (c) The Note Parties shall reimburse the applicable Agent for all charges, costs and expenses of such Person in connection with any inspections, visits, appraisals, audits or other reviews pursuant to clauses (a) and (b) above once during any Fiscal Year or at any time either an Event of Default has occurred and is continuing or the Note Parties are in compliance with Sections 6.6(b) and 6.6(c) but with a cushion to either relevant covenant level of 2.0% or less; provided that (i) any appraisal or valuation shall be performed in a manner consistent with the valuation provisions outlined in the definition of Share Value (FMV) and (ii) any inspections, visits, appraisals, audits or other reviews of any publicly traded entity shall be performed in compliance with applicable laws and the internal policies of such publicly traded entity.

5.7 Purchasers Meetings and Calls.

Company will, upon the request of Agent or Requisite Purchasers, participate in (a) a meeting of Agent and Purchasers once during each Fiscal Year to be held at Company's corporate offices (or at such other location as may be agreed to by Company and Agent) at such time as may be agreed to by Company and Agent and (b) a conference call with Agent and Purchasers once during each Fiscal Quarter at such time as may be agreed to by Company and Agent.

5.8 Compliance with Laws.

Each Note Party shall, and shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to, comply, and shall cause all other Persons, if any, on or occupying any Facilities to comply, with the requirements of all Applicable Laws and all Governmental Authorizations, and each Note Party shall, and shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to, comply with the requirements of all of its Material Contracts, in each case, except where the failure to comply could not reasonably be expected to result in a Material Adverse Effect or otherwise result in a Default or Event of Default.

5.9 Environmental.

- (a) Environmental Disclosure. The Note Parties will deliver to Agent and Purchasers:
 - (i) as soon as practicable following receipt thereof, copies of all environmental audits, investigations, analyses and reports of any kind or character, whether prepared by personnel of any Note Party or by independent consultants, Governmental Authorities or any other Persons, with respect to significant environmental matters at any Facility or with respect to any Environmental Claims;
 - (ii) promptly upon the occurrence thereof, written notice describing in reasonable detail (1) any Release required to be reported to any Governmental Authority under any applicable Environmental Laws, (2) any response or remedial action taken by Company or any other Person as a result of (A) any Hazardous Materials Activities the existence

of which could reasonably be expected to result in one or more Environmental Claims, individually or in the aggregate, having a Material Adverse Effect, or (B) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (3) any Note Party's discovery of any occurrence or condition at any Facility that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (4) any Note Party's discovery of any occurrence or condition on any real property adjoining or in the vicinity of any Facility that could cause such Facility or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any Environmental Laws;

- (iii) as soon as practicable following the sending or receipt thereof by any Note Party, a copy of any and all written communications with respect to (1) any Environmental Claims that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, (2) any Release required to be reported to any Governmental Authority, and (3) any request for information from any Governmental Authority that suggests such Governmental Authority is investigating whether any Note Party may be potentially responsible for any Hazardous Materials Activity;
 - (iv) prompt written notice describing in reasonable detail (1) any proposed acquisition of stock, assets, or property by any Note Party that could reasonably be expected to (A) expose any Note Party to, or result in, Environmental Claims that could reasonably be expected to result in, individually or in the aggregate, a Material Adverse Effect or (B) affect the ability of any Note Party to maintain in full force and effect all material Governmental Authorizations or Environmental Permits required under any Environmental Laws for their respective operations and (2) any proposed action to be taken by any Note Party to modify current operations in a manner that could reasonably be expected to subject any Note Party to any additional material obligations or requirements under any Environmental Laws; and
 - (v) with reasonable promptness, such other documents and information as from time to time may be requested by Agent in relation to any matters disclosed pursuant to this Section 5.9(a).
- (b) Hazardous Materials Activities, Etc. Each Note Party shall promptly take any and all actions necessary to (i) cure any violation of applicable Environmental Laws by such Note Party or its Subsidiaries (other than Excluded Subsidiaries) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect, and (ii) make an appropriate response to any Environmental Claim against such Note Party and discharge any obligations it

may have to any Person thereunder where failure to do so, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

- (c) No Control. Each Note Party hereby acknowledges and agrees that neither Agent nor any Purchaser or other Secured Party, nor any of their respective officers, directors, employees, attorneys, agents and representatives, (i) is now, or has ever been, in control of any Facility or any Note Party's affairs, and (ii) has the capacity or the authority through the provisions of the Note Documents or otherwise to control, direct or influence any (A) Note Party's conduct with respect to the ownership, operation or management of any Facility, (B) undertaking, work or task performed by any employee, agent or contractor of any Note Party or the manner in which such undertaking, work or task may be carried out or performed, or (C) compliance by any Note Party with Environmental Laws or Environmental Permits.

5.10 Subsidiaries.

- (a) Subject to clause (b) below, in the event that any Person becomes a Subsidiary (other than an Excluded Subsidiary) of Company, Company shall (i) concurrently with such Person becoming a Subsidiary cause such Subsidiary to become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Agent a Counterpart Agreement, and (i) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments, agreements, and certificates requested by Agent. With respect to each such Subsidiary, Company shall promptly send to Agent written notice setting forth with respect to such Person (x) the date on which such Person became a Subsidiary of Company and (y) all of the data required to be set forth in Schedule 4.1 with respect to all Subsidiaries of Company; provided, such written notice shall be deemed to supplement Schedule 4.1 for all purposes hereof.
- (b) In the event that any Student Loan Trust shall have any material liabilities, own any material assets or engage in any operations or business, other than, in each case, as permitted under Section 4.26 and Section 6.23, such Student Loan Trust shall (A) promptly and in any event within 3 Business Days become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement by executing and delivering to Agent a Counterpart Agreement and (B) take all such actions and execute and deliver, or cause to be executed and delivered, all such documents, instruments and certificates requested by Agent, in accordance with Section 5.10(a) above.
- (c) Notwithstanding anything herein or any other Note Document to the contrary, no Note Party that is a limited liability company may divide itself into two or more limited liability companies (pursuant to a "plan of division" as contemplated under the Delaware Limited Liability Company Act or otherwise) without the prior written consent of Agent, and in the event that any Note Party that is a limited liability company divides itself into two or more limited liability

companies (with or without the prior consent of Agent as required above), any limited liability companies formed as a result of such division shall be required to comply with the obligations set forth in Section 5.10(a) above and become a Guarantor hereunder and a Grantor under the Pledge and Security Agreement in accordance with Section 5.10(a) above.

5.11 Additional Material Real Estate Assets.

In the event that any Note Party acquires an interest in a Material Real Estate Asset, then such Note Party, contemporaneously with acquiring such Material Real Estate Asset shall take all such actions and execute and deliver, or cause to be executed and delivered, all such Mortgages, documents, instruments, agreements, opinions and certificates with respect to each such Material Real Estate Asset, that Agent shall reasonably request to create in favor of Agent, for the benefit of Secured Parties, a valid and, subject to any filing and/or recording referred to herein, perfected First Priority security interest in such Material Real Estate Assets. In addition to the foregoing, Company shall, at the request of Requisite Purchasers, deliver, from time to time, to Agent such appraisals as are required by law or regulation of Material Real Estate Assets with respect to which Agent has been granted a Lien.

5.12 Employee Benefit Plans; Pension Plans.

Each Note Party shall, and shall cause each of its Subsidiaries (other than Excluded Subsidiaries) to:

- (a) with respect to each Employee Benefit Plan, in a timely fashion perform in all respects all obligations (including funding, investment and administration obligations) required to be performed in connection with such Employee Benefit Plan; and
- (b) with respect to each Pension Plan, pay all contributions, premiums and payments when due in accordance with its terms and Applicable Law.

5.13 Further Assurances.

At any time or from time to time upon the request of Agent, each Note Party will, at its expense, promptly execute, acknowledge and deliver such further documents and do such other acts and things as Agent may reasonably request in order to effect fully the purposes of the Note Documents, including providing Purchasers with any information reasonably requested pursuant to Section 10.20. In furtherance and not in limitation of the foregoing, each Note Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by a First Priority Lien on all of the Collateral.

5.14 Miscellaneous Business Covenants.

Unless otherwise consented to by Agent and the Requisite Purchasers:

- (a) Non-Consolidation. Each Note Party will: (i) maintain entity records and books of account separate from those of any other entity which is an Affiliate of such entity; (ii) not commingle its funds or assets with those of any other entity which is an Affiliate of such entity; and (iii) provide that its board of directors or other analogous governing body will hold all appropriate meetings to authorize and approve such entity's actions, which meetings will be separate from those of other entities.
- (b) Books and Records. Each Note Party shall keep adequate books and records with respect to its business activities in which proper entries, reflecting all financial transactions, are made in accordance with GAAP.

5.15 Actions of Subsidiaries.

Each Note Party shall take all actions necessary to ensure compliance by each other Note Party that is its Subsidiary (other than any Excluded Subsidiary) of such other Note Party's covenants, undertakings and other obligations hereunder or under any of the other Note Documents.

5.16 Post-Closing Matters.

Each Note Party shall satisfy the requirements set forth on Schedule 5.16 on or before the date specified for such requirement or such later date to be determined by Agent.

5.17 Personal Guarantor Covenant.

Personal Guarantor shall maintain any two of Brendan Paddick, Stan Spavold and Wayne Myles in their capacities as trustees of the estate of Personal Guarantor.

5.18 Interim Sale.

On or before July 30, 2019 (or such later date as agreed to in writing (including by e-mail) by Agent in its sole discretion), one or more Note Parties shall have signed one or more purchase agreements (each in form and substance reasonably satisfactory to Agent) in respect of one or more Asset Sales with an aggregate purchase price of at least \$50,000,000 in cash (such sales, individually and collectively, the "**Interim Sale**") (provided that, such Interim Sale shall include the sale of a portion of CFFI Barbados' economic interest in ClearBank for an aggregate purchase price of at least \$25,000,000 in cash) that results in an accretive LTV Ratio (FMV) calculation, pro forma for such Interim Sale, without giving effect to the proceeds of such Interim Sale.

5.19 Cognition Sale.

On or before ~~January~~December 31, 2020 (or such later date as agreed to in writing (including by e-mail) by Agent in its sole discretion), one or more Note Parties shall have consummated the sale of the Capital Stock ~~and/or~~and assets of Cognition and its Subsidiaries (the "**Cognition Sale**") for an aggregate purchase price in an amount sufficient to pay the Cognition Obligations in full.

5.20 Board Observation Rights.

Agent shall be entitled to designate one observer (the "Board Observer") to attend any regular meeting (a "BOD Meeting") of the Board of Directors of Cognition or any of its Subsidiaries (or, in each case, any relevant committees thereof), except that the Board Observer shall not be entitled to vote on matters presented to or discussed by the Board of Directors (or any relevant committee thereof) of Cognition or any of its Subsidiaries at any such meetings. The Board Observer shall be timely notified of the time and place of any BOD Meetings and will be given written notice of all proposed actions to be taken by the Board of Directors (or any relevant committee thereof) of Cognition and any of its Subsidiaries at such meeting as if the Board Observer was a member thereof. Such notice shall describe in reasonable detail the nature and substance of the matters to be discussed and/or voted upon at such meeting (or the proposed actions to be taken by written consent without a meeting). The Board Observer shall have the right to receive all information provided to the members of the Board of Directors or any similar group performing an executive oversight or similar function (or any relevant committee thereof) of Cognition and any of its Subsidiaries in anticipation of or at such meeting (regular or special and whether telephonic or otherwise), in addition to copies of the records of the proceedings or minutes of such meeting, when provided to the members, and the Board Observer shall keep such materials and information confidential in accordance with Section 10.17. Notwithstanding the foregoing, the Board Observer shall not have the right to receive any materials (or be present during portions of the meetings in which such materials are discussed) that (a) are protected by the attorney-client privilege; provided, that, Cognition shall use commercially reasonable efforts to disclose such information in a way that would not risk waiver of such privilege or (b) relate to the Obligations. Company shall reimburse the Board Observer for all reasonable, documented out-of-pocket costs and expenses incurred in connection with its participation in any such BOD Meeting.

5.21 Student Loan Accounts.

Upon receipt by any Note Party of any proceeds of any Collateral, any Collections or any other amounts from a Student Loan Account, such Note Party shall deposit or cause to be deposited immediately, and in any event no later than the next Business Day after the date of receipt thereof, such proceeds, Collections or other amounts into a Controlled Account.

SECTION 6 NEGATIVE COVENANTS

Each Note Party covenants and agrees that, so long as any Note Commitment is in effect and until payment in full of all Obligations, such Note Party shall perform all covenants in this Section 6.

6.1 Indebtedness.

No Note Party shall, or shall permit any of its Subsidiaries (other than Excluded Subsidiaries) to, directly or indirectly, create, incur, assume or guarantee, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness, except:

- (a) the Obligations;
- (b) Scheduled Indebtedness, but not any extensions, renewals or replacements of such Indebtedness except (i) renewals and extensions expressly provided for in the agreements evidencing any such Indebtedness as the same are in effect on the date of this Agreement, and (ii) refinancings and extensions of any such Indebtedness if the terms and conditions thereof are not less favorable to the obligor thereon or to Purchasers than the Indebtedness being refinanced or extended, and the average life to maturity thereof is greater than or equal to that of the Indebtedness being refinanced or extended; provided, such Indebtedness permitted under the immediately preceding clause (i) or (ii) above shall not (A) include Indebtedness of an obligor that was not an obligor with respect to the Indebtedness being extended, renewed or refinanced, (B) exceed in a principal amount the Indebtedness being renewed, extended or refinanced, or (C) be incurred, created or assumed if any Default or Event of Default has occurred and is continuing or would result therefrom;
- (c) Indebtedness with respect to Capital Leases in an aggregate amount not to exceed \$2,000,000 at any one time outstanding or any Permitted Refinancing Indebtedness in respect thereof; provided, any such Indebtedness shall be secured only by the assets subject to such Capital Leases;
- (d) Indebtedness of CVI Seafood Holdings Limited and Company incurred pursuant to the BMO Credit Agreement in an aggregate amount not to exceed CDN\$40,000,000 or any Permitted Refinancing Indebtedness in respect thereof by an Acceptable Bank;
- (e) Indebtedness of CVI Seafood Holdings Limited and Company incurred pursuant to the Islandsbanki Credit Agreement in an aggregate amount not to exceed CDN\$35,000,000 or any Permitted Refinancing Indebtedness in respect thereof by an Acceptable Bank;
- (f) Indebtedness of Company incurred pursuant to Company's guarantee under the AltAir Note Purchase Agreement;
- (g) Indebtedness of Company incurred pursuant to the MidStar Limited Recourse Guarantee (as in effect on the Second Additional Closing Date); and
- (h) other Indebtedness of the Note Parties or Subsidiaries of the Note Parties, in an aggregate amount not to exceed at any time \$5,000,000, individually, and \$10,000,000, in the aggregate, which is unsecured and subordinated to the

Obligations in a manner satisfactory to Agent and which does not permit any repayment while any Obligations are outstanding and which matures at least 91 days after the Scheduled Maturity Date.

6.2 Liens.

No Note Party shall, or shall permit any of its Subsidiaries (other than Excluded Subsidiaries) to, directly or indirectly, create, incur, assume or permit to exist any Lien on or with respect to any property or asset of any kind (including any document or instrument in respect of goods or accounts receivable) of any Note Party, whether now owned or hereafter acquired, or any income or profits therefrom, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such property, asset, income or profits under the PPSA or under any similar recording or notice statute, except:

- (a) Liens in favor of Agent for the benefit of Secured Parties granted pursuant to any Note Document;
- (b) Liens for Taxes if obligations with respect to such Taxes are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, so long as such reserves or other appropriate provisions, if any, as shall be required by GAAP shall have been made for any such contested amounts;
- (c) statutory Liens of landlords, carriers, warehousemen, mechanics, repairmen, workmen and materialmen, and other Liens imposed by law, in each case incurred in the ordinary course of business for amounts not yet overdue;
- (d) Liens incurred in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security, or to secure statutory obligations, so long as no foreclosure, sale or similar proceedings shall have been commenced with respect to any portion of the Collateral on account thereof;
- (e) easements, rights of way, restrictions, encroachments, and other minor defects or irregularities in title, in each case which do not and will not interfere in any material respect with the ordinary conduct of the business of any Note Party;
- (f) any interest or title of a lessor or sublessor under any lease of real estate permitted hereunder;
- (g) purported Liens evidenced by the filing of precautionary financing statements under the PPSA relating solely to operating leases of personal property entered into in the ordinary course of business;
- (h) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods;

- (i) any zoning or similar law or right reserved to or vested in any governmental office or agency to control or regulate the use of any real property;
- (j) Liens securing Indebtedness permitted pursuant to Section 6.1(c) which attach only to the assets that are the subject of such Capital Lease;
- (k) Liens securing Indebtedness permitted pursuant to Section 6.1(d) which attach only to the assets described in Section 6.01 of the BMO Credit Agreement as in effect on the Original Closing Date;
- (l) Liens securing Indebtedness permitted pursuant to Section 6.1(e) which attach only to the assets described in Section 6.01 of the Islandsbanki Credit Agreement as in effect on the Original Closing Date;
- (m) Liens issued in connection with the refinancing of Indebtedness existing on the Original Closing Date; provided that: (i) such Liens shall charge or encumber the same real and/or personal property as the Liens that they are replacing; (ii) the Liens that are being replaced are discharged in connection with such refinancing; and (iii) the representation provided for in Section 4.13(f) shall be true and correct immediately following such refinancing;
- (n) Liens existing on the Second Additional Closing Date described in Schedule 6.2;
- (o) Liens on fixed assets acquired or held by any Note Party or any of its Subsidiaries in the ordinary course of its business to secure Indebtedness incurred to finance the acquisition of such fixed assets so long as such Lien only (i) attaches to such property and (ii) secures the Indebtedness that was incurred to acquire such property or any Permitted Refinancing Indebtedness in respect thereof, in an aggregate amount not to exceed \$5,000,000;
- (p) Liens granted by Company in favor of AltAir Agent securing the Indebtedness permitted pursuant to Section 6.1(h); and
- (q) Liens granted by Company in favor of MidStar Agent pursuant to the MidStar Pledge Agreement (as in effect on the Second Additional Closing Date).

provided, however, that no reference herein to Liens permitted hereunder (including Permitted Liens), including any statement or provision as to the acceptability of any Liens (including Permitted Liens), shall in any way constitute or be construed as to provide for a subordination of any rights of Agent, Purchasers or other Secured Parties hereunder or arising under any of the other Note Documents in favor of such Liens.

6.3 No Further Negative Pledges.

Except with respect to (a) the AltAir Note Purchase Agreement, (b) the MidStar Limited Recourse Guarantee and MidStar Pledge Agreement, and (c) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that, in the case of

clause (c), such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be), no Note Party shall, nor shall it permit any of its Subsidiaries (other than Excluded Subsidiaries) to, enter into any agreement prohibiting the creation or assumption of any Lien upon any of its properties or assets, whether now owned or hereafter acquired other than any such prohibition contained in an agreement creating a Permitted Lien.

6.4 Restricted Junior Payments.

No Note Party shall, nor shall it permit any of its Affiliates through any manner or means or through any other Person to, directly or indirectly, declare, order, pay, make or set apart, or agree to declare, order, pay, make or set apart, any sum for any Restricted Junior Payment, except (i) non-cash dividends declared at the end of each Fiscal Year in favor of Personal Guarantor or Lobster Point Holdings Limited, which non-cash dividends shall offset all shareholder advances made to Personal Guarantor or Lobster Point Holdings Limited during such Fiscal Year in accordance with Sections 6.5(v) and 6.5(vi), (ii) non-cash dividends declared at the end of each Fiscal Year by any Subsidiary in favor of any Note Party, which non-cash dividends shall offset intercompany advances made to such Subsidiary by any Note Party during such Fiscal Year in accordance with Section 6.5(vi), (iii) Restricted Junior Payments made among Note Parties (other than Holdings), and (iv) Restricted Junior Payments made in connection with the World Energy Restructuring, if applicable.

