

**“Consolidated Net Tangible Assets”** shall mean, with respect to any Person at any date of determination, the aggregate amount of total assets included in such Person’s most recent fiscal quarter for which internal financial statements are available, determined on a *pro forma* basis in a manner consistent with the *pro forma* basis contained in the definition of “Fixed Charge Coverage Ratio,” less (a) all current liabilities reflected in such balance sheet, and (b) all goodwill, trademarks, patents, unamortized debt discounts and expenses and other like intangibles reflected in such balance sheet.

**“Consolidated Net Worth”** shall mean the total of the amounts shown on a Person’s consolidated balance sheet determined in accordance with GAAP, as of the end of such Person’s most recent fiscal quarter for which internal financial statements are available prior to the taking of any action for the purpose of which the determination is being made, as the sum of (1) the par or stated value of all of such Person’s outstanding Capital Stock; (2) paid-in capital or capital surplus relating to such Capital Stock and (3) any retained earnings or earned surplus less (A) any accumulated deficit and (B) any amounts attributable to Disqualified Equity.

**“Controlled Affiliate”** shall have the meaning provided in Section 6.20.

**“Controlled Group”** shall mean all members of a controlled group of corporations or other business entities and all trades or businesses (whether or not incorporated) under common control which, together with the Borrower or any of its Restricted Subsidiaries, are treated as a single employer under Section 414 of the Code.

**“Corrective Extension Agreement”** shall have the meaning provided in Section 2.14(e).

**“Credit Facilities”** shall mean, with respect to the Borrower or any of its Restricted Subsidiaries, one or more debt facilities (including, without limitation, the ABL Credit Facility), commercial paper facilities, indentures or Debt Issuances with banks, investment banks, insurance companies, mutual funds, other institutional lenders, institutional investors or any of the foregoing providing for revolving credit loans, term loans, receivables financing (including through the sale of receivables to such lenders, other financiers or to special purpose entities formed to borrow from (or sell such receivables to) such lenders or other financiers against such receivables), letters of credit, bankers’ acceptances, other borrowings or Debt Issuances, in each case, as amended, restated, modified, renewed, extended, refunded, replaced or refinanced (in each case, without limitation as to amount), in whole or in part, from time to time (including through one or more Debt Issuances) and any agreements and related documents governing Indebtedness or Obligations incurred to refinance amounts then outstanding or permitted to be outstanding, whether or not with the original administrative agent, lenders, investment banks, insurance companies, mutual funds, other institutional lenders, institutional investors or any of the foregoing and whether provided under the original agreement, indenture or other documentation relating thereto.

**“Currency Exchange Protection Obligations”** mean, in respect of a Person, any foreign exchange contract, currency swap agreement, currency option or other similar agreement or arrangement designed to protect such Person against fluctuations in currency exchange rates.

**“Customary Intercreditor Agreement”** shall mean (a) to the extent executed in connection with the incurrence of secured Indebtedness the Liens securing which are intended to rank equal in priority to the Liens on Collateral securing the Secured Obligations (but without regard to the control of remedies), at the option of the Borrower and the Administrative Agent acting together in good faith, either (i) any intercreditor agreement substantially in the form of the Equal Priority Lien Intercreditor Agreement or (ii) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens securing such Indebtedness shall rank equal in priority to the Liens securing the Secured Obligations (but without regard to the control of remedies), (b) to the extent executed in connection with the incurrence of secured Indebtedness the Liens on ABL Collateral securing which are intended to rank senior to the Liens securing the Secured Obligations, at the option of the Borrower and the Administrative Agent acting together in good faith, either (i) an intercreditor agreement substantially in the form of the ABL Intercreditor Agreement or (ii) a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on ABL Collateral securing such Indebtedness shall rank senior to the Lien securing the Secured Obligations and (c) to the extent executed in connection with the incurrence, issuance or other obtaining of secured Indebtedness the Liens on the Collateral securing which Indebtedness are intended to rank junior to the Liens on the Collateral securing the Secured Obligations hereunder, at the option of the Borrower and the Administrative Agent acting together in good faith, a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent and the Borrower, which agreement shall provide that the Liens on the Collateral securing such Indebtedness shall rank junior to the Liens on the Collateral securing the Secured Obligations hereunder.

