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

FORM 10-Q

(Mark One)

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

For the quarterly period ended September 30, 2014

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

For the transition period from ________ to ________

Commission File Number: 001-34846

RealPage, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction of incorporation or organization)

4000 International Parkway
Carrollton, Texas
(Address of principal executive offices)

75-2788861
(I.R.S. Employer Identification No.)

75007-1951
(Zip Code)

(972) 820-3000
(Registrant’s telephone number, including area code)

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

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☑ No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of “large accelerated filer,” “accelerated filer” and “smaller reporting company” in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☑
Accelerated filer ☐

Non-accelerated filer ☐ (Do not check if a smaller reporting company)
Smaller reporting company ☐

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

Indicate the number of shares outstanding of each of the issuer’s classes of common stock, as of the latest practicable date.

Class
Common Stock, $0.001 par value

Outstanding at October 24, 2014

78,728,890
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PART I—FINANCIAL INFORMATION

Item 1. Financial Statements.

REALPAGE, INC.

Consolidated Balance Sheets
(in thousands, except share data)

<table>
<thead>
<tr>
<th></th>
<th>September 30, 2014</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(Unaudited)</td>
<td></td>
</tr>
<tr>
<td><strong>Assets</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$30,670</td>
<td>$34,502</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>$81,049</td>
<td>$71,941</td>
</tr>
<tr>
<td>Accounts receivable, less allowance for doubtful accounts of $2,116 and $914 at September 30, 2014 and December 31, 2013, respectively</td>
<td>$63,731</td>
<td>$66,635</td>
</tr>
<tr>
<td>Deferred tax asset, net</td>
<td>$2,868</td>
<td>$3,284</td>
</tr>
<tr>
<td>Other current assets</td>
<td>$9,566</td>
<td>$7,453</td>
</tr>
<tr>
<td>Total current assets</td>
<td>$187,884</td>
<td>$183,815</td>
</tr>
<tr>
<td>Property, equipment and software, net</td>
<td>$71,464</td>
<td>$54,775</td>
</tr>
<tr>
<td>Goodwill</td>
<td>$193,468</td>
<td>$152,422</td>
</tr>
<tr>
<td>Identified intangible assets, net</td>
<td>$105,192</td>
<td>$108,815</td>
</tr>
<tr>
<td>Deferred tax asset, net</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other assets</td>
<td>$5,023</td>
<td>$3,386</td>
</tr>
<tr>
<td>Total assets</td>
<td>$567,584</td>
<td>$503,213</td>
</tr>
<tr>
<td><strong>Liabilities and stockholders’ equity</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current liabilities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>$17,444</td>
<td>$11,978</td>
</tr>
<tr>
<td>Accrued expenses and other current liabilities</td>
<td>$25,995</td>
<td>$23,122</td>
</tr>
<tr>
<td>Current portion of deferred revenue</td>
<td>$68,321</td>
<td>$66,085</td>
</tr>
<tr>
<td>Customer deposits held in restricted accounts</td>
<td>$81,015</td>
<td>$71,910</td>
</tr>
<tr>
<td>Total current liabilities</td>
<td>$192,775</td>
<td>$173,095</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>$6,764</td>
<td>$5,671</td>
</tr>
<tr>
<td>Deferred tax liability, net</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revolving credit facility</td>
<td>$38,572</td>
<td>$1,379</td>
</tr>
<tr>
<td>Other long-term liabilities</td>
<td>$14,931</td>
<td>8,564</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>$253,042</td>
<td>$188,709</td>
</tr>
<tr>
<td>Commitments and contingencies (Note 8)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stockholders’ equity:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Preferred stock, $0.001 par value: 10,000,000 shares authorized and zero shares issued and outstanding at September 30, 2014 and December 31, 2013, respectively</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Common stock, $0.001 par value: 125,000,000 shares authorized, 82,826,622 and 80,511,791 shares issued and 78,849,752 and 78,433,626 shares outstanding at September 30, 2014 and December 31, 2013, respectively</td>
<td>83</td>
<td>81</td>
</tr>
<tr>
<td>Additional paid-in capital</td>
<td>$422,414</td>
<td>$390,854</td>
</tr>
<tr>
<td>Treasury stock, at cost: 3,976,870 and 2,078,165 shares at September 30, 2014 and December 31, 2013, respectively</td>
<td>(32,305)</td>
<td>(11,183)</td>
</tr>
<tr>
<td>Accumulated deficit</td>
<td>(75,470)</td>
<td>(65,086)</td>
</tr>
<tr>
<td>Accumulated other comprehensive loss</td>
<td>(180)</td>
<td>(162)</td>
</tr>
<tr>
<td>Total stockholders’ equity</td>
<td>$314,542</td>
<td>$314,504</td>
</tr>
<tr>
<td>Total liabilities and stockholders’ equity</td>
<td>$567,584</td>
<td>$503,213</td>
</tr>
</tbody>
</table>

See accompanying notes.
## Consolidated Statements of Operations

(ina thousands, except per share data)

(Unaudited)

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td><strong>Revenue:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On demand</td>
<td>$100,747</td>
<td>$94,084</td>
</tr>
<tr>
<td>On premise</td>
<td>755</td>
<td>838</td>
</tr>
<tr>
<td>Professional and other</td>
<td>3,034</td>
<td>3,149</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td>104,536</td>
<td>98,071</td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>58,225</td>
<td>59,960</td>
</tr>
<tr>
<td><strong>Operating expense:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product development</td>
<td>17,528</td>
<td>13,232</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>29,949</td>
<td>25,166</td>
</tr>
<tr>
<td>General and administrative</td>
<td>15,443</td>
<td>15,554</td>
</tr>
<tr>
<td><strong>Total operating expense</strong></td>
<td>62,920</td>
<td>53,952</td>
</tr>
<tr>
<td><strong>Operating (loss) income</strong></td>
<td>(4,695)</td>
<td>6,008</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>(345)</td>
<td>(236)</td>
</tr>
<tr>
<td><strong>(Loss) income before income taxes</strong></td>
<td>(5,040)</td>
<td>5,772</td>
</tr>
<tr>
<td>Income tax benefit</td>
<td>(1,783)</td>
<td>(7,114)</td>
</tr>
<tr>
<td><strong>Net (loss) income</strong></td>
<td>$ (3,257)</td>
<td>$12,886</td>
</tr>
<tr>
<td><strong>Net (loss) income per share</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$ (0.04)</td>
<td>$0.17</td>
</tr>
<tr>
<td>Diluted</td>
<td>$ (0.04)</td>
<td>$0.17</td>
</tr>
<tr>
<td><strong>Weighted average shares used in computing net (loss) income per share</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>77,280</td>
<td>75,234</td>
</tr>
<tr>
<td>Diluted</td>
<td>77,280</td>
<td>76,347</td>
</tr>
</tbody>
</table>

*See accompanying notes.*
REALPAGE, INC.

Consolidated Statements of Comprehensive Income (Loss)
(in thousands)
(Unaudited)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net (loss) income</td>
<td>$ (3,257)</td>
<td>$ (10,384)</td>
</tr>
<tr>
<td>Other comprehensive (loss) income—foreign currency translation adjustment</td>
<td>(9)</td>
<td>12</td>
</tr>
<tr>
<td>Comprehensive (loss) income</td>
<td>$ (3,266)</td>
<td>$ 12,886</td>
</tr>
</tbody>
</table>

See accompanying notes.
# REALPAGE, INC.

**Consolidated Statements of Stockholders’ Equity**  
*(in thousands)*  
*(Unaudited)*

<table>
<thead>
<tr>
<th>Description</th>
<th>Common Stock</th>
<th>Additional Paid-in Capital</th>
<th>Accumulated Other Comprehensive Loss</th>
<th>Accumulated Deficit</th>
<th>Treasury Shares</th>
<th>Total Stockholders' Equity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
<td>Amount</td>
<td>Shares</td>
<td>Shares</td>
<td>Amount</td>
</tr>
<tr>
<td>Balance as of December 31, 2013</td>
<td>80,512 $</td>
<td>$ 390,854 $</td>
<td>(162) $</td>
<td>$ (65,086)</td>
<td>(2,078) $</td>
<td>$ 314,504 $</td>
</tr>
<tr>
<td>Foreign currency translation</td>
<td>——</td>
<td>——</td>
<td>(18) $</td>
<td>——</td>
<td>——</td>
<td>(18) $</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>——</td>
<td>——</td>
<td>(10,384) $</td>
<td>——</td>
<td>——</td>
<td>(10,384) $</td>
</tr>
<tr>
<td>Exercise of stock options</td>
<td>586 $</td>
<td>5,166 $</td>
<td>——</td>
<td>——</td>
<td>——</td>
<td>5,166 $</td>
</tr>
<tr>
<td>Treasury stock purchase, at cost</td>
<td>——</td>
<td>——</td>
<td>(1,899) $</td>
<td>(21,122) $</td>
<td>——</td>
<td>(21,122) $</td>
</tr>
<tr>
<td>Issuance of restricted stock</td>
<td>1,695 $</td>
<td>2 $</td>
<td>——</td>
<td>——</td>
<td>——</td>
<td>2 $</td>
</tr>
<tr>
<td>Issuance of common stock</td>
<td>34 $</td>
<td>——</td>
<td>——</td>
<td>——</td>
<td>——</td>
<td>——</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>——</td>
<td>28,794 $</td>
<td>——</td>
<td>——</td>
<td>——</td>
<td>28,794 $</td>
</tr>
<tr>
<td>Acquisition-related contingent consideration</td>
<td>——</td>
<td>(2,400) $</td>
<td>——</td>
<td>——</td>
<td>——</td>
<td>(2,400) $</td>
</tr>
<tr>
<td>Balance as of September 30, 2014</td>
<td>82,827 $</td>
<td>$ 422,414 $</td>
<td>(180) $</td>
<td>$ (75,470)</td>
<td>(3,977) $</td>
<td>$ 314,542 $</td>
</tr>
</tbody>
</table>

*See accompanying notes.*

4
REALPAGE, INC.
Consolidated Statements of Cash Flows
(in thousands)
(Unaudited)

<table>
<thead>
<tr>
<th>Nine Months Ended September 30,</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net (loss) income</td>
<td>$(10,384)</td>
<td>$18,514</td>
</tr>
<tr>
<td>Adjustments to reconcile net (loss) income to net cash provided by operating activities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>30,533</td>
<td>22,823</td>
</tr>
<tr>
<td>Deferred tax benefit</td>
<td>(6,011)</td>
<td>(4,873)</td>
</tr>
<tr>
<td>Stock-based compensation</td>
<td>28,794</td>
<td>21,042</td>
</tr>
<tr>
<td>Loss on disposal of assets</td>
<td>36</td>
<td>310</td>
</tr>
<tr>
<td>Acquisition-related contingent consideration</td>
<td>564</td>
<td>1,300</td>
</tr>
<tr>
<td>Changes in assets and liabilities, net of assets acquired and liabilities assumed in business combinations:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>3,043</td>
<td>(6,007)</td>
</tr>
<tr>
<td>Customer deposits</td>
<td>(3)</td>
<td>1</td>
</tr>
<tr>
<td>Other current assets</td>
<td>(2,445)</td>
<td>(1,166)</td>
</tr>
<tr>
<td>Other assets</td>
<td>(700)</td>
<td>(386)</td>
</tr>
<tr>
<td>Accounts payable</td>
<td>3,099</td>
<td>3,902</td>
</tr>
<tr>
<td>Accrued compensation, taxes and benefits</td>
<td>(257)</td>
<td>(2,122)</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>3,140</td>
<td>(2,498)</td>
</tr>
<tr>
<td>Other current and long-term liabilities</td>
<td>645</td>
<td>769</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>50,054</td>
<td>51,609</td>
</tr>
</tbody>
</table>

Cash flows from investing activities:

<table>
<thead>
<tr>
<th>Nine Months Ended September 30,</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Purchases of property, equipment and software</td>
<td>(29,125)</td>
<td>(22,190)</td>
</tr>
<tr>
<td>Acquisition of businesses, net of cash acquired</td>
<td>(41,942)</td>
<td>(10,342)</td>
</tr>
<tr>
<td>Intangible asset additions</td>
<td>—</td>
<td>(600)</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(71,067)</td>
<td>(33,132)</td>
</tr>
</tbody>
</table>

Cash flows from financing activities:

<table>
<thead>
<tr>
<th>Nine Months Ended September 30,</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceeds from revolving credit facility</td>
<td>68,572</td>
<td>—</td>
</tr>
<tr>
<td>Payments on revolving credit facility</td>
<td>(30,000)</td>
<td>(10,000)</td>
</tr>
<tr>
<td>Deferred financing costs</td>
<td>(992)</td>
<td>—</td>
</tr>
<tr>
<td>Payments on capital lease obligations</td>
<td>(420)</td>
<td>(411)</td>
</tr>
<tr>
<td>Payments of deferred acquisition-related consideration</td>
<td>(4,007)</td>
<td>(1,545)</td>
</tr>
<tr>
<td>Issuance of common stock</td>
<td>5,168</td>
<td>6,854</td>
</tr>
<tr>
<td>Purchase of treasury stock</td>
<td>(21,122)</td>
<td>(3,163)</td>
</tr>
<tr>
<td>Net cash provided by (used in) financing activities</td>
<td>17,199</td>
<td>(8,265)</td>
</tr>
<tr>
<td>Net (decrease) increase in cash and cash equivalents</td>
<td>(3,814)</td>
<td>10,212</td>
</tr>
<tr>
<td>Effect of exchange rate on cash</td>
<td>(18)</td>
<td>(36)</td>
</tr>
</tbody>
</table>

Cash and cash equivalents:

<table>
<thead>
<tr>
<th>Nine Months Ended September 30,</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Beginning of period</td>
<td>34,502</td>
<td>33,804</td>
</tr>
<tr>
<td>End of period</td>
<td>$30,670</td>
<td>$43,980</td>
</tr>
</tbody>
</table>

See accompanying notes.

REALPAGE, INC.
Consolidated Statements of Cash Flows, continued
(in thousands)
(Unaudited)

<table>
<thead>
<tr>
<th>Nine Months Ended September 30,</th>
<th>2014</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supplemental cash flow information:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash paid for interest</td>
<td>$678</td>
<td>$812</td>
</tr>
<tr>
<td>Cash paid for income taxes, net of refunds</td>
<td>$358</td>
<td>$453</td>
</tr>
</tbody>
</table>
## Non-cash investing activities:

<table>
<thead>
<tr>
<th></th>
<th>Amount 1</th>
<th>Amount 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accrued fixed assets</td>
<td>$1,943</td>
<td>$754</td>
</tr>
</tbody>
</table>

## Non-cash financing activities:

<table>
<thead>
<tr>
<th></th>
<th>Amount</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed assets acquired under capital lease</td>
<td>$—</td>
<td>$1,976</td>
</tr>
</tbody>
</table>

*See accompanying notes.*
1. The Company

RealPage, Inc., a Delaware corporation, and its subsidiaries, (the “Company” or “we” or “us”) is a provider of property management solutions that enable owners and managers of single-family and a wide variety of multi-family rental property types to manage their marketing, pricing, screening, leasing, accounting, purchasing and other property operations. Our on demand software solutions are delivered through an integrated software platform that provides a single point of access and a shared repository of prospect, resident and property data. By integrating and streamlining a wide range of complex processes and interactions among the rental housing ecosystem of owners, managers, prospects, residents and service providers, our platform optimizes the property management process and improves the experience for all of these constituents. Our solutions enable property owners and managers to optimize revenues and reduce operating costs through higher occupancy, improved pricing methodologies, new sources of revenue from ancillary services, improved collections and more integrated and centralized processes.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying unaudited consolidated financial statements and footnotes have been prepared pursuant to the rules and regulations of the Securities and Exchange Commission (“SEC”). Certain information and note disclosures normally included in annual financial statements prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) have been condensed or omitted pursuant to those rules and regulations. We believe that the disclosures made are adequate to make the information not misleading.

The consolidated financial statements included herein reflect all adjustments (consisting of normal, recurring adjustments) which are, in the opinion of management, necessary to state fairly the results for the interim periods presented. All intercompany balances and transactions have been eliminated in consolidation. The results of operations for the interim periods presented are not necessarily indicative of the operating results to be expected for any subsequent interim period or for the fiscal year.

It is suggested that these financial statements be read in conjunction with the financial statements and the notes thereto included in our Annual Report on Form 10-K filed with the SEC on March 3, 2014 (“Form 10-K”).

Segment and Geographic Information

Our chief operating decision maker is our Chief Executive Officer, who reviews financial information presented on a company-wide basis. As a result, we determined that the Company has a single reporting segment and operating unit structure.

Principally, all of our revenue for the three and nine months ended September 30, 2014 and 2013 was in North America.

Net long-lived tangible assets held were $65.5 million and $51.5 million in North America and $6.0 million and $3.3 million in our international subsidiaries at September 30, 2014 and December 31, 2013, respectively.

Accounting Policies and Use of Estimates

The preparation of financial statements in conformity with GAAP requires our management to make certain estimates and assumptions that affect the reported amounts of assets and liabilities and the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Significant estimates include the allowance for doubtful accounts; the useful lives of tangible and intangible assets and the recoverability or impairment of tangible and intangible asset values; fair value measurements; purchase accounting allocations and related reserves; revenue and deferred revenue; stock-based compensation; and our effective income tax rate and the recoverability of deferred tax assets, which are based upon our expectations of future taxable income and allowable deductions. Actual results could differ from these estimates. For greater detail regarding these accounting policies and estimates, refer to our Form 10-K.

Revenue Recognition

We derive our revenue from three primary sources: our on demand software solutions; our on premise software solutions; and professional and other services. We commence revenue recognition when all of the following conditions are met:

• there is persuasive evidence of an arrangement;
• the solution and/or service has been provided to the customer;
• the collection of the fees is probable; and
• the amount of fees to be paid by the customer is fixed or determinable.

If the fees are not fixed or determinable, we recognize revenues when these criteria are met, which could be as payments become due from customers, or when amounts owed are collected. Accordingly, this may materially affect the timing of our revenue recognition and results of operations.

For multi-element arrangements that include multiple software solutions and/or services, we allocate arrangement consideration to all deliverables that have stand-alone value based on their relative selling prices. In such circumstances, we utilize the following hierarchy to determine the selling price to be used for allocating revenue to deliverables as follows:

- **Vendor specific objective evidence (VSOE), if available.** The price at which we sell the element in a separate stand-alone transaction;
- **Third-party evidence of selling price (TPE), if VSOE of selling price is not available.** Evidence from us or other companies of the value of a largely interchangeable element in a transaction; and
- **Estimated selling price (ESP), if neither VSOE nor TPE of selling price is available.** Our best estimate of the stand-alone selling price of an element in a transaction.

Our process for determining ESP for deliverables without VSOE or TPE considers multiple factors that may vary depending upon the unique facts and circumstances related to each deliverable. Key factors primarily considered in developing ESP include prices charged by us for similar offerings when sold separately, pricing policies and approvals from standard pricing and other business objectives.

From time to time, we sell on demand software solutions with professional services. In such cases, as each element has stand-alone value, we allocate arrangement consideration based on our ESP of the on demand software solution and VSOE of the selling price of the professional services.

Taxes collected from customers and remitted to governmental authorities are presented on a net basis.

**On Demand Revenue**

Our on demand revenue consists of license and subscription fees, transaction fees related to certain of our software-enabled value-added services and commissions derived from selling certain risk mitigation services.

License and subscription fees are comprised of a charge billed at the initial order date and monthly or annual subscription fees for accessing our on demand software solutions. The license fee billed at the initial order date is recognized as revenue on a straight-line basis over the longer of the contractual term or the period in which the customer is expected to benefit, which we consider to be three years.

Recognition starts once the product has been activated. Revenue from monthly and annual subscription fees is recognized on a straight-line basis over the access period.

We recognize revenue from transaction fees derived from certain of our software-enabled value-added services as the related services are performed.

As part of our risk mitigation services to the rental housing industry, we act as an insurance agent and derive commission revenue from the sale of insurance products to individuals. The commissions are based upon a percentage of the premium that the insurance company charges to the policyholder and are subject to forfeiture in instances where a policyholder cancels prior to the end of the policy. If the policy is cancelled, our commissions are forfeited as a percent of the unearned premium. As a result, we recognize the commissions related to these services ratably over the policy term as the associated premiums are earned. Our contract with our underwriting partner provides for contingent commissions to be paid to us in accordance with the agreement. This agreement provides for a calculation that considers, on the policies sold by us, earned premiums less i) earned agent commissions; ii) a percent of premium retained by our underwriting partner; iii) incurred losses; and iv) profit retained by our underwriting partner during the time period. Our estimate of contingent commission revenue considers historical loss experience on the policies sold by us.