6.5 Investments.

No Note Party shall, or shall permit any of its Subsidiaries (other than Excluded Subsidiaries) to, directly or indirectly, make or own any Investment in any Person, including any Joint Venture, except:

- (i) Investments in Cash and Cash Equivalents;
- (ii) Investments owned as of the Second Additional Closing Date and set forth on Schedule 6.5(ii)(a);
- (iii) Investments constituting (A) Securities received in satisfaction or partial satisfaction of amounts owing from financially troubled account debtors and (B) deposits, prepayments and other credits to suppliers, in the case of each of clauses (A) and (B), in the ordinary course of business consistent with the past practices of such Note Party or Subsidiary;
- (iv) Investments constituting Investment Assets acquired with Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds or Net Capital Return Proceeds in accordance with Section 2.10(a), (b) and (d) and pledged as Collateral in favor of Agent for the benefit of Purchasers;
- (v) Investments in the form of shareholder advances made by Company to Personal Guarantor from the Original Closing Date to December 31, 2018 in an aggregate amount not to exceed \$4,000,000 and Investments in the

form of shareholder advances made by Company to Lobster Point Holdings Limited from the Original Closing Date to December 31, 2018 in an aggregate amount not to exceed \$3,000,000;

- (vi) Investments constituting (A) Investments in Subsidiaries and Joint Ventures (other than those constituting Investment Assets) and (B) shareholder advances made by Company to Personal Guarantor or Lobster Point Holdings Limited, in the case of each of clauses (A) and (B), funded with Net Asset Sale Proceeds, Net Insurance/Condemnation Proceeds or Net Capital Return Proceeds (other than Restricted NCRP Amounts); provided that the aggregate amount of Investments made in any Fiscal Year constituting shareholder advances made by Company to Personal Guarantor or Lobster Point Holdings Limited shall not exceed an amount equal to 12.5% of all Net Capital Return Proceeds received by the Note Parties in such Fiscal Year and that, in the case of the Fiscal Years ended December 31, 2017 and December 31, 2018, are in excess of the aggregate amount of Investments in the form of shareholder advances made by Company to such Persons pursuant to clause (v) above;
- (vii) Investments made in connection with the World Energy Restructuring, if applicable; ~~and~~
- (viii) Investments made in Connection on or about the First Amendment Closing Date with the proceeds of the Cognition Notes in an aggregate amount not to exceed \$5,000,000, which proceeds shall be used for certain credit enhancements and general working capital purposes of Cognition and its Subsidiaries; and
- (ix) [The Rockport Equity Investment.](#)

6.6 Financial Covenants.

- (a) Net Residual Value. The Note Parties shall not permit the Net Residual Value to be less than (i) at any time on or prior to the date which is 30 days after the Additional Closing Date, \$50,000,000, (ii) at any time after the date which is 30 days after the Additional Closing Date but on or prior to the date which is 60 days after the Additional Closing Date, \$60,000,000, (iii) at any time after the date which is 60 days after the Additional Closing Date, \$65,000,000, and (iv) at any time after the Second Additional Closing Date, \$18,000,000.
- (b) LTV Ratio (FMV). The Note Parties shall not permit the LTV Ratio (FMV) to exceed (i) at any time prior to the Additional Closing Date, 0.33 to 1.0, (ii) at any time on and after the Additional Closing Date but prior to the Second Additional Closing Date, 0.375 to 1.0, and (iii) at any time on and after the Second Additional Closing Date, 0.46 to 1.0.

6.7 Fundamental Changes; Disposition of Assets; Acquisitions.

No Note Party shall, or shall permit any of its Subsidiaries (other than Excluded Subsidiaries) to, enter into any transaction of amalgamation, merger or consolidation, or liquidate, wind up or dissolve itself (or suffer any liquidation or dissolution), or engage in any Asset Sale, or acquire by purchase or otherwise (other than purchases or other acquisitions of inventory, materials and equipment in the ordinary course of business) the business, any property or assets of, or any Capital Stock of, any Person or any division or line of business or other business unit of any Person, except:

- (a) [intentionally deleted];
- (b) any Subsidiary of Company may be amalgamated with or into Company or any Wholly-Owned Note Party Subsidiary of Company, or be liquidated, wound up or dissolved, or all or any part of its business, property or assets may be conveyed, sold, leased, transferred or otherwise disposed of, in one transaction or a series of transactions, to Company or any Subsidiary of Company that is a Note Party;
- (c) Asset Sales by any Note Party (other than of Investment Assets); provided (i) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such Asset Sale, (ii) the consideration received by such Note Party for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Company (or similar governing body)), (iii) no less than 50% of such consideration shall be paid in Cash, and (iv) the Net Asset Sale Proceeds received (directly or indirectly) by such Note Party in respect of such Asset Sale shall be applied or reinvested, as applicable, in accordance with Sections 2.8 and 2.10(a);
- (d) Asset Sales by any Note Party of Investment Assets; provided (i) no Default or Event of Default shall have occurred and be continuing either before or after giving effect to such Asset Sale, (ii) the consideration received by such Note Party for such assets shall be in an amount at least equal to the fair market value thereof (determined in good faith by the board of directors of Company (or similar governing body)), (iii) all Cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by such Note Party in respect of such Asset Sale shall be applied to the prepayment of the Notes or otherwise used in accordance with Sections 2.8 and 2.10(d), and (iv) all non-cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by such Note Party in respect of such Asset Sale shall be pledged as Collateral in favor of Agent for the benefit of Purchasers;
- (e) disposals of obsolete or worn out property; and
- (f) Investments made in accordance with Section 6.5.

6.8 Disposal of Subsidiary Interests.

Except for any sale of all of its interests in the Capital Stock of any of its Subsidiaries in compliance with the provisions of Section 6.7, no Note Party shall, or shall permit any of its Subsidiaries (other than Excluded Subsidiaries) to, directly or indirectly sell, assign, pledge or otherwise encumber or dispose of any Capital Stock of any of its Subsidiaries.

6.9 Transactions with Shareholders and Affiliates.

No Note Party shall, nor shall it permit any of its Subsidiaries (other than Excluded Subsidiaries) to, directly or indirectly, enter into or permit to exist any transaction (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any holder of 5% or more of any class of Capital Stock of any Note Party or Subsidiary of a Note Party or with any Affiliate of any such holder, on terms that are less favorable to such Note Party or Subsidiary, than those that might be obtained at the time from a Person who is not such a holder or Affiliate. Company shall disclose in writing each transaction with any holder of 5% or more of any class of Capital Stock of any Note Party or Subsidiary of a Note Party or with any Affiliate of any such holder to Agent.

6.10 Conduct of Business.

From and after the Original Closing Date, no Note Party shall, nor shall it permit any of its Subsidiaries (other than Excluded Subsidiaries) to, engage in any business other than (i) the businesses engaged in by such Note Party or Subsidiary on the Original Closing Date, and (ii) businesses conducted by a Subsidiary of such Note Party acquired as an Investment made in accordance with Section 6.5, and (iii) such other lines of business as may be consented to by Agent.

6.11 Amendments or Waivers of Certain Related Agreements.

No Note Party shall agree to any amendment, restatement, supplement or other modification to, or any waiver of any term or provision of or any consent under, or any other determination (in its capacity as agent or as purchaser or with the consent of the requisite purchasers) in respect of any other matter under, any Related Agreement without, in each case, obtaining the prior written consent of Agent and Requisite Purchasers to such amendment, restatement, supplement, modification, waiver, consent or other determination.

6.12 Amendments or Waivers of with respect to Scheduled Indebtedness.

No Note Party shall, or shall permit any of its Subsidiaries (other than Excluded Subsidiaries) to, amend or otherwise change the terms of any Scheduled Indebtedness, or make any payment consistent with an amendment thereof or change thereto, if the effect of such amendment or change is to increase the principal, interest rate, fees or other amounts in respect of such Scheduled Indebtedness, change (to earlier dates) any dates upon which payments of principal, interest, fees or other amounts are due thereon, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance

provisions thereof, change the subordination provisions of such Scheduled Indebtedness (or of any guarantee thereof), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Scheduled Indebtedness (or a trustee or other representative on their behalf).

6.13 Fiscal Year.

No Note Party shall change its Fiscal Year-end from December 31.

6.14 Securities Accounts; Financial Assets.

No Note Party shall establish or maintain a Securities Account in which any Collateral is held or otherwise as to which Collateral is or may be credited which is not a Controlled Account. No Note Party will own any Financial Asset unless such Financial Asset is (i) a certificated security and has been delivered to Agent, endorsed in blank for transfer by means of an effective endorsement as contemplated in the STA, (ii) is an uncertificated security and has been registered in the name of Agent on the books and records of the issuer thereof, or (iii) is held in a Controlled Account.

6.15 Amendments to Organizational Documents and Material Contracts.

No Note Party shall, or shall permit any of its Subsidiaries (other than Excluded Subsidiaries) to, (a) amend or permit any amendments to any Note Party's Organizational Documents; or (b) amend or permit any amendments to, or terminate or waive any provision of, any Material Contract if such amendment, termination, or waiver could reasonably be expected to be adverse to any Secured Party.

6.16 Prepayments of Certain Indebtedness.

No Note Party shall, or shall permit any of its Subsidiaries to, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (i) the Obligations, (ii) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of in accordance with Section 6.7 in connection with the incurrence of Permitted Refinancing Indebtedness, (iii) Scheduled Indebtedness of a Note Party owing to a Person that is not an Affiliate of such Note Party, and (iv) Indebtedness under the AltAir Note Purchase Agreement.

6.17 Change of Name or Location.

No Note Party shall (a) change its incorporated name, or if not a corporation, its name as it appears in official filings in the jurisdiction of its organization, (b) change its chief executive office, principal place of business, registered office, domicile (within the meaning of the *Civil Code of Quebec*), corporate offices or warehouses or locations at which Collateral is held or stored, or the location of its records concerning the Collateral, (c) change the type of entity that it is, (d) change its jurisdiction of incorporation or organization, in each case, without at least 30

days prior written notice to Agent and after Agent's written acknowledgment that any action requested by Agent in connection therewith, including to continue the perfection and, in the case of the Province of Quebec, publication, of any Liens in favor of Agent, on behalf of Secured Parties, in any Collateral, has been completed or taken, and provided, that with respect to paragraphs (b) and (d), any such new location shall be in Canada unless otherwise consented to by Agent. Without limiting the foregoing, no Note Party shall change its name, identity or corporate or organizational structure in any manner that might make any financing statement filed in connection herewith or any other Note Document materially misleading within the meaning of the PPSA except upon prior written notice to Agent and after Agent's written acknowledgment that any action requested by Agent in connection therewith, including to continue the perfection or, in the case of the Province of Quebec, publication, of any Liens in favor of Agent, on behalf of the Secured Parties, in any Collateral, has been completed or taken.

6.18 Issuance of Capital Stock.

No Note Party shall, or shall permit any of its Subsidiaries to, enter into any transaction after the Original Closing Date whereby any Capital Stock of any Note Party would be issued, or agree to do so, other than in connection with an Investment made in accordance with Section 6.5(ii), or whereby the information provided in Schedule 4.2 would no longer be true, complete and accurate.

6.19 Pension Plans.

No Note Party shall, or shall permit any of its Subsidiaries to, (a) establish or commence contributing to or otherwise participate in any Defined Benefit Plan or Multi-Employer Plan; or (b) acquire an interest in any Person if such Person sponsors, administers, participates in, or has any liability in respect of, any Defined Benefit Plan or a Multi-Employer Plan.

6.20 Sanctions.

No Note Party, Subsidiary of a Note Party or director, officer, employee or agent of a Note Party shall (a) (i) become a Sanctioned Person, either in its own right or through any third party, (ii) have any of its assets in a Sanctioned Country or in the possession, custody or control of a Sanctioned Person or do business in or with, or derive any of its income from investments in or transactions with, any Sanctioned Country or Sanctioned Person in violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or any Sanctions, (iii) engage in any dealings or transactions prohibited by any Anti-Corruption Laws, Anti-Money Laundering Laws or any Sanctions, (iv) engage, do business with or derive income from any Sanctioned Person or Sanctioned Country in violation of any Anti-Corruption Laws, Anti-Money Laundering Laws or any Sanctions or (v) otherwise violate any Anti-Corruption Laws, Anti-Money Laundering Laws or any Sanctions or fail to immediately notify Agent in writing of any violation thereof, or (b) use the proceeds of any Note (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws or any Anti-Money Laundering Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country in violation of any Sanctions applicable to any

party to this Agreement, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

6.21 Holdings Covenant.

In the case of Holdings, notwithstanding anything to the contrary in this Agreement or any other Note Document, Holdings shall not:

- (a) conduct, transact or otherwise engage in, or commit to conduct, transact or otherwise engage in, any business or operations other than (i) those incidental to its ownership of the Capital Stock of Company, (ii) activities incidental to the maintenance of its existence and compliance with applicable laws and legal, tax and accounting matters related thereto, (iii) activities relating to the performance of obligations under the Note Documents to which it is a party or expressly permitted thereunder and (iv) activities incidental to the consummation of the transactions contemplated hereby and by the other Note Documents to which it is a party or otherwise incidental to the businesses or activities described in the foregoing clauses (i) through (iii);
- (b) incur, create, assume or suffer to exist any Indebtedness or other liabilities or financial obligations or any liens on its assets, except (i) the Obligations, (ii) obligations with respect to its Capital Stock in accordance with its organizational documents, (iii) Tax liabilities not yet due or which such Tax liabilities are permitted under Section 5.3, (iv) liabilities incurred in connection with the maintenance of its existence and (v) other transactions expressly permitted by this Section 6.21;
- (c) own, lease, manage or otherwise operate or transfer any properties or assets other than (i) ownership of Capital Stock of Company and de minimis amounts of other assets incidental to its business and (ii) other transactions expressly permitted under this Section 6.21; or
- (d) except as otherwise expressly permitted hereunder, consummate any merger, consolidation, amalgamation, liquidation, wind up, dissolution or Asset Sale.

6.22 Certain World Energy Actions.

Company shall not permit any of the BIOX Members to vote in favor of any action specified in Section 8.2(m) or Section 8.2(n) of the World Energy LLC Agreement (in each case, as in effect as of the Original Closing Date) without the prior written consent of Agent, which consent shall not be unreasonably withheld.

6.23 Student Loan Trusts.

Permit any Student Loan Trust to have any material liabilities, own any material assets or engage in any operations or business, other than, in each case, the ownership of student loans.

SECTION 7 GUARANTEE

7.1 Guarantee of the Obligations.

Each Guarantor hereby irrevocably and unconditionally guarantees to Agent for the ratable benefit of the Beneficiaries the due and punctual payment in full and performance of all Obligations which are or may become from time to time owing or payable, or to be performed, or which remain owing or unpaid to, or to be performed for the benefit of any of the Beneficiaries or any one or more of them (collectively, the “**Guaranteed Obligations**”). For greater certainty, the Guaranteed Obligations include, without limitation, all amounts which constitute Obligations and would be owed by any one or more of the Note Parties but for the fact that they are unenforceable or not allowable (in whole or in part) as a claim in an Insolvency Proceeding involving any Note Party due to the existence of such Insolvency Proceeding. Each Guarantor agrees that this Guarantee is a guarantee of payment and performance and not of collection. Notwithstanding the foregoing, the recourse of Agent and Purchasers for the Guaranteed Obligations of the Limited Guarantor shall be limited to the Limited Guarantor Property.

7.2 Payment by Guarantors.

Each Guarantor hereby agrees, in furtherance of the foregoing and not in limitation of any other right which any Beneficiary may have at law, in equity or otherwise against any Note Party pursuant to any of the Note Documents, that upon the failure of any Note Party to pay any of the Guaranteed Obligations when and as the same shall become due, whether at stated maturity, by required prepayment, declaration, acceleration, demand or otherwise (including amount that would become due but for the existence of any stay under applicable Insolvency Laws), it will pay, or cause to be paid, in Cash, to Agent for the ratable benefit of Beneficiaries, an amount equal to all Guaranteed Obligations then due as aforesaid. Any such payment shall be payable in the currency or currencies in which such Guaranteed Obligations are denominated and shall be made without set-off or counterclaim.

7.3 Liability of Guarantors Absolute.

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

- (a) the obligations of each Guarantor hereunder are independent of the obligations of any other Person, and a separate action or actions may be brought and prosecuted against such Guarantor whether or not any action is brought against any other Person and whether or not any other Person is joined in any such action or actions;

- (b) payment by any Guarantor of a portion, but not all, of the Guaranteed Obligations shall in no way limit, affect, modify or abridge any Guarantor's liability for any portion of the Guaranteed Obligations which has not been paid. Without limiting the generality of the foregoing, if Agent is awarded a judgment in any suit brought to enforce any Guarantor's covenant to pay a portion of the Guaranteed Obligations, such judgment shall not be deemed to release such Guarantor from its covenant to pay the portion of the Guaranteed Obligations that is not the subject of such suit, and such judgment shall not limit, affect, modify or abridge any other Guarantor's liability hereunder in respect of the Guaranteed Obligations;
- (c) any Beneficiary, upon such terms as it deems appropriate, without notice or demand and without affecting the validity or enforceability hereof or giving rise to any reduction, limitation, impairment, discharge or termination of any Guarantor's liability hereunder, from time to time may (i) renew, extend, accelerate, increase the rate of interest on, or otherwise change the time, place, manner or terms of payment of the Guaranteed Obligations; (ii) settle, compromise, release or discharge, or accept or refuse any offer of performance with respect to, or substitutions for, the Guaranteed Obligations or any agreement relating thereto and/or subordinate the payment of the same to the payment of any other obligations; (iii) request and accept other guarantees of the Guaranteed Obligations and take and hold security for the payment hereof or the Guaranteed Obligations; (iv) release, surrender, exchange, substitute, compromise, settle, rescind, waive, alter, subordinate or modify, with or without consideration, any security for payment of the Guaranteed Obligations, any other guarantees of the Guaranteed Obligations, or any other obligation of any Person (including any other Note Party) with respect to the Guaranteed Obligations; (v) enforce and apply any security now or hereafter held by or for the benefit of such Beneficiary in respect hereof or the Guaranteed Obligations and direct the order or manner of sale thereof, or exercise any other right or remedy that such Beneficiary may have against any such security, in each case as such Beneficiary in its discretion may determine consistent herewith and any applicable security agreement, including pursuant to one or more judicial or nonjudicial sales, whether or not every aspect of any such sale is commercially reasonable, and even though such action operates to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against any other Person or any security for the Guaranteed Obligations; and (vi) exercise any other rights available to it under the Note Documents; and
- (d) this Guarantee and the obligations of Guarantors hereunder shall be valid and enforceable and shall not be subject to any reduction, limitation, impairment, discharge or termination for any reason (other than payment in full of the Guaranteed Obligations), including the occurrence of any of the following, whether occurring before, upon or after any demand for payment hereunder, and whether or not any Guarantor shall have had notice or knowledge of any of them:
 - (i) the asserting or enforcing of any right, power or remedy (whether arising

under the Note Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto or with respect to any other guarantee of or security for the payment or performance of the Guaranteed Obligations; (ii) any failure or omission to assert or enforce or agreement or election not to assert or enforce, or the stay or enjoining, by order of court, by operation of law or otherwise, of the exercise or enforcement of, any claim or demand or any right, power or remedy (whether arising under the Note Documents, at law, in equity or otherwise) with respect to the Guaranteed Obligations or any agreement relating thereto, or with respect to any other guarantee of or security for the payment or performance of the Guaranteed Obligations; (iii) any rescission, waiver, amendment or modification of, or any consent to departure from, any of the terms or provisions (including provisions relating to events of default) hereof, any of the other Note Documents or any agreement or instrument executed pursuant thereto, or of any other guarantee or security for the Guaranteed Obligations, in each case whether or not in accordance with the terms hereof or such Note Document or any agreement relating to such other guarantee or security; (iv) the Guaranteed Obligations, or any agreement relating thereto, at any time being found to be illegal, invalid or unenforceable in any respect; (v) the application of payments received from any source to the payment of indebtedness other than the Guaranteed Obligations, even though any Beneficiary might have elected to apply such payment to any part or all of the Guaranteed Obligations; (vi) any change, reorganization or termination of the corporate structure or existence of any Person, any change in the ownership, control, name, objects, business or assets of any Person, any restructuring of the Guaranteed Obligations, any amalgamation or consolidation of any Person with any other Person or the consent to any of the foregoing by any Beneficiary; (vii) any failure to perfect or continue perfection of a security interest in any collateral which secures any of the Guaranteed Obligations; (viii) any defenses, set-offs or counterclaims which any Person may allege or assert against any Beneficiary or any other Person in respect of the Guaranteed Obligations, including failure of consideration, breach of warranty, payment, statute of frauds, statute of limitations, accord and satisfaction and usury; (ix) any limitation of status or power, disability, incapacity or other circumstance relating to any Person or any other Person, including any insolvency, bankruptcy, liquidation, reorganization, readjustment, composition, dissolution, winding-up or other proceeding involving or affecting any Person; (x) any failure of any Person, whether or not without fault on their part, to perform or comply with any of the provisions of the Note Documents or to give notice thereof to any Guarantor; (xi) any amendment, variation, modification, supplement or replacement of any of the Note Documents or any other document or instrument; (xii) the granting of time, renewals, extensions, compromises, concessions, waivers, releases, discharges and other indulgences to any Person; (xiii) the occurrence of any change in the laws, rules, regulations or ordinances of any jurisdiction or by any present or future action of any Governmental Authority amending, varying, reducing or otherwise affecting, or purporting to amend, vary, reduce or otherwise affect, any of the Guaranteed Obligations or the obligations of any Guarantor under this

Guarantee; (xiv) any other act or thing or omission, or delay to do any other act or thing, which may or might in any manner or to any extent vary the risk of any Guarantor as an obligor in respect of the Guaranteed Obligations; or (xv) any other circumstance that might otherwise constitute a legal or equitable discharge or defense of any Person under the Note Documents.