**“Debt Incurrence Prepayment Event”** shall mean any issuance or incurrence by the Borrower or any of the Restricted Subsidiaries of any Indebtedness, but excluding any Indebtedness permitted to be issued or incurred under Section 8.3.

**“Debt Issuances”** shall mean, with respect to the Borrower or any Restricted Subsidiary, one or more issuances after the Effective Date of Indebtedness evidenced by notes, debentures, bonds or other similar securities or instruments.

**“Default”** shall mean any event described in Section 9.

**“Default Rate”** shall have the meaning provided in Section 2.8(c).

**“Defaulting Lender”** shall mean any Lender with respect to which a Lender Default is in effect.

**“Designated Non-cash Consideration”** shall mean the fair market value of non-cash consideration received by the Borrower or a Restricted Subsidiary in connection with an Asset Sale that is so designated as Designated Non-cash Consideration pursuant to an Officers’ Certificate, setting forth the basis of such valuation, executed by the principal financial officer of the Borrower, less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Designated Non-cash Consideration.

**“Designated Proceeds”** shall mean the amount of net cash proceeds received by the Borrower from each issuance or sale since the Effective Date of mandatorily convertible preferred stock of the Borrower (other than Disqualified Equity), that at the time of such issuance was designated by the Borrower as “Designated Proceeds” pursuant to an Officers’ Certificate delivered to the Administrative Agent; *provided, however*, that if the mandatorily convertible preferred stock providing such Designated Proceeds is thereafter converted into common stock of the Borrower, that portion of the Designated Proceeds that has not been paid as dividends pursuant to clause (ix) of the second paragraph of Section 8.1 hereof shall no longer be considered to be Designated Proceeds.

**“Discount Prepayment Accepting Lender”** shall have the meaning provided in Section 4.1(c)(iii) hereof.

**“Discounted Loan Prepayment”** shall have the meaning provided in Section 4.1(c)(i) hereof.

**“Discounted Prepayment Effective Date”** shall mean, in the case of a Borrower Offer of Specified Discount Prepayment, five (5) Business Days following the receipt by each relevant Lender of notice from the Auction Agent in accordance with Section 4.1(c)(ii), unless a shorter period is agreed to between Borrower and the Auction Agent.

**“Disqualified Equity”** shall mean, with respect to any person, any Equity Interest that, by its terms (or by the terms of any security into which it is convertible, or for which it is exchangeable, in each case, at the option of the holder of the Equity Interest), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or redeemable at the option of the holder of the Equity Interest, in whole or in part, on or prior to the date that is 91 days after the date on which the Loans mature, except such Equity Interest that is solely redeemable with, or solely exchangeable for, any Equity Interest of such Person that is not Disqualified Equity. Notwithstanding the preceding sentence, any Capital Stock that would constitute Disqualified Equity solely because the holders thereof have the right to require the Borrower or any of its Restricted Subsidiaries to repurchase Capital Stock upon the occurrence of a change of control or an asset sale shall not constitute Disqualified Equity if the terms of such Capital Stock provide that the Borrower or such Restricted Subsidiary may not repurchase or redeem any such Capital Stock pursuant to such provisions unless such repurchase or redemption complies with Section 8.1 hereof

**“Dollars”** and **“\$”** shall mean dollars in lawful currency of the United States of America.

**“Effective Date”** shall mean the date on which all the conditions set forth in Section 5A shall have been satisfied (or waived in accordance with Section 11.1), which shall be the date hereof.