**On Premise Revenue**

Revenue from our on premise software solutions is comprised of an annual term license, which includes maintenance and support. Customers can renew their annual term license for additional one-year terms at renewal price levels. We recognize the annual term license on a straight-line basis over the contract term.

In addition, we have arrangements that include perpetual licenses with maintenance and other services to be provided over a fixed term. We allocate and defer revenue equivalent to the VSOE of fair value for the undelivered elements and recognize the difference between the total arrangement fee and the amount deferred for the undelivered elements as revenue. We have determined that we do not have VSOE of fair value for our customer support and professional services in these specific arrangements. As a result, the elements within our multiple-element sales agreements do not qualify for treatment as separate units of accounting. Accordingly, we account for fees received under multiple-element arrangements with customer.
support or other professional services as a single unit of accounting and recognize the entire arrangement ratably over the longer of the customer support period or the period during which professional services are rendered.

**Professional and Other Revenue**

Professional and other revenue is recognized as the services are rendered for time and material contracts. Training revenues are recognized after the services are performed.

**Fair Value Measurements**

We measure certain financial assets and liabilities at fair value pursuant to a fair value hierarchy based on inputs to valuation techniques that are used to measure fair value that are either observable or unobservable. Observable inputs reflect assumptions market participants would use in pricing an asset or liability based on market data obtained from independent sources while unobservable inputs reflect a reporting entity’s pricing based upon its own market assumptions. The fair value hierarchy consists of the following three levels:

- **Level 1** — Inputs are quoted prices in active markets for identical assets or liabilities.
- **Level 2** — Inputs are quoted prices for similar assets or liabilities in active markets, quoted prices for identical or similar assets or liabilities in markets that are not active, inputs other than quoted prices that are observable and market-corroborated inputs which are derived principally from or corroborated by observable market data.
- **Level 3** — Inputs are derived from valuation techniques in which one or more significant inputs or value drivers are unobservable.

**Concentrations of Credit Risk**

Our cash accounts are maintained at various financial institutions and may, from time to time, exceed federally insured limits. The Company has not experienced any losses in such accounts.

Concentrations of credit risk with respect to accounts receivable result from substantially all of our customers being in the multi-family rental housing market. Our customers, however, are dispersed across different geographic areas. We do not require collateral from customers. We maintain an allowance for losses based upon the expected collectability of accounts receivable. Accounts receivable are written off upon determination of non-collectability following established Company policies based on the aging from the accounts receivable invoice date.

No single customer accounted for 5% or more of our revenue or accounts receivable for the three or nine months ended September 30, 2014 or 2013.

**Recently Issued Accounting Standards**

In May 2014, the Financial Accounting Standards Board (“FASB”) issued ASU 2014-09, *Revenue from Contracts with Customers*. This new standard will replace all current GAAP guidance on this topic and eliminate all industry-specific guidance. The new revenue recognition standard provides a unified model to determine when and how revenue is recognized. The core principle is that a company should recognize revenue to depict the transfer of promised goods or services to customers in an amount that reflects the consideration for which the entity expects to be entitled in exchange for those goods or services. This guidance will be effective for us beginning January 1, 2017 and at that time, can be applied either retrospectively to each period presented or as a cumulative-effect adjustment as of the date of adoption. We have not yet selected a transition method nor have we determined the effect of the standard on our ongoing financial reporting.

In August 2014, the FASB issued ASU No. 2014-15, *Presentation of Financial Statements-Going Concern* (Subtopic 205-40), *Disclosure of Uncertainties about an Entity’s Ability to Continue as a Going Concern*. This standard sets forth management’s responsibility to evaluate, each reporting period, whether there is substantial doubt about our ability to continue as a going concern, and if so, to provide related footnote disclosures. The standard is effective for annual and interim reporting periods ending after December 15, 2016. We are currently evaluating this new standard and expect it to have no impact on our financial position and results of operations.

**3. Acquisitions**

**2014 Acquisitions**

In January 2014, we acquired certain assets from Bookt LLC, including the InstaManager product (“InstaManager”). InstaManager is a software-as-a-service vacation rental booking engine used by professional managers of vacation rental properties. InstaManager offers marketing websites, online pricing and availability, online booking, automated reservations, payment processing and insurance sales. The acquisition of InstaManager expanded our product offerings to include property management software for the vacation rental market. We acquired InstaManager for a preliminary purchase price of $9.2 million, consisting of a cash payment of $6.0 million at closing, a deferred cash payment of up to $1.0 million payable over two years after the acquisition date, and additional cash payments totaling up to $7.0 million if certain revenue targets are met for
the years ended March 31, 2015 and March 31, 2016 (a Level 3 input). The initial fair value of the deferred cash payment and the contingent cash payments was $0.8 million and $2.4 million, respectively. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on the achievement of certain revenue targets and will be evaluated quarterly. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at their estimated fair value based on assumptions made by us. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. The trade name acquired has an indefinite useful life as we do not plan to cease using the trade name in the marketplace. Direct acquisition costs were less than $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are deductible for tax purposes. The fair value of the deferred cash payment and the contingent cash payments were $0.8 million and $3.2 million, respectively, at September 30, 2014, and for the three and nine months ended September 30, 2014, we recognized losses of $0.6 million and $0.8 million due to the changes in their estimated fair value.

In March 2014, we acquired certain assets from Virtual Maintenance Manager LLC, including the Virtual Maintenance Manager product (“VMM”). VMM is a software-as-a-service application that facilitates the management of the end-to-end maintenance lifecycle for single-family and multi-family rental properties and provides property managers visibility into their maintenance costs, manages resources, and provides business control for property managers. We integrated VMM into our existing Propertyware products. We acquired the VMM assets for a preliminary purchase price of $1.2 million, consisting of a cash payment of $1.0 million at closing, a deferred cash payment of up to $0.2 million payable over two years after the acquisition date, and additional cash payments of up to $2.0 million if certain revenue targets are met for the twelve months ended June 30, 2015 and June 30, 2016 (a Level 3 input). The initial fair value of the deferred cash payment and the contingent cash payments was $0.2 million and less than $0.1 million, respectively. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on the achievement of certain revenue targets and will be evaluated quarterly. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at their estimated fair value based on assumptions made by us. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. Acquired customer relationships have a useful life of five years which will be amortized proportionately to the expected discounted cash flows derived from the asset. Direct acquisition costs were less than $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are deductible for tax purposes. The fair value of the contingent cash payments was less than $0.1 million at September 30, 2014, and for the three and nine months ended September 30, 2014, we recognized a gain of less than $0.1 million due to the changes in their estimated fair value.

In May 2014, we acquired certain assets from Notivus Multi-Family LLC (“Notivus”). Notivus is a software-as-a-service application that provides an outsourced vendor credentialing solution to assist multifamily owners and managers in the credentialing and ongoing monitoring of its current and prospective vendors, suppliers, and independent contractors. We are integrating Notivus into our existing Compliance Depot products. We acquired the Notivus assets for a preliminary purchase price of $4.4 million, consisting of a cash payment of $3.6 million at closing and a deferred cash payment of up to $0.8 million payable over two years after the acquisition date. The initial fair value of the deferred cash payment was approximately $0.8 million. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on working capital targets and will be evaluated quarterly. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at their estimated fair value based on assumptions made by us. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. Direct acquisition costs were less than $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are deductible for tax purposes.

In June 2014, we acquired all of the issued and outstanding stock of Kigo, Inc. ("Kigo"). Kigo is a software-as-a-service vacation rental booking system headquartered in the United States with operations in Spain. Kigo offers services for vacation rental property management that include vacation rental calendars, scheduling, reservations, accounting, channel management, website design, payment processing and other tasks to aid the management of leads, revenue, resources and lodging calendars. We plan to integrate Kigo with our existing vacation rental products. We acquired Kigo for a preliminary purchase price of $36.2 million, consisting of a cash payment of $30.7 million and a deferred cash payment of up to $5.5 million, to be payable over two and a half years after the acquisition date. This acquisition was financed from proceeds from our revolving line of credit and cash flows from operations. Direct acquisition costs were $0.5 million and expensed as incurred. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. Acquired customer relationships have a useful life of ten years, which will be amortized proportionately to the expected discounted cash flows derived from the asset. The trade name acquired has an indefinite useful life as we do not plan to cease using the trade name in the marketplace. Goodwill and identified intangibles associated with this acquisition are not deductible.
for tax purposes. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of this acquisition.

We preliminarily allocated the purchase price for InstaManager, VMM, Notivus and Kigo as follows:

<table>
<thead>
<tr>
<th></th>
<th>InstaManager</th>
<th>VMM</th>
<th>Notivus</th>
<th>Kigo</th>
</tr>
</thead>
<tbody>
<tr>
<td>(in thousands)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intangible assets:</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Developed product technologies</td>
<td>$4,490</td>
<td>$671</td>
<td>$1,840</td>
<td>$2,570</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>—</td>
<td>200</td>
<td>—</td>
<td>1,120</td>
</tr>
<tr>
<td>Tradenames</td>
<td>527</td>
<td>—</td>
<td>—</td>
<td>602</td>
</tr>
<tr>
<td>Goodwill</td>
<td>4,135</td>
<td>358</td>
<td>2,852</td>
<td>32,996</td>
</tr>
<tr>
<td>Deferred revenue</td>
<td>(33)</td>
<td>—</td>
<td>(156)</td>
<td>—</td>
</tr>
<tr>
<td>Net deferred taxes</td>
<td>—</td>
<td>—</td>
<td>—</td>
<td>(495)</td>
</tr>
<tr>
<td>Net other assets (liabilities)</td>
<td>55</td>
<td>—</td>
<td>(141)</td>
<td>(547)</td>
</tr>
<tr>
<td>Total purchase price</td>
<td>$9,174</td>
<td>$1,229</td>
<td>$4,395</td>
<td>$36,246</td>
</tr>
</tbody>
</table>

2013 Acquisitions

In February 2013, we acquired certain assets of Seniors for Living, Inc. (“SFL”). SFL is a leading performance-based marketing company that provides senior housing communities and home care companies with industry-leading referral and marketing services to help them achieve their occupancy goals. We have integrated SFL with our existing senior living software solutions. We acquired SFL for a purchase price of $2.7 million which consisted of a cash payment of $2.3 million and additional cash payments of $0.2 million each due 6 months and 12 months after the acquisition date. As of September 30, 2014, both payments of $0.2 million had been made. This acquisition was financed from proceeds from cash flows from operations. Acquired intangibles were recorded at fair value based on assumptions made by us. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. Acquired customer relationships have a useful life of five years which will be amortized proportionately to the expected discounted cash flows derived from the asset. Direct acquisition costs were less than $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are deductible for tax purposes.

In March 2013, we acquired certain assets from Yield Technologies, Inc., including RentSentinel and RentSocial (together, “RentSentinel”). The RentSentinel software-as-a-service platform is a fully featured apartment marketing management solution for the multi-family industry. RentSocial is an apartment search service that simplifies and incorporates the social marketing platform into the process of finding an apartment. We have integrated RentSentinel with our existing LeaseStar product family. We acquired RentSentinel for a purchase price of $10.5 million which consisted of a cash payment of $7.6 million, an issuance of 72,500 shares of our common stock and two tranches of 36,250 shares of our common stock which are issuable 12 months and 24 months after the acquisition date, respectively. As of September 30, 2014, 33,868 shares had been issued. This acquisition was financed from proceeds from cash flows from operations and our common stock. Acquired intangibles were recorded at fair value based on assumptions made by us. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. Acquired customer relationships have a useful life of nine years which will be amortized proportionately to the expected discounted cash flows derived from the asset. Direct acquisition costs were $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are not deductible for tax purposes.

In October 2013, we acquired substantially all of the operating assets of Windsor Compliance Services, Inc. (“Windsor Compliance”) for a purchase price of $2.7 million, which included a cash payment of $1.3 million at closing and additional cash payments of $1.0 million and $0.5 million due 12 months and 24 months after the acquisition date, respectively, which are contingent on Windsor Compliance providing services to a specified number of units on or before those dates (a Level 3 input). The initial fair value of the cash payments was $1.3 million. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on the achievement of the servicing targets discussed above. Windsor Compliance is a firm specializing in compliance with tax credits and regulations for the affordable housing industry. We have integrated Windsor Compliance with our other affordable HUD products. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at fair value based on assumptions made by us. Acquired customer relationships have a useful life of ten years which will be amortized proportionately to the expected discounted cash flows derived from the asset. The fair value of the cash payments was $1.3 million. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on the achievement of the servicing targets discussed above. Windsor Compliance is a firm specializing in compliance with tax credits and regulations for the affordable housing industry. We have integrated Windsor Compliance with our other affordable HUD products. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at fair value based on assumptions made by us. Acquired customer relationships have a useful life of ten years which will be amortized proportionately to the expected discounted cash flows derived from the asset. The fair value of the cash payments was $1.3 million. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on the achievement of the servicing targets discussed above. Windsor Compliance is a firm specializing in compliance with tax credits and regulations for the affordable housing industry. We have integrated Windsor Compliance with our other affordable HUD products. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at fair value based on assumptions made by us. Acquired customer relationships have a useful life of ten years which will be amortized proportionately to the expected discounted cash flows derived from the asset.
discounted cash flows derived from the asset. Direct acquisition costs were less than $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are deductible for tax purposes. The fair value of the additional cash payments was $1.4 million at September 30, 2014, and for the three and nine months ended September 30, 2014, we recognized losses of $0.1 million due to the changes in their estimated fair value.

In October 2013, we acquired all of the issued and outstanding capital stock of MyBuilding Inc. ("MyBuilding") for a purchase price of $6.9 million, consisting of a cash payment of $4.5 million at closing, a deferred cash payment of up to $1.5 million payable over two years after the acquisition date and additional cash payments totaling up to $1.1 million if certain revenue targets are met for the years ended December 31, 2014 and December 31, 2015. The initial fair value of the deferred cash payment and the contingent cash payments was $1.4 million and $0.3 million, respectively. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on the achievement of certain revenue targets (a Level 3 input). MyBuilding provides software-as-a-service solutions that facilitate the creation of online communities that connect residents to multifamily property managers, local vendors, and other residents. We have integrated MyBuilding with our existing LeaseStar software solutions. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at fair value based on assumptions made by us. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. Acquired customer relationships have a useful life of ten years which will be amortized proportionately to the expected discounted cash flows derived from the asset. The trade name acquired has an indefinite useful life as we do not plan to cease using the trade name in the marketplace. Direct acquisition costs were less than $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are not deductible for tax purposes. The fair value of the deferred cash payment and the contingent cash payments were $1.4 million and $0.3 million, respectively, at September 30, 2014, and for the three and nine months ended September 30, 2014, we recognized losses of less than $0.1 million, due to the changes in their estimated fair value.

In October 2013, we acquired all of the membership interests of Active Building, LLC ("Active Building") for a purchase price of $14.4 million, consisting of a cash payment of $11.3 million at closing, a deferred cash payment of up to $2.0 million payable over three years after the acquisition date, and additional cash payments totaling up to $6.5 million if certain revenue targets are met for the years ended December 31, 2014 and December 31, 2015. The initial fair value of the deferred cash payment and the contingent cash payments was $1.7 million and $1.3 million, respectively. The fair value was based on management’s estimate of the fair value of the cash payment using a probability weighted discount model on the achievement of certain revenue targets (a Level 3 input). Active Building provides software-as-a-service solutions that facilitate the creation of online communities that connect residents to multifamily property managers, local vendors, and other residents. We have integrated Active Building with our existing LeaseStar software solutions. This acquisition was financed from cash flows from operations. Acquired intangibles were recorded at fair value based on assumptions made by us. The acquired developed product technologies have a useful life of three years amortized on a straight-line basis. Acquired customer relationships have a useful life of ten years which will be amortized proportionately to the expected discounted cash flows derived from the asset. The trade name acquired has an indefinite useful life as we do not plan to cease using the trade name in the marketplace. Direct acquisition costs were less than $0.1 million and expensed as incurred. We included the results of operations of this acquisition in our consolidated financial statements from the effective date of the acquisition. Goodwill and identified intangibles associated with this acquisition are deductible for tax purposes. The fair value of the deferred cash payment and the contingent cash payments was $1.9 million and $1.3 million, respectively, at September 30, 2014, and for the three and nine months ended September 30, 2014, we recognized gains of $0.1 million and $0.3 million, respectively, due to the changes in their estimated fair value.

We allocated the purchase prices for SFL, RentSentinel, Windsor Compliance, MyBuilding and Active Building as follows:
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4. Property, Equipment and Software

Other Acquisition-Related Fair Value Adjustments

We have acquired companies in previous years for which acquisition-related contingent consideration was included in the purchase price and recorded at fair value. The liability established for the acquisition-related contingent consideration will continue to be re-evaluated and recorded at an estimated fair value based on the probabilities, as determined by management, of achieving the related targets. This evaluation will be performed until all of the targets have been met or terms of the agreement expire. For the three and nine months ended September 30, 2014, there were no acquisition-related fair value adjustments for acquisitions made prior to January 1, 2013.

Payments made to SeniorLiving.net, acquired in July 2011, and Rent Mine Online, acquired in July 2012, during the three months ended September 30, 2014 totaled $3.3 million. Payments made to Vigilan, acquired in January 2012, SeniorLiving.net, acquired in July 2011, and Rent Mine Online, acquired in July 2012, during nine months ended September 30, 2014 totaled $3.8 million.

Pro Forma Results of Acquisitions

The following table presents pro forma results of operations for the three and nine months ended September 30, 2014 and September 30, 2013 as if the Kigo, Notivus, VMM, InstaManager, Active Building, MyBuilding, Windsor Compliance, SFL, and RentSentinel acquisitions had occurred on January 1, 2013. The pro forma information includes the business combination accounting effects resulting from these acquisitions, including interest expense, tax benefit, and additional amortization resulting from the valuation of amortizable intangible assets. We prepared the pro forma financial information for the combined entities for comparative purposes only, and it is not indicative of what actual results would have been if the acquisitions had occurred on January 1, 2013, nor do the pro forma results intend to be a projection of results that may be obtained in the future.

### Three Months Ended September 30, 2014 Pro Forma

<table>
<thead>
<tr>
<th>Revenue:</th>
<th>SFL</th>
<th>RentSentinel</th>
<th>Windsor Compliance</th>
<th>My Building</th>
<th>Active Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>On demand</td>
<td>$100,747</td>
<td>$95,953</td>
<td></td>
<td>$290,691</td>
<td>$276,554</td>
</tr>
<tr>
<td>On premise</td>
<td>$755</td>
<td>$838</td>
<td></td>
<td>$2,446</td>
<td>$2,799</td>
</tr>
<tr>
<td>Professional and other</td>
<td>$3,034</td>
<td>$3,149</td>
<td></td>
<td>$8,280</td>
<td>$8,473</td>
</tr>
<tr>
<td>Total revenue</td>
<td>$104,536</td>
<td>$99,940</td>
<td></td>
<td>$301,417</td>
<td>$287,826</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>$(3,257)</td>
<td>$(12,098)</td>
<td></td>
<td>$(10,857)</td>
<td>$14,806</td>
</tr>
<tr>
<td>Net (loss) income per share</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$(0.04)</td>
<td>$(0.16)</td>
<td></td>
<td>$(0.14)</td>
<td>$0.20</td>
</tr>
<tr>
<td>Diluted</td>
<td>$(0.04)</td>
<td>$(0.16)</td>
<td></td>
<td>$(0.14)</td>
<td>$0.20</td>
</tr>
</tbody>
</table>

### Nine Months Ended September 30, 2014 Pro Forma

<table>
<thead>
<tr>
<th>Revenue:</th>
<th>SFL</th>
<th>RentSentinel</th>
<th>Windsor Compliance</th>
<th>My Building</th>
<th>Active Building</th>
</tr>
</thead>
<tbody>
<tr>
<td>On demand</td>
<td>$301,417</td>
<td>$287,826</td>
<td></td>
<td>$301,417</td>
<td>$287,826</td>
</tr>
<tr>
<td>On premise</td>
<td>$2,446</td>
<td>$2,799</td>
<td></td>
<td>$2,446</td>
<td>$2,799</td>
</tr>
<tr>
<td>Professional and other</td>
<td>$8,280</td>
<td>$8,473</td>
<td></td>
<td>$8,280</td>
<td>$8,473</td>
</tr>
<tr>
<td>Total revenue</td>
<td>$301,417</td>
<td>$287,826</td>
<td></td>
<td>$301,417</td>
<td>$287,826</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>$(10,857)</td>
<td>$(14,806)</td>
<td></td>
<td>$(10,857)</td>
<td>$14,806</td>
</tr>
</tbody>
</table>

4. Property, Equipment and Software

Property, equipment and software consist of the following:

- Intangible assets:
  - Developed product technologies: $1,406 to $4,238
  - Customer relationships: 161 to 2,390
  - Tradenames: —
  - Goodwill: 1,035 to 3,633
  - Deferred revenue: 1,035 to 3,633
  - Net deferred taxes: —
  - Net other assets: 88

- Total purchase price, net of cash acquired: $2,690 to $10,496
Leasehold improvements  $23,425  $18,756
Data processing and communications equipment  58,321  47,719
Furniture, fixtures, and other equipment  15,015  11,266
Software  48,346  36,750
Less: Accumulated depreciation and amortization  (73,643)  (59,716)
Property, equipment and software, net  $71,464  $54,775

Depreciation and amortization expense for property, equipment and software was $5.6 million and $3.6 million for the three months ended September 30, 2014 and 2013, and $15.0 million and $10.9 million for the nine months ended September 30, 2014 and 2013, respectively. This includes depreciation for assets purchased through capital leases.