7.4 Waivers by Guarantors.

Each Guarantor hereby waives, for the benefit of Beneficiaries: (a) any right to require any Beneficiary, as a condition of payment or performance by such Guarantor, to (i) proceed against any other Person, (ii) proceed against or exhaust any security held from any other Person, (iii) proceed against or have resort to any balance of any Deposit Account or credit on the books of any Beneficiary in favor of any other Person, or (iv) pursue any other remedy in the power of any Beneficiary whatsoever; (b) any defense arising by reason of the incapacity, lack of authority or any disability or other defense of any other Person including any defense based on or arising out of the lack of validity or the unenforceability of the Guaranteed Obligations or any agreement or instrument relating thereto or by reason of the cessation of the liability of any other Person from any cause other than satisfaction in full of the Guaranteed Obligations; (c) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal; (d) any defense based upon any Beneficiary's errors or omissions in the administration of the Guaranteed Obligations, except behavior which amounts to bad faith; (e) (i) any principles or provisions of law, statutory or otherwise, which are or might be in conflict with the terms hereof and any legal or equitable discharge of such Guarantor's obligations hereunder, (ii) the benefit of any statute of limitations affecting such Guarantor's liability hereunder or the enforcement hereof, (iii) any rights to set-offs, recoupments and counterclaims, and (iv) promptness, diligence and any requirement that any Beneficiary protect, secure, perfect or insure any security interest or lien or any property subject thereto; (f) notices, demands, presentments, protests, notices of protest, notices of dishonor or non-payment, notices or proof of reliance and notices of any action or inaction, including acceptance hereof, notices of default hereunder or any agreement or instrument related thereto, notices of any renewal, extension or modification of the Guaranteed Obligations or any agreement related thereto, notices of any extension of credit to any Person and notices of any of the matters referred to in Section 7.3 and any right to consent to any thereof; and (g) any defenses or benefits that may be derived from or afforded by law which limit the liability of or exonerate guarantors or sureties, or which may conflict with the terms hereof.

7.5 Guarantors' Rights of Subrogation, Contribution, etc.

Until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor hereby waives any claim, right or remedy, direct or indirect, that such Guarantor now has or may hereafter have against any other Person or any of its assets in connection with this Guarantee or the performance by such Guarantor of its obligations hereunder, in each case whether such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise and including (a) any right of subrogation, reimbursement or indemnification that such Guarantor now has or may hereafter have against any other Person with respect to the Guaranteed Obligations, (b) any right to enforce, or to participate in, any claim, right or remedy

that any Beneficiary now has or may hereafter have against any other Person, and (c) any benefit of, and any right to participate in, any collateral or security now or hereafter held by any Beneficiary. In addition, until the Guaranteed Obligations shall have been indefeasibly paid in full, each Guarantor shall withhold exercise of any right of contribution such Guarantor may have against any other Person. Each Guarantor further agrees that, to the extent the waiver or agreement to withhold the exercise of its rights of subrogation, reimbursement, indemnification and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation, reimbursement or indemnification such Guarantor may have against any other Person or against any collateral or security, shall be junior and subordinate to any rights any Beneficiary may have against any Person and to all right, title and interest any Beneficiary may have in any such collateral or security. If any amount shall be paid to any Guarantor on account of any such subrogation, reimbursement, indemnification or contribution rights at any time when all Guaranteed Obligations shall not have been finally and indefeasibly paid in full, such amount shall be held in trust for Agent on behalf of Beneficiaries and shall forthwith be paid over to Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms hereof.

7.6 Subordination of Other Obligations.

Any Indebtedness of any other Note Party now or hereafter held by any Guarantor (the “**Obligee Guarantor**”) is hereby subordinated in right of payment to the Guaranteed Obligations, and any such indebtedness collected or received by the Obligee Guarantor after an Event of Default has occurred and is continuing shall be held in trust for Agent on behalf of Beneficiaries and shall forthwith be paid over to Agent for the benefit of Beneficiaries to be credited and applied against the Guaranteed Obligations but without affecting, impairing or limiting in any manner the liability of the Obligee Guarantor under any other provision hereof.

7.7 Continuing Guarantee.

This Guarantee is a continuing guarantee and shall remain in effect until all of the Guaranteed Obligations shall have been indefeasibly paid in full. Each Guarantor hereby irrevocably waives any right to revoke this Guarantee as to future transactions giving rise to any Guaranteed Obligations.

7.8 Authority of Guarantors.

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

7.9 Financial Condition of Company.

Any Note may be issued by Company without notice to or authorization from any Guarantor regardless of the financial or other condition of Company at the time of any such Note is issued. No Beneficiary shall have any obligation to disclose or discuss with any Guarantor its assessment, or any Guarantor’s assessment, of the financial condition of Company. Each Guarantor has adequate means to obtain information from Company on a continuing basis

concerning the financial condition of Company and its ability to perform its obligations under the Note Documents, and each Guarantor assumes the responsibility for being and keeping informed of the financial condition of Company and of all circumstances bearing upon the risk of non-payment of the Guaranteed Obligations. Each Guarantor hereby waives and relinquishes any duty on the part of any Beneficiary to disclose any matter, fact or thing relating to the business, operations or conditions of Company now known or hereafter known by any Beneficiary.

7.10 Bankruptcy, etc.

- (a) So long as any Guaranteed Obligations remain outstanding, no Guarantor shall, without the prior written consent of Agent acting pursuant to the instructions of Requisite Purchasers, commence or join with any other Person in commencing any bankruptcy, reorganization or insolvency case or proceeding of or against any other Note Party.
- (b) Each Guarantor acknowledges and agrees that any interest on any portion of the Guaranteed Obligations which accrues after the commencement of any case or proceeding referred to in clause (a) above shall be included in the Guaranteed Obligations because it is the intention of Guarantors and Beneficiaries that the Guaranteed Obligations which are guaranteed by Guarantors pursuant hereto should be determined without regard to any rule of law or order which may relieve Company of any portion of such Guaranteed Obligations. Guarantors will permit any trustee in bankruptcy, receiver, debtor in possession, assignee for the benefit of creditors or similar person to pay Agent, or allow the claim of Agent in respect of, any such interest accruing after the date on which such case or proceeding is commenced.
- (c) In the event that all or any portion of the Guaranteed Obligations are paid, the obligations of Guarantors hereunder shall continue and remain in full force and effect or be reinstated, as the case may be, in the event that all or any part of such payment(s) are rescinded or recovered directly or indirectly from any Beneficiary as a preference, fraudulent transfer or otherwise, and any such payments which are so rescinded or recovered shall constitute Guaranteed Obligations for all purposes hereunder.

7.11 Discharge of Guarantee Upon Sale of Guarantor.

If all of the Capital Stock of any Guarantor or any of its successors in interest hereunder shall be sold or otherwise disposed of (including by merger or consolidation) in accordance with the terms and conditions hereof, the Guarantee of such Guarantor or such successor in interest, as the case may be, hereunder shall automatically be discharged and released without any further action by any Beneficiary or any other Person effective as of the time of such Asset Sale.

7.12 Indemnity.

As an original and independent obligation under this Guarantee, each Guarantor shall (i) indemnify each Beneficiary against all costs, losses, expenses and liabilities of whatever kind resulting from the failure by any other Guarantor to make due and punctual payment of any of the Guaranteed Obligations or resulting from any of the Guaranteed Obligations being or becoming void, voidable, unenforceable or ineffective against any other Note Party (including all legal and other costs, charges and expenses incurred by any Beneficiary, in connection with preserving or enforcing, or attempting to preserve or enforce, its rights under this Guarantee); and (ii) pay on demand the amount of such costs, losses, expenses and liabilities whether or not any of any Beneficiary has attempted to enforce any rights against any other Person or otherwise.

SECTION 8 EVENTS OF DEFAULT

8.1 Events of Default.

If any one or more of the following conditions or events shall occur:

- (a) Failure to Make Payments When Due. Failure of any Note Party, Limited Guarantor or Personal Guarantor to pay any Obligation when due; or
- (b) Default in Other Agreements. (i) Failure of any Note Party or any of its Subsidiaries to pay when due any principal of or interest on or any other amount payable in respect of one or more items of Indebtedness (other than Indebtedness referred to in Section 8.1(a)) in an individual principal amount of \$1,000,000 or more or with an aggregate principal amount of \$2,000,000 or more, in each case beyond the grace period, if any, provided therefor; (ii) breach or default by any Note Party or any of its Subsidiaries that has not been waived with respect to any other material term of (1) one or more items of Indebtedness in the individual or aggregate principal amounts referred to in clause (i), or (2) any loan agreement, mortgage, indenture or other agreement relating to such item(s) of Indebtedness, in each case beyond the grace period, if any, provided therefor, if the effect of such breach or default is to cause, or to permit the holder or holders of that Indebtedness (or a trustee on behalf of such holder or holders), to cause, that Indebtedness to become or be declared due and payable (or subject to a compulsory repurchase or redeemable) prior to its stated maturity or the stated maturity of any underlying obligation, as the case may be; (iii) a default or an event of default under any Related Agreement shall occur; or (iv) a default or an event of default under the Bourbon Arctic Note Purchase Agreement shall occur; or
- (c) Breach of Representations, etc. Any representation, warranty, certification or other statement made or deemed made by any Note Party in any Note Document or in any statement or certificate at any time given by any Note Party or any of its

Subsidiaries in writing pursuant hereto or thereto or in connection herewith or therewith shall be false as of the date made or deemed made; or

- (d) Other Defaults. (i) Any Note Party shall default in the performance of or compliance with any term contained herein or any of the other Note Documents, other than any such term referred to in any other Section of this Section 8.1, and, (ii) such default shall not have been remedied or waived within 30 days after the earlier of (A) an officer of such Note Party becoming aware of such default, or (B) receipt by Company of notice from Agent or any Purchaser of such default; provided that any default resulting from any Note ~~Party's~~Party's failure to comply with the provisions of Section 5.18 shall not be entitled to the cure period referred to in clause (ii) above; or
- (e) Involuntary Bankruptcy; Appointment of Receiver, etc. Any involuntary case or proceeding (including the filing of any notice of intention in respect thereof) is commenced against any Note Party, Limited Guarantor or Personal Guarantor under any Insolvency Law or other Applicable Law in any jurisdiction in respect of the: (i) bankruptcy, liquidation, winding-up, dissolution or suspension of general operations; or (ii) composition, rescheduling, reorganization, arrangement or readjustment of, or other relief from, or stay of proceedings to enforce, some or all of the debts or obligations; or (iii) appointment of a trustee, interim receiver, receiver, receiver and manager, liquidator, administrator, custodian, sequestrator, agent or other similar official for such Note Party, Limited Guarantor or Personal Guarantor, or for all or a substantial part of the assets of such Note Party, Limited Guarantor or Personal Guarantor; or (iv) possession, foreclosure, seizure or retention, sale or other disposition of, or other proceedings to enforce security over, all or any material part of the assets, of such Note Party, Limited Guarantor or Personal Guarantor and such case or proceeding shall remain undismissed or unstayed for 30 days or more or such court shall enter a decree or order granting the relief sought in such case or proceeding; or
- (f) Voluntary Proceedings, etc. Any Note Party, Limited Guarantor or Personal Guarantor: (i) files a petition or application seeking relief under any Insolvency Law; or (ii) commences or fails to contest in a timely and appropriate manner or consents to the institution of any proceeding referred to in Section 8.1(e) above or to the filing of any such petition or to the appointment of or taking possession by a custodian, receiver, interim receiver, receiver and manager, liquidator, assignee, trustee or sequestrator (or similar official) of any Note Party, Limited Guarantor or Personal Guarantor or of all or any material part of any such Note Party's, Limited Guarantor's or Personal Guarantor's assets; or (iii) makes an assignment for the benefit of creditors; or (iv) takes action in furtherance of any of the foregoing or of any of the proceedings referred to in Section 8.1(e); or (v) admits in writing its inability to, or is generally unable to, pay its debts as such debts become due or is otherwise insolvent; or
- (g) Judgments and Attachments. Any money judgment, writ or warrant of attachment or similar process involving (i) in any individual case an amount in excess of

\$1,000,000 or (ii) in the aggregate at any time an amount in excess of \$2,000,000 (in either case to the extent not adequately covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) shall be entered or filed against any Note Party or any of their respective assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of 60 days (or in any event later than five days prior to the date of any proposed sale thereunder); or

- (h) Dissolution. Any order, judgment or decree shall be entered against any Note Party decreeing the dissolution or split up of such Note Party and such order shall remain undischarged or unstayed for a period in excess of 30 days; or
- (i) Change of Control. A Change of Control shall occur; or
- (j) Guarantees, Collateral Documents and other Note Documents. At any time after the execution and delivery thereof, (i) the Guarantee for any reason, other than the satisfaction in full of all Obligations, shall cease to be in full force and effect (other than in accordance with its terms) or shall be declared to be null and void or any Guarantor shall repudiate its obligations thereunder, (ii) this Agreement or any Note Document ceases to be in full force and effect or shall be declared null and void, or Agent shall not have or shall cease to have a valid and perfected First Priority Lien in any Collateral purported to be covered by the Collateral Documents, or (iii) any Note Party shall contest the validity or enforceability of any Note Document in writing or deny in writing that it has any further liability, including with respect to future advances by Purchasers, under any Note Document to which it is a party;
- (k) Employee Benefit Plans. A Pension Plan Termination Event occurs or a Note Party fails to make a required contribution to or payment under any Pension Plan when due; or
- (l) Cognition Sale. The Note Parties shall have failed to comply with the provisions of Section 5.19.

8.2 Remedies.

- (a) Upon the occurrence of (i) any Event of Default described in Section 8.1(e) or 8.1(f), automatically, or (ii) any other Event of Default (other than an Event of Default described in Section 8.1(l)), at the request of (or with the consent of) Requisite Purchasers, upon notice to Company by Agent, (A) the Note Commitments, if any, of each Purchaser having such Note Commitments shall immediately terminate; (B) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Note Party, Limited Guarantor and Personal Guarantor: (1) the unpaid principal amount of and accrued interest on the Notes (including any PIK Interest), and (2) all other Obligations (including the Applicable Premium); and (C) Agent may

enforce any and all Liens and security interests created pursuant to Collateral Documents.

- (b) Upon the occurrence of an Event of Default described in Section 8.1(l), upon notice to Company by Agent, (i) the Cognition Note Commitments, if any, of each Purchaser having such Cognition Note Commitments shall immediately terminate; (ii) each of the following shall immediately become due and payable, in each case without presentment, demand, protest or other requirements of any kind, all of which are hereby expressly waived by each Note Party, Limited Guarantor and Personal Guarantor: (A) the unpaid principal amount of and accrued interest on the Cognition Notes (including any PIK Interest), and (B) all other Cognition Obligations (including the Applicable Premium); (iii) Agent may enforce any and all Liens and security interests created pursuant to Collateral Documents with respect to (A) the Collateral of FP Acquisition Holdings, FP Resources Holdings, FP Resources USA, Cognition or any of their respective Subsidiaries and (B) any intercompany notes evidencing Indebtedness with respect to which any of the Note Parties and their Subsidiaries listed in clause (iii)(A) above are obligors, and (iv)(A) Agent may, in its sole discretion, engage a third-party advisor, at the sole cost and expense of Company, to assist in the marketing, negotiation and consummation of the Cognition Sale, and (B) the Note Parties shall, at the direction of Agent or its agents (including, without limitation, any third-party advisor engaged by Agent pursuant to clause (A) above), take any action (including, without limitation, preparation of marketing materials) and execute any agreement, instrument or other document that Agent may deem necessary or advisable to effect the Cognition Sale.
- (c) In addition to, and without limitation of, the foregoing, from and after the occurrence of any Event of Default resulting from the Note Parties' failure to comply with the provisions of Section 5.18 and the failure of the Note Parties to pursue an Interim Sale in a manner reasonably satisfactory to Agent, (x) Agent may, in its sole discretion, engage a third-party advisor, at the sole cost and expense of Company, to assist in the marketing, negotiation and consummation of the Interim Sale, and (y) the Note Parties shall, at the direction of Agent or its agents (including, without limitation, any third-party advisor engaged by Agent pursuant to clause (x) above), take any action (including, without limitation, preparation of marketing materials) and execute any agreement, instrument or other document that Agent may deem necessary or advisable to effect the Interim Sale. Notwithstanding the foregoing, it is agreed that any Interim Sale is subject to the terms of the ClearBank shareholders agreement and approval by the Prudential Regulatory Authority, as applicable.

SECTION 9 AGENT

9.1 Appointment of Agent.

HPS is hereby appointed Agent of the Secured Parties hereunder and under the other Note Documents and each Purchaser hereby authorizes HPS, in such capacity, to act as its agent in accordance with the terms hereof and the other Note Documents. Agent hereby agrees to act upon the express conditions contained herein and the other Note Documents, as applicable. The provisions of this Section 9 are solely for the benefit of Agent and the Secured Parties and no Note Party nor Limited Guarantor nor the Personal Guarantor shall have any rights as a third-party beneficiary of any of the provisions thereof. In performing its functions and duties hereunder, Agent shall act solely as an agent of Secured Parties and does not assume and shall not be deemed to have assumed any obligation towards or relationship of agency or trust with or for any Note Party, Limited Guarantor or Personal Guarantor.

9.2 Powers and Duties.

Each Purchaser irrevocably authorizes Agent to take such action on such Purchaser's behalf and to exercise such powers, rights and remedies hereunder and under the other Note Documents as are specifically delegated or granted to Agent by the terms hereof and thereof, together with such powers, rights and remedies as are reasonably incidental thereto. Agent shall have only those duties and responsibilities that are expressly specified herein and the other Note Documents. Agent may exercise such powers, rights and remedies and perform such duties by or through its agents or employees. Agent shall not have, by reason hereof or any of the other Note Documents, a fiduciary relationship in respect of any Purchaser; and nothing herein or any of the other Note Documents, expressed or implied, is intended to or shall be so construed as to impose upon Agent any obligations in respect hereof or any of the other Note Documents except as expressly set forth herein or therein.

9.3 General Immunity.

- (a) No Responsibility for Certain Matters. Agent shall not be responsible to any Purchaser for the execution, effectiveness, genuineness, validity, enforceability, collectability or sufficiency hereof or any other Note Document or for any representations, warranties, recitals or statements made herein or therein or made in any written or oral statements or in any financial or other statements, instruments, reports or certificates or any other documents furnished or made by Agent to Purchasers or by or on behalf of any Note Party to Agent or any Purchaser in connection with the Note Documents and the transactions contemplated thereby or for the financial condition or business affairs of any Note Party or any other Person liable for the payment of any Obligations, nor shall Agent be required to ascertain or inquire as to the performance or observance of any of the terms, conditions, provisions, covenants or agreements contained in any of the Note Documents or as to the use of the proceeds of the Notes or as to the existence or possible existence of any Event of Default or Default or to make any disclosures with respect to the foregoing. Anything contained herein to the

contrary notwithstanding, Agent shall not have any liability arising from confirmations of the amount of outstanding Notes or the component amounts thereof.

- (b) Exculpatory Provisions. Neither Agent nor any of its officers, partners, directors, employees or agents shall be liable to Purchasers for any action taken or omitted by Agent under or in connection with any of the Note Documents except to the extent caused by Agent's gross negligence or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction. Agent shall be entitled to refrain from any act or the taking of any action (including the failure to take an action) in connection herewith or any of the other Note Documents or from the exercise of any power, discretion or authority vested in it hereunder or thereunder unless and until Agent shall have received instructions in respect thereof from Requisite Purchasers (or such other Purchasers as may be required to give such instructions under Section 10.5) and, upon receipt of such instructions from Requisite Purchasers (or such other Purchasers, as the case may be), Agent shall be entitled to act or (where so instructed) refrain from acting, or to exercise such power, discretion or authority, in accordance with such instructions. Without prejudice to the generality of the foregoing, (i) Agent shall be entitled to rely, and shall be fully protected in relying, upon any communication, instrument or document believed by it to be genuine and correct and to have been signed or sent by the proper Person or Persons, and shall be entitled to rely and shall be protected in relying on opinions and judgments of counsel (who may be counsel for a Note Party), accountants, experts and other professional advisors selected by it; and (ii) no Purchaser shall have any right of action whatsoever against Agent as a result of Agent acting or (where so instructed) refraining from acting hereunder or any of the other Note Documents in accordance with the instructions of Requisite Purchasers (or such other Purchasers as may be required to give such instructions under Section 10.5).

9.4 Agent Entitled to Act as Purchaser.

The agency hereby created shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Agent in its individual capacity as a Purchaser hereunder. With respect to its participation in the Notes, Agent shall have the same rights and powers hereunder as any other Purchaser and may exercise the same as if it were not performing the duties and functions delegated to it hereunder, and the term "Purchaser" shall, unless the context clearly otherwise indicates, include Agent in its individual capacity. Agent and its Affiliates may accept deposits from, lend money to, own securities of, and generally engage in any kind of banking, trust, financial advisory or other business with Company or any of its Affiliates as if it were not performing the duties specified herein, and may accept fees and other consideration from Company for services in connection herewith and otherwise without having to account for the same to Purchasers.