**“Effective Yield”** shall mean, as to any Indebtedness, the effective yield on such Indebtedness as determined by the Borrower and the Administrative Agent, taking into account the applicable interest rate margins, any interest rate floors (the effect of which floors shall be determined in a manner set forth in the proviso below) or similar devices and all fees, including

upfront or similar fees or original issue discount (amortized over the shorter of (x) the remaining Weighted Average Life to Maturity of such Indebtedness and (y) the four years following the date of incurrence thereof) payable generally to Lenders or other institutions providing such Indebtedness, but excluding any arrangement, structuring or other similar fees payable in connection therewith that are not generally shared with the relevant Lenders and, if applicable, customary consent or ticking fees for an amendment paid generally to consenting Lenders; *provided* that, with respect to any Indebtedness that includes a “LIBOR floor”, (1) to the extent that the Reference Rate on the date that the Effective Yield is being calculated is less than such floor, the amount of such difference shall be deemed added to the interest rate margin for such Indebtedness for the purpose of calculating the Effective Yield and (2) to the extent that the Reference Rate on the date that the Effective Yield is being calculated is greater than such floor, then the floor shall be disregarded in calculating the Effective Yield.

“**Embargoed Person**” shall have the meaning provided in Section 6.21.

“**EMU**” shall mean the economic and monetary union as contemplated in the Treaty on European Union.

“**Environmental Law**” shall mean any and all federal, state and local statutes, laws, common law, judicial decisions, regulations, ordinances, rules, judgments, orders decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (i) the protection of the environment, (ii) the effect of the environment on human health, (iii) emissions, discharges or releases of pollutants, contaminants, hazardous substances or wastes into surface water, ground water or land, or (iv) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, hazardous substances or wastes or the clean up or other remediation thereof.

“**Equal Priority Indebtedness**” shall have the meaning provided in Section 8.4(c) hereof.

“**Equal Priority Lien Intercreditor Agreement**” shall mean a Priority Lien Intercreditor Agreement substantially in the form of Exhibit L to this Agreement to be entered into (in the event a Loan Party incurs any Equal Priority Indebtedness) among the Administrative Agent and one or more representatives for holders of such Equal Priority Indebtedness (but without regard to the control of remedies), with such modifications thereto as the Administrative Agent may reasonably agree.

“**Equal Priority Obligations**” shall mean the Secured Obligations and any Obligations secured by Liens on the Collateral that rank equal in priority with the Liens on the Collateral securing the Secured Obligations hereunder.

“**Equity Interest**” shall mean Capital Stock and all warrants, options or other rights to acquire Capital Stock, but excluding any debt security that is convertible into, or exchangeable for, Capital Stock.

“**ERISA**” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and any successor thereto.

**“ERISA Affiliate”** shall mean each person (as defined in Section 3(9) of ERISA) that together with the Borrower would be deemed to be a “single employer” within the meaning of Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

**“Euro”** shall mean the single currency of participating member states of the EMU.

**“Excess Asset Sale Proceeds”** shall have the meaning provided in Section 8.4(c) hereof.

**“Exchange Act”** shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

**“Excluded Taxes”** shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document, (i) Taxes imposed on or measured by its net income or branch profits (however denominated, and including (for the avoidance of doubt) any backup withholding in respect thereof under Section 3406 of the Code or any similar provision of state, local or foreign law), and franchise (and similar) Taxes imposed on it (in lieu of net income Taxes), in each case by (a) the United States or (b) a jurisdiction (including any political subdivision thereof) as a result of such recipient being organized in, having its principal office in, or in the case of any Lender, having its applicable lending office in, such jurisdiction, or as a result of any other present or former connection with such jurisdiction (other than any such connection arising solely from this Agreement or any other Loan Documents or any transactions contemplated thereunder), (ii) except in the case of a Lender that is an assignee pursuant to a request by the Borrower under Section 11.7, in the case of a Non-U.S. Lender, any United States federal withholding Tax imposed on any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document that (A) is required to be imposed on amounts payable to such Non-U.S. Lender pursuant to laws in force at the time such Non-U.S. Lender becomes a party hereto (or designates a new lending office), except to the extent that such Non-U.S. Lender (or its assignor, if any) was entitled, immediately prior to the designation of a new lending office (or assignment), to receive additional amounts or indemnification payments from any Loan with respect to such withholding Tax pursuant to Section 4.4 or (B) is attributable to such Lender’s failure to comply with Section 4.4(d), (e), (h) or (i) or (iii) any United States federal withholding Tax imposed under FATCA.

**“Executive Order”** shall have the meaning provided in Section 6.21.

**“Existing Indebtedness”** shall mean the aggregate amount of Indebtedness of the Borrower and its Restricted Subsidiaries outstanding on the Effective Date.