5. Goodwill and Other Intangible Assets

The change in the carrying amount of goodwill for the nine months ended September 30, 2014 is as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>September 30, 2014</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balance at December 31, 2013</td>
<td>$152,422</td>
<td></td>
</tr>
<tr>
<td>Goodwill acquired</td>
<td>40,341</td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>705</td>
<td></td>
</tr>
<tr>
<td>Balance at September 30, 2014</td>
<td>$193,468</td>
<td></td>
</tr>
</tbody>
</table>

Other intangible assets consisted of the following at September 30, 2014 and December 31, 2013:

<table>
<thead>
<tr>
<th>Amortization Period</th>
<th>September 30, 2014</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Carrying Amount</td>
<td>Accumulated Amortization</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td>(in thousands)</td>
</tr>
<tr>
<td>Finite-lived intangible assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Developed technologies</td>
<td>3 years</td>
<td>$54,852</td>
</tr>
<tr>
<td>Customer relationships</td>
<td>1-10 years</td>
<td>$86,753</td>
</tr>
<tr>
<td>Vendor relationships</td>
<td>7 years</td>
<td>$5,650</td>
</tr>
<tr>
<td>Total finite-lived intangible assets</td>
<td></td>
<td>$147,255</td>
</tr>
<tr>
<td>Indefinite-lived intangible assets:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Tradenames</td>
<td></td>
<td>$41,659</td>
</tr>
<tr>
<td>Total intangible assets</td>
<td></td>
<td>$188,914</td>
</tr>
</tbody>
</table>

Amortization of finite-lived intangible assets was $5.4 million and $4.0 million for the three months ended, and $15.5 million and $11.9 million for the nine months ended September 30, 2014 and 2013, respectively.

6. Debt

Credit Facility Opened September 2014

On September 30, 2014, we entered into a new agreement for a secured revolving credit facility to refinance our outstanding revolving loans. The new credit facility provides an aggregate principal amount of up to $200.0 million, with sublimits of $10.0 million for the issuance of letters of credit and for $20.0 million of swingline loans. The credit facility also allows us, subject to certain conditions, to request additional term loans or revolving commitments in an aggregate principal amount of up to $150.0 million, plus an amount that would not cause our consolidated net leverage ratio, which is a ratio of the Company’s consolidated funded indebtedness to its consolidated EBITDA, to exceed 3.25 to 1.00. At our option, the revolving loans accrue interest at a per annum rate equal to either LIBOR or Wells Fargo’s prime rate (or, if greater, the federal funds rate plus 0.50% or one month LIBOR plus 1.00%) in each case plus a margin ranging from 1.25% to 1.75% in the case of LIBOR loans, and 0.25% to 0.75% in the case of prime rate loans, in each case based upon our consolidated net leverage ratio. The interest is due and payable quarterly, in arrears, for loans bearing interest at the prime rate and at the end of the applicable period.
interest period in the case of loans bearing interest at the adjusted LIBOR rate. The credit facility is secured by substantially all of the Company’s assets and certain of our existing and future material domestic subsidiaries are required to guaranty our obligations under the credit facility. We are also required to comply with customary affirmative and negative covenants, as well as a consolidated net leverage ratio and an interest coverage ratio. The credit facility matures September 30, 2019.

**Previous Credit Facility**

Our previous secured revolving credit facility had an aggregate principal amount of up to $150.0 million, subject to a borrowing formula, with a sublimit of $10.0 million for the issuance of letters of credit on our behalf. At our option, the borrowings accrued interest at a per annum rate equal to either LIBOR or Wells Fargo’s prime rate (or, if greater, the federal funds rate plus 0.50% or three month LIBOR plus 1.00%), in each case plus a margin ranging from 2.00% to 2.50%, in the case of LIBOR loans, and 0.0% to 0.25% in the case of prime rate loans, in each case based upon our senior leverage ratio. The interest was due and payable monthly, in arrears, for loans bearing interest at the prime rate and at the end of the applicable 1-, 2-, or 3-month interest period in the case of loans bearing interest at the adjusted LIBOR rate.

In May 2014, we entered into an amendment to the previous credit facility. Under the terms of the amendment, the restrictive covenants were amended to permit us to repurchase up to $75 million of our common stock, subject to certain conditions. Additionally, the fixed charge coverage ratio was replaced with a new minimum interest expense coverage ratio and the capital expenditures limitations were increased.

In June 2014, we entered into an amendment to the previous credit facility. Under the terms of the amendment, the parties to the credit facility consented to the acquisition of Kigo and agreed that the acquisition of Kigo would be a “Permitted Acquisition,” as defined in the credit facility and would be excluded from the calculation of the Permitted Acquisition limit. Additionally, the amendment increased the value of our equipment that could be in the hands of our employees, consultants, or customers in the ordinary course of business to $2.5 million and amended the definition of “Aggregate Permitted Acquisition Limit” to $150.0 million, plus an additional $100.0 million if certain conditions are met. In June 2014, we borrowed a total of $25.0 million from our revolving line of credit in order to partially finance our acquisition of Kigo.

As of September 30, 2014 and December 31, 2013, we had $38.6 million and $0.0 million, respectively, outstanding under our revolving line of credit. As of September 30, 2014, $161.4 million was available under our revolving line of credit of which $10.0 million was available for the issuance of letters of credit. We had unamortized debt issuance costs of $1.1 million and $0.3 million at September 30, 2014 and December 31, 2013, respectively. As of September 30, 2014, we were in compliance with the covenants under our credit facility.

**7. Share-based Compensation**

In February 2014, we granted 1,356,972 options with an exercise price of $17.75 which vest quarterly over three years. We also granted 681,395 shares of restricted stock at $17.75 which vest quarterly over three years.

In April 2014, we granted 39,156 shares of restricted stock at $18.39 which vest quarterly over three years to our Board of Directors.

In May 2014, we granted 159,194 options with an exercise price of $18.71 which vest quarterly over three years. We also granted 84,620 shares of restricted stock at $18.71 which vest quarterly over three years and 100,400 shares of restricted stock at $20.61 which fully vested on August 7, 2014.

In August 2014, we granted 295,615 options with an exercise price of $15.19 which vest quarterly over three years. We also granted 793,008 shares of restricted stock at $15.19, of which 151,513 shares vest quarterly over three years and 121,495 shares vest quarterly over one year. The remaining 520,000 shares consist of two tranches that become eligible for vesting if the average closing price per share of our common stock equals or exceeds an the established threshold for each tranche for twenty consecutive days prior to July 1, 2017. The shares vest quarterly over one year following the date they become eligible for vesting.

All stock options and restricted stock were granted under the 2010 Equity Incentive Plan, as amended and restated.

**8. Commitments and Contingencies**

**Lease Commitments**

In the first quarter of 2013, we entered into a capital lease agreement for software that expires in 2016. We recognize lease expense on a straight-line basis over the lease term.
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The assets under capital lease are as follows:

<table>
<thead>
<tr>
<th></th>
<th>September 30, 2014</th>
<th>December 31, 2013</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Software</strong></td>
<td>$1,977</td>
<td>$1,977</td>
</tr>
<tr>
<td><strong>Less: Accumulated depreciation and amortization</strong></td>
<td>(969)</td>
<td>(549)</td>
</tr>
<tr>
<td><strong>Assets under capital lease, net</strong></td>
<td>$1,008</td>
<td>$1,428</td>
</tr>
</tbody>
</table>

Aggregate annual rental commitments at September 30, 2014 under capital lease are as follows:

<table>
<thead>
<tr>
<th>Year</th>
<th>Total minimum lease payments</th>
<th>Less current portion</th>
<th>Long-term portion</th>
</tr>
</thead>
<tbody>
<tr>
<td>2014</td>
<td>$1,029</td>
<td>$571</td>
<td>$437</td>
</tr>
<tr>
<td>2015</td>
<td>588</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2016</td>
<td>294</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Guarantor Arrangements

We have agreements whereby we indemnify our officers and directors for certain events or occurrences while the officer or director is or was serving at our request in such capacity. The term of the indemnification period is for the officer or director’s lifetime. The maximum potential amount of future payments we could be required to make under these indemnification agreements is unlimited; however, we have a director and officer insurance policy that limits our exposure and enables us to recover a portion of any future amounts paid. As a result of our insurance policy coverage, we believe the estimated fair value of these indemnification agreements is minimal. Accordingly, we had no liabilities recorded for these agreements as of September 30, 2014 or December 31, 2013.

In the ordinary course of our business, we enter into standard indemnification provisions in our agreements with our customers. Pursuant to these provisions, we indemnify our customers for losses suffered or incurred in connection with third-party claims that our products infringed upon any U.S. patent, copyright, trademark or other intellectual property right. Where applicable, we generally limit such infringement indemnities to those claims directed solely to our products and not in combination with other software or products. With respect to our products, we also generally reserve the right to resolve such claims by designing a non-infringing alternative, by obtaining a license on reasonable terms, or by terminating our relationship with the customer and refunding the customer’s fees.

The potential amount of future payments to defend lawsuits or settle indemnified claims under these indemnification provisions is unlimited in certain agreements; however, we believe the estimated fair value of these indemnification provisions is minimal, and, accordingly, we had no liabilities recorded for these agreements as of September 30, 2014 or December 31, 2013.

Litigation

From time to time, in the normal course of our business, we are a party to litigation matters and claims. Litigation can be expensive and disruptive to normal business operations. Moreover, the results of complex legal proceedings are difficult to predict and our view of these matters may change in the future as the litigation and events related thereto unfold. We expense legal fees as incurred. Insurance recoveries associated with legal costs incurred are recorded when they are deemed probable of recovery.

We review the status of each matter and record a provision for a liability when we consider both that it is probable that a liability has been incurred and that the amount of the loss can be reasonably estimated. These provisions are reviewed quarterly and adjusted as additional information becomes available. If either or both of the criteria are not met, we assess whether there is at least a reasonable possibility that a loss, or additional losses beyond those already accrued, may be incurred. If there is a reasonable possibility that a material loss (or additional material loss in excess of any existing accrual) may be incurred, we disclose an estimate of the amount of loss or range of losses, either individually or in the aggregate, as appropriate, if such an estimate can be made, or disclose that an estimate of loss cannot be made. An unfavorable outcome in any legal matter, if material, could have an adverse effect on our operations, financial position, liquidity and results of operations.
On January 24, 2011, Yardi Systems, Inc. (“Yardi”) filed a lawsuit in the U.S. District Court for the Central District of California against RealPage, Inc. and DC Consulting, Inc. (the “Yardi Lawsuit”). We answered and filed counterclaims against Yardi, and on July 1, 2012, the Company and Yardi entered into a settlement agreement resolving all outstanding litigation between the parties.

In connection with the Yardi Lawsuit, the Company made claims for reimbursement against each of its primary and excess layer general liability and errors and omissions liability insurance carriers. Each of our primary and excess layer errors and omissions liability insurance carriers other than Homeland Insurance of New York (“Homeland”) reimbursed the Company up to each of its policy limits. On July 19, 2012, we became aware of assertions by one of our primary layer errors and omissions insurance carriers, Ace European Group, Ltd. d/b/a Ace European Group, Barbican Syndicate 1995 at Lloyds’s (“Ace”), that Ace no longer considered the previously reimbursed $5.0 million payment covered under such policy, and that Ace demanded reimbursement of the $5.0 million payment that it had previously reimbursed to us. On August 12, 2012, our first excess layer errors and omissions insurance carrier, Axis Surplus Insurance Company (“Axis”), informed us that if Ace’s policy is deemed void, then Axis’ first excess layer policy was void on the same basis which would result in the Company’s obligation to reimburse to Axis $5.0 million in payments that Axis had previously reimbursed to us. The Company disputed these assertions by these carriers. Accordingly, on August 14, 2012, the Company filed a lawsuit in the U.S. District Court for the Eastern District of Texas against Ace and Axis (the “Ace Lawsuit”) seeking a declaration by the court that Ace and Axis have no right to, and no lawful reason to demand reimbursement of, the amounts paid to the Company in connection with the Yardi Lawsuit. On February 25, 2014, RealPage and Axis entered into a confidential settlement and mutual release of claims, as a result of which Axis was dismissed from the Ace Lawsuit.

On March 11, 2014, Ace filed its answer, affirmative defenses and counterclaims. On April 1, 2014, RealPage and Ace entered into a confidential settlement agreement and mutual release of claims and on April 7, 2014, the court entered an order granting the joint motion to dismiss all claims and demands asserted in the lawsuit. We expensed $4.7 million, inclusive of the settlements and other related costs in the first quarter of 2014.

We are involved in other litigation matters not listed above but we believe that any reasonably possible adverse outcome of these matters would not be material either individually or in the aggregate at this time. Our view of the matters not listed may change in the future as the litigation and events related thereto unfold.

9. Net Income (Loss) Per Share

Basic net income (loss) per share is computed by dividing the net income (loss) by the weighted average number of common shares outstanding during the period. Diluted net income (loss) per share is computed by using the weighted average number of common shares outstanding, including potential dilutive shares of common stock assuming the dilutive effect of outstanding stock options and restricted stock using the treasury stock method. Weighted average shares from common share equivalents in the amount of 753,583 and 302,820 for the three months ended September 30, 2014 and 2013, respectively, and 1,549,922 and 795,700 for the nine months ended September 30, 2014 and 2013, respectively, were excluded from the respective dilutive shares outstanding because their effect was antidilutive.
The following table presents the calculation of basic and diluted net (loss) income per share:

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended</th>
<th>Nine Months Ended</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>September 30, 2014</td>
<td>September 30, 2013</td>
</tr>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td>(in thousands, except per share amounts)</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Numerator:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>$(3,257)</td>
<td>$12,886</td>
</tr>
<tr>
<td></td>
<td>$(10,384)</td>
<td>$18,514</td>
</tr>
<tr>
<td><strong>Denominator:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted average common shares used in computing basic net (loss) income per share</td>
<td>77,280</td>
<td>75,234</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Diluted:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Add weighted average effect of dilutive securities:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Stock options and restricted stock</td>
<td>—</td>
<td>1,113</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Weighted average common shares used in computing diluted net (loss) income per share</td>
<td>77,280</td>
<td>76,347</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net (loss) income per common share:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$(0.04)</td>
<td>$0.17</td>
</tr>
<tr>
<td></td>
<td>$(0.13)</td>
<td>$0.25</td>
</tr>
<tr>
<td>Diluted</td>
<td>$(0.04)</td>
<td>$0.17</td>
</tr>
<tr>
<td></td>
<td>$(0.13)</td>
<td>$0.24</td>
</tr>
</tbody>
</table>

10. Income Taxes

We make estimates and judgments in determining income tax expense for financial statement purposes. These estimates and judgments occur in the calculation of certain tax assets and liabilities, which arise from differences in the timing of recognition of revenue and expense for tax and financial statement purposes.

Our provision for income taxes in interim periods is based on our estimated annual effective tax rate. We record cumulative adjustments in the quarter in which a change in the estimated annual effective rate is determined. The estimated annual effective tax rate calculation does not include the effect of discrete events that may occur during the year. The effect of these events, if any, is recorded in the quarter in which the event occurs.

Our effective income tax rate was 35.4% and (123.3)% for the three months ended and 28.4% and (16.5)% for the nine months ended September 30, 2014 and 2013, respectively. During 2013, we were able to conclude that, given our performance, the realization of our deferred tax assets was more likely than not and accordingly reversed valuation allowances of approximately $9.2 million and recorded the reduction in valuation allowances as a tax benefit for the period. This reduction of the valuation allowance is the primary cause of the noted fluctuation of our effective income tax rate between the current and prior periods presented. Our effective tax rate fluctuated from the statutory rate predominantly due to the impact of permanent differences, including stock compensation, and the non-deductibility of contingent consideration, in relation to our results of operations before income taxes.

Item 2.  Management’s Discussion and Analysis of Financial Condition and Results of Operations.

This Quarterly Report on Form 10-Q contains “forward-looking statements” within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (which Sections were adopted as part of the Private Securities Litigation Reform Act of 1995). Statements preceded by, followed by or that otherwise include the words “anticipates,” “believes,” “could,” “seeks,” “estimates,” “expects,” “intends,” “may,” “plans,” “potential,” “predicts,” “projects,” “should,” “will,” “would” or similar expressions and the negatives of those terms are generally forward-looking in nature and not historical facts. These forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause our actual results, performance or achievements to be materially different from any anticipated results, performance or achievements. Factors that might cause or contribute to such differences include, but are not limited to those discussed in the section entitled “Risk Factors” in Part II, Item 1A of this report. You should carefully review the risks described herein and in the other documents we file from time to time with the Securities and Exchange Commission (“SEC”), including our Annual Report on Form 10-K for fiscal year 2013. You should not place undue reliance on forward-looking statements herein, which speak only as of the date of this report. Except as required by law, we disclaim any intention, and undertake no obligation, to revise any forward-looking statements, whether as a result of new information, a future event or otherwise.
RealPage, Inc., a Delaware corporation, and its subsidiaries, (the “Company” or “we” or “us”) is a leading provider of on-demand software solutions for the rental housing industry. Our broad range of property management solutions enables owners and managers of single-family and a wide variety of multi-family rental property types to manage their marketing, pricing, screening, leasing, accounting, purchasing and other property operations. Our on-demand software solutions are delivered through an integrated software platform that provides access to a shared repository of prospect, resident and property data. By integrating and streamlining a wide range of complex processes and interactions among the rental housing ecosystem of owners, managers, prospects, residents and service providers, our platform helps optimize the property management process and improves the experience for all of these constituents.

Our solutions enable property owners and managers to increase revenues and reduce operating costs through higher occupancy, improved pricing methodologies, new sources of revenue from ancillary services, improved collections and more integrated and centralized processes. As of September 30, 2014, over 10,400 customers used one or more of our on-demand software solutions to help manage the operations of approximately 9.5 million rental housing units. Our customers include each of the ten largest multi-family property management companies in the United States, ranked as of January 1, 2014 by the National Multi Housing Council, based on number of units managed.

We sell our solutions through our direct sales organization. Our total revenues were approximately $104.5 million and $98.1 million for the three months ended, and $300.1 million and $281.5 million for the nine months ended, September 30, 2014 and 2013, respectively. In the same periods, we had operating (loss) income of approximately $(4.7) million, $6.0 million, $(13.7) million, and $16.8 million respectively, and net (loss) income of approximately $(3.3) million, $12.9 million, $(10.4) million, and $18.5 million, respectively.

Our company was formed in 1998 to acquire Rent Roll, Inc., which marketed and sold on-premise property management systems for the conventional multi-family rental housing markets. In June 2001, we released OneSite, our first on-demand property management system. Since 2002, we have expanded our on-demand software solutions to include a number of software-enabled value-added services that provide complementary sales and marketing, asset optimization, risk mitigation, billing and utility management and spend management capabilities. In connection with this expansion, we have allocated greater resources to the development and infrastructure needs of developing and increasing sales of our suite of on-demand software solutions. In addition, since July 2002, we have completed 30 acquisitions of complementary technologies to supplement our internal product development and sales and marketing efforts and expand the scope of our solutions, the types of rental housing properties served by our solutions and our customer base.

Recent Acquisitions

In February 2013, we acquired certain assets of Seniors for Living, Inc. (“SFL”). SFL is a leading performance-based marketing company that provides senior housing communities and home care companies with industry-leading referral and marketing services to help them achieve their occupancy goals. We integrated SFL with our existing senior living software solutions. We acquired SFL for a purchase price of $2.7 million which consisted of a cash payment of $2.3 million and additional cash payments of $0.2 million paid 6 months and 12 months after the acquisition date.

In March 2013, we acquired certain assets from Yield Technologies, Inc., including RentSentinel and RentSocial (together, “RentSentinel”). RentSentinel is an apartment search service that simplifies and incorporates the social marketing platform into the process of finding an apartment. The RentSentinel platform is a fully featured apartment marketing management solution for the multi-family industry. RentSocial is an apartment search service that simplifies and incorporates the social marketing platform into the process of finding an apartment. We integrated RentSentinel with our existing LeaseStar product family. We acquired RentSentinel for a purchase price of $10.5 million which consisted of a cash payment of $7.6 million, issuance of 7,500 shares of our common stock and two tranches of 36,250 shares of our common stock which are issuable 12 months and 24 months after the acquisition date, respectively. As of September 30, 2014, 33,368 shares had been issued.