9.5 Purchaser Representations. (i) Each Original Purchaser of Initial Notes represents and warrants as follows on and as of the Original Closing Date, (ii) each Additional Purchaser of Additional Notes represents and warrants as follows on and as of the Additional Closing Date and (iii) each Purchaser of Second Additional Notes represents and warrants as follows on and as of the Second Additional Closing Date:

- (a) Private Placement. Such Purchaser understands that (i) the offering and sale of the Notes is intended to be exempt from registration under the Securities Act pursuant to Section 4(a)(2) of the Securities Act and (ii) there is no existing public or other market for the Notes and there can be no assurance that such Purchaser will be able to sell or otherwise dispose of the Notes. Such Purchaser further understands that the Notes may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that Company is not required to register the Notes.
- (b) Purchase for Investment. Such Purchaser severally represents that it is purchasing the Notes for its own account or for one or more separate accounts maintained by such Purchaser or for the account of one or more pension or trust funds and not with a view to the distribution thereof, provided that the disposition of such Purchaser's or their property shall at all times be within such Purchaser's or their control. Such Purchaser understands that the Notes have not been registered under the Securities Act and may be resold only if registered pursuant to the provisions of the Securities Act or if an exemption from registration is available, except under circumstances where neither such registration nor such an exemption is required by law, and that Company is not required to register the Notes.
- (c) QIB; Accredited Investor. Such Purchaser is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act and an "accredited investor" (as defined in Rule 501 of Regulation D under the Securities Act) and by reason of such Purchaser's business and financial experience, and the business and financial experience of those Persons retained by such Purchaser to advise such Purchaser with respect to its investment in the Notes, such Purchaser, together with such advisors, have such knowledge, sophistication and experience in business and financial matters as to be capable of evaluating the merits and risks of the prospective investment, are able to bear the economic risk of such investment and, at the present time, are able to afford a complete loss of such investment.
- (d) Information Available. Such Purchaser has been afforded the opportunity: (i) to ask such questions as such Purchaser has deemed necessary of, and to receive answers from, representatives of Company concerning the terms and conditions of the offering of the Notes and the merits and risks of investing in the Notes; and (ii) to obtain such additional information as Company possesses or can acquire without unreasonable effort or expense that is necessary to verify the accuracy

and completeness of the information previously furnished to such Purchaser by Company.

- (e) ERISA. No part of the funds to be used by such Purchaser in connection with the purchase of the Notes constitutes “plan assets” (within the meaning of 29 C.F.R. § 2510.3-101) with respect to any “employee benefit plan” (within the meaning of Section 3(3) of ERISA), subject to Title 1, Part 4 of ERISA, with respect to which Company and its Subsidiaries are a “party in interest” (within the meaning of Section 3(14) of ERISA) or is a “disqualified person” (within the meaning of Section 4975(e)(2) of the Internal Revenue Code) unless such Notes are being purchased pursuant to a statutory or administrative exemption from the prohibited transaction rules applicable thereto.

9.6 Right to Indemnity.

Each Purchaser, in proportion to its Pro Rata Share, severally agrees to indemnify Agent, its Affiliates and their respective officers, partners, directors, trustees, employees and agents (each, an “**Indemnitee Agent Party**”), to the extent that such Indemnitee Agent Party shall not have been reimbursed by any Note Party, for and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including counsel fees and disbursements) or disbursements of any kind or nature whatsoever which may be imposed on, incurred by or asserted against such Indemnitee Agent Party in exercising its powers, rights and remedies or performing its duties hereunder or under the other Note Documents or otherwise in its capacity as such Indemnitee Agent Party in any way relating to or arising out of this Agreement or the other Note Documents, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE AGENT PARTY**; provided, no Purchaser shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Indemnitee Agent Party’s gross negligence or willful misconduct as determined by a final, non-appealable judgment of a court of competent jurisdiction. If any indemnity furnished to any Indemnitee Agent Party for any purpose shall, in the opinion of such Indemnitee Agent Party, be insufficient or become impaired, such Indemnitee Agent Party may call for additional indemnity and cease, or not commence, to do the acts indemnified against until such additional indemnity is furnished; provided, in no event shall this sentence require any Purchaser to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement in excess of such Purchaser’s Pro Rata Share thereof; and provided further, this sentence shall not be deemed to require any Purchaser to indemnify any Indemnitee Agent Party against any liability, obligation, loss, damage, penalty, action, judgment, suit, cost, expense or disbursement described in the proviso in the immediately preceding sentence.

9.7 Successor Agent.

- (a) Agent may resign at any time by giving 30 days’ prior written notice thereof to Purchasers and Company. Upon any such notice of resignation, Requisite Purchasers shall have the right, upon five Business Days’ notice to Company, to

appoint a successor Agent, as the case may be. Upon the acceptance of any appointment as Agent hereunder by such successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent, and the retiring Agent shall promptly (i) transfer to such successor Agent all sums, Securities and other items of Collateral held under the Collateral Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Agent under the Note Documents, and (ii) execute and deliver to such successor Agent such amendments to financing statements, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the Liens created under the Collateral Documents, whereupon such retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder, the provisions of this Section 9 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent hereunder. If no such successor Agent shall have been appointed by the Requisite Purchasers and shall have accepted such appointment within 30 days after the retiring Agent gives notice of its resignation (or such earlier date as agreed by the Requisite Purchasers) (the "**Resignation Effective Date**"), then the retiring Agent may (but shall not be obligated to), on behalf of Purchasers, appoint a successor Agent. Whether or not a successor Agent has been appointed, such resignation shall become effective in accordance with such notice by the resigning Agent on the Resignation Effective Date, and the retiring Agent shall be discharged from its duties and obligations hereunder and under the other Note Documents and all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Purchaser directly, until such time, if any, as a successor Agent shall have been appointed as provided above. After the retiring Agent's resignation hereunder and under the other Note Documents, the provisions of this Article, Section 10.2 and Section 10.3 shall continue in effect for the benefit of such retiring Agent in respect of any actions taken or omitted to be taken by it while the retiring Agent was acting as Agent.

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

9.8 Collateral Documents and Guarantee.

- (a) Agent under Collateral Documents and Guarantee. Each Purchaser hereby further authorizes Agent, on behalf of and for the benefit of Purchasers, to be the agent for and representative of Purchasers with respect to the Guarantee, the Collateral and the Collateral Documents. Subject to Section 10.5, without further written

consent or authorization from Purchasers, Agent may execute any documents or instruments necessary to (i) release any Lien encumbering any item of Collateral that is the subject of a sale or other disposition of assets permitted hereby or to which Requisite Purchasers (or such other Purchasers as may be required to give such consent under Section 10.5) have otherwise consented or (ii) release any Guarantor from the Guarantee pursuant to Section 7.11 or with respect to which Requisite Purchasers (or such other Purchasers as may be required to give such consent under Section 10.5) have otherwise consented.

- (b) Right to Realize on Collateral and Enforce Guarantee. Anything contained in any of the Note Documents to the contrary notwithstanding, Company, Agent and each Purchaser hereby agree that (i) no Purchaser shall have any right individually to realize upon any of the Collateral or to enforce the Guarantee, it being understood and agreed that all powers, rights and remedies hereunder may be exercised solely by Agent, on behalf of Purchasers in accordance with the terms hereof and all powers, rights and remedies under the Collateral Documents may be exercised solely by Agent, and (ii) in the event of an enforcement by Agent in respect of any of the Collateral pursuant to a public or private sale, Agent or any Purchaser may be the purchaser of any or all of such Collateral at any such sale and Agent, as agent for and representative of Secured Parties (but not any Purchaser or Purchasers in its or their respective individual capacities unless Requisite Purchasers shall otherwise agree in writing) shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Obligations as a credit on account of the purchase price for any collateral payable by Agent at such sale.

9.9 No Reliance on Agent's Customer Identification Program.

Each Purchaser acknowledges and agrees that neither such Purchaser, nor any of its Affiliates, participants or assignees, may rely on Agent to carry out such Purchaser's, Affiliate's, participant's or assignee's customer identification program, or other requirements imposed by the USA PATRIOT Act or the regulations issued thereunder, including the regulations set forth in 31 C.F.R. §§ 1010.100(yy), (iii), 1020.100, and 1020.220 (formerly 31 C.F.R. § 103.121), as hereafter amended or replaced ("**CIP Regulations**"), or any other Anti-Corruption Laws or Anti-Money Laundering Laws, including any programs involving any of the following items relating to or in connection with any of the Note Parties, their Affiliates or their agents, the Note Documents or the transactions hereunder or contemplated hereby: (1) any identity verification procedures, (2) any recordkeeping, (3) comparisons with government lists, (4) customer notices or (5) other procedures required under the CIP Regulations or other regulations issued under the USA PATRIOT Act. Each Purchaser, Affiliate, participant or assignee subject to Section 326 of the USA PATRIOT Act will perform the measures necessary to satisfy its own responsibilities under the CIP Regulations.

SECTION 10
MISCELLANEOUS

10.1 Notices.

- (a) Notices Generally. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given to a Note Party or Agent shall be sent to such Person's address as set forth on Appendix B or in the other relevant Note Document, and in the case of any Purchaser, the address as indicated on Appendix B or otherwise indicated to Agent in writing. Each notice or other communication hereunder shall be in writing and may be personally served, sent by email, Canada Post mail, registered or certified mail, or courier service and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of email, or five Business Days after depositing it in the Canada Post mail with postage prepaid and properly addressed; provided, no notice to Agent shall be effective until received by Agent.
- (b) Electronic Communications.
- (i) Notices and other communications to Purchasers hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by Agent, provided that the foregoing shall not apply to notices to any Purchaser pursuant to SECTION 2 if such Purchaser has notified Agent that it is incapable of receiving notices under such Section by electronic communication. Agent or Note Parties may, in their discretion, agree to accept notices and other communications to them 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 Agent otherwise prescribes, (x) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient, and (y) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (x) of notification that such notice or communication is available and identifying the website address therefor.
- (ii) Each of the Note Parties understands that the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution and agrees

and assumes the risks associated with such electronic distribution, except to the extent caused by the willful misconduct or gross negligence of Agent as determined by a final, non-appealable judgment of a court of competent jurisdiction.

- (iii) Approved Electronic Communications are provided “as is” and “as available”. Neither Agent nor any of its officers, directors, employees, agents, advisors or representatives (the “**Agent Affiliates**”) warrant the accuracy, adequacy, or completeness of the Approved Electronic Communications and each expressly disclaims liability for errors or omissions in the Approved Electronic Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Agent Affiliates in connection with the Approved Electronic Communications.

10.2 Expenses.

Whether or not the transactions contemplated hereby shall be consummated, Company agrees to pay promptly (a) all Agent’s actual costs and expenses reasonably incurred in connection with the preparation of the Note Documents and any consents, amendments, waivers or other modifications thereto; (b) all Agent’s costs of furnishing all opinions by counsel for Company and the other Note Parties; (c) all fees, expenses and disbursements of counsel to Agent (including allocated costs of internal counsel and expenses and disbursements of outside counsel) reasonably incurred in connection with the negotiation, preparation, execution and administration of the Note Documents and any consents, amendments, waivers or other modifications thereto and any other documents or matters requested by Company; (d) all the actual costs and expenses reasonably incurred in connection with creating and perfecting Liens in favor of Agent, for the benefit of Secured Parties, including filing and recording fees, expenses and taxes, stamp or documentary taxes, search fees, title insurance premiums and fees, expenses and disbursements of counsel reasonably incurred by Agent and of counsel providing any opinions that Agent or Requisite Purchasers may request in respect of the Collateral or the Liens created pursuant to the Collateral Documents; (e) all Agent’s actual costs and fees, expenses for, and disbursements of any of Agent’s, auditors, accountants, consultants or appraisers whether internal or external, and all counsel fees (including allocated costs of internal counsel and expenses and disbursements of outside counsel) reasonably incurred by Agent; (f) all the actual costs and expenses (including the fees, expenses and disbursements of any appraisers, consultants, advisors and agents employed or retained by Agent and its counsel) reasonably incurred in connection with the custody or preservation of any of the Collateral; (g) all other actual and costs and expenses incurred by Agent in connection with the negotiation, preparation and execution of the Note Documents and any consents, amendments, waivers or other modifications thereto and the transactions contemplated thereby; and (h) after the occurrence of a Default or an Event of Default, all costs and expenses, including legal fees (including allocated costs of internal counsel and expenses and disbursements of outside counsel) and costs of settlement incurred by Agent (including any former Agent) and each Purchaser (including any former Purchaser) in enforcing any Obligations of or in collecting any

payments due from any Note Party hereunder or under the other Note Documents by reason of such Default or Event of Default (including in connection with the sale, lease or license of, collection from, or other realization upon any of the Collateral or the enforcement of the Guarantee or in connection with any refinancing or restructuring of the credit arrangements provided hereunder in the nature of a “work-out” or pursuant to any insolvency or bankruptcy cases or proceedings.

10.3 Indemnity.

- (a) In addition to the payment of expenses pursuant to Section 10.2, whether or not the transactions contemplated hereby shall be consummated, each Note Party agrees to defend (subject to Indemnitees’ selection of counsel), indemnify, pay and hold harmless, Agent and each Purchaser, their Affiliates and their respective officers, partners, directors, members, advisors, trustees, employees, agents and sub agents of Agent and each Purchaser (each, an “**Indemnitee**”), from and against any and all Indemnified Liabilities, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY, OR SOLE NEGLIGENCE OF SUCH INDEMNITEE**; provided, no Note Party shall have any obligation to any Indemnitee hereunder with respect to any Indemnified Liabilities to the extent such Indemnified Liabilities arise from the gross negligence or willful misconduct of that Indemnitee, in each case, as determined by a final, non-appealable judgment of a court of competent jurisdiction. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this Section 10.3 may be unenforceable in whole or in part because they are violative of any law or public policy, the applicable Note Party shall contribute the maximum portion that it is permitted to pay and satisfy under Applicable Law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.
- (b) To the extent permitted by Applicable Law, no Note Party shall assert, and each Note Party hereby waives, any claim against Agent, Purchasers and their respective Affiliates, directors, employees, counsel, agents or sub agents, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) (whether or not the claim therefor is based on contract, tort or duty imposed by any applicable legal requirement) arising out of, in connection with, as a result of, or in any way related to, this Agreement or any Note Document or any agreement or instrument contemplated hereby or thereby or referred to herein or therein, the transactions contemplated hereby or thereby, any Note or the use of the proceeds thereof or any act or omission or event occurring in connection therewith, and each Note Party hereby waives, releases and agrees not to sue upon any such claim or any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

10.4 Set-Off.

In addition to any rights now or hereafter granted under Applicable Law and not by way of limitation of any such rights, upon the occurrence of any Event of Default, each Purchaser and

their respective Affiliates is hereby authorized by each Note Party at any time or from time to time subject to the consent of Agent (such consent not to be unreasonably withheld or delayed), without notice to any Note Party or to any other Person (other than Agent), any such notice being hereby expressly waived, to set-off and to appropriate and to apply any and all deposits (general or special, including Indebtedness evidenced by certificates of deposit, whether matured or unmatured, but not including trust accounts (in whatever currency)) and any other Indebtedness at any time held or owing by such Purchaser to or for the credit or the account of any Note Party, Limited Guarantor or Personal Guarantor (in whatever currency) against and on account of the Obligations of any Note Party, Limited Guarantor or Personal Guarantor to such Purchaser hereunder, irrespective of whether or not (a) such Purchaser shall have made any demand hereunder, (b) any Obligation shall be due or payable, be contingent or unmatured or (c) such Obligation is owed to a branch or office of such Purchaser different from the branch or office holding such deposit or obligation or such Indebtedness.

10.5 Amendments and Waivers.

- (a) Requisite Purchasers' Consent. Subject to Sections 10.5(b) and 10.5(c), no amendment, modification, termination or waiver of any provision of the Note Documents, or consent to any departure by any Note Party, Limited Guarantor or Personal Guarantor therefrom, shall in any event be effective without the written concurrence of Agent and the Requisite Purchasers; provided that Agent may, with the consent of Company only, amend, modify or supplement this Agreement to cure any ambiguity, omission, defect or inconsistency, so long as such amendment, modification or supplement does not adversely affect the rights of any Purchaser.
- (b) Affected Purchasers' Consent. Without the written consent of each Purchaser that would be affected thereby, no amendment, modification, termination, or consent shall be effective if the effect thereof would:
 - (i) extend the scheduled final maturity of any Note;
 - (ii) reduce the rate of interest on any Note (other than any waiver of any increase in the interest rate applicable to any Note pursuant to Section 2.6) or any fee payable hereunder;
 - (iii) extend the time for payment of any such interest or fees;
 - (iv) reduce the principal amount of any Note;
 - (v) amend, modify, terminate or waive any provision of this Section 10.5(b) or Section 10.5(c);
 - (vi) amend the definition of “**Requisite Purchasers**” or “**Pro Rata Share**” or Section 2.14;

- (vii) release all or substantially all of the Collateral or all or substantially all of the Guarantors from the Guarantee, except as expressly provided in the Note Documents; or
 - (viii) consent to the assignment or transfer by any Note Party, Limited Guarantor or Personal Guarantor of any of its rights and obligations under any Note Document.
- (c) Other Consents. No amendment, modification, termination or waiver of any provision of the Note Documents, or consent to any departure by any Note Party, Limited Guarantor or Personal Guarantor therefrom, shall amend, modify, terminate or waive any provision of Section 9 as the same applies to Agent, or any other provision hereof as the same applies to the rights or obligations of Agent, in each case without the consent of Agent.
- (d) Execution of Amendments, etc. Agent may, but shall have no obligation to, with the concurrence of any Purchaser, execute amendments, modifications, waivers or consents on behalf of such Purchaser. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on any Note Party in any case shall entitle any Note Party to any other or further notice or demand in similar or other circumstances. Any amendment, modification, termination, waiver or consent effected in accordance with this Section 10.5 shall be binding upon each Purchaser at the time outstanding, each future Purchaser and, if signed by a Note Party, Limited Guarantor or Personal Guarantor, on such Note Party, Limited Guarantor or Personal Guarantor.

10.6 Successors and Assigns; Participations.

- (a) Generally. This Agreement shall be binding upon the parties hereto and their respective successors and assigns and shall inure to the benefit of the parties hereto and the successors and assigns of Purchasers. No Note Party's, Limited Guarantor's or Personal Guarantor's rights or obligations hereunder nor any interest therein may be assigned or delegated by any Note Party, Limited Guarantor or Personal Guarantor without the prior written consent of all Purchasers. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, Indemnitee Agent Parties under Section 9.5 and Indemnitees under Section 10.3, their respective successors and assigns permitted hereby and, to the extent expressly contemplated hereby, Affiliates of Agent and Purchasers) any legal or equitable right, remedy or claim under or by reason of this Agreement.
- (b) [Intentionally Deleted].
- (c) Right to Assign. Each Purchaser shall have the right at any time to sell, assign or transfer all or a portion of its rights and obligations under this Agreement, including all or a portion of its Note Commitment or Notes owing to it or other

Obligations (provided, however, that each such assignment shall be of a uniform, and not varying, percentage of all rights and obligations under and in respect of any Note and any related Note Commitments) to any Eligible Assignee upon the giving of notice to Company and Agent.

- (d) Mechanics. The assigning Purchaser and the assignee thereof shall execute and deliver to Agent an Assignment Agreement. To the extent the assignee is not already a Purchaser hereunder, the assignee shall deliver to Agent all documentation and other information required by regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations, including, without limitation, the USA PATRIOT Act.
- (e) Notice of Assignment. Upon its receipt and acceptance of a duly executed and completed Assignment Agreement, Agent shall record the information contained in such Assignment Agreement in the Register, shall give prompt notice thereof to Company and shall maintain a copy of such Assignment Agreement.
- (f) Representations and Warranties of Assignee. Each Purchaser, upon execution and delivery hereof or upon executing and delivering an Assignment Agreement, as the case may be, represents and warrants as of the Original Closing Date, Additional Closing Date or Second Additional Closing Date, as applicable, or as of the applicable Effective Date (as defined in the applicable Assignment Agreement) that (i) it is an Eligible Assignee; (ii) it has experience and expertise in the purchase of or investing in commitments or notes such as the applicable Note Commitments or Notes, as the case may be; and (iii) it will make or invest in, as the case may be, its Note Commitments or Notes for its own account in the ordinary course of its business and without a view to distribution of such Note Commitments or Notes within the meaning of the *Securities Act* (Ontario) or other applicable securities laws.
- (g) Effect of Assignment. Subject to the terms and conditions of this Section 10.6, as of the date of recordation in the Register (the “Effective Date”): (i) the assignee thereunder shall have the rights and obligations of a “Purchaser” hereunder to the extent such rights and obligations hereunder have been assigned to it pursuant to such Assignment Agreement and shall thereafter be a party hereto and a “Purchaser” for all purposes hereof; (ii) the assigning Purchaser thereunder shall, to the extent that rights and obligations hereunder have been assigned thereby pursuant to such Assignment Agreement, relinquish its rights (other than any rights which survive the termination hereof under Section 10.8) and be released from its obligations hereunder (and, in the case of an Assignment Agreement covering all or the remaining portion of an assigning Purchaser’s rights and obligations hereunder, such Purchaser shall cease to be a party hereto; provided, anything contained in any of the Note Documents to the contrary notwithstanding, such assigning Purchaser shall continue to be entitled to the benefit of all indemnities hereunder as specified herein with respect to matters arising out of the prior involvement of such assigning Purchaser as a Purchaser hereunder); (iii) the Note Commitments shall be modified to reflect the Note Commitment of such

assignee and any Note Commitment of such assigning Purchaser, if any; and (iv) if any such assignment occurs after the issuance of any Note hereunder, the assigning Purchaser shall, upon the effectiveness of such assignment or as promptly thereafter as practicable, surrender its applicable Notes to Agent for cancellation, and thereupon Company shall issue and deliver new Notes, if so requested by the assignee and/or assigning Purchaser, to such assignee and/or to such assigning Purchaser, with appropriate insertions, to reflect the new Note Commitments and/or outstanding Notes of the assignee and/or the assigning Purchaser.