**“Existing Term Loan Class”** shall have the meaning provided in Section 2.14(a).

**“Extended Repayment Date”** shall have the meaning provided in Section 2.5(c).

**“Extended Term Loan Facility”** shall mean each Class of Extended Term Loans made pursuant to Section 2.14.

**“Extended Term Loan Repayment Amount”** shall have the meaning provided in Section 2.5(c).

**“Extended Term Loans”** shall have the meaning provided in Section 2.14(a).

**“Extending Lender”** shall have the meaning provided in Section 2.14(b).

**“Extension Agreement”** shall have the meaning provided in Section 2.14(c).

**“Extension Election”** shall have the meaning provided in Section 2.14(b).

**“Extension Request”** shall mean Term Loan Extension Requests.

**“Extension Series”** shall mean all Extended Term Loans that are established pursuant to the same Extension Agreement (or any subsequent Extension Agreement to the extent such Extension Agreement expressly provides that the Extended Term Loans provided for therein are intended to be a part of any previously established Extension Series) and that provide for the same interest margins, extension fees, if any, and amortization schedule.

**“Fair Market Value”** shall mean, with respect to consideration received or to be received, or given or to be given, pursuant to any transaction by the Borrower or any Restricted Subsidiary, the fair market value of such consideration as determined by the Borrower, whose determination shall be conclusive; *provided* if such fair market value is determined to exceed \$150.0 million, such fair market value shall be as determined in good faith by the Board of Directors of the Borrower.

**“FATCA”** shall mean Sections 1471 through 1474 of the Code, as of the Effective Date (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), or any current or future Treasury regulations promulgated thereunder or official administrative interpretations thereof.

**“Federal Funds Effective Rate”** shall mean, for any day, the weighted average of the per annum rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day, as published on the next succeeding Business Day by the Federal Reserve Bank of New York or, if such rate is not so published for any date that is a Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal Funds brokers of recognized standing selected by it.

**“Fees”** shall mean all amounts payable pursuant to, or referred to in, Section 3.1 hereof.

“**Financial Hedging Agreements**” shall mean (i) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements and (ii) other agreements or arrangements designed to protect such Person against fluctuations in interest rates, currency exchange rates or commodity prices and not for speculative purposes.

“**Financial Hedging Obligations**” shall mean, with respect to any Person, the net payment Obligations of such Person under Financial Hedging Agreements.

“**Fixed Charge Coverage Ratio**” shall mean, with respect to any Person for any period, the ratio of the Consolidated Cash Flow of such Person for such period to the Fixed Charges of such Person for such period. In the event that the specified Person or any of its Restricted Subsidiaries incurs, assumes, guarantees, repays, repurchases, redeems, defeases or otherwise discharges any Indebtedness (other than revolving borrowings under any Credit Facility) or issues, repurchases or redeems Disqualified Equity subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made (the “**Calculation Date**”), then the Fixed Charge Coverage Ratio shall be calculated giving *pro forma* effect to such incurrence, assumption, guarantee, repayment, repurchase, redemption, defeasance or other discharge of Indebtedness, or such issuance, repurchase or redemption of Disqualified Equity and the use of proceeds therefrom, as if the same had occurred at the beginning of the applicable four-quarter reference period. In addition, for purposes of making the computation referred to above: (i) acquisitions that have been made by the specified Person or any of its Restricted Subsidiaries, including through mergers, asset purchase transactions or consolidations and including any related financing transactions, during the four-quarter reference period or subsequent to such reference period and on or prior to the Calculation Date shall be given *pro forma* effect as if they had occurred on the first day of the four-quarter reference period and Consolidated Cash Flow for such reference period shall be calculated giving *pro forma* effect to any expense and cost reductions that have occurred or, in the reasonable judgment of the Chief Financial Officer or Chief Accounting Officer of the Borrower, are reasonably expected to occur (regardless of whether those operating improvements or cost savings could then be reflected in *pro forma* financial statements prepared in accordance with Regulation S-X promulgated by the SEC or any regulation or policy related thereto); (ii) the Consolidated Cash Flow attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded; (iii) the Fixed Charges attributable to discontinued operations, as determined in accordance with GAAP, and operations or businesses disposed of prior to the Calculation Date, shall be excluded, but only to the extent that the obligations giving rise to such Fixed Charges shall not be obligations of the referent Person or any of its Restricted Subsidiaries following the Calculation Date; (iv) if any Indebtedness bears a floating rate of interest, the interest expense on such Indebtedness shall be calculated as if the average rate for the applicable period to the Calculation Date had been the applicable rate for the entire period (taking into account any Hedging Obligation applicable to such Indebtedness if such Hedging Obligation has a remaining term as at the Calculation Date in excess of 12 months); and (v) interest on Indebtedness under a revolving credit facility computed on a *pro forma* basis shall be calculated based on the average daily balance of such Indebtedness for the four fiscal quarters subject to the *pro forma* calculation, except as set forth in the first sentence of this definition.