In October 2013, we acquired substantially all of the operating assets of Windsor Compliance Services, Inc. (“Windsor Compliance”) for a purchase price of $2.7 million, which consisted of a cash payment of $1.3 million at closing and additional cash payments of $1.0 million and $0.5 million due 12 months and 24 months after the acquisition date, respectively, which are contingent on Windsor Compliance providing services to a specified number of units on or before those dates. Windsor Compliance is a firm specializing in compliance with tax credits and regulation for the affordable housing industry.

In October 2013, we acquired all of the issued and outstanding capital stock of MyBuilding Inc. ("MyBuilding") for a purchase price of $6.9 million consisting of a cash payment of $4.5 million at closing, a deferred cash payment of up to $1.5 million payable over two years after the acquisition date and a deferred deferred earn out consisting of two additional cash payments totaling $1.1 million if certain revenue targets are met for the years ended December 31, 2014 and December 31, 2015. A provider of software-as-a-service solutions, MyBuilding products facilitate the creation of online communities that connect residents to multifamily property managers, local vendors, and other residents.
In October 2013, we acquired all of the membership interest of Active Building, LLC ("Active Building") for a purchase price of $14.4 million, which consisted of a cash payment of $11.3 million at closing, a deferred cash payment of up to $2.0 million payable over three years after the acquisition date, and additional cash payments totaling $6.5 million if certain revenue targets are met for the years ended December 31, 2014 and December 31, 2015. A provider of software-as-a-service solutions, Active Building products facilitate the creation of online communities that connect residents to multifamily property managers, local vendors, and other residents.

In January 2014, we acquired certain assets from Bookt LLC, including the InstaManager product ("InstaManager"), for a preliminary purchase price of $9.2 million, consisting of a cash payment of $6.0 million at closing, a deferred cash payment of up to $1.0 million payable over two years after the acquisition date, and additional cash payments totaling up to $7.0 million if certain revenue targets are met for the years ended March 31, 2015 and March 31, 2016. InstaManager is a software-as-a-service vacation rental booking system used by professional managers of vacation rental properties. InstaManager offers marketing websites, online pricing and availability, online booking, automated reservations, payment processing and insurance sales.

In March 2014, we acquired certain assets from Virtual Maintenance Manager LLC, including the Virtual Maintenance Manager product ("VMM"), for a preliminary purchase price of $1.2 million, consisting of a cash payment of $1.0 million at closing, a deferred cash payment of up to $0.2 million payable over two years after the acquisition date, and additional cash payments of up to $2.0 million if certain revenue targets are met for the years ended June 30, 2015 and June 30, 2016. VMM is a software-as-a-service application that facilitates the management of the end-to-end maintenance lifecycle for single-family and multi-family rental properties and provides property managers visibility into their maintenance costs, manages resources, and provides business control for property managers.

In May 2014, we acquired substantially all of the operating assets of Notivus Multi-Family, LLC ("Notivus") for a preliminary purchase price of $4.4 million, which consisted of a cash payment of $3.6 million at closing and a deferred cash payment of up to $0.8 million payable over two years after the acquisition date. The acquisition of Notivus expands our ability to provide vendor risk management and compliance software solutions for the rental housing industry.

In June 2014, we acquired all of the issued and outstanding stock of Kigo, Inc. ("Kigo"). Kigo is a software-as-a-service vacation rental booking system headquartered in the United States with operations in Spain. Kigo offers services for vacation rental property management that include vacation rental calendars, scheduling, reservations, accounting, channel management, website design, payment processing and other tasks to aid the management of leads, revenue, resources and lodging calendars. We plan to integrate Kigo with our existing vacation rental products and further extend our vacation booking system internationally. We acquired Kigo for a preliminary purchase price of $36.2 million, consisting of a cash payment of $30.7 million and a deferred cash payment of up to $5.5 million, to be payable over two and a half years after the acquisition date.

Critical Accounting Policies and Estimates

The preparation of our condensed consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, costs and expenses and related disclosures. We base these estimates and assumptions on historical experience or on various other factors that we believe to be reasonable and appropriate under the circumstances. We reconsider and evaluate our estimates and assumptions on an on-going basis. Accordingly, actual results may differ significantly from these estimates.

We believe that the following critical accounting policies involve our more significant judgments, assumptions and estimates, and therefore, could have the greatest potential impact on our condensed consolidated financial statements:

• Revenue recognition;
• Fair value measurements;
• Accounts receivable;
• Business combinations;
• Goodwill and other intangible assets with indefinite lives;
• Impairment of long-lived assets;
• Intangible assets;
• Stock-based compensation;
• Income taxes; and
• Capitalized product development costs.

A full discussion of our critical accounting policies, which involve significant management judgment, appears in our Form 10-K under “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Critical
Accounting Policies and Estimates.” For further information regarding our business, industry trends, accounting policies and estimates, and risks and uncertainties, refer to our Form 10-K.

**Key Components of Our Results of Operations**

**Revenue**

We derive our revenue from three primary sources: our on demand software solutions; our on premise software solutions; and our professional and other services.

*On demand revenue.* Revenue from our on demand software solutions is comprised of license and subscription fees relating to our on demand software solutions, typically licensed for one year terms, commission income from sales of renter’s insurance policies, and transaction fees for certain on demand software solutions, such as payment processing, spend management and billing services. Typically, we price our on demand software solutions based primarily on the number of units or beds the customer manages with our solutions. For our insurance based solutions, our agreement provides for a fixed commission on earned premiums related to the policies sold by us. The agreement also provides for a contingent commission to be paid to us in accordance with the agreement. This agreement provides for a calculation that considers, on the policies sold by us, earned premiums less i) earned agent commissions; ii) a percent of premium retained by our underwriting partner; iii) incurred losses; and iv) profit retained by our underwriting partner during the time period. Our estimate of our contingent commission revenue considers historical loss experience on the policies sold by us. For our transaction-based solutions, we price based on a fixed rate per transaction.

*On premise revenue.* Our on premise software solutions are distributed to our customers and maintained locally on the customers’ hardware. Revenue from our on premise software solutions is comprised of license fees under term and perpetual license agreements. Typically, we have licensed our on premise software solutions pursuant to term license agreements with an initial term of one year that include maintenance and support. Customers can renew their term license agreement for additional one-year terms at renewal price levels.

We no longer actively market our legacy on premise software solutions to new customers, and only license our on premise software solutions to a small portion of our existing on premise customers as they expand their portfolio of rental housing properties. While we intend to support our acquired on premise software solutions, we expect that many of the customers who license these solutions will transition to our on demand software solutions over time.

*Professional and other revenue.* Revenue from professional and other services consists of consulting and implementation services, training and other ancillary services. We complement our solutions with professional and other services for our customers willing to invest in enhancing the value or decreasing the implementation time of our solutions. Our professional and other services are typically priced as time and material engagements.

**Cost of Revenue**

Cost of revenue consists primarily of personnel costs related to our operations, support services, training and implementation services, expenses related to the operation of our data center and fees paid to third-party service providers. Personnel costs include salaries, bonuses, stock-based compensation and employee benefits. Cost of revenue also includes an allocation of facilities costs, overhead costs and depreciation, as well as amortization of acquired technology related to strategic acquisitions and amortization of capitalized development costs. We allocate facilities, overhead costs and depreciation based on headcount.

**Operating Expenses**

We classify our operating expenses into three categories: product development, sales and marketing, and general and administrative. Our operating expenses primarily consist of personnel costs, costs for third-party contracted development, marketing, legal, accounting and consulting services and other professional service fees. Personnel costs for each category of operating expenses include salaries, bonuses, stock-based compensation and employee benefits for employees in that category. In addition, our operating expenses include an allocation of our facilities costs, overhead costs and depreciation based on headcount for that category, as well as amortization of purchased intangible assets resulting from our acquisitions.

*Product development.* Product development expense consists primarily of personnel costs for our product development employees and executives and fees to contract development vendors. Our product development efforts are focused primarily on increasing the functionality and enhancing the ease of use of our on demand software solutions and expanding our suite of on demand software solutions. In 2008 and 2011, we established product development and service centers in Hyderabad, India and Manila, Philippines, respectively, to take advantage of strong technical talent at lower personnel costs compared to the United States.

*Sales and marketing.* Sales and marketing expense consists primarily of personnel costs for our sales, marketing and business development employees and executives, travel and entertainment and marketing programs. Marketing programs consist of amounts paid for search engine optimization (“SEO”) and search engine marketing (“SEM”), renter’s insurance and
other advertising, tradeshows, user conferences, public relations, industry sponsorships and affiliations and product marketing. In addition, sales and marketing expense includes amortization of certain purchased intangible assets, including customer relationships and key vendor and supplier relationships obtained in connection with our acquisitions.

**General and administrative.** General and administrative expense consists of personnel costs for our executive, finance and accounting, human resources, management information systems and legal personnel, as well as legal, accounting and other professional service fees and other corporate expenses.

**Key Business Metrics**

In addition to traditional financial measures, we monitor our operating performance using a number of financially and non-financially derived metrics that are not included in our condensed consolidated financial statements. We monitor the key performance indicators as follows:

**On demand revenue.** This metric represents the license and subscription fees relating to our on demand software solutions, typically licensed for one year terms, commission income from sales of renter’s insurance policies and transaction fees for certain of our on demand software solutions. We consider on demand revenue to be a key business metric because we believe the market for our on demand software solutions represents the largest growth opportunity for our business.

**On demand revenue as a percentage of total revenue.** This metric represents on demand revenue for the period presented divided by total revenue for the same period. We use on demand revenue as a percentage of total revenue to measure our success in executing our strategy to increase the penetration of our on demand software solutions and expand our recurring revenue streams attributable to these solutions. We expect our on demand revenue to remain a significant percentage of our total revenue although the actual percentage may vary from period to period due to a number of factors, including the timing of acquisitions, professional and other revenue and on premise perpetual license sales and maintenance fees.

**Ending on demand units.** This metric represents the number of rental housing units managed by our customers with one or more of our on demand software solutions at the end of the period. We use ending on demand units to measure the success of our strategy of increasing the number of rental housing units managed with our on demand software solutions. Property unit counts are provided to us by our customers as new sales orders are processed. Property unit counts may be adjusted periodically as information related to our customers’ properties is updated or supplemented, which could result in adjustments to the number of units previously reported.

**Non-GAAP on demand revenue.** This metric represents on demand revenue adjusted to reverse the effect of the write down of deferred revenue associated with purchase accounting for strategic acquisitions. We use this metric to evaluate our on demand revenue as we believe its inclusion provides a more accurate depiction of on demand revenue arising from our strategic acquisitions.

The following provides a reconciliation of non-GAAP on demand revenue to on demand revenue, our most directly comparable GAAP financial measure:

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014 (in thousands)</td>
<td>2013 (in thousands)</td>
</tr>
<tr>
<td>On demand revenue</td>
<td>$100,747</td>
<td>$94,084</td>
</tr>
<tr>
<td>Acquisition-related and other deferred revenue adjustments</td>
<td>(392)</td>
<td>1,793</td>
</tr>
<tr>
<td>Non-GAAP on demand revenue</td>
<td>$100,355</td>
<td>$95,877</td>
</tr>
</tbody>
</table>

**Non-GAAP on demand revenue per average on demand unit.** This metric represents non-GAAP on demand revenue for the period presented divided by average on demand units for the same period. For interim periods, the calculation is performed on an annualized basis. We calculate average on demand units as the average of the beginning and ending on demand units for each quarter in the period presented. We monitor this metric to measure our success in increasing the number of on demand software solutions utilized by our customers to manage their rental housing units, our overall revenue and profitability.

**Adjusted EBITDA.** We define this metric as net income (loss) plus acquisition-related and other deferred revenue, depreciation, asset impairment, and loss on sale of asset; amortization of intangible assets; interest expense, net; income tax expense (benefit); stock-based compensation expense, acquisition-related expense and certain litigation-related expenses. We believe that the use of Adjusted EBITDA is useful in evaluating our operating performance because it excludes certain non-cash expenses, including depreciation, amortization and stock-based compensation. Adjusted EBITDA is not determined in accordance with accounting principles generally accepted in the United States, or GAAP, and should not be considered as a substitute for or superior to financial measures determined in accordance with GAAP. For a reconciliation of Adjusted EBITDA

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to net income (loss), refer to the table below. Our Adjusted EBITDA decreased from approximately $23.7 million and $65.5 million for the three and nine months ended September 30, 2013, respectively, to approximately $16.3 million $53.3 million for the three and nine months ended September 30, 2014, respectively, as a result of our net loss in 2014.
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Results of Operations

The following tables set forth our results of operations for the specified periods. The period-to-period comparison of financial results is not necessarily indicative of future results.

Condensed Consolidated Statements of Operations Data

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014 (in thousands, except per share data)</td>
<td>2013</td>
</tr>
<tr>
<td><strong>Revenue:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On demand</td>
<td>$100,747</td>
<td>$94,084</td>
</tr>
<tr>
<td>On premise</td>
<td>755</td>
<td>838</td>
</tr>
<tr>
<td>Professional and other</td>
<td>3,034</td>
<td>3,149</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td>104,536</td>
<td>98,071</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>58,225</td>
<td>59,960</td>
</tr>
<tr>
<td><strong>Operating expense:</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product development</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Total operating expense</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Operating (loss) income</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(Loss) income before income taxes</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Income tax benefit</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net (loss) income</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Net (loss) income per share</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>$ (0.04)</td>
<td>$0.17</td>
</tr>
<tr>
<td>Diluted</td>
<td>$ (0.04)</td>
<td>$0.17</td>
</tr>
<tr>
<td><strong>Weighted average shares used in computing net (loss) income per share</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Basic</td>
<td>77,280</td>
<td>75,234</td>
</tr>
<tr>
<td>Diluted</td>
<td>77,280</td>
<td>76,347</td>
</tr>
</tbody>
</table>

(1) Includes stock-based compensation expense as follows:

<table>
<thead>
<tr>
<th></th>
<th>2014 (in thousands)</th>
<th>2013 (in thousands)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of revenue</td>
<td>$1,141</td>
<td>$785</td>
</tr>
<tr>
<td>Product development</td>
<td>2,707</td>
<td>1,271</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>3,774</td>
<td>2,686</td>
</tr>
<tr>
<td>General and administrative</td>
<td>1,914</td>
<td>2,994</td>
</tr>
</tbody>
</table>

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The following table sets forth our results of operations for the specified periods as a percentage of our revenue for those periods. The period-to-period comparison of financial results is not necessarily indicative of future results.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On demand</td>
<td>96.4 %</td>
<td>95.9 %</td>
<td>96.4 %</td>
<td>96.0 %</td>
</tr>
<tr>
<td>On premise</td>
<td>0.7</td>
<td>0.9</td>
<td>0.8</td>
<td>1.0</td>
</tr>
<tr>
<td>Professional and other</td>
<td>2.9</td>
<td>3.2</td>
<td>2.8</td>
<td>3.0</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td><strong>Cost of revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Gross profit</strong></td>
<td>55.7</td>
<td>61.1</td>
<td>57.2</td>
<td>60.6</td>
</tr>
<tr>
<td><strong>Operating expense</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Product development</td>
<td>16.8</td>
<td>13.5</td>
<td>16.1</td>
<td>13.1</td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>28.6</td>
<td>25.7</td>
<td>28.0</td>
<td>25.6</td>
</tr>
<tr>
<td>General and administrative</td>
<td>14.8</td>
<td>15.9</td>
<td>17.7</td>
<td>15.9</td>
</tr>
<tr>
<td><strong>Total operating expenses</strong></td>
<td>60.2</td>
<td>55.1</td>
<td>61.8</td>
<td>54.6</td>
</tr>
<tr>
<td>Operating (loss) income</td>
<td>(4.5)</td>
<td>6.0</td>
<td>(4.6)</td>
<td>6.0</td>
</tr>
<tr>
<td>Interest expense and other, net</td>
<td>(0.3)</td>
<td>(0.2)</td>
<td>(0.3)</td>
<td>(0.3)</td>
</tr>
<tr>
<td><strong>(Loss) income before income taxes</strong></td>
<td>(4.8)</td>
<td>5.8</td>
<td>(4.9)</td>
<td>5.7</td>
</tr>
<tr>
<td>Income tax benefit</td>
<td>(1.7)</td>
<td>(7.3)</td>
<td>(1.4)</td>
<td>(0.9)</td>
</tr>
<tr>
<td><strong>Net (loss) income</strong></td>
<td>(3.1)</td>
<td>13.1</td>
<td>(3.5)</td>
<td>6.6</td>
</tr>
</tbody>
</table>

Three and Nine Months Ended September 30, 2014 compared to Three and Nine Months Ended September 30, 2013

**Revenue**

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Revenue</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>On demand</td>
<td>$100,747</td>
<td>$94,084</td>
<td>$6,663</td>
<td>7.1 %</td>
</tr>
<tr>
<td>On premise</td>
<td>755</td>
<td>838</td>
<td>(83)</td>
<td>(9.9)</td>
</tr>
<tr>
<td>Professional and other</td>
<td>3,034</td>
<td>3,149</td>
<td>(115)</td>
<td>(3.7)</td>
</tr>
<tr>
<td><strong>Total revenue</strong></td>
<td>$104,536</td>
<td>$98,071</td>
<td>$6,465</td>
<td>6.6</td>
</tr>
<tr>
<td><strong>On demand unit metrics:</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ending on demand units</td>
<td>9,496</td>
<td>8,730</td>
<td>766</td>
<td>8.8 %</td>
</tr>
<tr>
<td>Average on demand units</td>
<td>9,434</td>
<td>8,673</td>
<td>761</td>
<td>8.8 %</td>
</tr>
<tr>
<td>Non-GAAP on demand revenue</td>
<td>$100,355</td>
<td>$95,877</td>
<td>$4,478</td>
<td>4.7</td>
</tr>
<tr>
<td><strong>Non-GAAP on demand revenue per average on unit</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$42.55</td>
<td>$44.22</td>
<td>(1.67)</td>
<td>$41.57</td>
<td>42.54</td>
</tr>
</tbody>
</table>
The changes in total revenue for the three and nine months ended September 30, 2014 and 2013 are due to the following changes in our three revenue components:

**On demand revenue.** Our on demand revenue increased $6.7 million and $19.1 million for the three and nine months ended September 30, 2014, respectively, as compared to the same periods in 2013, primarily due to an increase in rental property units managed with our on demand solutions as a result of our continued investment in our sales force. This increase was offset in part due to a decrease in RPU to $42.55 and $41.57 during the respective periods were driven by reduced spending by our customers on marketing and advertising resulting from lower resident turnover rates and higher occupancy rates.

**On premise revenue.** On premise revenue decreased $0.1 million and $0.4 million for the three and nine months ended September 30, 2014, respectively, as compared to the same periods in 2013. We no longer actively market our legacy on premise software solutions to new customers and only market and support our acquired on premise software solutions. We expect on premise revenue to continue to decline over time as we transition acquired on premise customers to our on demand property management solutions.

**Professional and other revenue.** Professional and other services revenue decreased $0.1 million and $0.2 million for the three and nine months ended September 30, 2014, respectively, as compared to the same periods in 2013, primarily due to a decrease in revenue from consulting services.

**On demand unit metrics.** As of September 30, 2014, one or more of our on demand solutions was utilized in the management of 9.5 million rental property units, representing an increase of 8.8% compared to the same period in 2013. The increase in the number of rental property units managed by one or more of our on demand solutions was due to new customer sales, marketing efforts to existing customers and our 2013 and 2014 acquisitions which contributed 1.7% to total ending on demand units.

For the three and nine months ended September 30, 2014, annualized non-GAAP on demand revenue per average on demand unit decreased compared to the three and nine months ended September 30, 2013, primarily due to a decrease in contingent commission revenues from our renter's insurance products, reduced spending by our customers on marketing and advertising, and lower resident turnover rates.

### Cost of Revenue

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td>Cost of revenue</td>
<td>$ 41,018</td>
<td>$ 34,975</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>5,293</td>
<td>3,136</td>
</tr>
<tr>
<td>Total cost of revenue</td>
<td>$ 46,311</td>
<td>$ 38,111</td>
</tr>
</tbody>
</table>

**Cost of revenue.** The increase in cost of revenue for the three months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $2.3 million increase in costs related to the increased sales of our solutions, which includes investments in infrastructure and other support services; a $3.0 million increase in personnel expense primarily related to costs to support our growth initiatives and to a lesser degree increases in headcount added as a result of our 2014 and 2013 acquisitions; a $0.4 million increase in stock-based compensation related to our professional services personnel and data center operations personnel; a $2.2 million increase in non-cash amortization of technology; and a $0.3 million increase in information technology expense.