- (h) Participations. Each Purchaser shall have the right at any time to sell one or more participations to any Person (other any Note Party or any Affiliate thereof) in all or any part of its Note Commitments, Notes or in any other Obligation. The holder of any such participation, other than an Affiliate of Purchaser granting such participation, shall not be entitled to require such Purchaser to take or omit to take any action hereunder except with respect to any amendment, modification or waiver that would (i) extend the final scheduled maturity of any Note in which such participant is participating, or reduce the rate or extend the time of payment of interest or fees thereon (except in connection with a waiver of applicability of any post-default increase in interest rates) or reduce the principal amount thereof, or increase the amount of the participant's participation over the amount thereof then in effect (it being understood that a waiver of any Default or Event of Default or of a mandatory reduction in the Note Commitment shall not constitute a change in the terms of such participation, and that an increase in any Note Commitment or Note shall be permitted without the consent of any participant if the participant's participation is not increased as a result thereof), (ii) consent to the assignment or transfer by any Note Party of any of its rights and obligations under this Agreement, or (iii) release all or substantially all of the Collateral under the Collateral Documents or all or substantially all of the Guarantors from the Guarantee (except as expressly provided in the Note Documents) supporting the Notes hereunder in which such participant is participating. Company agrees that each participant shall be entitled to the benefits of Sections 2.15 and 2.16 to the same extent as if it were a Purchaser and had acquired its interest by assignment pursuant to clause (c) of this Section. To the extent permitted by law, each participant also shall be entitled to the benefits of Section 10.4 as though it were a Purchaser, provided such participant agrees to be subject to Section 2.13 as though it were a Purchaser. **Each Purchaser that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of Company, 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 Notes or other obligations under the Note Documents (the "Participant Register"); provided that no Purchaser 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 or its other obligations under any Note Document) to any Person except to the extent that such disclosure is necessary to establish**

that such commitment, loan 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 Purchaser 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, Agent (in its capacity as Agent) shall have no responsibility for maintaining a Participant Register.

- (i) Certain Other Assignments. In addition to any other assignment permitted pursuant to this Section 10.6, any Purchaser may assign, pledge and/or grant a security interest in, all or any portion of its Notes, and the other Obligations owed by or to such, if any, to secure obligations of such Purchaser; provided, no Purchaser, as between Company and such Purchaser, shall be relieved of any of its obligations hereunder as a result of any such assignment and pledge, and provided further, in no event shall the applicable pledgee or trustee be considered to be a “Purchaser” or be entitled to require the assigning Purchaser to take or omit to take any action hereunder.
- (j) Transfers. (i) No Purchaser shall transfer any Note or any portion thereof unless such transfer is made in accordance with (A) Rule 144A under the Securities Act, (B) the registration and qualification requirements (or any applicable exemptions therefrom) under applicable state securities laws and (C) any applicable Canadian securities laws; (ii) upon surrender for registration of a permitted transfer of any Note at the office or agency of Company, Company shall execute and deliver, in the name of the designated transferee, a new Note of a like tenor and aggregate principal amount; (iii) a replacement Note issued upon any registration of a permitted transfer of any Note shall be the valid obligation of Company, evidencing the same debt, and entitled to the same benefits under this Agreement, as the Note surrendered upon such registration of transfer and references to Note in this Agreement shall be deemed to be references to the replacement Note; and (iv) if presented or surrendered for registration of transfer, each Note shall (if so required by Company) be duly endorsed, or be accompanied by a written instrument of transfer in form reasonably satisfactory to Company, duly executed by the owner thereof.

10.7 Independence of Covenants.

All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or would otherwise be within the limitations of, another covenant shall not avoid the occurrence of a Default or an Event of Default if such action is taken or condition exists.

10.8 Survival of Representations, Warranties and Agreements.

All representations, warranties and agreements made herein shall survive the execution and delivery hereof and the issuance of and purchase of the Notes. Notwithstanding anything herein

or implied by law to the contrary, all indemnities in favor of Agent or any Purchaser, each of the agreements of the Note Parties set forth in Sections 2.15, 2.16, 10.2, 10.3 and 10.4 and the agreements of Purchasers set forth in Sections 2.13, 9.3(b) and 9.5 shall survive the repayment of the Notes and the termination hereof.

10.9 No Waiver; Remedies Cumulative.

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

10.10 Marshalling; Payments Set Aside.

Neither Agent nor any Purchaser shall be under any obligation to marshal any assets in favor of any Note Party or any other Person or against or in payment of any or all of the Obligations. To the extent that any Note Party, Limited Guarantor or Personal Guarantor makes a payment or payments to Agent or Purchasers (or to Agent, on behalf of Purchasers), or Agent or Purchasers enforce any security interests or exercise their rights of setoff, and such payment or payments or the proceeds of such enforcement or setoff or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, any other provincial or federal law, common law or any equitable cause, then, to the extent of such recovery, the obligation or part thereof originally intended to be satisfied, and all Liens, rights and remedies therefor or related thereto, shall be revived and continued in full force and effect as if such payment or payments had not been made or such enforcement or setoff had not occurred.

10.11 Severability.

In case any provision in or obligation hereunder or other Note Document shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

10.12 Obligations Several; Independent Nature of Purchasers' Rights.

The obligations of Purchasers hereunder are several and no Purchaser shall be responsible for the obligations or Note Commitment of any other Purchaser hereunder. Nothing contained herein or in any other Note Document, and no action taken by Purchasers pursuant hereto or thereto, shall be deemed to constitute Purchasers as a partnership, an association, a joint venture or any other

kind of entity. The amounts payable at any time hereunder to each Purchaser shall be a separate and independent debt, and each Purchaser shall be entitled to protect and enforce its rights arising under this Agreement and the other Note Documents and it shall not be necessary for any other Purchaser to be joined as an additional party in any proceeding for such purpose.

10.13 Complete Agreement.

The Note Documents constitute the complete agreement between the parties with respect to the subject matter thereof and may not be modified, altered or amended except as set forth in Section 10.5. Any letter of interest, commitment letter, fee letter or confidentiality agreement, if any, between any Note Party and Agent or any Purchaser or any of their respective Affiliates, predating this Agreement and relating to a financing of substantially similar form, purpose or effect shall be superseded by this Agreement save and except as expressly provided therein.

10.14 Headings.

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

10.15 APPLICABLE LAW; CONSENT TO JURISDICTION.

- (a) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE NOTE DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THE NOTE DOCUMENTS AND THE OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK. EACH NOTE PARTY HEREBY CONSENTS AND AGREES THAT THE COURTS OF THE STATE OF NEW YORK SITTING IN THE COUNTY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF SUCH STATE, SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE NOTE PARTIES, AGENT AND PURCHASERS PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER NOTE DOCUMENTS; PROVIDED, THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE ANY LEGAL ACTION BEING TAKEN IN ANY OTHER JURISDICTION OR AGENT FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF AGENT (EACH BEING REFERRED TO HEREIN AS AN “ENFORCEMENT JURISDICTION”). EACH NOTE PARTY, LIMITED GUARANTOR AND PERSONAL GUARANTOR EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO THE JURISDICTION OF SUCH ENFORCEMENT JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH

COURT, AND EACH NOTE PARTY, LIMITED GUARANTOR AND PERSONAL GUARANTOR HEREBY WAIVES ANY OBJECTION THAT SUCH NOTE PARTY, LIMITED GUARANTOR OR PERSONAL GUARANTOR MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT OF SUCH ENFORCEMENT JURISDICTION. EACH NOTE PARTY, LIMITED GUARANTOR AND PERSONAL GUARANTOR HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY OVERNIGHT COURIER ADDRESSED TO SUCH NOTE PARTY, LIMITED GUARANTOR AND PERSONAL GUARANTOR AT THE ADDRESS SET FORTH IN APPENDIX B OF THIS AGREEMENT FOR COMPANY AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF SUCH NOTE PARTY'S ACTUAL RECEIPT THEREOF AND 1 BUSINESS DAY AFTER DEPOSIT WITH A REPUTABLE OVERNIGHT COURIER FOR NEXT BUSINESS DAY DELIVERY WITH ALL CHARGES PREPAID.

- (b) Each Note Party hereby irrevocably appoints Corporation Service Company (the "Process Agent"), with an office on the date hereof at 1180 Avenue of the Americas, Suite 210, New York, New York 10036-8401 as its agent to receive on behalf of each Note Party service of the summons and complaint and any other process which may be served in any action or proceeding described above. Such service may be made by mailing or delivering a copy of such process to each Note Party, in care of the Process Agent at the address specified above for such Process Agent, and such Note Party hereby irrevocably authorizes and directs the Process Agent to accept such service on its behalf. Each Note Party covenants and agrees that, for so long as it shall be bound under this Agreement or any other Loan Document, it shall maintain a duly appointed agent for the service of summons and other legal process in New York, New York, United States of America, for the purposes of any legal action, suit or proceeding brought by any party in respect of this Agreement or such other Loan Document and shall keep Agent advised of the identity and location of such agent. If for any reason there is no authorized agent for service of process in New York, each Note Party irrevocably consents to the service of process out of the said courts by mailing copies thereof by registered United States air mail postage prepaid to it at its address specified in Appendix B. Nothing in this Section 10.15 shall affect the right of any Secured Party to (i) commence legal proceedings or otherwise sue any Note Party in the country in which it is domiciled or in any other court having jurisdiction over such Note Party or (ii) serve process upon any Note Party in any manner authorized by the laws of any such jurisdiction.

10.16 WAIVER OF JURY TRIAL.

EACH OF THE PARTIES HERETO HEREBY AGREES TO WAIVE ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER OR UNDER ANY OF THE OTHER NOTE DOCUMENTS OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR THE PURCHASER/ISSUER RELATIONSHIP THAT IS BEING ESTABLISHED. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 10.5 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS HERETO OR ANY OF THE OTHER NOTE DOCUMENTS OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE NOTES MADE HEREUNDER. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

10.17 Confidentiality.

Agent and each Purchaser shall hold all non-public information regarding Company and its Subsidiaries and their businesses identified as such by Company and obtained by such Purchaser pursuant to the requirements hereof in accordance with such Purchaser's customary procedures for handling confidential information of such nature, it being understood and agreed by Company that, in any event, Agent and each Purchaser may make (i) disclosures of such information to Affiliates of Agent or such Purchaser and to their respective agents and advisors (and to other persons authorized by a Purchaser or Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.17), (ii) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of any Notes or any participations therein or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to Company and its obligations (provided such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by the provisions of, or provisions no less restrictive than, this Section 10.17), (iii) disclosure to any rating agency

when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Note Parties received by it from Agent or any Purchaser, (iv) disclosures to any Purchaser's financing sources, provided that prior to any disclosure, such financing source is informed of the confidential nature of the information, (v) disclosures in connection with the exercise of any remedies hereunder or under any other Note Document or any action or proceeding relating to this Agreement or any Note Document or the enforcement of rights hereunder or thereunder, (vi) disclosures with the written consent of Company, (vii) disclosures to the extent such information becomes publicly available other than as a result of a breach of this Section 10.17, (viii) disclosures to the extent that such information is independently developed by Agent, such Purchaser or any of their respective Affiliates and (ix) disclosures required or requested by any Governmental Authority or pursuant to legal or judicial process; provided, unless specifically prohibited by Applicable Law or court order, Agent and each Purchaser shall make reasonable efforts to notify Company of any request by any Governmental Authority (other than any such request in connection with any examination of the financial condition or other routine examination of such Purchaser by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information. In addition, Agent and each Purchaser may disclose the existence of this Agreement and the information about this Agreement to market data collectors, similar services providers to the lending industry, and service providers to Agent and Purchasers in connection with the administration and management of this Agreement and the other Note Documents. Notwithstanding the foregoing, on or after the Original Closing Date, Agent may, at its own expense, issue news releases and publish "tombstone" advertisements and other announcements relating to this transaction in newspapers, trade journals and other appropriate media (which may include use of logos of one or more of the Note Parties) (collectively, "**Trade Announcements**"). No Note Party shall issue any Trade Announcements except (i) as may be required by Applicable Laws, or (ii) with the prior approval of Agent.

10.18 Counterparts.

This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

10.19 Intercreditor ~~Agreement~~ Agreements.

Each Purchaser hereby grants to Agent all requisite authority to enter into or otherwise become bound by, and to perform its obligations and exercise its rights and remedies under and in accordance with the terms of, the Intercreditor ~~Agreement~~ Agreements and to bind the Purchasers thereto by Agent's entering into or otherwise becoming bound thereby, and no further consent or approval on the part of any Purchaser is or will be required in connection with the performance by Agent of the Intercreditor ~~Agreement~~ Agreements.

10.20 Customer Identification.

- (a) Each Purchaser and Agent (for itself and not on behalf of any Purchaser) hereby notifies the Note Parties that pursuant to the requirements of the PCTFA, it may

be required to obtain, verify and record information that identifies the Note Parties, which information includes the name and address of the Note Parties and other information that will allow such Purchaser or Agent, as applicable, to identify the Note Parties in accordance with those Acts.

- (b) Each Purchaser that is subject to the requirements of the USA PATRIOT Act hereby notifies the Note Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the entities composing the Note Parties, which information includes the name and address of each such entity and other information that will allow such Purchaser to identify the entities composing the Note Parties in accordance with the USA PATRIOT Act. Each Note Party agrees to take such action and execute, acknowledge and deliver at its sole cost and expense, such instruments and documents as any Purchaser may reasonably require from time to time in order to enable such Purchaser to comply with the USA PATRIOT Act.

10.21 Judgment Currency.

- (a) If, for the purpose of obtaining or enforcing judgment against any Note Party in any court in any jurisdiction, it becomes necessary to convert into any other currency (such other currency being hereinafter in this Section 10.21 referred to as the “**Judgment Currency**”) an amount due under any Note Document in any currency (the “**Obligation Currency**”) other than the Judgment Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of the State of New York or in the courts of any other jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Section 10.21 being hereinafter in this Section 10.21 referred to as the “**Judgment Conversion Date**”).
- (b) If, in the case of any proceeding in the court of any jurisdiction referred to in Section 10.21(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Note Party or Note Parties shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency which could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Person under this Section 10.21(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Note Documents.

- (c) The term “rate of exchange” in this Section 10.21 means the rate of exchange at which Agent, on the relevant date at or about 12:00 p.m. (noon), would be prepared to sell, in accordance with Agent’s normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.

10.22 Advice of Counsel; No Strict Construction.

Each of the parties represents to each other party hereto that it has discussed this Agreement and the other Note Documents with its counsel. The parties hereto have participated jointly in the negotiation and drafting of this Agreement and the other Note Documents. In the event an ambiguity or question of intent or interpretation arises, this Agreement and each of the other Note Documents shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement or any other Note Document.

10.23 Paramountcy.

If there is a conflict, inconsistency, ambiguity, or difference between any provision of this Agreement and of any other Note Document, the provision of this Agreement shall prevail, and such provision of such other Note Document shall be amended to the extent only to eliminate any such conflict, inconsistency, ambiguity or difference; provided, that no right or remedy of any Secured Party in any other Note Document which may be in addition to the rights and remedies of such Secured Party in this Agreement, nor any obligation (including, for the avoidance of any doubt, with respect to any representation, warranty, or covenant) of any Note Party in any other Note Document which may be in addition to, or otherwise more onerous than, the obligations of such Note Party contained in this Agreement, shall constitute a conflict, inconsistency, ambiguity or difference for the purposes of this Section 10.23.

10.24 Joint and Several Obligations.

Notwithstanding any other provision contained herein or in any other Note Document, if a “creditor” whose “claim” is “secured” (as such terms are defined under the Bankruptcy Code) is determined by a court of competent jurisdiction not to include a Person to whom obligations are owed on a joint or joint and several basis, then Company’s Obligations (and the Obligations of each other Note Party), to the extent such Obligations are secured, shall be several obligations and not joint or joint and several obligations.

10.25 Day Not A Business Day.

In the event that any day on or before which any action, calculation, determination or allocation is required to be taken hereunder is not a Business Day, then such action, calculation, determination or allocation shall be required to be taken at the requisite time on or before the first succeeding day that is a Business Day thereafter, unless such day is in the next calendar month, in which case such action, calculation, determination or allocation shall be required to be taken at the requisite time on the first preceding day that is a Business Day.

10.26 Electronic Execution of Assignments.

The words “execution,” “signed,” “signature,” and words of like import in any Assignment Agreement shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or other similar laws based on the Uniform Electronic Transactions Act.

10.27 No Fiduciary Duty.

Agent, each Purchaser and their Affiliates (collectively, solely for purposes of this paragraph, the “**Purchasers**”), may have economic interests that conflict with those of the Note Parties, Limited Guarantor and Personal Guarantor. Each Note Party agrees that nothing in the Note Documents or otherwise will be deemed to create an advisory, fiduciary or agency relationship or fiduciary or other implied duty between Purchasers and any Note Party, Limited Guarantor or Personal Guarantor, its stockholders or its affiliates. Each Note Party, Limited Guarantor and Personal Guarantor acknowledges and agrees that (i) the transactions contemplated by the Note Documents are arm’s-length commercial transactions between Purchasers, on the one hand, and the Note Parties, Limited Guarantor and Personal Guarantor, on the other, (ii) in connection therewith and with the process leading to such transaction each Purchaser is acting solely as a principal and not the agent or fiduciary of any Note Party, Limited Guarantor or Personal Guarantor, its management, stockholders, creditors or any other person, (iii) no Purchaser has assumed an advisory or fiduciary responsibility in favor of any Note Party, Limited Guarantor or Personal Guarantor with respect to the transactions contemplated hereby or the process leading thereto (irrespective of whether any Purchaser or any of its affiliates has advised or is currently advising any Note Party, Limited Guarantor or Personal Guarantor on other matters) or any other obligation to any Note Party except the obligations expressly set forth in the Note Documents and (iv) each Note Party, Limited Guarantor and Personal Guarantor has consulted its own legal and financial advisors to the extent it deemed appropriate. Each Note Party, Limited Guarantor and Personal Guarantor further acknowledges and agrees that it is responsible for making its own independent judgment with respect to such transactions and the process leading thereto. Each Note Party, Limited Guarantor and Personal Guarantor agrees that it will not claim that any Purchaser has rendered advisory services of any nature or respect, or owes a fiduciary or similar duty to any Note Party, Limited Guarantor or Personal Guarantor, in connection with such transaction or the process leading thereto.

10.28 Time.

Time is of the essence in all respects hereof.

10.29 Limitations Act, 2002.

Each of the parties hereto agree that any and all limitation periods provided for in the *Limitations Act, 2002* (Ontario) shall be excluded from application to the Obligations and any undertaking, covenant, indemnity or other agreement of any Note Party, Limited Guarantor or Personal

Guarantor provided for in any Note Document to which it is a party in respect thereof, in each case to fullest extent permitted by such Act.

10.30 Highest Lawful Rate.

It is the intention of the parties hereto that Agent and each Purchaser shall conform strictly to usury laws applicable to it. Accordingly, if the transactions contemplated hereby or by any other Note Document would be usurious as to Agent or any Purchaser under laws applicable to it (including the laws of the United States of America and the State of New York or any other jurisdiction whose laws may be mandatorily applicable to Agent or such Purchaser notwithstanding the other provisions of this Agreement), then, in that event, notwithstanding anything to the contrary in this Agreement or any other Note Document or any agreement entered into in connection with or as security for the Obligations, it is agreed as follows: (i) the aggregate of all consideration which constitutes interest under law applicable to Agent or any Purchaser that is contracted for, taken, reserved, charged or received by Agent or such Purchaser under this Agreement or any other Note Document or agreements or otherwise in connection with the Obligations shall under no circumstances exceed the maximum amount allowed by such applicable law, any excess shall be canceled automatically and if theretofore paid shall be credited by Agent or such Purchaser on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by Agent or such Purchaser, as applicable, to Company); and (ii) in the event that the maturity of the Obligations is accelerated by reason of any Event of Default under this Agreement or otherwise, or in the event of any required or permitted prepayment, then such consideration that constitutes interest under law applicable to Agent or any Purchaser may never include more than the maximum amount allowed by such applicable law, and excess interest, if any, provided for in this Agreement or otherwise shall, subject to the last sentence of this Section, be canceled automatically by Agent or such Purchaser, as applicable, as of the date of such acceleration or prepayment and, if theretofore paid, shall be credited by Agent or such Purchaser, as applicable, on the principal amount of the Obligations (or, to the extent that the principal amount of the Obligations shall have been or would thereby be paid in full, refunded by Agent or such Purchaser to Company). All sums paid or agreed to be paid to Agent or any Purchaser for the use, forbearance or detention of sums due hereunder shall, to the extent permitted by law applicable to Agent or such Purchaser, be amortized, prorated, allocated and spread throughout the full term of the Notes until payment in full so that the rate or amount of interest on account of any Notes hereunder does not exceed the maximum amount allowed by such applicable law. If at any time and from time to time (x) the amount of interest payable to Agent or any Purchaser on any date shall be computed at the Highest Lawful Rate applicable to Agent or such Purchaser pursuant to this Section and (y) in respect of any subsequent interest computation period the amount of interest otherwise payable to Agent or such Purchaser would be less than the amount of interest payable to Agent or such Purchaser computed at the Highest Lawful Rate applicable to Agent or such Purchaser, then the amount of interest payable to Agent or such Purchaser in respect of such subsequent interest computation period shall continue to be computed at the Highest Lawful Rate applicable to Agent or such Purchaser until the total amount of interest payable to Agent or such Purchaser shall equal the total amount of interest which would have been payable to Agent or such Purchaser if the total amount of interest had been computed without giving effect to this Section.