**“Fixed Charges”** shall mean, with respect to any Person for any period, (a) the sum, without duplication, of: (i) the consolidated interest expense of such Person and its Restricted Subsidiaries for such period, whether paid or accrued (including, without limitation or duplication, amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, the interest component of all payments associated with Capital Lease Obligations, commissions, discounts and other fees and charges incurred in respect of letter of credit or bankers’ acceptance financings, and net of the effect of all payments (if any) made or received pursuant to Hedging Obligations); plus (ii) the consolidated interest expense of such Person and its Restricted Subsidiaries that was capitalized during such period; plus (iii) any interest expense on Indebtedness of another Person that is guaranteed by such Person or one of its Restricted Subsidiaries or secured by a Lien on assets of such Person or one of its Restricted Subsidiaries (whether or not such guarantee or Lien is called upon); plus (iv) all dividend payments, whether or not in cash, on any series of preferred stock of such Person or any of its Restricted Subsidiaries, other than dividend payments on Equity Interests payable solely in Equity Interests of the Borrower (other than Disqualified Equity) or to the Borrower or a Restricted Subsidiary of the Borrower, minus (b) to the extent included in (a) above, write-off of deferred financing costs of such Person and its Restricted Subsidiaries during such period and any charge related to, or any premium or penalty paid in connection with, paying any such Indebtedness of such Person and its Restricted Subsidiaries prior to its Maturity Date.

**“Foreign Assets Control Regulations”** shall have the meaning provided in Section 6.21

**“Fund”** shall mean any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

**“Funding Date”** shall mean the date on which all the conditions set forth in Section 5B shall have been satisfied (or waived in accordance with Section 11.1).

**“GAAP”** shall mean generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as have been approved by a significant segment of the accounting profession, which are in effect from time to time.

**“Governmental Authority”** shall mean any nation, sovereign or government, any state, province, territory or other political subdivision thereof, and any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including a central bank or stock exchange.

**“Granting Lender”** shall have the meaning provided in Section 11.6(g) hereof.

**“Guarantee”** shall mean (a) the Guarantee made by each Guarantor in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Ex-



hibit A hereto, and (b) any other guarantee of the Secured Obligations made by a Restricted Subsidiary that in form and substance reasonably acceptable to the Administrative Agent.

**“Guarantors”** shall mean (i) those Subsidiaries of the Borrower subject to the Guarantee as of the Effective Date, (ii) those other Persons organized under the laws of the United States or a state thereof that become subject to the Guarantee in accordance with Section 7.13 after the Effective Date and (iii) any other Person that is required to enter into or has entered into the Guarantee, in each case together with its permitted successors and assigns (including, without limitation, a debtor in possession on its behalf).

**“Hazardous Materials”** shall mean (a) any petroleum or petroleum products, radioactive materials, friable asbestos, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls, and radon gas; (b) any chemicals, materials or substances defined as or included in the definition of “hazardous substances,” “hazardous waste,” “hazardous materials,” “extremely hazardous waste,” “restricted hazardous waste,” “toxic substances,” “toxic pollutants,” “contaminants,” or “pollutants,” or words of similar import, under any applicable Environmental Law; and (c) any other chemical, material or substance, which is prohibited, limited or regulated by any Environmental Law.