The increase in cost of revenue for the nine months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $3.8 million increase in costs related to the increased sales of our solutions, which includes investments in infrastructure and other support services; a $8.9 million increase in personnel expense primarily related to costs to support our growth initiatives and headcount added as a result of our 2014 and 2013 acquisitions; a $0.8 million increase in stock-based compensation related to our professional services personnel and data center operations personnel; a $3.6 million increase in non-cash amortization of technology; and a $0.4 million increase in information technology expense.
Operating Expenses

### Table of Contents

#### Operating Expenses

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td>------------------------------</td>
<td>---------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Product development</td>
<td>$16,209</td>
<td>$12,484</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>1,319</td>
<td>748</td>
</tr>
<tr>
<td>Total product development expense</td>
<td>$17,528</td>
<td>$13,232</td>
</tr>
</tbody>
</table>

**Product development.** The increase in product development expense for the three months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $1.6 million increase in personnel expense for product development groups to further develop, test and launch new products and to a lesser degree a result of our 2014 and 2013 acquisitions and offset by a transition of certain expenses to our Philippine and Indian operations; a $0.4 increase in facility and infrastructure related costs; a $1.4 million increase in stock-based compensation expense; a $0.6 million increase in depreciation expense; and a $0.3 million increase in other product development related expenses.

The increase in product development expense for the nine months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $4.2 million increase in personnel expense for product development groups to further develop, test and launch new products and as a result of our 2014 and 2013 acquisitions and offset by a transition of certain expenses to our Philippine and Indian operations; a $0.8 increase in facility and infrastructure related costs; a $3.6 million increase in stock-based compensation expense; a $1.4 million increase in depreciation expense; and a $1.3 million increase in other product development related expenses.

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>Sales and marketing</td>
<td>$26,519</td>
<td>$22,317</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>3,430</td>
<td>2,849</td>
</tr>
<tr>
<td>Total sales and marketing expense</td>
<td>$29,949</td>
<td>$25,166</td>
</tr>
</tbody>
</table>

**Sales and marketing.** The increase in sales and marketing expense for the three months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $3.3 million increase in sales and marketing personnel expenses and commission related to our increased investment in sales personnel and personnel acquired as a result of our 2014 and 2013 acquisitions; a $1.1 million increase in stock-based compensation expense; a $0.3 million increase in travel-related expenses; and a $0.6 million increase in amortization expense; partially offset by a $0.2 million decrease in bad debt expense and a $1.1 million increase in marketing program expense offset by lower SEM expenses of $1.4 million.

The increase in sales and marketing expense for the nine months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $6.0 million increase in sales and marketing personnel expense and commission related to our increased investment in sales personnel and personnel acquired as a result of our 2014 and 2013 acquisitions; a $2.1 million increase in stock-based compensation expense; a $2.6 million increase in marketing program expense offset by $1.3 million from reductions in SEM expenses; a $1.0 million increase in travel-related expenses; and a $2.2 million increase in amortization expense; partially offset by a $0.6 million decrease in bad debt expense.

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td></td>
<td>(in thousands)</td>
<td></td>
</tr>
<tr>
<td>General and administrative</td>
<td>$14,523</td>
<td>$14,682</td>
</tr>
<tr>
<td>Depreciation and amortization</td>
<td>920</td>
<td>872</td>
</tr>
<tr>
<td>Total general and administrative expense</td>
<td>$15,443</td>
<td>$15,554</td>
</tr>
</tbody>
</table>
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General and administrative. The decrease in general and administrative expense for the three months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $1.1 million decrease in stock-based compensation related to general and administrative personnel and a $0.4 million decrease in legal expense; partially offset by a $0.8 million increase in the fair value adjustments of acquisition-related liabilities; and a $0.6 million increase in other general and administrative costs.

The increase in general and administrative expense for the nine months ended September 30, 2014 as compared to the same period in 2013 was primarily due to: a $1.2 million increase in personnel expense to support the growth in our business, including increased investment in our offshore operations that support those functions; a $1.2 million increase in stock-based compensation related to general and administrative personnel; a $5.8 million increase in litigation expense primarily due to legal fees and the settlement of the Ace Lawsuit in 2014; and a $0.8 million increase in other general and administrative costs; partially offset by a $0.7 million decrease in the fair value adjustments of acquisition-related liabilities.

Interest Expense and Other, Net

The increase in interest expense and other, net for the three months ended September 30, 2014, as compared to the same period in 2013, was due to borrowings on our revolving credit facility to partially finance our acquisition of Kigo.

The decrease in interest expense and other, net for the nine months ended September 30, 2014, as compared to the same period in 2013, was due to a decrease in interest expense as a result of lower debt balances for the majority of nine months ended September 30, 2014 and incurring interest charges in conjunction with the settlement of a sales tax and use audit in 2013.

Provision for Taxes

We compute our provision for income taxes on a quarterly basis by applying the estimated annual effective tax rate to income from recurring operations and other taxable income. Our effective income tax rate was 28.4% and (16.5)% for the nine months ended and 35.4% and (123.3)% for the three months ended September 30, 2014 and 2013, respectively. Our effective tax rate fluctuated from the statutory rate predominantly due to the impact of state taxes and permanent differences, including stock compensation and the non-deductibility of contingent consideration, in relation to our results of operations before income taxes. During 2013, we were able to conclude that, given our performance, the realization of our deferred tax assets was more likely than not and accordingly reversed valuation allowances of approximately $9.2 million and recorded the reduction in valuation allowances as a tax benefit for the period. This reduction of the valuation allowance is the primary cause of the noted fluctuation of our effective income tax rate between the current and prior periods presented.

Reconciliation of Non-GAAP Financial Measures

We define Adjusted EBITDA as net income (loss) plus acquisition-related and other deferred revenue adjustments, depreciation, asset impairment, and loss on sale of asset, amortization of intangible assets, interest expense, net, income tax expense (benefit), stock-based compensation expense, acquisition-related expense, and certain litigation-related expenses. We believe that the use of Adjusted EBITDA is useful to investors and other users of our financial statements in evaluating our operating performance because it provides them with an additional tool to compare business performance across companies and across periods. We believe that:

• Adjusted EBITDA provides investors and other users of our financial information consistency and comparability with our past financial performance, facilitates period-to-period comparisons of operations and facilitates comparisons with our peer companies, many of which use similar non-GAAP financial measures to supplement their GAAP results;

• it is useful to exclude certain non-cash charges, such as depreciation and asset impairment, amortization of intangible assets and stock-based compensation and non-core operational charges, such as acquisition-related expense and certain litigation-related expenses, from Adjusted EBITDA because the amount of such expenses in any specific period may not directly correlate to the underlying performance of our business operations and these expenses can vary significantly between periods as a result of new acquisitions, full amortization of previously acquired tangible and intangible assets or the timing of new stock-based awards, as the case may be; and

• it is useful to include deferred revenue written down for GAAP purposes under purchase accounting rules and revenue deferred due to a lack of historical experience determining the settlement of the contractual obligations in order to appropriately measure the underlying performance of our business operations in the period of activity and associated expense.
We use Adjusted EBITDA in conjunction with traditional GAAP operating performance measures as part of our overall assessment of our performance, for planning purposes, including the preparation of our annual operating budget, to evaluate the effectiveness of our business strategies and to communicate with our board of directors concerning our financial performance.

We do not place undue reliance on Adjusted EBITDA as our only measure of operating performance. Adjusted EBITDA should not be considered as a substitute for other measures of liquidity or financial performance reported in accordance with GAAP. There are limitations to using non-GAAP financial measures, including that other companies may calculate these measures differently than we do, that they do not reflect our capital expenditures or future requirements for capital expenditures and that they do not reflect changes in, or cash requirements for, our working capital. We compensate for the inherent limitations associated with using the Adjusted EBITDA measures through disclosure of these limitations, presentation of our financial statements in accordance with GAAP and reconciliation of Adjusted EBITDA to the most directly comparable GAAP measure, net (loss) income.

The following provides a reconciliation of net(loss) income to Adjusted EBITDA:

<table>
<thead>
<tr>
<th></th>
<th>Three Months Ended September 30,</th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014</td>
<td>2013</td>
</tr>
<tr>
<td>Net (loss) income</td>
<td>$ (3,257)</td>
<td>$12,886</td>
</tr>
<tr>
<td>Acquisition-related and other deferred revenue</td>
<td>392</td>
<td>1,793</td>
</tr>
<tr>
<td>Depreciation, asset impairment and loss on sale of asset</td>
<td>5,121</td>
<td>3,400</td>
</tr>
<tr>
<td>Amortization of intangible assets</td>
<td>5,857</td>
<td>4,242</td>
</tr>
<tr>
<td>Interest expense, net</td>
<td>349</td>
<td>236</td>
</tr>
<tr>
<td>Income tax benefit</td>
<td>(1,783)</td>
<td>(7,114)</td>
</tr>
<tr>
<td>Litigation related expense</td>
<td>39</td>
<td>278</td>
</tr>
<tr>
<td>Stock-based compensation expense</td>
<td>9,536</td>
<td>7,736</td>
</tr>
<tr>
<td>Acquisition-related expense</td>
<td>860</td>
<td>288</td>
</tr>
<tr>
<td>Adjusted EBITDA</td>
<td>$16,330</td>
<td>$23,745</td>
</tr>
</tbody>
</table>
Liquidity and Capital Resources

Our primary sources of liquidity as of September 30, 2014 consisted of $30.7 million of cash and cash equivalents, $161.4 million available under our revolving line of credit and $32.8 million of current assets less current liabilities (excluding $30.7 million of cash and cash equivalents and $68.3 million of deferred revenue).

Our principal uses of liquidity have been to fund our operations, working capital requirements, capital expenditures, acquisitions and to service our debt obligations. We expect that working capital requirements, capital expenditures and acquisitions will continue to be our principal needs for liquidity over the near term. In addition, through September 30, 2014, we made several acquisitions for which a portion of the cash purchase price is payable at various times through 2017. We expect to fund these obligations from cash provided by operating activities or, in some cases, the issuance of shares of our common stock at our election.

We believe that our existing cash and cash equivalents, working capital (excluding deferred revenue and cash and cash equivalents) and our cash flow from operations, will be sufficient to fund our operations and planned capital expenditures for at least the next 12 months. Our future capital requirements will depend on many factors, including our rate of revenue growth, the timing and size of acquisitions, the expansion of our sales and marketing activities, the timing and extent of spending to support product development efforts, the timing of introductions of new solutions and enhancements to existing solutions and the continuing market acceptance of our solutions. We may enter into acquisitions of complementary businesses, applications or technologies in the future, which could require us to seek additional equity or debt financing. Additional funds may not be available on terms favorable to us, or at all.

As of December 31, 2013, we had federal and state net operating loss carryforwards of $174.0 million and $6.9 million, respectively. These carryforwards may be available to offset potential payments of future federal and state income tax liabilities and, if unused, expire at various dates through 2028 for both federal and state income tax purposes.

The following table sets forth cash flow data for the periods indicated therein:

<table>
<thead>
<tr>
<th></th>
<th>Nine Months Ended September 30,</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2014 (in thousands)</td>
</tr>
<tr>
<td>Net cash provided by operating activities</td>
<td>$50,054</td>
</tr>
<tr>
<td>Net cash used in investing activities</td>
<td>(71,067)</td>
</tr>
<tr>
<td>Net cash provided by (used in) financing activities</td>
<td>17,199</td>
</tr>
</tbody>
</table>

Net Cash Provided by Operating Activities

In the nine months ended September 30, 2014, cash provided by operating activities consisted of a net loss of $10.4 million, net non-cash charges of $59.4 million and changes in working capital of $6.5 million, partially offset by a deferred tax benefit of $6.0 million and acquisition-related contingent consideration charges of $0.6 million. Net non-cash charges to income increased $15.2 million or 34.4%, compared to the same period in 2013, and primarily consisted of depreciation, amortization and stock-based compensation expense. The cash inflow resulting from the changes in working capital was primarily due to changes in accounts receivable, deferred revenue and accounts payable, partially offset by decreases in other assets arising from prepaid expenses related to software license maintenance.

Net Cash Used in Investing Activities

In the nine months ended September 30, 2014, investing activities consisted of acquisition-related payments of $41.9 million primarily related to the Kigo, InstaManager, Notivus, and VMM acquisitions and $29.1 million of capital expenditures related to investments in our technology infrastructure and in our Philippine and Indian operations to support our growth initiatives. The increase in cash used in investing activities from the same period in 2013 relates to the consideration paid, net of cash acquired, for our 2014 acquisitions as compared to 2013 combined with an increase in capital spending.

Net Cash provided by (Used in) Financing Activities

Cash provided by financing activities during the nine months ended September 30, 2014 was primarily due to receiving $38.6 million in net proceeds from our revolving credit facility, partially offset by capital lease payments of $0.4 million, $4.0 million in payments of acquisition-related contingent consideration, deferred financing costs of $1.0 million and net outflows of $16.0 million from stock issuances under our stock-based compensation plans. Cash provided by financing
activities increased from the same period in 2013 primarily due to the receipt of $38.6 million in proceeds from our revolving credit facility in 2014, partially offset by a $10.0 million payment on our revolving credit facility in 2013.

**Contractual Obligations, Commitments and Contingencies**

**Contractual Obligations**

Our contractual obligations relate primarily to borrowings and interest payments under credit facilities, capital leases, operating leases and purchase obligations. On September 30, 2014, we entered into a new credit facility agreement described below. There have been no other material changes outside normal operations in our contractual obligations from our disclosures within our Form 10-K.

**Long-Term Debt Obligations**

On September 30, 2014, we entered into a new agreement for a secured revolving credit facility to refinance our outstanding revolving loans. The new credit facility provides an aggregate principal amount of up to $200.0 million, with sublimits of $10.0 million for the issuance of letters of credit and for $20.0 million of swingline loans. The credit facility also allows us, subject to certain conditions, to request additional term loans or revolving commitments in an aggregate principal amount of up to $150.0 million, plus an amount that would not cause our consolidated net leverage ratio to exceed 3.25 to 1.00. At our option, the revolving loans accrue interest at a per annum rate equal to either LIBOR or Wells Fargo’s prime rate (or, if greater, the federal funds rate plus 0.50% or one month LIBOR plus 1.00%) in each case plus a margin ranging from 1.25% to 1.75% in the case of LIBOR loans, and 0.25% to 0.75% in the case of prime rate loans, in each case based upon our consolidated net leverage ratio. The interest is due and payable quarterly, in arrears, for loans bearing interest at the prime rate and at the end of the applicable interest period in the case of loans bearing interest at the adjusted LIBOR rate. The credit facility is secured by substantially all of the Company’s assets and certain of our existing and future material domestic subsidiaries are required to guaranty our obligations under the credit facility. We are also required to comply with customary affirmative and negative covenants, as well as a consolidated net leverage ratio and an interest coverage ratio.

Our previous secured revolving credit facility had an aggregate principal amount of up to $150.0 million, subject to a borrowing formula, with a sublimit of $10.0 million for the issuance of letters of credit on our behalf. At our option, the borrowings accrued interest at a per annum rate equal to either LIBOR or Wells Fargo’s prime rate (or, if greater, the federal funds rate plus 0.50% or three month LIBOR plus 1.00%), in each case plus a margin ranging from 2.00% to 2.50%, in the case of LIBOR loans, and 0.0% to 0.25% in the case of prime rate loans, in each case based upon our senior leverage ratio. The interest was due and payable monthly, in arrears, for loans bearing interest at the prime rate and at the end of the applicable 1-, 2-, or 3-month interest period in the case of loans bearing interest at the adjusted LIBOR rate.

In May 2014, we entered into an amendment to the previous credit facility. Under the terms of the amendment, the restrictive covenants were amended to permit us to repurchase up to $75 million of our common stock, subject to certain conditions. Additionally, the fixed charge coverage ratio was replaced with a new minimum interest expense coverage ratio and the capital expenditures limitations were increased.

In June 2014, we entered into an amendment to the previous credit facility. Under the terms of the amendment, the parties to the credit facility consented to the acquisition of Kigo and agreed that the acquisition of Kigo would be a “Permitted Acquisition,” as defined in the credit facility and would be excluded from the calculation of the Permitted Acquisition limit. Additionally, the amendment increased the value of our equipment that could be in the hands of our employees, consultants, or customers in the ordinary course of business to $200.0 million and amended the definition of "Aggregate Permitted Acquisition Limit" to $150.0 million, plus an additional $100.0 million if certain conditions are met. In June 2014, we borrowed a total of $25.0 million from our revolving line of credit in order to partially finance the acquisition of Kigo.

All of our obligations under the credit facility are secured by substantially all of our assets. All of our existing and future domestic subsidiaries are required to guaranty our obligations under the credit facility, other than certain immaterial subsidiaries, foreign subsidiary holding companies, and our payment processing subsidiaries. Such guarantees by existing and future domestic subsidiaries are and will be secured by substantially all of the assets of such subsidiaries.

Our credit facility contains customary covenants, subject in each case to customary exceptions and qualifications, which limit our and certain of our subsidiaries’ ability to, among other things, incur additional indebtedness or guarantee indebtedness of others; create liens on our assets; enter into mergers or consolidations; dispose of assets; prepay certain indebtedness or make changes to our governing documents and certain of our agreements; pay dividends and make other distributions on our capital stock, and redeem and repurchase our capital stock; make investments, including acquisitions; and enter into transactions with affiliates. Our credit facility additionally contains customary affirmative covenants. We are also required to comply with a maximum consolidated net leverage ratio and a minimum interest coverage ratio. The interest coverage ratio, which is a ratio of our four previous fiscal consecutive quarters’ consolidated EBITDA to our interest expense,
is to be not less than 3.00 to 1.00 as of the last day of any fiscal quarter. The consolidated net leverage ratio, which is the ratio of funded indebtedness on the last day of each fiscal quarter to the four previous consecutive fiscal quarters' consolidated EBITDA, is not to be greater than 3.50 to 1.00, provided that we can elect to increase the ratio to 3.75 to 1.00 for a specified period following a permitted acquisition. As of September 30, 2014, we were in compliance with the covenants under our credit facility.

The credit facility contains customary events of default, subject to customary cure periods for certain defaults, that include, among others, non-payment defaults, covenant defaults, material judgment defaults, bankruptcy and insolvency defaults, cross-defaults to certain other material indebtedness, ERISA defaults, inaccuracy of representations and warranties, and a change in control default.

In the event of a default on our credit facility, the obligations under the credit facility could be accelerated, the applicable interest rate under the credit facility could be increased, the loan commitments could be terminated, our subsidiaries that have guaranteed the credit facility could be required to pay the obligations in full, and our lenders would be permitted to exercise remedies with respect to all of the collateral that is securing the credit facility, including substantially all of our and our subsidiary guarantors’ assets. Any such default that is not cured or waived could have a material adverse effect on our liquidity and financial condition.

Share Repurchase Program

Our Board of Directors approved a $50 million initial share repurchase program during the second quarter of fiscal 2014 and continuing for a period of up to one year. During the quarter, we repurchased 844,381 shares of our common stock at a weighted average cost of $15.66 per share and a total cost of approximately $13.2 million. No shares were purchased from October 1, 2014 through November 4, 2014.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet financing arrangements and we do not have any relationships with unconsolidated entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities, which have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

Market risk represents the risk of loss that may impact our financial position due to adverse changes in financial market prices and rates. Our market risk exposure is primarily a result of fluctuations in interest rates. We do not hold or issue financial instruments for trading purposes.

We had cash and cash equivalents of $30.7 million and $34.5 million at September 30, 2014 and December 31, 2013, respectively.

We hold cash and cash equivalents for working capital purposes. We do not have material exposure to market risk with respect to investments, as our investments consist primarily of highly liquid investments purchased with original maturities of three months or less. We do not use derivative financial instruments for speculative or trading purposes; however, we may adopt specific hedging strategies in the future. Any declines in interest rates, however, will reduce future interest income.

We had $38.6 million and $0.0 million outstanding under our revolving credit facility at September 30, 2014 and December 31, 2013, respectively. The interest on this debt is variable and adjusted periodically based on the three-month LIBOR rate. If the LIBOR and Prime rates change by 10% of the September 30, 2014 closing market rates, our annual interest expense would change by less than $0.1 million.

Item 4. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

Pursuant to Rule 13a-15(b) and Rule 15d-15(b) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), we carried out an evaluation, with the participation of our management, and under the supervision of our Chief Executive Officer and Chief Financial Officer, of the effectiveness of our disclosure controls and procedures (as defined under Rule 13a-15(e) and 15d-15(e) under the Exchange Act) as of the end of the period covered by this report. Based upon that evaluation, our Chief Executive Officer and Chief Financial Officer concluded that our disclosure controls and procedures were effective as of September 30, 2014, in ensuring that information required to be disclosed in the reports that we file or
submit under the Exchange Act, is recorded, processed, summarized and reported, within the time periods specified in the SEC’s rules and forms, and that such information is accumulated and communicated to management, including our Chief Executive Officer and Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosure. Management’s assessment of the effectiveness of our disclosure controls and procedures is expressed at the level of reasonable assurance because management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving their objectives.