For purposes of this Section, the term “applicable law” shall mean that law in effect from time to time and applicable to the transactions between Company, on the one hand, and Agent and Purchasers, on the other, that lawfully permits the charging and collection of the highest permissible, lawful non-usurious rate of interest on such transactions and this Agreement, including laws of the State of New York and, to the extent controlling, laws of the United States of America and the laws of Canada or any other jurisdiction from time to time where a Note Party may be incorporate, formed or otherwise constituted.

10.31 Waiver of Immunity.

To the extent that any Note Party has or hereafter may acquire (or may be attributed, whether or not claimed) any immunity (sovereign or otherwise) from any legal action, suit or proceeding, from jurisdiction of any court or from set-off or any legal process (whether service of process or notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) with respect to itself or any of its property, such Note Party hereby irrevocably waives and agrees not to plead or claim, to the fullest extent permitted by law, such immunity in respect of (a) its obligations under the Note Documents, (b) any legal proceedings to enforce such obligations and (c) any legal proceedings to enforce any judgment rendered in any proceedings to enforce such obligations. Each Note Party hereby agrees that the waivers set forth in this Section shall be to the full extent permitted under the Foreign Sovereign Immunities Act and are intended to be irrevocable for purposes of the Foreign Sovereign Immunities Act.

10.32 Hypothecary Representative.

For greater certainty and without limiting the power of Agent hereunder or under any other Note Document, Agent and each Purchaser hereby appoints and authorizes HPS to act as hypothecary representative within the meaning of Article 2692 of the Civil Code of Quebec (in such capacity, the “**Hypothecary Representative**”) of Agent and Purchasers for the purposes of holding any security granted by any Note Party pursuant to the laws of the Province of Quebec and to exercise such rights and duties as are conferred upon the Hypothecary Representative thereunder and under applicable laws (with the power to delegate any such rights and duties as appropriate). HPS, Agent and each Purchaser hereby confirms and agrees to such appointment and each Person who is or becomes an Agent or a Purchaser hereunder (including by its execution of an assignment and assumption agreement) shall be deemed to have consented to and ratified the foregoing appointment of the Hypothecary Representative and to have ratified all actions taken by the Hypothecary Representative prior to such date. For greater certainty, the Hypothecary Representative shall have the same rights, powers, immunities, indemnities and exclusions from liability as are prescribed in favor of Agent in this Agreement, which shall apply *mutadis mutandis*. In the event of the resignation and appointment of a successor Agent (which shall include its resignation as Hypothecary Representative), such successor Agent shall also act as the Hypothecary Representative unless and until a successor hypothecary representative is otherwise appointed.

10.33 No Novation; Continued Effectiveness of Note Purchase Agreement and other Note Documents.

Notwithstanding anything to the contrary contained herein, this Agreement shall not extinguish the obligations for the payment of money outstanding under the Original Note Purchase Agreement and Amended and Restated Note Purchase Agreement or discharge or release the Lien or priority of any Collateral Document or any other security therefor. Nothing herein contained shall be construed as a substitution or novation of the obligations outstanding under the Original Note Purchase Agreement and Amended and Restated Note Purchase Agreement or instruments securing the same, which shall remain in full force and effect, except to any extent modified hereby or by instruments executed concurrently herewith and except to the extent repaid as provided herein. Nothing implied in this Agreement or in any other document contemplated hereby shall be construed as a release or other discharge of any of the Note Parties under any Note Document from any of its obligations and liabilities as Company, Limited Guarantor, Personal Guarantor, Guarantor or pledgor under any of the Note Documents.

Each Note Party, Limited Guarantor and Personal Guarantor hereby (a) confirms and agrees that this Agreement and each other Note Document to which it is a party is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects except that on and after the Second Additional Closing Date all references in any such Note Document to the “Note Purchase Agreement,” the “Agreement,” “thereto,” “thereof,” “thereunder” or words of like import referring to the Note Purchase Agreement shall mean the Amended and Restated Purchase Agreement as amended by this Agreement, and (b) confirms and agrees that to the extent that any such Note Document purports to assign or pledge to Agent for the benefit of the Secured Parties, or to grant to Agent for the benefit of the Secured Parties a security interest in or Lien on, any Collateral as security for the Obligations or Guaranteed Obligations, as the case may be, of any Note Party from time to time existing in respect of the Amended and Restated Note Purchase Agreement (as amended hereby) and the other Note Documents, such pledge, assignment and/or grant of the security interest or Lien is hereby ratified and confirmed in all respects. This Agreement does not and shall not affect any of the obligations of any Note Party, other than as expressly provided herein, including, without limitation, Company’s obligation to repay the Notes in accordance with the terms of this Agreement, or the obligations of any other Note Party under any Note Document to which it is a party, all of which obligations shall remain in full force and effect. Except as expressly provided herein, the execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of Agent or any Purchaser under this Agreement or any other Note Document, nor constitute a waiver of any provision of this Agreement or any other Note Document.

[Remainder of page intentionally left blank]

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

HOLDINGS:

CVI HOLDINGS INC.

By: _____

Name:

Title:

NOTE PARTIES:

CFFI TELECOMMUNICATIONS HOLDINGS LTD.

By: _____
Name: Nanci Rorabeck
Title: Assistant Secretary

CFFI UK VENTURES (BARBADOS) LTD.

By: _____
Name:
Title:

CFFI VENTURES INC.

By: _____
Name: Nanci Rorabeck
Title: Assistant Secretary

BIOX HOLDINGS, LLC

By: _____
Name:
Title:

FP RESOURCES LIMITED

By: _____
Name:
Title:

BIOX USA LIMITED

By: _____
Name:
Title:

LIMITED GUARANTOR:

**HORIZON MARITIME HOLDINGS
LTD.**

By: _____
Name:
Title:

PERSONAL GUARANTOR:

SIGNED, SEALED & DELIVERED
In the presence of:

Witness



John C. Risley

AGENT AND LEAD ARRANGER:

HPS INVESTMENT PARTNERS LLC,
as Agent and Lead Arranger

By: _____
Name:
Title:

PURCHASERS:

Mezzanine Partners III, L.P.

By: HPS Mezzanine Management III, LLC, as investment manager

By: HPS Investment Partners, LLC, its sole and managing member

Name:

Title:

MP III Offshore Master Lux, L.P.

By: HPS Mezzanine Management III, LLC, as investment manager

By: HPS Investment Partners, LLC, its sole and managing member

Name:

Title:

AP Mezzanine Partners III, L.P.

By: HPS Mezzanine Management III, LLC, as investment manager

By: HPS Investment Partners, LLC, its sole and managing member

Name:

Title:

**APPENDIX A
TO NOTE PURCHASE AND GUARANTEE AGREEMENT**

Note Commitments

Purchaser	Initial Note Commitment	Additional Note Commitment	Second Additional Note Commitment	Cognition Note Commitment	<u>Third Additional Note Commitment</u>	Pro Rata Share
MP III Offshore Master Lux, L.P.	\$99,434,870.09	\$33,144,956.70	\$33,144,957.00	\$3,314,495.67	<u>\$4,971,743.51</u>	66.290%
Mezzanine Partners III, L.P.	\$42,923,764.65	\$14,307,921.55	\$14,307,921.00	\$1,430,792.15	<u>\$2,146,188.22</u>	28.616%
AP Mezzanine Partners III L.P.	\$7,641,365.26	\$2,547,121.75	\$2,547,122.00	\$254,712.18	<u>\$382,068.27</u>	5.094%
Total	\$150,000,000	\$50,000,000	\$50,000,000	\$5,000,000	<u>\$7,500,000</u>	100%

**APPENDIX B
TO NOTE PURCHASE AND GUARANTEE AGREEMENT**

Notice Addresses

COMPANY OR NOTE PARTIES:

CFFI Ventures Inc.
757 Bedford Highway
Bedford, Nova Scotia
B4A 3Z7

Attention: Stan Spavold
Email: sspavold@cffi.com

With a copy to:

McInnes Cooper
1300-1969 Upper Water Street
Halifax, Nova Scotia
B3J 2V1

Attention: Ben Pryde
Email: ben.pryde@mcinnescooper.com

LIMITED GUARANTOR:

Horizon Maritime Holdings Ltd.
101 Research Drive, Main Floor
Dartmouth, NS B2Y 4T6

Attention: Sean Leet
Email: sean.leet@horizonmaritime.com

With a copy to:

McInnes Cooper
1300-1969 Upper Water Street
Halifax, Nova Scotia
B3J 2V1

Attention: Ben Pryde
Email: ben.pryde@mcinnescooper.com

PERSONAL GUARANTOR:

John C. Risley
757 Bedford Highway
Bedford, Nova Scotia
B4A 3Z7

Email: jrisley@cffi.com

With a copy to:

McInnes Cooper
1300-1969 Upper Water Street
Halifax, Nova Scotia
B3J 2V1

Attention: Ben Pryde
Email: ben.pryde@mcinnescooper.com

AGENT, LEAD ARRANGER OR ANY PURCHASER:

HPS Investment Partners LLC
40 West 57th Street
New York, New York 10019

Attention: Shant Babikian
Email: shant.babikian@hpspartners.com

With a copy to:

Schulte Roth & Zabel LLP
919 Third Avenue
New York, New York 10022

Attention: Michael M. Mezzacappa
Email: michael.mezzacappa@srz.com

SCHEDULE 5.16

POST CLOSING MATTERS

Nil.

Summary report:	
Litera® Change-Pro for Word 10.8.1.6 Document comparison done on 8/10/2020 9:59:49 PM	
Style name: Standard - Color	
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Changes:	
Add	276
Delete	227
Move From	2
Move To	2
Table Insert	5
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	512

APPENDIX “G”

[ATTACHED]

THIRD AMENDED AND RESTATED CALL OPTION AGREEMENT

by and between

CFFI VENTURES INC.

and

CFFI HOLDINGS S. À R.L.

Dated as of August 11, 2020

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Exhibit

Exhibit A Investments

THIRD AMENDED AND RESTATED CALL OPTION AGREEMENT

This THIRD AMENDED AND RESTATED CALL OPTION AGREEMENT (this “**Agreement**”), dated as of August 11, 2020 (the “**Effective Date**”), is made and entered into by and between CFFI Ventures Inc. (“**Ventures**”) and CFFI Holdings S. à r.l. (“**HPS**”). Ventures and HPS are referred to herein as, collectively, the “**Parties**”, and each, a “**Party**”. Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in Section 1.01.

WHEREAS, Ventures and HPS are party to that certain Call Option Agreement (the “**Original Agreement**”), dated as of October 23, 2017 (the “**Original Effective Date**”), which Original Agreement was amended and restated by that certain Amended and Restated Call Option Agreement (the “**A&R Agreement**”), dated as of March 16, 2018 (the “**A&R Effective Date**”), which A&R Agreement was amended and restated by that certain Second Amended and Restated Call Option Agreement (the “**2nd A&R Agreement**”), dated as of April 25, 2019 (the “**2nd A&R Effective Date**”);

WHEREAS, (a) as of the Original Effective Date, Ventures held, directly and/or indirectly, the Original Investments, (b) as of the A&R Effective Date, Ventures held, directly and/or indirectly, the Original Investments and the A&R Investment, (c) as of the 2nd Effective Date, Ventures holds, directly and/or indirectly, the Second A&R Investments, (d) as of the Effective Date, Ventures holds, directly and/or indirectly, the Current Investments, and (e) as of each Future Investment Date, will hold, directly and/or indirectly, the applicable Future Investment(s);

WHEREAS, (a) pursuant to the Original Agreement, Ventures granted to HPS, and HPS accepted from Ventures, certain options, on the terms and subject to the conditions set forth therein, (b) pursuant to the A&R Agreement, Ventures granted to HPS, and HPS accepted from Ventures, certain additional options, on the terms and subject to the conditions set forth therein, and (c) pursuant to the 2nd A&R Agreement, Ventures granted to HPS, and HPS accepted from Ventures, certain additional options, on the terms and subject to the conditions set forth therein; and

WHEREAS, each of the Parties wishes to amend and restate the 2nd A&R Agreement on the terms and subject to the conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS AND CONSTRUCTION

Section 1.01 Definitions.

(a) Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Note Purchase Agreement.

(b) When used herein, the following terms shall have the meanings set forth below:

“**2nd A&R Investments**” means the Current Investments contemplated by the 2nd A&R Agreement, other than the Original Investments and the A&R Investments.

“**2nd A&R Agreement**” has the meaning set forth in the Recitals.

“**2nd A&R Effective Date**” has the meaning set forth in the Recitals.

“**A&R Agreement**” has the meaning set forth in the Recitals.

“**A&R Effective Date**” has the meaning set forth in the Recitals.

“**A&R Investments**” means the Current Investments contemplated by the A&R Agreement, other than the Original Investments.

“**Additional Investment**” has the meaning set forth in Section 2.04(b).

“**Additional Investment Date**” has the meaning set forth in Section 2.04(b).

“**Affiliate**” means, with respect to any particular Person, any other Person controlling, controlled by or under common control with such particular Person, and “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“**Aggregate HPS Return Amount**” means (a) the aggregate Fair Market Value of the Call Option Interests received by HPS in connection with each Call Option settled in accordance with Section 2.03(d), if any (which, for purposes of this clause (a), the Fair Market Value of any Call Option Interests shall be determined as of the Call Option Settlement Date on which HPS received such Call Option Interests), *plus* (b) the aggregate amount of HPS Proceeds received by HPS in connection with all Call Options settled in accordance with Section 2.03(e), if any. Notwithstanding anything to the contrary set forth herein, HPS Proceeds shall be calculated in accordance with the immediately preceding sentence and finally determined in accordance with ARTICLE III.

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

“**Applicable Proceeds**” means, with respect to each Investment, an amount equal to the Gross Proceeds with respect such Investment, *multiplied by* the HPS Percentage of such Investment. Notwithstanding anything to the contrary set forth herein, Applicable Proceeds shall be calculated in accordance with the immediately preceding sentence and finally determined in accordance with ARTICLE III.

“**Bankruptcy Code**” means the United States Bankruptcy Code (11 U.S.C. § 101, *et. seq.*), as amended.

“Business Day” means any day other than Saturday, Sunday, any day that is a legal holiday under the laws of the Province of Ontario, the Province of Nova Scotia or the State of New York, or is a day on which banking institutions located in such jurisdictions are authorized or required by law or other governmental action to close.

“Call Option” and **“Call Options”** have the meanings set forth in Section 2.01(b).

“Call Option Interests” means (a) with respect to the RP Call Option, a number or amount, as applicable, of Interests of the RP Investments equal to 30.00% of the Ventures Interests of the RP Investments, and (b) with respect to each other Call Option, a number or amount, as applicable, of Interests of the applicable Investment equal to 20.00% of the Ventures Interests of such Investment.

“Call Option Purchase Price” means, with respect to each Call Option, the amount set forth across from the applicable Investment on Exhibit A under the column heading *“Call Option Purchase Price”*, as may be adjusted or supplemented from time to time pursuant to the terms of this Agreement.

“Call Option Settlement Date” has the meaning set forth in Section 2.03(c).

“CoC” means HPS’s cash-on-cash return with respect to the transactions contemplated by the Note Purchase Agreement and this Agreement, as calculated by HPS, in its sole discretion.

“Current Investment” means each direct and/or indirect investment of Ventures as of the Effective Date set forth on Exhibit A.

“Current Investment Call Option” and **“Current Investment Call Options”** have the meanings set forth in Section 2.01(a).

“Disputed Item” has the meaning set forth in Section 3.01.

“Distribution Notice” has the meaning set forth in Section 2.05(a).

“Effective Date” has the meaning set forth in the Preamble.

“Excess Amount” means the amount, if any, by which the Aggregate HPS Return Amount exceeds the Maximum HPS Return Amount.

“Exercise Notice” has the meaning set forth in Section 2.03(a).

“Exercise Period” means, with respect to each Call Option, the Liquidity Event Exercise Period or the Note Termination Exercise Period, as applicable.

“Expiration Date” means, with respect to each Call Option, the day following the last day of the Exercise Period.

“**Fair Market Value**” means fair market value as finally determined in accordance with ARTICLE III.

“**Follow-On Investment**” means, with respect to each Current Investment, any direct or indirect acquisition by Ventures of additional Interests of such Current Investment on or after the Effective Date.

“**Follow-On Investment Date**” has the meaning set forth in Section 2.04(a)(ii).

“**Follow-On Notice**” has the meaning set forth in Section 2.04(a)(i).

“**Future Investment**” means each Follow-On Investment and each Additional Investment, as applicable.

“**Future Investment Call Option**” and “**Future Investment Call Options**” have the meanings set forth in Section 2.01(b).

“**Future Investment Date**” means each Follow-On Investment Date and each Additional Investment Date, as applicable.

“**Gross Proceeds**” means (a) with respect to any Current Investment and any Follow-On Investment, an amount equal to (i) the amount of proceeds Ventures (or any of its Affiliates) receives, or is entitled to receive, upon a Liquidity Event in respect of such Current Investment and, if applicable, such Follow-On Investment, or (ii) the Fair Market Value, as of the Note Termination Date, of the Ventures Interests (in the aggregate) of such Current Investment and, if applicable, such Follow-On Investment, and (b) with respect to any Additional Investment, (i)(A) the amount of proceeds Ventures (or any of its Affiliates) receives or is entitled to receive upon a Liquidity Event in respect of such Additional Investment, or (B) the Fair Market Value, as of the Note Termination Date, of the Ventures Interests of such Additional Investment, *multiplied by* (ii) a fraction, the numerator of which equals the aggregate amount of the Retained Gross Proceeds that is invested, directly or indirectly, in such Additional Investment by Ventures pursuant to Section 2.04(b), and the denominator of which equals *the sum of* (A) the total amount invested, directly or indirectly, in such Additional Investment by Ventures, *and* (B) any outside capital invested in such Additional Investment. For purposes of the immediately preceding sentence, in the event of a Liquidity Event involving the direct or indirect disposition by Ventures of a portion (and not all) of the applicable Ventures Interests, Gross Proceeds shall be calculated using the amount of proceeds Ventures (or any of its Affiliates) would have been entitled to receive upon the disposition of all of the applicable Ventures Interests upon the same terms as the terms of such Liquidity Event. Notwithstanding anything to the contrary set forth herein, Gross Proceeds shall be calculated in accordance with the two immediately preceding sentences and finally determined in accordance with ARTICLE III.

“**HPS**” has the meaning set forth in the Preamble.

“**HPS Percentage**” means (a) with respect to the RP Investments, 30.00%, and (b) with respect to any other Investment, 20.00%.

“**HPS Proceeds**” means, with respect to each Investment, an amount equal to the Applicable Proceeds of such Investment, *minus* the applicable Call Option Purchase Price; *provided, however*, that, notwithstanding the foregoing, if the calculation of HPS Proceeds pursuant to this sentence (but for this proviso) results in a negative number, the HPS Proceeds with respect to such Investment shall be an amount equal \$0.00 for all purposes under this Agreement. Notwithstanding anything to the contrary set forth herein, HPS Proceeds shall be calculated in accordance with the immediately preceding sentence and finally determined in accordance with ARTICLE III.

“**Independent Firm**” means an accounting firm, appraisal firm, investment banking firm or consultant of nationally recognized standing that is qualified to perform the valuation, calculation or other determination that is the subject of its engagement and that is disinterested with respect to the applicable engagement (which such engagement shall be at Company’s expense) selected according to the following methodology: (a) Company shall select an appraiser that, in the good faith judgment of Company, meets the criteria set forth in this definition (the “**Ventures Selected Firm**”), which Ventures Selected Firm Agent may approve or decline in its good faith judgment, (b) in the event Agent declines the Ventures Selected Firm pursuant to clause (a) of this sentence, Agent shall select an appraiser that, in the good faith judgment of Agent, meets the criteria set forth in this definition (the “**HPS Selected Firm**”), which HPS Selected Firm Company may approve or decline in its good faith judgment, and (c) in the event that Company declines the HPS Selected Firm as the appraiser pursuant to clause (b) of this sentence, the Ventures Selected Firm and the HPS Selected Firm shall mutually select a third-party appraiser that meets the criteria set forth in this definition to perform the applicable engagement, which selection shall be final, conclusive, non-appealable and binding for all purposes hereunder (or, if the Ventures Selected Firm and the HPS Select Firm cannot or do not so select such a third party appraiser reasonably promptly, Company and Agent shall mutually agree upon a third party appraiser that meets the criteria set forth in this definition to perform the applicable engagement).