**“Hedging Obligations”** shall mean, with respect to any Person, collectively, the Commodity Hedging Obligations of such Person, the Currency Exchange Protection Obligations of such Person and the Financial Hedging Obligations of such Person.

**“Indebtedness”** shall mean, with respect to any Person, without duplication, (1) the principal of and premium, if any, with respect to indebtedness of such Person for borrowed money or evidenced by bonds, notes, debentures or similar instruments; (2) reimbursement obligations of such Person for letters of credit or banker’s acceptances; (3) Capital Lease Obligations of such Person; (4) obligations of such Person for the payment of the balance deferred and unpaid of the purchase price of any property except any such balance that constitutes (a) an accrued expense, (b) a trade payable or (c) an earn-out obligation until, after 30 days of becoming due and payable, such earn-out obligation has not been paid and becomes a liability on the balance sheet of such Person in accordance with GAAP; (5) Hedging Obligations (the amount of which at any time of determination shall be equal to the termination value of such agreement or arrangement giving rise to such Hedging Obligation that would be payable at such time); or (6) preferred stock of a Restricted Subsidiary that is not a Guarantor (but excluding, in each case, any accrued dividends). In the case of the foregoing clauses (1) through (5), if and to the extent any of the foregoing obligations or indebtedness (other than letters of credit, banker’s acceptances and Hedging Obligations), but excluding amounts recorded in accordance with Accounting Standards Codification No. 815, would appear as a liability upon a balance sheet of such Person prepared in accordance with GAAP. In the case of clause (6), the amount of Indebtedness attributable to such preferred stock shall be the repurchase price calculated in accordance with the terms of such preferred stock as if the preferred stock were repurchased on the date on which Indebtedness is required to be determined pursuant to this Agreement; *provided* that if the preferred stock is not then permitted to be repurchased, the amount of Indebtedness shall be the greater of the liquidation preference and the book value of

the preferred stock. In addition, the term “Indebtedness” includes, without duplication (A) obligations or indebtedness of others of the type referred to in the foregoing clauses (1) through (6) that are secured by a Lien on any asset of such Person (whether or not such Indebtedness is assumed by such Person), but in an amount not to exceed the lesser of the amount of such other Person’s obligation or indebtedness or the Fair Market Value of such asset; and (B) to the extent not otherwise included, the guarantee by such Person of any obligations or indebtedness of others of the type referred to in the foregoing clauses (1) through (6), whether or not such guarantee is contingent, and whether or not such guarantee appears on the balance sheet of such Person.

“**Indemnified Liabilities**” shall have the meaning provided in Section 11.5 hereof.

“**Indemnified Taxes**” shall mean all Taxes imposed on or with respect to or measured by, any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document other than (a) Excluded Taxes, (b) Other Taxes and (c) any interest, penalties or expenses caused by an Agent’s or Lender’s gross negligence or willful misconduct.

“**Independent Financial Advisor**” shall mean a nationally recognized accounting, appraisal or investment banking firm that is, in the reasonable judgment of the Board of Directors, qualified to perform the task for which such firm has been engaged hereunder and disinterested and independent with respect to the Borrower and its Affiliates; *provided* that providing accounting, appraisal or investment banking services to the Borrower or any of its Affiliates or having an employee, officer or other representative serving as a member of the Board of Directors of the Borrower or any of its Affiliates shall not disqualify any firm from being an Independent Financial Advisor.

“**Initial Term Loan**” shall have the meaning provided in Section 2.1(a).

“**Initial Term Loan Facility**” shall have the meaning provided in the recitals to this Agreement.

“**Initial Term Loan Maturity Date**” shall mean the third anniversary of the Funding Date, or if such anniversary of the Funding Date is not a Business Day, the Business Day immediately following such anniversary.

“**Initial Term Loan Repayment Amount**” shall have the meaning provided in Section 2.5(b).

“**Initial Term Loan Repayment Date**” shall have the meaning provided in Section 2.5(b).

“**Interest Period**” shall mean, with respect to any Loan, the interest period applicable thereto, as determined pursuant to Section 2.9 hereof.