Changes in Internal Controls

There were no changes in the Company’s internal control over financial reporting during the nine months ended September 30, 2014 that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

Inherent Limitations of Internal Controls

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or our internal controls will prevent all error and all fraud. A control system, no matter how well conceived and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the company have been detected. These inherent limitations include the realities that judgments in decision-making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the control. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions. Over time, controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.
PART II—OTHER INFORMATION

Item 1. Legal Proceedings.

From time to time, we have been and may be involved in various legal proceedings arising from our ordinary course of business.

We believe that there are no claims or actions pending against us, the ultimate disposition of which would have a material adverse impact on us.

Item 1A. Risk Factors

Risks Related to Our Business

*Our quarterly operating results have fluctuated in the past and may fluctuate in the future, which could cause our stock price to decline.*

Our quarterly operating results may fluctuate as a result of a variety of factors, many of which are outside of our control. Fluctuations in our quarterly operating results may be due to a number of factors, including the risks and uncertainties discussed elsewhere in this filing. Some of the important factors that could cause our revenues and operating results to fluctuate from quarter to quarter include:

- the extent to which on demand software solutions maintain current and achieve broader market acceptance;
- fluctuations in leasing activity by our customers;
- increase in number and/or severity of insurance claims on policies sold by us;
- our ability to timely introduce enhancements to our existing solutions and new solutions;
- our ability to renew the use of our on demand products and services by units managed by our existing customers and to increase the use of our on demand products and services for the management of units by our existing and new customers;
- changes in our pricing policies or those of our competitors or new competitors;
- changes in local economic, political and regulatory environments of our international operations;
- the variable nature of our sales and implementation cycles;
- general economic, industry and market conditions in the rental housing industry that impact our current and potential customers;
- the amount and timing of our investment in research and development activities;
- technical difficulties, service interruptions, data or document losses or security breaches;
- Internet usage trends among consumers, and the methodologies Internet search engines utilized to direct those consumers to websites such as our LeaseStar product family;
- our ability to hire and retain qualified key personnel, including the rate of expansion of our sales force and IT department;
- our ability to get ahead of external forces and emergence of new technologies and products;
- our ability to enter into new markets;
- changes in the legal, regulatory or compliance environment related to the rental housing industry or the markets in which we operate, including without limitation fair credit reporting, payment processing, data protection and privacy, social media, utility billing, insurance, the Internet and e-commerce, licensing, telemarketing, electronic communications, the Health Insurance Portability Act of 1996 (“HIPAA”) and the Health Information Technology Economic and Clinical Health Act (“HITECH”);
- the amount and timing of operating expenses and capital expenditures related to the expansion of our operations and infrastructure;
- the timing of revenue and expenses related to recent and potential acquisitions or dispositions of businesses or technologies;
- our ability to integrate acquisition operations in a cost-effective and timely manner;
- litigation and settlement costs, including unforeseen costs;
If we do not manage the size, complexity and diverse nature of our business effectively, we could experience product performance issues, delayed software releases and longer response times for assisting our customers with implementation of our solutions and could lack adequate resources to support our customers on an ongoing basis, any of which could adversely affect our reputation in the market and our ability to generate revenue from new or existing customers.

The nature of our platform is complex and highly integrated, and if we fail to successfully manage releases or integrate new solutions, it could harm our revenues, operating income and reputation.

We manage a complex platform of solutions that consists of our property management solutions, integrated software-enabled value-added services and web-based advertising and lease generation services. Many of our solutions include a large number of product centers that are highly integrated and require interoperability with other RealPage products, as well as products and services of third-party service providers. Additionally, we typically deploy new releases of the software underlying our on demand software solutions on a bi-weekly, monthly or quarterly schedule, depending on the solution. Due to this complexity and the condensed development cycles under which we operate, we may experience errors in our software, corruption or loss of our data or unexpected performance issues from time to time. For example, our solutions may face interoperability difficulties with software operating systems or programs being used by our customers, or new releases, upgrades, fixes or the integration of acquired technologies may have unanticipated consequences on the operation and performance of our other solutions. If we encounter integration challenges or discover errors in our solutions late in our
Our business depends substantially on the renewal of our products and services for on demand units managed by our customers and the increase in the use of our on demand products and services for on demand units.

With the exception of some of our LeaseStar and Propertyware solutions, which are typically month-to-month, we generally license our solutions pursuant to customer agreements with a term of one year. The pricing of the agreements is typically based on a price per unit basis. Our customers have no obligation to renew these agreements after their term expires, or to renew these agreements at the same or higher annual contract value. In addition, under specific circumstances, our customers have the right to cancel their customer agreements before they expire, for example, in the event of an uncured breach by us, or in some circumstances, by giving 30 days’ notice or paying a cancellation fee. In addition, customers often purchase a higher level of professional services in the initial term than they do in renewal terms to ensure successful activation. As a result, our ability to grow is dependent in part on customers purchasing additional solutions or professional services for their on demand units after the initial term of their customer agreement. Though we maintain and analyze historical data with respect to rates of customer renewals, upgrades and expansions, those rates may not accurately predict future trends in renewal of on demand units. Our customers’ on demand unit renewal rates may decline or fluctuate for a number of reasons, including, but not limited to, their level of satisfaction with our solutions, our pricing, our competitors’ pricing, reductions in our customers’ spending levels or reductions in the number of on demand units managed by our customers. If our customers cancel or amend their agreements with us during their term, do not renew their agreements, renew on less favorable terms or do not purchase additional solutions or professional services in renewal periods, our revenue may grow more slowly than expected or decline and our profitability may be harmed.

Additionally, we have experienced, and expect to continue to experience, some level of on demand unit attrition as properties are sold and the new owners and managers of properties previously owned or managed by our customers do not continue to use our solutions. We cannot predict the amount of on demand unit turnover we will experience in the future. However, we have experienced higher rates of on demand unit attrition with our Propertyware property management system, primarily because it serves smaller properties than our OneSite property management system, and we may experience higher levels of on demand unit attrition to the extent Propertyware grows as a percentage of our revenues. If we experience increased on demand unit turnover, our financial performance and operating results could be adversely affected.

On demand revenue that is derived from products that help owners and managers lease and market apartments, such as certain products in LeaseStar and LeasingDesk, may decrease as occupancy rates rise. We have also experienced, and expect to continue to experience, some number of consolidations of our customers with other parties. If one of our customers consolidates with a party who is not a customer, our customer may decide not to continue to use our solutions for its on demand units. In addition, if one of our customers is consolidated with another customer, the acquiring customer may have negotiated lower prices for our solutions or may use fewer of our solutions than the acquired customer. In each case, the consolidated entity may attempt to negotiate lower prices for using our solutions as a result of the entity’s increased size. These consolidations may cause us to lose on demand units or require us to reduce prices as a result of enhanced customer leverage, which could cause our financial performance and operating results to be adversely affected.

Historically, our on demand units managed by our customers have renewed at a rate of 95.3% based on an average of the last two years ending September 30, 2014.

Because we recognize subscription revenue over the term of the applicable customer agreement, a decline in subscription renewals or new service agreements may not be reflected immediately in our operating results.

We generally recognize revenue from customers ratably over the terms of their customer agreements which, with the exception of our month-to-month advertising, lease generation and Propertyware agreements, are typically one year. As a result, much of the revenue we report in each quarter is deferred revenue from customer agreements entered into during previous quarters. Consequently, a decline in new or renewed customer agreements in any one quarter will not be fully reflected in our revenue or our results of operations until future periods. Accordingly, this revenue recognition model also makes it difficult for us to rapidly increase our revenue through additional sales in any period, as revenue from new customers must be recognized over the applicable subscription term.

We may not be able to continue to add new customers and retain and increase sales to our existing customers, which could adversely affect our operating results.

Our revenue growth is dependent on our ability to continually attract new customers while retaining and expanding our service offerings to existing customers. Growth in the demand for our solutions may be inhibited and we may be unable to sustain growth in our sales for a number of reasons, including, but not limited to:

- our failure to develop new or additional solutions;
• our inability to market our solutions in a cost-effective manner to new customers or in new vertical or geographic markets;
• our inability to expand our sales to existing customers;
• our inability to compete successfully against our existing and future competitors in pricing strategies;
• the inability of our LeaseStar product family to grow traffic to its websites, resulting in lower levels of lead and lease/move-in traffic to customers;
• our inability to build and promote our brand; and
• perceived or actual security, integrity, reliability, quality or compatibility problems with our solutions.

A substantial amount of our past revenue growth was derived from purchases of upgrades and additional solutions by existing customers. Our costs associated with increasing revenue from existing customers are generally lower than costs associated with generating revenue from new customers. Therefore, a reduction in the rate of revenue increase from our existing customers, even if offset by an increase in revenue from new customers, could reduce our profitability and have a material adverse effect on our operating results.

If we are not able to integrate past or future acquisitions successfully, our operating results and prospects could be harmed.

We have acquired new technology and domain expertise through multiple acquisitions, including our most recent acquisitions of Seniors for Living, Inc. in February 2013, RentSentinel and RentSocial in March 2013, Windsor Compliance Services, Inc., MyBuilding Inc., and Active Building, LLC in October 2013, Bookt, LLC in January 2014, Virtual Maintenance Manager, LLC in March 2014, Notivus Multi-Family, LLC in May 2014, and Kigo, Inc. in June 2014. We expect to continue making acquisitions. The success of our future acquisition strategy will depend on our ability to identify, negotiate, complete and integrate acquisitions. Acquisitions are inherently risky, and any acquisitions we complete may not be successful. Any acquisitions we pursue would involve numerous risks, including the following:

• difficulties in integrating and managing the operations and technologies of the companies we acquire;
• diversion of our management’s attention from normal daily operations of our business;
• our inability to maintain the customers, the key employees, the key business relationships and the reputations of the businesses we acquire;
• our inability to generate sufficient revenue from acquisitions to offset our increased expenses associated with acquisitions;
• our responsibility for the liabilities of the businesses we acquire, including, without limitation, liabilities arising out of their failure to maintain effective data security, data integrity, disaster recovery and privacy controls prior to the acquisition, or their infringement or alleged infringement of third party intellectual property, contract or data access rights prior to the acquisition;
• difficulties in complying with new markets or regulatory standards to which we were not previously subject;
• delays in our ability to implement internal standards, controls, procedures and policies in the businesses we acquire; and
• adverse effects of acquisition activity on the key performance indicators we use to monitor our performance as a business.

Our current acquisition strategy includes the acquisition of companies that offer property management systems or other systems that may not interoperate with our software-enabled value-added services. In order to integrate and fully realize the benefits of such acquisitions, we expect to build application interfaces that enable such customers to use a wide range of our solutions while they continue to use their legacy management systems. In addition, over time we expect to migrate each acquired company’s customers to our on demand property management solutions to retain them as customers and to be in a position to offer them our solutions on a cost-effective basis. These efforts may be unsuccessful or entail costs that result in losses or reduced profitability.

Unanticipated events and circumstances may occur in future periods which may affect the realizability of our intangible assets recognized through acquisitions. The events and circumstances that we consider include significant under-performance relative to projected future operating results and significant changes in our overall business and/or product strategies. These events and circumstances may cause us to revise our estimates and assumptions used in analyzing the value of our other intangible assets with indefinite lives, the revision could result in a non-cash impairment charge that could have a material impact on our financial results.

We may be unable to secure the equity or debt funding necessary to finance future acquisitions on terms that are acceptable to us, or at all. If we finance acquisitions by issuing equity or convertible debt securities, our existing stockholders
will likely experience ownership dilution, and if we finance future acquisitions with debt funding, we will incur interest expense and may have to comply with additional financing covenants or secure that debt obligation with our assets.

If we are unable to successfully develop or acquire and sell enhancements and new solutions, our revenue growth will be harmed and we may not be able to meet profitability expectations.

The industry in which we operate is characterized by rapidly changing customer requirements, technological developments and evolving industry standards. Our ability to attract new customers and increase revenue from existing customers will depend in large part on our ability to successfully develop, bring to market and sell enhancements to our existing solutions and new solutions that effectively respond to the rapid changes in our industry. Any enhancements or new solutions that we develop or acquire may not be introduced to the market in a timely or cost-effective manner and may not achieve the broad market acceptance necessary to generate the revenue required to offset the operating expenses and capital expenditures related to development or acquisition. If we are unable to timely develop or acquire and sell enhancements and new solutions that keep pace with the rapid changes in our industry, our revenue will not grow as expected and we may not be able to maintain or meet profitability expectations.

We derive a substantial portion of our revenue from a limited number of our solutions and failure to maintain demand for these solutions or diversify our revenue base through increasing demand for our other solutions could negatively affect our operating results.

Historically, a majority of our revenue was derived from sales of our OneSite property management system and our LeasingDesk software-enabled value-added service. If we are unable to develop enhancements to these solutions to maintain demand for these solutions or to diversify our revenue base by increasing demand for our other solutions, our operating results could be negatively impacted. If there is inadequate demand for these new products, our operating results could be negatively impacted.

We use a small number of data centers to deliver our solutions. Any disruption of service at our data centers or other facilities could interrupt or delay our customers’ access to our solutions, which could harm our operating results.

The ability of our customers to access our service is critical to our business. We host our products and services, support our operations, and service our customers primarily from our Dallas, Texas-based data centers. Some of our products and services derived from recent acquisitions are hosted and supported from data centers in other geographic locations within the continental United States, many of which are operated by third party data vendors. Until such time that migration of these acquired product and services to our Texas-based data centers can be completed, we will not have sole control over the operations of all data center facilities.

We may fail to provide such service as a result of numerous factors, many of which are beyond our control, including, without limitation: mechanical failure, power outage, human error, physical or electronic security breaches, war, terrorism and related conflicts or similar events worldwide, fire, earthquake, hurricane, flood and other natural disasters, sabotage and vandalism. We attempt to mitigate these risks at our Texas-based data centers or other facilities through various business continuity efforts, including redundant infrastructure, 24 x 7 x 365 system activity monitoring, backup and recovery procedures, use of a secure off-site storage facility for backup media, separate test systems and rotation of management and system security measures, but our precautions may not protect against all potential problems. Disaster recovery procedures are in place to facilitate the recovery of our operations, products and services within the stated service level goals. Our secondary data center is equipped with physical space, power, storage and networking infrastructure and Internet connectivity to support the solutions we provide in the event of the interruption of services at our primary data center. Even with this secondary data center, however, our operations would be interrupted during the transition process should our primary data center experience a failure. Moreover, both our primary and secondary data centers are located in the greater metropolitan Dallas area. As a result, any regional disaster could affect both data centers and result in a material disruption of our services. Furthermore, these business continuity efforts do not support our data centers outside of Texas or any centers operated by third party data vendors.

Problems at one or more of our data centers, whether or not within our control, could result in service interruptions or delays that could harm our operating results. Disruptions at our data centers or other facilities could cause disruptions in our services and data or document loss or corruption. This could damage our reputation, cause us to issue credits to customers, subject us to potential liability or costs related to defending against claims or cause customers to terminate or elect not to renew their agreements, any of which could negatively impact our revenues.

We provide service level commitments to our customers, and our failure to meet the stated service levels could significantly harm our revenue and our reputation.

Our customer agreements provide that we maintain certain service level commitments to our customers relating primarily to product functionality, network uptime, critical infrastructure availability and hardware replacement. For example, our service level agreements generally require that our solutions are available 98% of the time during coverage hours (normally 6:00 a.m. though 10:00 p.m. Central time daily) 365 days per year (other than certain permitted exceptions such as
We face intense competitive pressures and our failure to compete successfully could harm our operating results.

The market for many of our solutions is intensely competitive, fragmented and rapidly changing. Some of these markets have relatively low barriers to entry. With the introduction of new technologies and market entrants, we expect competition to intensify in the future. Increased competition generally could result in pricing pressures, reduced sales and reduced margins. Often we compete to sell our solutions against existing systems that our potential customers have already made significant expenditures to install.

Our competitors vary depending on our product and service. In the market for accounting software we compete with Yardi Systems, Inc. ("Yardi"), MRI Software LLC, Property Solutions International, Inc. ("Property Solutions"), AMSI Property Management (owned by Infor Global Solutions, Inc.), Intacct Corp, NetSuite Inc., Intuit Inc, Oracle Corporation, PeopleSoft and JD Edwards (each owned by Oracle Corporation), SAP AG, Microsoft Corporation, AppFolio Inc. and various smaller providers of accounting software. High costs are typically associated with switching an organization’s accounting software. In the market for property management software, we face competitive pressure from Yardi and its Voyager products, AMSI Property Management (owned by Infor Global Solutions, Inc.), Boston Post (acquired by MRI Software LLC), Jenark (owned by CoreLogic), Entrata (a division of Property Solutions), ResMan and MRI Software LLC. In the single-family market, our accounting and property management systems primarily compete with Yardi, AppFolio Inc., Intuit Inc., DIY Real Estate Solutions (acquired by Yardi), Buildium, LLC, Rent Manager (owned by London Computer Systems, Inc.), and Property Boss Solutions, LLC.

In the market for vertically-integrated cloud computing for multi-family real estate owners and property managers, our only substantial competition is from Yardi. We also compete with cloud computing service providers such as Amazon.com Inc., Rackspace Hosting Inc., International Business Machines Corp. and many others.

We offer a number of software-enabled value-added services that compete with a disparate and large group of competitors. In the applicant screening market, our principal competitors are LexisNexis (a subsidiary of Reed Elsevier Group plc), CoreLogic, Inc. (formerly First Advantage Corporation, an affiliate of The First American Corporation), Property Solutions, TransUnion Rental Screening Solutions, Inc. (a subsidiary of TransUnion LLC), Resident Check Inc., Yardi, On-Site.com and many other smaller regional and local screening companies.

In the insurance market, our principal competitors are Assurant, Inc., Bader Company, CoreLogic, Inc., Property Solutions, Yardi and a number of national insurance underwriters (including GEICO Corporation, The Allstate Corporation, State Farm Fire and Casualty Company, Farmers Insurance Exchange, Nationwide Mutual Insurance Company and United Services Automobile Association) that market renters insurance. There are many smaller screening and insurance providers in the risk mitigation area that we encounter less frequently, but they nevertheless present a competitive presence in the market.

In the customer relationship management ("CRM") market, we compete with providers of contact center and call tracking services, including LeaseHawk LLC, Yardi, Property Solutions International, Inc., and numerous regional and local contact centers. In addition, we compete with lead tracking solution providers, including LeaseHawk LLC, Lead Tracking Solutions (acquired by Yardi) and Who’s Calling, Inc. In addition, we compete with content syndication providers VaultWare (owned by MRI Software LLC) and rentbits.com, Inc. Finally, we compete with companies providing web portal services, including Apartments24-7.com, Inc., Ellipse Communications, Inc., Property Solutions, G5 Search Marketing, Inc., Spherexx.com, and Yardi. Certain Internet listing services also offer websites for their customers, usually as a free value add to their listing service.

In the marketing and web portal services market, we compete with G5 Search Marketing, Inc., Spherexx LLC, ReachLocal, Inc., Property Solutions, On-Site.com, Yodle, Inc., Yardi and many local or regional advertising agencies.

In the Internet listing service market, we compete with ForRent (a division of Dominium Enterprises), Apartment Guide (a division of Primedia Inc.), Rent.com (owned by Primedia, Inc.), RentPath, Inc., Apartments.com (a division of CoStar Group, Inc.), Apartment Finder (a division of Network Communications, Inc.), Move, Inc., Property Solutions, Rent Café (a division of Yardi), Zillow (and Trulia, Inc.) and many other companies in regional areas.
In the Senior Living market, we compete against A Place for Mom, Inc., Care.com, Inc., Caring, Inc., Eldermark, Care Patrol Franchise Systems, LLC, Yardi, Aging with Grace, LLC, SeniorHousingNet.com (owned by Move, Inc.), G5 Search Marketing Inc., SeniorHomes.com (owned by Moveo, Corp.), The Right Click LLC, ALMSA Corporation and many other regionally focused companies.

In the utility billing and energy management market, we compete at a national level with American Utility Management, Inc., Conservice, LLC, Yardi (following its acquisitions of ista North America and Energy Billing Systems, Inc.), Property Solutions, Ocius LLC, NWP Services Corporation and Minol USA, L.P. Many other smaller utility billing companies compete for smaller rental properties or in regional areas.

In the revenue management market, we compete with Property Solutions, The Rainmaker Group, Inc. and Yardi.