“**Interests**” means (a) any shares, interests, participations or other equivalents (however designated) of capital stock of a corporation, (b) any ownership interests in a Person other than a corporation, including units, membership interests, partnership interests, joint venture interests and beneficial interests, and (c) any warrants, options, convertible or exchangeable securities, subscriptions, rights (including any preemptive or similar rights), calls or other rights to purchase or acquire any of the foregoing.

“**Interests Change Notice**” has the meaning set forth in Section 2.06.

“**Interests Change Objection**” has the meaning set forth in Section 2.06.

“**Investment**” means each Current Investment, each Follow-On Investment, and each Additional Investment, as applicable.

“**IRR**” means HPS’s internal rate of return with respect to the transactions contemplated by the Note Purchase Agreement and this Agreement, as calculated by HPS in its sole discretion.

“Liquidity Event” means, (a) with respect to the RP Investments, the sale of all or substantially all of the assets of Rockport, (ii) the disposition of (A) any of the Ventures Interests of the RP Investment, or (B) any of the Interests of Rockport held by NPC Fund I, or (iii) any other liquidity event resulting in the receipt, directly and/or indirectly, by Ventures (or any of its Affiliates, including NPC Fund I) or of proceeds in respect of the RP Investment Investment, and (b) with respect to any other Investment, (i) the sale of all or substantially all of the assets of such Investment, (ii) the disposition of any of the Ventures Interests of such Investment, or (iii) any other liquidity event resulting in the receipt, directly and/or indirectly, by Ventures (or any of its Affiliates) of proceeds in respect of such Investment.

“Liquidity Event Date” means, with respect to any Investment, the date on which a Liquidity Event with respect to such Investment, if any, shall occur.

“Liquidity Event Notice” means, with respect to each Investment, a written notice delivered by Ventures to HPS within three Business Days following the date that Ventures or any of its Affiliates first becomes aware of a potential Liquidity Event. Each Liquidity Event Notice shall include (a) the name of the applicable Investment, (b) the anticipated date of such Liquidity Event, (c) the amount of proceeds Ventures and/or any of its Affiliates is entitled to receive in connection with such Liquidity Event (or, if not known at the time such Liquidity Event Notice must be delivered, a reasonable estimate thereof), and (d) the anticipated date of the receipt of such proceeds.

“Liquidity Event Exercise Period” means, with respect to each Call Option, the 10-Business Day period beginning on the receipt by HPS of a Liquidity Event Notice in respect of the applicable Investment.

“Maximum HPS Return Amount” means an amount of value received (whether in cash or kind) by HPS hereunder (excluding any value received in respect of the RP Investments) and under the Note Purchase Agreement (excluding any value received in respect of the RP Notes) that would result in an IRR of 24.00% following the payment of all amounts owing under the Note Purchase Agreement (other than in respect of the RP Notes) and the settlement of all Call Options (other than the RP Options) exercised pursuant to and in accordance with Section 2.03.

“Minimum HPS Return Amount” means an amount of value received (whether in cash or kind) by HPS hereunder (excluding any value received in respect of the RP Investments) and under the Note Purchase Agreement (excluding any value received in respect of the RP Notes) that would result in the greater of (a) an IRR of 16.00% and (b) a CoC of 1.5x following the payment of all amounts owing under the Note Purchase Agreement (other than in respect of the RP Notes) and the settlement of all Call Options (other than the RP Options) exercised pursuant to and in accordance with Section 2.03.

“Note Purchase Agreement” means that certain Second Amended and Restated Note Purchase and Guarantee Agreement, dated as of April 25, 2019 (as amended by that certain Amendment No. 1, dated as of November 15, 2019, that certain Amendment No. 2, dated as of August 11, 2020 and as may be further amended, restated, supplemented or otherwise modified from time to time), by and among Ventures, certain Affiliates of Ventures, as Guarantors,

Limited Guarantor or Personal Guarantor, the Purchasers party thereto from time to time, and HPS Investment Partners LLC, as Agent and Lead Arranger.

“**Note Repayment Notice**” shall have the meaning set forth in Section 6.03(b).

“**Note Termination Exercise Period**” means the 10-Business Day period beginning on the date on which Ventures validly delivers to HPS the Note Repayment Notice.

“**Note Termination Date**” means the earlier to occur of (a) the date that the Notes have been repaid in full and the Note Purchase Agreement has been terminated, in each case, pursuant to the terms and subject to the conditions set forth in the Note Purchase Agreement, or (b) the termination of the Note Purchase Agreement in accordance with Section 8.1 thereof.

“**Notes**” means notes issued by Ventures pursuant to the Note Purchase Agreement.

“**NPC Fund I**” means Northern Private Capital Fund I Limited Partnership.

“**NPC Fund I LPA**” means that certain Amended and Restated Limited Partnership Agreement of NPC Fund I, dated as of April 15, 2019, as amended, supplement or otherwise modified from time to time.

“**Organizational Documents**” means (a) the articles or certificate of incorporation and the bylaws of a corporation, (b) the partnership agreement and any statement of partnership of a general partnership, (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership, (d) the limited liability company operating agreement and the certificate of formation of a limited liability company, (e) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person, and (f) any amendment or supplement to any of the foregoing.

“**Original Agreement**” has the meaning set forth in the Recitals.

“**Original Effective Date**” has the meaning set forth in the Recitals.

“**Original Investments**” means the Current Investments contemplated by the Original Agreement.

“**Participation Agreements**” has the meaning set forth in Section 4.04.

“**Party**” and “**Parties**” have the meanings set forth in the Preamble.

“**Person**” means any individual, corporation, partnership, joint venture or enterprise, limited liability company, unincorporated association, trust, estate, governmental entity or other entity or organization, and shall include the successor (by merger or otherwise) of any entity or organization.

“**Retained Gross Proceeds**” means, (a) with respect to any Current Investment or any Follow-On Investment, as applicable, an amount equal to (i) the Gross Proceeds from such

Current Investment or such Follow-On Investment, as applicable, *multiplied by* (ii) the Retention Percentage of such Current Investment, and (b) with respect to any Additional Investment, an amount equal to (i)(A) the Gross Proceeds from such Additional Investment, *multiplied by* (B) a fraction, (1) the numerator of which equals the aggregate amount of Retained Gross Proceeds that resulted from a Liquidity Event in respect of any applicable prior Investment that is invested in such Additional Investment, directly or indirectly, by Ventures pursuant to Section 2.04(b), and (2) the denominator of which equals *the sum of* (I) the total amount invested, directly or indirectly, in such Additional Investment by Ventures, *and* (II) any outside capital invested in such Additional Investment, *multiplied by* (ii) the Retention Percentage of such Additional Investment. Notwithstanding anything to the contrary set forth herein, Retained Gross Proceeds shall be calculated in accordance with the immediately preceding sentence and finally determined in accordance with ARTICLE III.

“**Retention Percentage**” means, with respect to any Investment, (a) 100.00% minus (b) the HPS Percentage of such Investment.

“**Shortfall Amount**” means the amount, if any, by which the Minimum HPS Return Amount exceeds the Aggregate HPS Return Amount.

“**Rockport**” means Rockport Investment Inc., in its capacity as a Portfolio Company (as defined in NPC Fund I LPA) of NPC Fund I.

“**RP Call Option**” means the Call Option in respect of the Ventures Interests associated with the RP Investments.

“**RP GP Investment**” has the meaning set forth on Exhibit A.

“**RP Investments**” means, collectively, the RP LP Investment and the RP GP Investment.

“**RP LP Investment**” has the meaning set forth on Exhibit A.

“**RP Notes**” means the portion of the Third Additional Notes the proceeds of which are used, directly or indirectly, to fund the RP Investments

“**Subsidiary**” means, with respect to any Person, any corporation, company, partnership, limited liability company, unlimited liability company, association, joint venture or other business entity of which more than 50% of the total voting power of shares of stock or other ownership interests entitled (without regard to the occurrence of any contingency) to vote in the election of the Person or Persons (whether directors, managers, trustees or other Persons performing similar functions) having the power to direct or cause the direction of the management and policies thereof is at the time owned or controlled, directly or indirectly, legally or beneficially, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof; *provided* that, in determining the percentage of ownership interests of any Person controlled by another Person, no ownership interest in the nature of a “qualifying share” of the former Person shall be deemed to be outstanding.

“**Taxes**” has the meaning set forth in Section 6.02.

“**Ventures**” has the meaning set forth in the Preamble.

“**Ventures Interests**” means, (a) with respect to each Current Investment, the number or amount, as applicable, of Interests of such Current Investment held by Ventures as of the Effective Date and set forth across from such Current Investment on Exhibit A under the column heading “*Ventures Interests*”, as such number or amount, as applicable, may be adjusted pursuant to this Agreement, (b) with respect to each Follow-On Investment, the number or amount, as applicable, of Interests of such Follow-On Investment held by Ventures as of the applicable Follow-On Investment Date, which shall be set forth across from such Follow-On Investment on Exhibit A under the column heading “*Ventures Interests*” pursuant to Section 2.04(a), as such number or amount, as applicable, may be adjusted pursuant to this Agreement, and (c) with respect to each Additional Investment, the number or amount, as applicable, of Interests of such Additional Investment held by Ventures as of the applicable Additional Investment Date, which shall be set forth across from such Additional Investment on Exhibit A under the column heading “*Ventures Interests*” pursuant to Section 2.04(b), as such number or amount, as applicable, may be adjusted pursuant to this Agreement.

Section 1.02 Interpretation and Rules of Construction. In this Agreement, except to the extent otherwise provided or that the context otherwise requires: (a) when a reference is made in this Agreement to an Article, Section, or Exhibit, such reference is to an Article or Section of, or an Exhibit to, this Agreement; (b) the table of contents and headings for this Agreement are for reference purposes only and do 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 are deemed to be followed by the words “without limitation”; (d) the words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement; (e) no rule of construction against the draftsperson shall be applied in connection with the interpretation or enforcement of this Agreement, as this Agreement is the product of negotiation between sophisticated parties advised by competent counsel and embodies the justifiable expectations of sophisticated parties derived from arms’-length negotiations; and (f) the word “day”, unless otherwise indicated, shall be deemed to refer to a calendar day, and if the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action shall be extended to the next succeeding Business Day.

ARTICLE II

CALL OPTIONS

Section 2.01 Call Options.

(a) *Current Investments*. Upon the terms and subject to the conditions set forth in the Original Agreement, the A&R Agreement, the 2nd A&R Agreement, and this Agreement, effective as of the date set forth across from such Investment on Exhibit A under the column heading “*Issuance Date*”, Ventures hereby grants, or shall have granted, to HPS, and HPS hereby accepts, or shall have accepted, from Ventures, an irrevocable option (which each such option remains outstanding and is unexercised as of the Effective Date) (each, a “**Current**

Investment Call Option”, and collectively, the “**Current Investment Call Options**”), exercisable in accordance with Section 2.03, to purchase the applicable Call Option Interests.

(b) *Future Investments.* Upon the terms and subject to the conditions set forth in this Agreement, with respect to each Future Investment, effective as of the applicable Future Investment Date, Ventures shall grant to HPS, and HPS shall accept from Ventures (in each case, with no further action required by any of the Parties), an irrevocable option (each, an “**Future Investment Call Option**”, and collectively, the “**Future Investment Call Options**”, and collectively with the Current Investment Call Options, the “**Call Options**”, and each, a “**Call Option**”), exercisable in accordance with Section 2.03, to purchase the applicable Call Option Interests.

Section 2.02 Treatment and Allocation of Notes.

(a) Solely for U.S. federal income tax purposes, Ventures and HPS have agreed that (i) the Initial Notes issued under the Note Purchase Agreement are treated under Treasury Regulation Section 1.1273-2(h) as an investment unit consisting of the Initial Notes and the Call Options granted to HPS under the Original Agreement; (ii) \$142,875,000 of the principal amount of the Initial Notes was allocated to the Initial Notes and the remaining \$7,125,000 of the principal amount of the Initial Notes was allocated to the Call Options granted to HPS under the Original Agreement in accordance with Treasury Regulation Section 1.1273-2(h)(1); and (iii) each of Ventures and HPS have filed and will file all U.S. federal income tax returns in a manner consistent with the foregoing allocation.

(b) Solely for U.S. federal income tax purposes, Ventures and HPS have agreed that (i) the Additional Notes issued under the Note Purchase Agreement are treated under Treasury Regulation Section 1.1273-2(h) as an investment unit consisting of the Additional Notes and the Call Options granted to HPS under the A&R Agreement; (ii) \$47,750,000 of the principal amount of the Additional Notes was allocated to the Additional Notes and the remaining \$2,375,000 of the principal amount of the Additional Notes was allocated to the Call Options granted to HPS under the A&R Agreement in accordance with Treasury Regulation Section 1.1273-2(h)(1); and (iii) each of Ventures and HPS have filed and will file all U.S. federal income tax returns in a manner consistent with the foregoing allocation.

(c) Solely for U.S. federal income tax purposes, Ventures and HPS have agreed that (i) the Second Additional Notes issued under the Note Purchase Agreement are treated under Treasury Regulation Section 1.1273-2(h) as an investment unit consisting of the Second Additional Notes and the Call Options granted to HPS under the 2nd A&R Agreement; (ii) \$49,090,000 of the principal amount of the Second Additional Notes will be allocated to the Second Additional Notes and the remaining \$910,000 of the principal amount of the Second Additional Notes will be allocated to the Call Options granted to HPS under the 2nd A&R Agreement in accordance with Treasury Regulation Section 1.1273-2(h)(1); and (iii) each of Ventures and HPS will file all U.S. federal income tax returns in a manner consistent with the foregoing allocation.

(d) Solely for U.S. federal income tax purposes, Ventures and HPS hereby agree that (i) the Third Additional Notes issued under the Note Purchase Agreement will be

treated under Treasury Regulation Section 1.1273-2(h) as an investment unit consisting of the Third Additional Notes and the Call Options granted to HPS under this Agreement; (ii) 6,706,288.60 of the principal amount of the Third Additional Notes will be allocated to the Third Additional Notes and the remaining \$793,711.40 of the principal amount of the Third Additional Notes will be allocated to the Call Options granted to HPS under this Agreement in accordance with Treasury Regulation Section 1.1273-2(h)(1); and (iii) each of Ventures and HPS will file all U.S. federal income tax returns in a manner consistent with the foregoing allocation.

(e) The Parties agree that the RP Call Option will not be treated as an equity interest in NPC Fund I for U.S. federal tax purposes unless and until the date on which the RP Call Option is exercised by HPS. The Parties agree to file all U.S. federal income tax returns in a manner consistent with the foregoing.

Section 2.03 Exercise and Settlement Procedures.

(a) HPS or its nominee (the identity of which will be identified to Ventures in writing) shall have the right (but not obligation) to exercise each Call Option in full (but not in part) with respect to the applicable Call Option Interests at any time during the Exercise Period by delivering a notice of exercise (each, an “**Exercise Notice**”). Subject to Section 2.03(e), the Exercise Notice, when duly given by HPS or its nominee to Ventures prior to the expiration of the Exercise Period, shall constitute an irrevocable and binding offer of HPS or its nominee to purchase the Call Option Interests from Ventures in exchange for the applicable Call Option Purchase Price in accordance with this Agreement.

(b) Immediately after receipt of an Exercise Notice, Ventures shall (i) obtain any consent, waiver, authorization or approval from any third party, and (ii) complete all procedures, formalities and requirements as required under, or give effect to any required amendments to, any Organizational Documents (or any other relevant documents) of such Investment, in each case, for the transfer of Call Option Interests to HPS or its nominee and to otherwise effect the settlement of such Call Option.

(c) The settlement of such Call Option shall occur at the principal offices of HPS on the applicable Liquidity Event Date or the Note Termination Date, as applicable, or at such other time and/or place as the Parties mutually agree in writing (each such date, a “**Call Option Settlement Date**”).

(d) On each Call Option Settlement Date:

(i) HPS will pay, or cause to be paid, to Ventures an amount equal to the applicable Call Option Purchase Price; and

(ii) Ventures shall deliver to HPS or its nominee (A) good and marketable title to the Call Option Interests free and clear of any and all liens, claims, security interests, participations, or encumbrances of any kind or nature whatsoever and (B) certificates or other instruments (if any) representing such Call Option Interests and stock powers or allonges (or the applicable equivalent document), as applicable, duly executed in blank.

(e) Notwithstanding anything to the contrary set forth herein, (i) if Ventures is unable to obtain all of the consents, waivers or authorizations required to effect the transfer of the applicable Call Option Interests to HPS or its nominee, or (ii) at the election of either Party (by delivery, prior to the applicable Call Option Settlement Date, of written notice of such election to the other Party (with respect to HPS, which written notice may be included in the applicable Election Notice)), in lieu of the applicable Call Option Interests and Call Option Purchase Price, the Call Option shall be settled in a cash payment, on the applicable Call Option Settlement Date, by on or on behalf of Ventures to HPS in an amount equal to the HPS Proceeds in respect of the applicable Investment.

(f) All payments made to either Party pursuant to this Agreement shall be made by wire transfer of immediately available funds to the account or accounts designated by the receiving Party in writing at least one Business Day prior to the day on which any such payment is to be made.

(g) Unless agreed otherwise by the Parties, each Call Option shall be deemed (i) exercised and expired upon the completion of all applicable actions as provided in this Section 2.03 or (ii) expired upon the expiration of the applicable Exercise Period, in each case, in respect of such Call Option.

Section 2.04 Future Investments.

(a) Follow-On Investments.

(i) Ventures shall provide written notice (each, a “**Follow-On Notice**”) to HPS within three Business Days following the date upon which Ventures or any of its Affiliates first becomes aware of a potential Follow-On Investment. Each Follow-On Notice shall include (A) the name of the applicable Current Investment, (B) the anticipated date of such Follow-On Investment, (C) the number of Interests of such Current Investment being directly or indirectly acquired by Ventures in connection with such Follow-On Investment (or, if not known at the time such Follow-On Notice must be delivered, a reasonable estimate thereof), and (D) the aggregate consideration to be paid in connection with such acquisition (or, if not known at the time such Follow-On Notice must be delivered, a reasonable estimate thereof). Following the delivery of any Follow-On Notice, Ventures shall keep HPS reasonably apprised of any additional information that becomes available to Ventures or any of its Affiliates in connection with such Follow-On Investment.

(ii) Within three Business Days following the later to occur of (A) the date of the applicable Follow-On Investment (each such date, a “**Follow-On Investment Date**”), and (B) the date on which the Fair Market Value, as of the applicable Follow-On Investment Date, of the applicable Ventures Interests is finally determined in accordance with ARTICLE III, the Parties shall mutually revise Exhibit A to incorporate such Follow-On Investment thereon. The number or amount, as applicable, of the Ventures Interests of such Follow-On Investment and the Fair Market Value, as of the applicable Follow-On Investment Date, of the Call Option Interests in respect of such Follow-On

Investment, shall be set forth across from such Follow-On Investment on Exhibit A under the column headings “*Ventures Interest*” and “*Call Option Purchase Price*”, respectively.

(iii) Notwithstanding anything to the contrary set forth herein, each Current Investment Call Option and each Future Investment Call Option in respect of a Follow-On Investment shall be treated as a separate Call Option for all purposes hereunder, including, for the avoidance of doubt, with respect to Section 2.03, Section 2.05 and Section 2.06.

(b) Additional Investments. At any time on or after the Effective Date, if and to the extent Ventures or any of its Affiliates invests, directly or indirectly, all or any portion of any Retained Gross Proceeds in an investment (each such investment, an “**Additional Investment**”), within three Business Days following the later to occur of (i) the applicable Additional Investment Date and (ii) the date on which the Fair Market Value, as of the applicable Additional Investment Date, of the Ventures Interests of such Additional Investment is finally determined, the Parties shall mutually revise Exhibit A to incorporate such Additional Investment thereon. The number or amount, as applicable, of the Ventures Interests of such Additional Investment and the Fair Market Value, as of the applicable Additional Investment Date, of the Call Option Interests in respect of such Additional Investment, shall be set forth across from such Additional Investment on Exhibit A under the column headings “*Ventures Interest*” and “*Call Option Purchase Price*”, respectively. Each date on which Ventures or any of its Affiliates invests, directly or indirectly, in an Additional Investment shall be referred to herein as an “**Additional Investment Date**”.

Section 2.05 Adjustments to Call Option Purchase Price.

(a) Ventures shall provide written notice (each, a “**Distribution Notice**”) to HPS within three Business Days following the date upon which Ventures or any of its Affiliates first becomes aware of the declaration or payment of a potential dividend or distribution by, or in respect of, any Investment, a portion of which is to be paid, directly and/or indirectly, to Ventures or any of its Affiliates. Each Distribution Notice shall include (i) the anticipated date on which such dividend or distribution is to be paid, (ii) the total amount to be paid in connection with such dividend or distribution, (iii) the portion of such total amount that is allocated, directly and/or indirectly, to Ventures or any of its Affiliates, and (iv) whether and, if applicable, to what extent such dividend or distribution is to be paid in kind. Following the delivery of any Distribution Notice, Ventures shall keep HPS reasonably apprised of any additional information that becomes available to Ventures or any of its Affiliates in connection with such dividend or distribution.

(b) Following (i) the payment, directly or indirectly, of any dividend or distribution to Ventures by, or in respect of, any Investment, or (ii) the date on which the Fair Market Value of such in-kind payment is finally determined (if all or a portion of any such dividend or distribution is paid in kind), as applicable, the Parties shall amend Exhibit A to decrease the Call Option Purchase Price of such Investment by an amount equal to *the product of* (A) the HPS Percentage of such Investment, *and* (B) Ventures’ (or one of its Affiliates’) allocated share of such dividend or distribution (including, for the avoidance of doubt, the Fair Market Value of any portion of such dividend or distribution that is paid in kind). Exhibit A

shall be amended pursuant to the immediately preceding sentence within three Business Days following the determination of the amount by which the Call Option Purchase Price of such Investment is to be decreased pursuant to the immediately preceding sentence.

Section 2.06 Adjustments to Ventures Interests. Except in connection with any Follow-On Investment, which shall be governed by Section 2.04, if, at any time or from time to time following the Effective Date, the number or amount, as applicable, or character of any of the Ventures Interests is increased, decreased or otherwise modified, Ventures shall provide written notice (each, an “**Interests Change Notice**”) to HPS of such increase, decrease or other modification, including (a)(i) the amount of such increase or decrease and the resulting number or amount, as applicable, of the Ventures Interests in respect of the Investment, and/or (ii) the modification of such Interests, including the form thereof, and (b) an explanation, in reasonable detail, of such increase, decrease or other modification. Within five Business Days following the receipt by HPS of such Interests Change Notice, the Parties shall amend Exhibit A to reflect such increase, decrease or other modification; *provided, however*, that, in the event HPS objects to such amendment, by delivering written notice (each, an “**Interests Change Objection**”) to Ventures within three Business Days following HPS’s receipt of the applicable Interests Change Notice, the Parties shall mutually agree in writing (in accordance with ARTICLE III) as to such amendment, and Exhibit A shall be amended within three Business Days following, and in accordance with, such mutual written agreement.

Section 2.07 True Up. Following the settlement of all Call Options exercised pursuant to and in accordance with Section 2.03, (a) if an Excess Amount exists, HPS shall pay, or cause to be paid, to Ventures an amount equal to such Excess Amount, or (b) if a Shortfall Amount exists, Ventures shall pay, or caused to be paid, to HPS an amount equal to such Shortfall Amount, in each case on the Note Termination Date.

Section 2.08 Obligations Absolute. The Parties acknowledge that the granting of each Call Option by Ventures to HPS is (and with respect to a Future Investment Call Option, will be) irrevocable and without recourse and is (and with respect to a Future Investment Call Option, will be) without representation or warranty, whether express or implied, of any kind or character by the Parties, except as expressly provided in this Agreement. It is the intention of the Parties that each Call Option and all payments hereunder shall neither be part of the bankruptcy estate of Ventures and/or any of its direct or indirect Subsidiaries under Section 541 of the Bankruptcy Code nor subject to the automatic stay under Section 362 of the Bankruptcy Code in the event of Ventures’ and/or any of its Affiliates’ insolvency, bankruptcy, reorganization, arrangement or similarly proceeding or general assignment for the benefit of creditors.

ARTICLE III

DISPUTE RESOLUTION

Section 3.01 Procedures. The Parties shall negotiate in good faith for a period of 15 days following (a) any date on which an Exercise Notice is delivered to Ventures pursuant hereto in an effort to mutually agree upon, as applicable, the amount of Gross Proceeds and the resulting calculation of Applicable Proceeds, HPS Proceeds and Retained Gross Proceeds (including, in each case, any applicable inputs required in connection therewith) with respect to

the applicable Investment; (b) any date on which a Distribution Notice is delivered to HPS pursuant hereto in an effort to mutually agree upon (i) if applicable, the Fair Market Value of any portion of the dividend or distribution with respect to which notice is provided in such Distribution Notice that is to be paid in kind, and (ii) the amount by which the applicable Call Option Purchase Price is to be decreased pursuant to Section 2.05 in connection with such dividend or distribution; (c) any Future Investment Date in an effort to mutually agree upon the Fair Market Value of the Ventures Interests of such Future Investment; (d) any date on which an Exercise Notice is delivered to Ventures pursuant hereto in connection with the exercise by HPS of any Call Option during the Note Termination Exercise Period in an effort to mutually agree upon, as applicable, (i) the applicable items set forth in clause (a) of this sentence, and/or (ii) the Fair Market Value, as of the Note Termination Date, of the applicable Call Option Interests; (e) any date on which an Interests Change Objection is delivered to Ventures pursuant hereto in an effort to mutually agree upon the amendment to Exhibit A in connection therewith; or (f) the Note Termination Date in an effort to mutually agree upon (i) the Maximum HPS Return Amount, the Minimum HPS Return Amount and, if applicable, the Fair Market Value of the Call Option Interests received in connection with any Call Option settled in accordance with Section 2.03(d) and the resulting calculation of the Actual HPS Return and the HPS Excess Amount or the HPS Shortfall Amount, as applicable (each such item to be mutually agreed, a **“Disputed Item”**). If, during such 15-day period, the Parties mutually agree as to the amount of any applicable Disputed Item, the amount of such Disputed Item, as so mutually agreed, shall be the final amount of such Disputed Item for all purposes hereunder. If, at the conclusion of such 15-day period, the Parties have not mutually agreed upon the amount of any applicable Disputed Item, then any Disputed Item not so mutually agreed upon shall be submitted by the Parties for final resolution the Independent Firm. The Independent Firm shall be engaged by the Parties no later than 10 Business Days following the later to occur of (A) the conclusion of such 15-day period, and (B) the determination of the identity of the Independent Firm in accordance with this Agreement. Each Party agrees to promptly execute, if so requested by the Independent Firm, a reasonable engagement letter with respect to the determination to be made by the Independent Firm pursuant to and in accordance with this Section 3.01. The Independent Firm shall determine only those applicable Disputed Items un-agreed upon at the end of such 15-day period, and the Independent Firm’s determination shall be based upon and consistent with the terms and conditions of this Agreement. The determination by the Independent Firm shall also be based on presentations with respect to such un-agreed upon Disputed Item by each Party to the Independent Firm (to the extent consistent with the terms and conditions of this Agreement) and not on the Independent Firm’s independent review. The Parties will provide copies to each other of all written submissions to the Independent Firm and shall be permitted to attend (and shall receive reasonable advance written notice of) any meeting with or presentations to the Independent Firm. The Parties shall use their reasonable best efforts to make their respective presentations to the Independent Firm as promptly as practicable following submission to the Independent Firm of the applicable Disputed Items (but in any event, no later than 15 days after engagement of the Independent Firm), and each Party shall be entitled, as part of its presentation, to respond to the presentation of the other presenter and any questions and requests of the Independent Firm. Each Party’s presentations to the Independent Firm shall be consistent with the earlier positions taken by such Party with respect to such applicable Disputed Items during such 15-day period. In deciding any matter, the Independent Firm (1) shall be bound by the provisions of this Section 3.01, and (2) may not assign a value to any applicable Disputed Item

greater than the greatest value, or less than the smallest value, for such Disputed Item claimed by either Party in their respective presentations to the Independent Firm. The Independent Firm's determination shall be made within 45 days after its engagement (or as soon thereafter as possible), shall be set forth in a written statement delivered to the Parties, shall be final, conclusive, non-appealable and binding for all purposes hereunder, absent manifest error by the Independent Firm, and shall not be deemed an award subject to review under the Federal Arbitration Act or any other similar statute.

Section 3.02 Fees and Expenses of the Independent Firm. All fees and expenses of the Independent Firm pursuant to its engagement by the Parties pursuant to this ARTICLE III shall be borne one-half by Ventures and one-half by HPS.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF VENTURES

Ventures represents and warrants to HPS on and as of the Original Effective Date, the A&R Effective Date, the 2nd A&R Effective Date, the Effective Date and each Future Investment Date, as applicable, as follows:

Section 4.01 Organization; Authority. Ventures is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. Ventures has the requisite power and authority to execute, deliver and perform its obligations under this Agreement, including all documents executed in connection herewith and to grant each Call Option.

Section 4.02 Authorization. This Agreement has been duly and validly authorized, executed and delivered by Ventures and constitutes a valid, binding and enforceable agreement of Ventures in accordance with its terms, except as the same may be limited by any applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by general principles of equity.

Section 4.03 No Conflict. Except as contemplated by Section 2.03(b), neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby (a) is prohibited by, or requires Ventures to obtain any consent, authorization, approval or registration under, any law, statute, rule or regulation, judgment, order, writ, injunction or decree that is binding upon Ventures or any of its properties or assets, (b) will violate any provisions of the Organizational Documents of Ventures or any of its Subsidiaries, or (c) will violate any provision of the Note Documents or the other Related Agreements.

Section 4.04 Ownership of Assets. As of the Original Effective Date, the A&R Effective Date, the 2nd A&R Effective Date, and the Effective Date, Ventures or a wholly owned Subsidiary of Ventures is the sole legal and beneficial owner of and has good and marketable title to each of the Ventures Interests in respect of each Current Investment, free and clear of any and all liens, claims, security interests, participations, or encumbrances of any kind or nature whatsoever other than the participation agreement entered into between Michael Risley

and CFFI UK Ventures (Barbados) Ltd. with respect to CB Infrastructure Ltd. and the participation agreement entered into between Michael Risley and CVI Fuel Holdings Inc. with respect to 10293547 Canada Limited, each dated the 25th day of September, 2017 (collectively, the “**Participation Agreements**”). As of each Future Investment Date, Ventures or a wholly owned Subsidiary of Ventures shall be the sole legal and beneficial owner of and shall have good and marketable title to the applicable Ventures Interests in respect of the Future Investments, free and clear of any and all liens, claims, security interests, participations, or encumbrances of any kind or nature whatsoever other than the Participation Agreements, if still in force at the date of such Future Investment.

Section 4.05 No Prior Agreements. As of the Original Effective Date, the A&R Effective Date, the 2nd A&R Effective Date, and the Effective Date, neither Ventures nor any of its Affiliates has, directly or indirectly, previously sold, conveyed, transferred, assigned, participated, pledged or otherwise encumbered any of the Ventures Interests in respect of the Current Investments, in whole or in part, to any other Person (or agreed to do any of the foregoing). As of each Future Investment Date, neither Ventures nor any of its Affiliates has, directly or indirectly, previously sold, conveyed, transferred, assigned, participated, pledged or otherwise encumbered the applicable Ventures Interests in respect of the Future Investments, in whole or in part, to any other Person (or agreed to do any of the foregoing).

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF HPS

HPS represents and warrants to Ventures on and as of the Original Effective Date, the A&R Effective Date, the 2nd A&R Effective Date, the Effective Date and each Future Investment Date, as applicable, as follows:

Section 5.01 Organization; Authority. HPS is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization. HPS has the requisite power and authority to execute, deliver and perform its obligations under this Agreement, including all documents executed in connection herewith.

Section 5.02 Authorization. This Agreement has been duly and validly authorized, executed and delivered by HPS and constitutes a valid, binding and enforceable agreement of HPS in accordance with its terms, except as the same may be limited by any applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws relating to or limiting creditors’ rights generally or by general principles of equity.

Section 5.03 No Conflict. Neither the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated hereby (a) is prohibited by, or requires HPS to obtain any consent, authorization, approval or registration under, any law, statute, rule or regulation, judgment, order, writ, injunction or decree that is binding upon HPS or any of its properties or assets, or (b) will violate any provisions of the Organizational Documents of HPS.

Section 5.04 Investment Intent. HPS is acquiring (or if applicable, in connection with a Future Investment, will acquire) each Call Option for its own account and not with the view to any sale or distribution thereof.

ARTICLE VI

COVENANTS

Section 6.01 Transferability. Ventures agrees that it will not sell, assign, convey, transfer or otherwise dispose of this Agreement or any of its rights and/or obligations hereunder to any other Person without the prior written consent of HPS.

Section 6.02 Withholdings and Taxes. Any and all payments by or on account of Ventures hereunder shall be made free and clear of and without deduction or withholding for any and all present or future taxes, levies, imposts, duties, deductions, withholdings, assessments, fees or other charges, including any interest, additions to tax or penalties applicable thereto (any such taxes, levies, *etc.*, “**Taxes**”), except as required by applicable law. If any applicable law requires the deduction or withholding of any Taxes from or in respect of any such payment, (a) Ventures shall make such deduction or withholding, (b) Ventures shall pay the full amount deducted to the relevant governmental or taxing authority in accordance with applicable law, and (c) the sum payable by Ventures shall be increased by the amount necessary such that, after making all required deductions and withholdings (including deductions and withholdings applicable to additional sums payable under this Section 6.02), the recipient of the payment receives the amount equal to the sum it would have received had no such deduction or withholding been made.

Section 6.03 Information Rights.

(a) In addition to its obligations set forth in the second sentence of Section 2.04 and the last sentence of each of Section 2.05(a) and Section 6.03(b), following the delivery of any Liquidity Event Notice, Ventures shall keep HPS reasonably apprised of any additional information that becomes available to Ventures or any of its Subsidiaries in connection with the Liquidity Event for which notice is provided in such Liquidity Event Notice. Additionally, Ventures shall, within two Business Days following HPS’s written request, provide, or cause to be provided, all information reasonably requested by HPS in connection with this Agreement and each Call Option.

(b) Ventures shall provide HPS with written notice (such notice, the “**Note Repayment Notice**”) not less than 10 Business Days but not more than 30 Business Days prior to the date on which Ventures has determined that it will repay, or cause to be repaid, the Notes in full, on the terms and subject to the conditions set forth in the Note Purchase Agreement. Following the delivery of the Note Repayment Notice, Ventures shall keep HPS reasonably apprised of any additional information relevant to the repayment of the Notes.

ARTICLE VII

GENERAL

Section 7.01 Notices. All notices, requests, claims, demands and other communications hereunder shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by an internationally recognized overnight courier service, by facsimile, by registered or certified mail (postage prepaid, return receipt requested) or by e-mail to the respective Parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 7.01):

- (a) if to Ventures:

CFFI Ventures Inc.
757 Bedford Highway
Bedford, Nova Scotia
B4A 37
Attention: Stan Spavold
E-mail: sspavold@cffi.com

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

McInnes Cooper
1969 Upper Water Street, Suite 1300
Purdy's Wharf Tower II
Halifax, Nova Scotia
B3J 3R7
Attention: Ben Pryde
E-mail: ben.pryde@mcinnescooper.com

- (b) if to HPS:

CFFI Holdings S. à r.l.
c/o HPS Investment Partners LLC
40 West 57th Street
New York, New York 10019
Attention: Shant Babikian
E-mail: shant.babikian@hpspartners.com

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

Proskauer Rose LLP
Eleven Times Square
New York, New York 10036-8299
Attention: Michael M. Mezzacappa
E-mail: MMezzacappa@proskauer.com

Any notice delivered (i) by personal delivery or by courier service to the party to whom it is addressed as provided above shall be deemed to have been given and received on the day it is so delivered at such address (*provided* that if such day is not a Business Day, or if the notice is received after 5:00 p.m. (addressee's local time), then such notice shall be deemed to have been given and received on the next Business Day), (ii) by prepaid registered or certified mail shall be deemed to have been given and received on the fourth Business Day following the date of its mailing, (iii) by facsimile shall be deemed to have been given and received on the day in which such transmission is confirmed (*provided* that if such day is not a Business Day or if the facsimile transmission is received after 5:00 p.m. (addressee's local time), then such notice shall be deemed to have been given and received on the first Business Day after its transmission), or (iv) by e-mail shall be deemed to be given and received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, return e-mail or other written acknowledgement) (*provided* that if such acknowledgement is not received on a Business Day or is received after 5:00 p.m. (addressee's local time) on a Business Day, such notice shall be deemed to have been given and received on the first Business Day after such acknowledgement).

Section 7.02 Relationship of the Parties. Each Party acknowledges and agrees that the relationship arising from this Agreement does not constitute or create a general agency, joint venture, partnership, trustee, employee relationship or franchise between the Parties.

Section 7.03 GOVERNING LAW; CHOICE OF VENUE; JURY WAIVER AND JURISDICTION.

(a) THIS AGREEMENT AND ANY NON-CONTRACTUAL OBLIGATIONS ARISING OUT OF OR IN CONNECTION WITH IT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.

(b) EACH PARTY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN THE COUNTY OF NEW YORK, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH PARTY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFOREMENTIONED COURTS AND WAIVES ANY DEFENSE OF *FORUM NON CONVENIENS*. EACH PARTY HEREBY WAIVES PERSONAL SERVICES OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICES OF PROCESS MAY BE MADE UPON SUCH PARTY BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH IN SECTION 7.01 AND THAT SERVICE SO MADE SHALL BE COMPLETE 10 DAYS AFTER THE SAME HAS BEEN POSTED.

(c) EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED ON OR ARISING OUT OF THIS AGREEMENT. EACH PARTY ACKNOWLEDGES THAT THE WAIVER SET FORTH IN THE IMMEDIATELY PRECEDING SENTENCE IS A MATERIAL INDUCEMENTS TO ENTER INTO A BUSINESS RELATIONSHIP, THAT THE OTHER PARTY HAS RELIED

ON SUCH WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT THE OTHER PARTY WILL CONTINUE TO RELY ON SUCH WAIVER IN ITS RELATED FUTURE DEALINGS WITH SUCH PARTY. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS HAD THE OPPORTUNITY OF REVIEWING THE WAIVER SET FORTH IN THE FIRST SENTENCE OF THE PARAGRAPH WITH LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY MAKES SUCH WAIVER.

Section 7.04 Further Actions and Mutual Cooperation. Each Party shall promptly and duly execute and deliver any and all instruments, certificates and documents of further assurance and all such supplemental instruments and take such further action as the Parties may reasonably deem necessary to carry out the purposes and intent of this Agreement.

Section 7.05 Binding Effect; Successors and Assigns; No Third Party Rights. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, permitted assigns and legal representatives. This Agreement shall be for the sole benefit of the Parties and their respective successors, permitted assigns and legal representatives and is not intended, nor shall it be construed, to give any Person, other than the Parties and their respective successors, permitted assigns and legal representatives, any legal or equitable right, remedy or claim thereunder; *provided* that HPS's rights under this Agreement are free from any restriction on transfer.

Section 7.06 Entire Agreement; Modification; Waiver. This Agreement sets forth the entire agreement between the Parties relating to the subject matter hereof and supersedes any prior agreements or understandings regarding the subject matter hereof, whether oral or in writing. Neither this Agreement nor any term hereof may be changed, waived, discharged or terminated, except by an instrument in writing signed by the Party against whom enforcement of such change, waiver, discharge or termination is sought. Any of the terms or conditions of this Agreement may be waived at any time by the Party entitled to the benefit thereof; *provided, however*, that a Party's failure to enforce any provision or provisions of this Agreement shall not (a) in any way be construed as a waiver of any such provision or provisions or as to any future violations thereof or (b) prevent such Party thereafter from enforcing each and every provision of this Agreement. The rights granted the Parties herein are cumulative, and the waiver by a Party of any single remedy shall not constitute a waiver of such Party's right to assert all other legal remedies available to such Party under this Agreement.

Section 7.07 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 7.08 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument. Delivery of an executed counterpart of this agreement by facsimile or electronic transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement.

(Remainder of page intentionally left blank)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed
as of the date first written above.

CFFI VENTURES INC.

By: Nanci Korabeck
Name: Nanci Korabeck
Title: VP & CLO

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first written above.

CFFI HOLDINGS S. À R.L.

By: Shant Babikian
Name: Shant Babikian
Title: Managing Director

EXHIBIT A

<u>Investment</u>	<u>Ventures Interests</u>	<u>FMV / Cost</u>	<u>Call Option Purchase Price</u>	<u>Issuance Date</u>
Cognition Financial Corporation	59,880,830	\$54,878,400	\$8,231,760	October 23, 2017
CB Infrastructure Limited	350,000	\$116,763,360	\$17,514,504	October 23, 2017
CFFI Technology Development Inc.	882,500	\$31,279,440	\$4,691,916	October 23, 2017
BIOX Corporation	44,783,274	\$57,380,000	\$8,607,000	October 23, 2017
BIOX Holdings, LLC	50,000 Class A Units	\$50,000,000	\$7,500,000	March 16, 2018
Horizon Maritime Offshore A/S	500	\$nil	\$nil	April 25, 2019
Horizon Maritime Services Ltd.	10,000 Common Shares	\$5,925,000	\$888,750	October 23, 2017
Horizon Maritime Services Ltd.	5,154 Non-Voting Common Shares	\$7,834,080	\$1,174,960	November 20, 2018
NPC Fund I	20% LP Interest (as defined in the NPC Fund I LPA), solely in respect of Rockport (the “ RP LP Investment ”)	\$4,420,000	\$1,326,000	August 11, 2020
	50% GP Interest (as defined in the NPC Fund I LPA), solely in respect of Rockport (the “ RP GP Investment ”)	\$nil	\$nil	August 11, 2020