In the market for multi-family housing market research, we compete with Reis, Inc., Axiometrics, Inc., Pierce-Eislen, Inc. (owned by Yardi), CoStar Group, Inc. and Portfolio Research, Inc.

In the spend management market, we compete with Yardi, AvidXchange, Inc., Nexus Systems, Inc., Ariba, Inc., Oracle Corporation, Buyers Access LLC, PAS Purchasing Solutions and ESS Technologies LLC.

In the payment processing market, we compete with Chase Paymentech Solutions, LLC (a subsidiary of JPMorgan Chase & Co.), First Data Corporation, Fiserv, Inc., MoneyGram International, Inc., NWP Services Corporation, On-Site.com, Property Solutions, PayLease LLC, RentPayment.com (a subsidiary of Yapstone, Inc.), Yardi, a number of national banking institutions and those that take payments directly from tenants.

In the Affordable housing compliance and audit services market, we compete with Zeffert and Associates, Inc., Preferred Compliance Solutions, Inc., Spectrum Enterprises, Inc. and many other smaller local and regional compliance and audit services.

In the vacation rental market, we compete with LiveRez, Inc., HomeAway Software, and many other smaller local and regional companies.

In addition, many of our existing or potential customers have developed or may develop their own solutions that may be competitive with our solutions. We also may face competition for potential acquisition targets from our competitors who are seeking to expand their offerings.

With respect to all of our competitors, we compete based on a number of factors, including total cost of ownership, level of integration with property management systems, ease of implementation, product functionality and scope, performance, security, scalability and reliability of service, brand and reputation, sales and marketing capabilities and financial resources. Some of our existing competitors and new market entrants may enjoy substantial competitive advantages, such as greater name recognition, longer operating histories, larger installed customer bases and larger sales and marketing budgets, as well as greater financial, technical and other resources. In addition, any number of our existing competitors or new market entrants could combine or consolidate to become a more formidable competitor with greater resources. As a result of such competitive advantages, our existing and future competitors may be able to:

- develop superior products or services, gain greater market acceptance and expand their offerings more efficiently or more rapidly;
- adapt to new or emerging technologies and changes in customer requirements more quickly;
- take advantage of acquisition and other opportunities more readily;
- adopt more aggressive pricing policies and devote greater resources to the promotion of their brand and marketing and sales of their products and services; and
- devote greater resources to the research and development of their products and services.

If we are not able to compete effectively, our operating results will be harmed.

We integrate our software-enabled value-added services with competitive property management software for some of our customers. Our application infrastructure, marketed to our customers as the RealPage Cloud, is based on an open architecture that enables third-party applications to access and interface with applications hosted in the RealPage Cloud through our RealPage Exchange platform. Likewise, through this platform our RealPage Cloud services are able to access and interface with other third-party applications, including third-party property management systems. We also provide services to assist in the implementation, training, support and hosting with respect to the integration of some of our competitors’ applications with our solutions. We sometimes rely on the cooperation of our competitors to implement solutions for our customers. However, frequently our reliance on the cooperation of our competitors can result in delays in integration. There is no assurance that our competitors, even if contractually obligated to do so, will continue to cooperate with us or will not prospectively alter their obligations to do so. We also occasionally develop interfaces between our software-enabled value-added services and competitor property management software without their cooperation or consent. There is no assurance that our competitors will...
not alter their applications in ways that inhibit or prevent integration or assert that their intellectual property rights restrict our ability to integrate our solutions with their applications. Moreover, regardless of merit, such interface-related activity may result in costly litigation.

On January 24, 2011, Yardi filed a lawsuit in the U.S. District Court for the Central District of California against RealPage, Inc. and DC Consulting, Inc. (the “Yardi Lawsuit”). We answered and filed counterclaims against Yardi, and on July 1, 2012, RealPage and Yardi entered into a comprehensive settlement of all outstanding litigation between them, and the lawsuit was dismissed. As part of the settlement, Yardi and RealPage granted each other perpetual licenses and rights to substantially expanded interfaces so that clients can experience a more full-featured integration between RealPage and Yardi applications. The parties also established ongoing testing environments to facilitate efficient operation of the interfaces. In addition, Yardi granted RealPage a license to certain patents. Under the settlement, RealPage will continue providing hosting services for Yardi software for current clients until July 2017. RealPage also agreed to stop offering hosting services for Yardi software to new customers and to stop providing support or implementation services for Yardi software. While we believe that this settlement comprehensively addressed the matters underlying our dispute with Yardi, if Yardi or other competitors do not cooperate with us, alter their applications in ways that inhibit or restrict the integration of our solutions or assert that their intellectual property rights restrict our ability to integrate our solutions with their applications and we are not able to find alternative ways to integrate our solutions with our competitors’ applications, our business would be harmed.

We face competition to attract consumers to our LeaseStar product websites and mobile applications, which could impair our ability to continue to grow the number of users who use our websites and mobile applications, which would harm our business, results of operations and financial condition.

The success of our LeaseStar product family depends in part on our ability to continue to attract additional consumers to our websites and mobile applications. Our existing and potential competitors include companies that could devote greater technical and other resources than we have available, have a more accelerated time frame for deployment and leverage their existing user bases and proprietary technologies to provide products and services that consumers might view as superior to our offerings. Any of our future or existing competitors may introduce different solutions that attract consumers or provide solutions similar to our own but with better branding or marketing resources. If we are unable to continue to grow the number of consumers who use our website and mobile applications, our business, results of operations and financial condition would be harmed.

We are entering a business environment in which social media integration is playing a significantly increasing role. Social media is a new and rapidly changing industry wherein the rules and regulations related to use and disclosure of personal information is unclear and evolving.

The operation and marketing of multitenant real estate developments is likely to become much more dependent upon the use of and integration with social media platforms as communities attempt to reach their current and target customers through applications, such as Facebook, Twitter, LinkedIn and other current and emerging social applications. The use of these applications necessarily involves the disclosure of personal information by individuals participating in social media, and the corresponding utilization of such personal information by our products and services via integration programs and data exchanges. The regulatory framework for social media privacy and security issues is currently in flux and is likely to remain so for the foreseeable future. Practices regarding the collection, use, storage, transmission and security of personal information by companies on social media platforms have recently come under increased public scrutiny as various government agencies and consumer groups have called for new regulation and changes in industry practices. We are also subject to each social media platform’s terms and conditions for use, application development and integration, which may be modified, restricted, or otherwise changed, affecting and possibly curtailing our ability to offer products and services.

These factors, many of which are beyond our control, present a high degree of uncertainty for the future of social media integration. As such, there is no assurance that our participation in social media integration will be risk free, as contractual, statutory or other legal restrictions may be created that limit or otherwise impede our participation in or leverage of social media integration.

We may be unable to compete successfully against our existing or future competitors in attracting advertisers, which could harm our business, results of operations and financial condition.

In our LeaseStar product family, we compete to attract advertisers with media sites, including websites dedicated to providing real estate listings and other rental housing related services to real estate professionals and consumers, and major Internet portals, general search engines and social media sites, as well as other online companies. We also compete for a share of advertisers’ overall marketing budgets with traditional media such as television, magazines, newspapers and home/apartment guide publications, particularly with respect to advertising dollars spent at the local level by real estate professionals to advertise their qualifications and listings. Large companies with significant brand recognition have large numbers of direct sales personnel and substantial proprietary advertising inventory and web traffic, which may provide a competitive advantage. To compete successfully for advertisers against future and existing competitors, we must continue to invest resources in
developing our advertising platform and proving the effectiveness and relevance of our advertising products and services. Pressure from competitors seeking to acquire a greater share of our advertisers’ overall marketing budget could adversely affect our pricing and margins, lower our revenue, and increase our research and development and marketing expenses. If we are unable to compete successfully against our existing or future competitors, our business, financial condition or results of operations would be harmed.

Variability in our sales and activation cycles could result in fluctuations in our quarterly results of operations and cause our stock price to decline.

The sales and activation cycles for our solutions, from initial contact with a prospective customer to contract execution and activation, vary widely by customer and solution. We do not recognize revenue until the solution is activated. While most of our activations follow a set of standard procedures, a customer’s priorities may delay activation and our ability to recognize revenue, which could result in fluctuations in our quarterly operating results. Additionally, certain of our products are offered in suites containing multiple solutions, resulting in additional fluctuation in activations depending on each customer’s priorities with respect to solutions included in the suite.

Many of our customers are price sensitive, and if market dynamics require us to change our pricing model or reduce prices, our operating results will be harmed.

Many of our existing and potential customers are price sensitive, and recent adverse global economic conditions, as well as decreased leasing velocity, have contributed to increased price sensitivity in the multi-family housing market and the other markets that we serve. As market dynamics change, or as new and existing competitors introduce more competitive pricing or pricing models, we may be unable to renew our agreements with existing customers or customers of the businesses we acquire or attract new customers at the same price or based on the same pricing model as previously used. As a result, it is possible that we may be required to change our pricing model, offer price incentives or reduce our prices, which could harm our revenue, profitability and operating results.

If we do not effectively expand and train our sales force, we may be unable to add new customers or increase sales to our existing customers and our business will be harmed.

We continue to be substantially dependent on our sales force to obtain new customers and to sell additional solutions to our existing customers. We believe that there is significant competition for sales personnel with the skills and technical knowledge that we require. Our ability to achieve significant revenue growth will depend, in large part, on our success in recruiting, training and retaining sufficient numbers of sales personnel to support our growth. New hires require significant training and, in most cases, take significant time before they achieve full productivity. Our recent hires and planned hires may not become as productive as we expect, and we may be unable to hire or retain sufficient numbers of qualified individuals in the markets where we do business or plan to do business. If we are unable to hire and train sufficient numbers of effective sales personnel, or the sales personnel are not successful in obtaining new customers or increasing sales to our existing customer base, our business will be harmed.

Material defects or errors in the software we use to deliver our solutions could harm our reputation, result in significant costs to us and impair our ability to sell our solutions.

The software applications underlying our solutions are inherently complex and may contain material defects or errors, particularly when first introduced or when new versions or enhancements are released. We have, from time to time, found defects in the software applications underlying our solutions, and new errors in our existing solutions may be detected in the future. Any errors or defects that cause performance problems or service interruptions could result in:

- a reduction in new sales or subscription renewal rates;
- unexpected sales credits or refunds to our customers, loss of customers and other potential liabilities;
- delays in customer payments, increasing our collection reserve and collection cycle;
- diversion of development resources and associated costs;
- harm to our reputation and brand; and
- unanticipated litigation costs.

Additionally, the costs incurred in correcting defects or errors could be substantial and could adversely affect our operating results.

Failure to effectively manage the development of our solutions and data processing efforts outside the United States could harm our business.

Our success depends, in part, on our ability to process high volumes of customer data and enhance existing solutions and develop new solutions rapidly and cost effectively. We currently maintain offices in Hyderabad, India and Manila, Philippines where we employ development and data processing personnel. We believe that performing these activities in
corresponding liability for these resident payments is

We rely on third-party technologies and services that may be difficult to replace or that could cause errors, failures or disruptions of our service, any of which could harm our business.

We rely on a number of third-party providers, including, but not limited to, computer hardware and software vendors, database and data providers, to deliver our solutions. We currently utilize equipment, software and services from Akami Inc., Avaya Inc., Brocade Communications Systems, Inc., Cisco Systems, Inc., Dell Inc., EMC Corporation, Microsoft Corporation, Oracle Corporation and salesforce.com, Inc., as well as many other smaller providers. Our OneSite Accounting service relies on a software-as-a-service, or SaaS-based, accounting system developed and maintained by a third-party service provider. We host this application in our data centers and provide supplemental development resources to extend this accounting system to meet the unique requirements of the rental housing industry. Our shared cloud portfolio reporting service utilizes software licensed from IBM. We expect to utilize additional service providers as we expand our platform. Although the third-party technologies and services that we currently require are commercially available, such technologies and services may not continue to be available on commercially reasonable terms, or at all. Any loss of the right to use any of these technologies or services could result in delays in the provisioning of our solutions until alternative technology is either developed by us, or, if available, is identified, obtained and integrated, and such delays could harm our business. It also may be time consuming and costly to enter into new relationships. Additionally, any errors or defects in the third-party technologies we utilize or delays or interruptions in the third-party services we rely on could result in errors, failures or disruptions of our services, which also could harm our business.

We depend upon third-party service providers for important payment processing functions. If these third-party service providers do not fulfill their contractual obligations or choose to discontinue their services, our business and operations could be disrupted and our operating results would be harmed.

We rely on several large payment processing organizations to enable us to provide payment processing services to our customers, including electronic funds transfers, or EFT, check services, bank card authorization, data capture, settlement and merchant accounting services and access to various reporting tools. These organizations include Bank of America Merchant Services, Bank of America, N.A., Paymentech, LLC, Fiserv, Inc., Financial Transmission Network, Inc., Jack Henry & Associates, Inc., JPMorgan Chase Bank, N.A. and Wells Fargo, N.A. We also rely on third-party hardware manufacturers to manufacture the check scanning hardware our customers utilize to process transactions. Some of these organizations and service providers are competitors who also directly or indirectly sell payment processing services to customers in competition with us. With respect to these organizations and service providers, we have significantly less control over the systems and processes than if we were to maintain and operate them ourselves. In some cases, functions necessary to our business are performed on proprietary third-party systems and software to which we have no access. We also generally do not have long-term contracts with these organizations and service providers. Accordingly, the failure of these organizations and service providers to renew their contracts with us or fulfill their contractual obligations and perform satisfactorily could result in significant disruptions to our operations and adversely affect operating results. In addition, businesses that we have acquired, or may acquire in the future, typically rely on other payment processing service providers. We may encounter difficulty converting payment processing services from these service providers to our payment processing platform. If we are required to find an alternative source for performing these functions, we may have to expend significant money, time and other resources to develop or obtain an alternative, and if developing or obtaining an alternative is not accomplished in a timely manner and without significant disruption to our business, we may be unable to fulfill our responsibilities to customers or meet their expectations, with the attendant potential for liability claims, damage to our reputation, loss of ability to attract or maintain customers and reduction of our revenue or profits.

We face a number of risks in our payment processing business that could result in a reduction in our revenues and profits.

In connection with our electronic payment processing services, we process resident payments and subsequently submit these resident payments to our customers after varying clearing times established by RealPage. These payments are settled through our sponsoring clearing banks, and in the case of EFT, our Originating Depository Financial Institutions, or ODFIs. Currently, we rely on Bank of America, N.A., Wells Fargo, N.A. and JPMorgan Chase Bank, N.A. as our sponsoring clearing banks. In the future, we expect to enter into similar sponsoring clearing bank relationships with one or more other national banking institutions. The resident payments that we process for our customers at our sponsoring clearing banks are identified in our consolidated balance sheets as restricted cash and the corresponding liability for these resident payments is
identified as customer deposits. Our electronic payment processing business and related maintenance of custodial accounts subjects us to a number of risks, including, but not limited to:

- liability for customer costs related to disputed or fraudulent transactions if those costs exceed the amount of the customer reserves we have during the clearing period or after resident payments have been settled to our customers;
- electronic processing limits on the amount of custodial balances that any single ODFI, or collectively all of our ODFIs, will underwrite;
- reliance on clearing bank sponsors, card payment processors and other service payment provider partners to process electronic transactions;
- failure by us or our bank sponsors to adhere to applicable laws and regulatory requirements or the standards of the electronic payments rules and regulations and other rules and regulations that may impact the provision of electronic payment services;
- continually evolving and developing laws and regulations governing payment processing and money transmission, the application or interpretation of which is not clear in some jurisdictions;
- incidences of fraud, a security breach or our failure to comply with required external audit standards; and
- our inability to increase our fees at times when electronic payment partners or associations increase their transaction processing fees.

If any of these risks related to our electronic payment processing business were to materialize, our business or financial results could be negatively affected. Although we attempt to structure and adapt our payment processing operations to comply with these complex and evolving laws and regulations, our efforts may not guarantee compliance. In the event that we are found to be in violation of these legal requirements, we may be subject to monetary fines, cease and desist orders, mandatory product changes, or other penalties that could have an adverse effect on our results of operations. Additionally, with respect to the processing of EFTs, we are exposed to financial risk. EFTs between a resident and our customer may be returned for various reasons such as insufficient funds or stop payment orders. These returns are charged back to the customer by us. However, if we or our sponsoring clearing banks are unable to collect such amounts from the customer’s account or if the customer refuses or is unable to reimburse us for the chargeback, we bear the risk of loss for the amount of the transfer. While we have not experienced material losses resulting from chargebacks in the past, there can be no assurance that we will not experience significant losses from chargebacks in the future. Any increase in chargebacks not paid by our customers may adversely affect our financial condition and results of operations.

We entered into a Service Provider Agreement with Wells Fargo Merchant Services, LLC and Wells Fargo Bank, NA (“Wells Fargo”), effective January 1, 2014. Under the Service Provider Agreement, RealPage, Inc. is a registered independent sales organization (“ISO”) of Wells Fargo. Wells Fargo will act as a merchant acquiring bank for processing RealPage client credit card and debit card payments (“Card Payments”), and RealPage will serve as an ISO. As an ISO, RealPage will assume the underwriting risk for processing Card Payments on behalf of its clients. If RealPage experiences excessive chargebacks, either RealPage or Wells Fargo has the authority to cease client card processing services, and such events could result in a material adverse effect on our revenues, operating income, and reputation.

Evolution and expansion of our payment processing business may subject us to additional regulatory requirements and other risks, for which failure to comply or adapt could harm our operating results.

The evolution and expansion of our payment processing business may subject us to additional risks and regulatory requirements, including laws covering money transmission and anti-money laundering. These requirements vary throughout the markets in which we operate, and several jurisdictions lack clarity in the application and interpretation of these rules. In order to maintain flexibility in the growth and expansion of our payments operations, we have begun the process of applying for certain money transmitter licenses in jurisdictions throughout the United States, and expect to expand the licensure as needed to accommodate new product development. Our efforts to obtain this licensure could result in significant management time, effort, and cost, and may still not guarantee compliance given the constant state of change in these regulatory frameworks. While we maintain a compliance program focused on applicable laws and regulations throughout the payments industry, there is no guarantee that we will not be subject to fines or other regulatory actions in one or more jurisdictions, or be required to adjust business practices to accommodate future regulatory requirements.

If our security measures are breached and unauthorized access is obtained to our software platform and infrastructure, or our customers’ or their residents’ or prospects’ data, we may incur significant liabilities, third parties may misappropriate our intellectual property, our solutions may be perceived as not being secure and customers may curtail or stop using our solutions.
Maintaining the security of our software platform and service infrastructure is of paramount importance to us and our customers, and we devote significant resources to this effort. Breaches of the security measures we take to protect our software platform and service infrastructure and our and our customers’ confidential or proprietary information that is stored on and transmitted through those systems could disrupt and compromise the security of our internal systems and on-demand applications, impair our ability to provide products and services to our customers and protect the privacy of their data, compromise our confidential or technical business information harming our competitive position, result in theft or misuse of our intellectual property, or otherwise adversely affect our business.

The solutions we provide involve the collection, storage and transmission of confidential personal and proprietary information regarding our customers and our customers’ current and prospective residents and business partners. Specifically, we collect, store and transmit a variety of customer data such as demographic information and payment histories of our customers’ prospective and current residents and business partners. Additionally, we collect and transmit sensitive financial data such as credit card and bank account information. Treatment of certain types of data, such as personally identifiable information, protected health information and sensitive financial data may be subject to federal or state regulations requiring heightened privacy and security. If our data security or data integrity measures are breached or otherwise fail or prove to be inadequate for any reason, as a result of third-party actions or our employees’ contractors’ errors or malfeasance or otherwise, and unauthorized persons obtain access to this information, or the data is otherwise compromised, we could incur significant liability to our customers and to their prospective or current residents or business partners, significant costs associated with internal regulatory investigations and litigation, or significant fines and sanctions by payment processing networks or governmental authorities. Any of these events or circumstances could result in damage to our reputation and material harm to our business.

We also rely upon our customers as users of our system to promote security of the system and the data within it, such as administration of customer-side access credentialing and control of customer-side display of data. On occasion, our customers have failed to perform these activities in such a manner as to prevent unauthorized access to data. To date, these breaches have not resulted in claims against us or in material harm to our business, but we cannot be certain that the failure of our customers in future periods to perform these activities will not result in claims against us, which could expose us to potential litigation, damage to our reputation and material harm to our business.

There can be no certainty that the measures we have taken to protect our software platform and service infrastructure, our confidential and proprietary information, and the privacy and integrity of our customers’ and their current or prospective residents’ and business partners’ data are adequate to prevent or remedy unauthorized access to our system. Because techniques used to obtain unauthorized access to, or to sabotage, systems change frequently and generally are not recognized until launched against a target, we may be unable to anticipate these techniques or to implement adequate preventive measures. Experienced computer programmers seeking to intrude or cause harm, or hackers, may attempt to penetrate our service infrastructure from time to time. Hackers may consist of sophisticated organizations, competitors, governments or individuals who launch targeted attacks to gain unauthorized access to our systems. A hacker who is able to penetrate our service infrastructure could misappropriate proprietary or confidential information or cause interruptions in our services. We might be required to expend significant capital and resources to protect against, or to remedy, problems caused by hackers, and we may not have a timely remedy against a hacker who is able to penetrate our service infrastructure. In addition to purposeful breaches, inadvertent actions or the transmission of computer viruses could expose us to security risks. If an actual or perceived breach of our security occurs or if our customers and potential customers perceive vulnerabilities, the market perception of the effectiveness of our security measures could be harmed, we could lose sales and customers and our business could be materially harmed.

**If we are unable to cost-effectively scale or adapt our existing architecture to accommodate increased traffic, technological advances or changing customer requirements, our operating results could be harmed.**

As we continue to increase our customer base and the number of products used by our customers to manage units, the number of users accessing our on demand software solutions over the Internet will continue to increase. Increased traffic could result in slow access speeds and response times. Since our customer agreements typically include service availability commitments, slow speeds or our failure to accommodate increased traffic could result in breaches of our customer agreements. In addition, the market for our solutions is characterized by rapid technological advances and changes in customer requirements. In order to accommodate increased traffic and respond to technological advances and evolving customer requirements, we expect that we will be required to make future investments in our network architecture. If we do not implement future upgrades to our network architecture cost-effectively, or if we experience prolonged delays or unforeseen difficulties in connection with upgrading our network architecture, our service quality may suffer and our operating results could be harmed.

**Because certain solutions we provide depend on access to customer data, decreased access to this data or the failure to comply with applicable privacy laws and regulations or address privacy concerns applicable to such data could harm our business.**
Certain of our solutions depend on our continued access to our customers’ data regarding their prospective and current residents, including data compiled by other third-party service providers who collect and store data on behalf of our customers. Federal and state governments and agencies have adopted, or are considering adopting, laws and regulations regarding the collection, use and disclosure of such data. Any restrictions on the use of or decrease in the availability of such data from our customers, or other third parties that collect and store such data on behalf of our customers, and the costs of compliance with, and other burdens imposed by, applicable legislative and regulatory initiatives may limit our ability to collect, aggregate or use this data. Any limitations on our ability to collect, aggregate or use such data could reduce demand for certain of our solutions. Additionally, any inability to adequately address privacy concerns, even if unfounded, or comply with applicable privacy laws, regulations and policies, could result in liability to us or damage to our reputation and could inhibit sales and market acceptance of our solutions and harm our business.

The market for on demand software solutions in the rental housing industry continues to develop, and if it does not develop further or develops more slowly than we expect, our business will be harmed.

The market for on demand SaaS software solutions in the rental housing industry delivered via the Internet through a web browser is rapidly growing but still relatively immature compared to the market for traditional on premise software installed on a customer’s local personal computer or server. It is uncertain whether the on demand delivery model will achieve and sustain high levels of demand and market acceptance, making our business and future prospects difficult to evaluate and predict. While our existing customer base has widely accepted this new model, our future success will depend, to a large extent, on the willingness of our potential customers to choose on demand software solutions for business processes that they view as critical. Many of our potential customers have invested substantial effort and financial resources to integrate traditional enterprise software into their businesses and may be reluctant or unwilling to switch to on demand software solutions. Some businesses may be reluctant or unwilling to use on demand software solutions because they have concerns regarding the risks associated with security capabilities, reliability and availability, among other things, of the on demand delivery model. If potential customers do not consider on demand software solutions to be beneficial, then the market for these solutions may not further develop, or it may develop more slowly than we expect, either of which would adversely affect our operating results.

If use of the Internet and mobile technology, particularly with respect to online rental housing products and services, does not continue to increase as rapidly as we anticipate, our business could be harmed.

Our future success is substantially dependent on the continued use of the Internet and mobile technology as effective media of business and communication by our customers and consumers. Internet and mobile technology use may not continue to develop at historical rates, and consumers may not continue to use the Internet or mobile technology as media for information exchange or we may not keep up with the latest technology. Further, these media may not be accepted as viable long-term outlets for rental housing information for a number of reasons, including actual or perceived lack of security of information and possible disruptions of service or connectivity. If consumers begin to access rental housing information through other media and we fail to innovate, our business may be negatively impacted.

Economic trends that affect the rental housing market may have a negative effect on our business.

Our customers include a range of organizations whose success is intrinsically linked to the rental housing market. Economic trends that negatively or positively affect the rental housing market may adversely affect our business. The downturn in the global economy which began in 2008 has caused volatility in the real estate markets, generally, including the rental housing market, and increases in the rates of mortgage defaults and bankruptcy. Continued instability or downturns affecting the rental housing market may have a material adverse effect on our business, prospects, financial condition and results of operations by:

- decreasing demand for leasing and marketing solutions;
- reducing the number of occupied sites and units on which we earn revenue;
- preventing our customers from expanding their businesses and managing new properties;
- causing our customers to reduce spending on our solutions;
- subjecting us to increased pricing pressure in order to add new customers and retain existing customers;
- causing our customers to switch to lower-priced solutions provided by our competitors or internally developed solutions;
- delaying or preventing our collection of outstanding accounts receivable; and
- causing payment processing losses related to an increase in customer insolvency.

In addition, economic trends that reduce the frequency of renter turnover or the quantity of new renters may reduce the number of rental transactions completed by our customers and may, as a result, reduce demand for our rental, leasing or marketing transaction specific services.
If customers and other advertisers reduce or end their advertising spending on our LeaseStar products and we are unable to attract new advertisers, our business would be harmed.

Some components of our LeaseStar product family depend on advertising generated through sales to real estate agents and brokerages, property owners and other advertisers relevant to rental housing. Our ability to attract and retain advertisers, and ultimately to generate advertising revenue, depends on a number of factors, including:

- increasing the number of consumers of our LeaseStar products and services;
- competing effectively for advertising dollars with other online media companies;
- continuing to develop our advertising products and services;
- keeping pace with changes in technology and with our competitors; and
- offering an attractive return on investment to our advertiser customers for their advertising spending with us.

Reductions in lead generation could have a negative effect on our operating results.

We could face reductions in leads generated for our clients if third party originators of such leads were to elect to suspend sending leads to us or our sources for such leads were reduced. Reductions in leads generated could reduce the value of our lead generation services, make it difficult for us to add new lead generation services customers, retain existing lead generation services customers and maintain or increase sales levels to our existing lead generation services customers and could adversely affect our operating results.

We may require additional capital to support business growth, and this capital might not be available.

We intend to continue to make investments to support our business growth and may require additional funds to respond to business challenges or opportunities, including the need to develop new solutions or enhance our existing solutions, enhance our operating infrastructure or acquire businesses and technologies. Accordingly, we may need to engage in equity or debt financings to secure additional funds. If we raise additional funds through further issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Debt financing secured by us in the future could involve additional restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. In addition, we may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us when we require it, our ability to continue to support our business growth and to respond to business challenges or opportunities could be significantly limited.

Our debt obligations contain restrictions that impact our business and expose us to risks that could adversely affect our liquidity and financial condition.

On September 30, 2014, we entered into a new agreement for a secured revolving credit facility to refinance our outstanding revolving loans. The new credit facility provides an aggregate principal amount of up to $200.0 million, with sublimits of $10.0 million for the issuance of letters of credit and for $20.0 million of swingline loans. The credit facility also allows us, under certain conditions, to request additional term loans or revolving commitments in an aggregate principal amount of up to $150.0 million, plus an amount that would not cause our consolidated net leverage ratio to exceed 3.25 to 1.00. As of September 30, 2014, we had $38.6 million of debt outstanding under our revolving line of credit and $10.0 million was available for the issuance of letters of credit. Advances under the credit facility may be voluntarily prepaid and reborrowed.

All of our obligations under the credit facility are secured by substantially all of our assets. All of our existing and future domestic subsidiaries are required to guaranty our obligations under the credit facility, other than certain immaterial subsidiaries, foreign subsidiary holding companies, and our payment processing subsidiaries. Such guarantees by existing and future domestic subsidiaries are and will be secured by substantially all of the assets of such subsidiaries.

Our credit facility contains customary covenants, subject in each case to customary exceptions and qualifications, which limit our and certain of our subsidiaries’ ability to, among other things:

- incur additional indebtedness or guarantee indebtedness of others;
- create liens on our assets;
- enter into mergers or consolidations;
- dispose of assets;
- prepay certain indebtedness;
- make changes to our governing documents and certain of our agreements;
- pay dividends and make other distributions on our capital stock, and redeem and repurchase our capital stock;
Our credit facility also contains, subject in each case to customary exceptions and qualifications, customary affirmative covenants. We are also required to comply with a maximum consolidated net leverage ratio and a minimum consolidated interest coverage ratio. The interest coverage ratio, which is a ratio of our four previous consecutive fiscal quarters' consolidated EBITDA to our interest expense, is to be not less than 3.00 to 1.00 as of the last day of any fiscal quarter. The consolidated net leverage ratio, which is the ratio of funded indebtedness on the last day of each fiscal quarter to the four previous consecutive fiscal quarters' consolidated EBITDA, is not to be greater than 3.50 to 1.00, provided that we can elect to increase the ratio to 3.75 to 1.00 for a specified period following a permitted acquisition. As of September 30, 2014, we were in compliance with the covenants under our credit facility.

Assertions by a third party that we infringe its intellectual property, whether successful or not, could subject us to costly and time-consuming litigation or expensive licenses.

The software and technology industries are characterized by the existence of a large number of patents, copyrights, trademarks and trade secrets and by frequent litigation based on allegations of infringement, misappropriation, misuse and other violations of intellectual property rights. We have received in the past, and may receive in the future, communications from third parties claiming that we have infringed or otherwise misappropriated the intellectual property rights or terms of use of others. Our technologies may not be able to withstand any third-party claims against their use. Since we currently have no patents, we may not use patent infringement as a defensive strategy in such litigation. Additionally, although we have licensed from other parties proprietary technology covered by patents, we cannot be certain that any such patents will not be challenged, invalidated or circumvented. If such patents are invalidated or circumvented, this may allow existing and potential competitors to develop products and services that are competitive with, or superior to, our solutions.

Many of our customer agreements require us to indemnify our customers for certain third-party claims, such as intellectual property infringement claims, which could increase our costs of defending such claims and may require that we pay damages if there were an adverse ruling or settlement related to any such claims. These types of claims could harm our relationships with our customers, may deter future customers from purchasing our solutions or could expose us to litigation for these claims. Even if we are not a party to any litigation between a customer and a third party, an adverse outcome in any such litigation could make it more difficult for us to defend our intellectual property in any subsequent litigation in which we are a named party.

Litigation could force us to stop selling, incorporating or using our solutions that include the challenged intellectual property or redesign those solutions that use the technology. In addition, we may have to pay damages if we are found to be in violation of a third party’s rights. We may have to procure a license for the technology, which may not be available on reasonable terms, if at all, may significantly increase our operating expenses or may require us to restrict our business activities in one or more respects. As a result, we may also be required to develop alternative non-infringing technology, which could require significant effort and expense. There is no assurance that we would be able to develop alternative solutions or, if alternative solutions were developed, that they would perform as required or be accepted in the relevant markets. In some instances, if we are unable to offer non-infringing technology, or obtain a license for such technology, we may be required to refund some or the entire license fee paid for the infringing technology by our customers.
Our exposure to risks associated with the use of intellectual property may be increased as a result of acquisitions, as we have a lower level of visibility into the development process with respect to acquired technology or the care taken to safeguard against infringement risks. Such risks include, without limitation, patent infringement risks, copyright infringement risks, or the inclusion of open source software subject to onerous license provisions or violations of terms of use that could even require the disclosure of our proprietary source code. Third parties may make infringement and similar or related claims after we have acquired technology that had not been asserted prior to our acquisition.

Any failure to protect and successfully enforce our intellectual property rights could compromise our proprietary technology and impair our brands.

Our success depends significantly on our ability to protect our proprietary rights to the technologies we use in our solutions. If we are unable to protect our proprietary rights adequately, our competitors could use the intellectual property we have developed to enhance their own products and services, which could harm our business. We rely on a combination of copyright, service mark, trademark and trade secret laws, as well as confidentiality procedures and contractual restrictions, to establish and protect our proprietary rights, all of which provide only limited protection. We currently have no issued patents or pending patent applications and may be unable to obtain patent protection in the future. In addition, if any patents are issued in the future, they may not provide us with any competitive advantages, may not be issued in a manner that gives us the protection that we seek and may be successfully challenged by third parties. Unauthorized parties may attempt to copy or otherwise obtain and use the technologies underlying our solutions. Monitoring unauthorized use of our technologies is difficult, and we do not know whether the steps we have taken will prevent unauthorized use of our technology. If we are unable to protect our proprietary rights, we may find ourselves at a competitive disadvantage to others who have not incurred the substantial expense, time and effort required to create similar innovative products.

We cannot assure you that any future service mark or trademark registrations will be issued for pending or future applications or that any registered service marks or trademarks will be enforceable or provide adequate protection of our proprietary rights. If we are unable to secure new marks, maintain already existing marks and enforce the rights to use such marks against unauthorized third-party use, our ability to brand, identify and promote our solutions in the marketplace could be impaired, which could harm our business.

We customarily enter into agreements with our employees, contractors and certain parties with whom we do business to limit access to and disclosure of our proprietary information. The legal and technical steps we have taken, however, may not prevent unauthorized use or the reverse engineering of our technology. Moreover, we may be required to release the source code of our software to third parties under certain circumstances. For example, some of our customer agreements provide that if we cease to maintain or support a certain solution without replacing it with a successor solution, then we may be required to release the source code of the software underlying such solution. In addition, others may independently develop technologies that are competitive to ours or infringe our intellectual property. Moreover, it may be difficult or practically impossible to detect copyright infringement or theft of our software code. Enforcement of our intellectual property rights also depends on our legal actions being successful against these infringers, but these actions may not be successful, even when our rights have been infringed. Furthermore, the legal standards relating to the validity, enforceability and scope of protection of intellectual property rights in Internet-related industries are uncertain and still evolving.

Additionally, if we sell our solutions internationally in the future, effective patent, trademark, service mark, copyright and trade secret protection may not be available or as robust in every country in which our solutions are available. As a result, we may not be able to effectively prevent competitors outside the United States from infringing or otherwise misappropriating our intellectual property rights, which could reduce our competitive advantage and ability to compete or otherwise harm our business.

We may be unable to halt the operations of websites that aggregate or misappropriate data from our LeaseStar websites.

From time to time, third parties have misappropriated data from our LeaseStar websites through website scraping, software robots or other means and aggregated this data on their websites with data from other companies. In addition, copycat websites have misappropriated data on our network and attempted to imitate our brand or the functionality of our website. When we have become aware of such websites, we have employed technological or legal measures in an attempt to halt their operations. However, we may be unable to detect all such websites in a timely manner and, even if we could, technological and legal measures may be insufficient to halt their operations. In some cases, particularly in the case of websites operating outside of the United States, our available remedies may not be adequate to protect us against the impact of the operation of such websites. Regardless of whether we can successfully enforce our rights against the operators of these websites, any measures that we may take could require us to expend significant financial or other resources, which could harm our business, results of operations or financial condition. In addition, to the extent that such activity creates confusion among consumers or advertisers, our brand and business could be harmed.
Legal proceedings against us could be costly and time consuming to defend.

We are from time to time subject to legal proceedings and claims that arise in the ordinary course of business, including claims brought by our customers in connection with commercial disputes, claims brought by our customers’ current or prospective residents, including class action lawsuits based on asserted statutory or regulatory violations, employment-based claims made by our current or former employees, administrative agencies, government regulators, or insurers. In November, the Company was named in a purported class action lawsuit in the Eastern District of Virginia, Jenkins v. RealPage, Inc., Case No. 3:14cv758. This case is at an early stage and the Company is in the process of analyzing the case and preparing a response. Litigation, enforcement actions, and other legal proceedings, regardless of their outcome, may result in substantial costs and may divert management’s attention and our resources, which may harm our business, overall financial condition and operating results. In addition, legal claims that have not yet been asserted against us may be asserted in the future. Although we maintain insurance, there is no guarantee that such insurance will be available or sufficient to cover any such legal proceedings or claims. For example, insurance may not cover such legal proceedings or claims or may withhold or dispute coverage of such legal proceedings or claims on various grounds, including by alleging such coverage is beyond the scope of such policies, that we are not in compliance with the terms of such insurance policies or that such policies are not in effect, even after proceeds under such insurance policies have been received by us. In addition, insurance may not be sufficient for one or more such legal proceedings or claims and may not continue to be available on terms acceptable to us, or at all. A legal proceeding or claim brought against us that is uninsured or underinsured could result in unanticipated costs, thereby harming our operating results.

We could be sued for contract, warranty or product liability claims, and such lawsuits may disrupt our business, divert management’s attention and our financial resources or have an adverse effect on our financial results.

We provide warranties to customers of certain of our solutions and services relating primarily to product functionality, network uptime, critical infrastructure availability and hardware replacement. General errors, defects, inaccuracies or other performance problems in the software applications underlying our solutions or inaccuracies in or loss of the data we provide to our customers could result in financial or other damages to our customers. Additionally, errors associated with any delivery of our services, including utility billing, could result in financial or other damages to our customers. There can be no assurance that any limitations of liability set forth in our contracts would be enforceable or would otherwise protect us from liability for damages. We maintain general liability insurance coverage, including coverage for errors and omissions, in amounts and under terms that we believe are appropriate. There can be no assurance that this coverage will continue to be available on terms acceptable to us, or at all, or in sufficient amounts to cover one or more large product liability claims, or that the insurer will not deny coverage for any future claim or dispute coverage of such legal proceedings or claims even after proceeds under such insurance policies have been received by us. The successful assertion of one or more large product liability claims against us that exceeds available insurance coverage, could have a material adverse effect on our business, prospects, financial condition and results of operations.

If we fail to develop our brands cost-effectively, our financial condition and operating results could be harmed.

We market our solutions under discrete brand names. We believe that developing and maintaining awareness of our brands is critical to achieving widespread acceptance of our existing and future solutions and is an important element in attracting new customers and retaining our existing customers. Additionally, we believe that developing these brands in a cost-effective manner is critical in meeting our expected margins. In the past, our efforts to build our brands have involved significant expenses and we intend to continue to make expenditures on brand promotion. Brand promotion activities may not yield increased revenue, and even if they do, any increased revenue may not offset the expenses we incurred in building our brands. If we fail to cost-effectively build and maintain our brands, we may fail to attract new customers or retain our existing customers, and our financial condition and results of operations could be harmed.

If we fail to maintain proper and effective internal controls, our ability to produce accurate and timely financial statements could be impaired, which could harm our operating results, our ability to operate our business and investors’ views of us.

Ensuring that we have adequate internal financial and accounting controls and procedures in place so that we can produce accurate financial statements on a timely basis is a costly and time-consuming effort that needs to be re-evaluated frequently. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with United States generally accepted accounting principles. We are required to comply with Section 404 of the Sarbanes-Oxley Act of 2002, or the Sarbanes-Oxley Act, which requires annual management assessment of the effectiveness of our internal control over financial reporting and a report by our independent auditors. If we fail to maintain proper and effective internal controls, our ability to produce accurate and timely financial statements could be impaired, which could harm our operating results, harm our ability to operate our business and reduce the trading price of our stock.

Changes in, or errors in our interpretations and applications of, financial accounting standards or practices may cause adverse, unexpected financial reporting fluctuations and affect our reported results of operations.
A change in accounting standards or practices can have a significant effect on our reported results and may even affect our reporting of transactions completed before the change is effective. New accounting pronouncements and varying interpretations of accounting pronouncements have occurred and may occur in the future. Changes to existing rules or the questioning of current practices or errors in our interpretations and applications of financial accounting standards or practices may adversely affect our reported financial results or the way in which we conduct our business.

We have incurred, and will incur, increased costs and demands upon management as a result of complying with the laws and regulations affecting public companies, which could harm our operating results.

As a public company, we have incurred, and will incur, significant legal, accounting, investor relations and other expenses that we did not incur as a private company, including costs associated with public company reporting requirements. We also have incurred and will incur costs associated with current corporate governance requirements, including requirements under Section 404 and other provisions of the Sarbanes-Oxley Act, as well as rules implemented by the Securities Exchange Commission and The NASDAQ Stock Market LLC. We expect these rules and regulations to increase our legal and financial compliance costs substantially and to make some activities more time-consuming and costly. As a public company, it is more expensive for us to obtain director and officer liability insurance and it may be more difficult for us to attract and retain qualified individuals to serve on our board of directors or as our executive officers.

Government regulation of the rental housing industry, and services provided to the rental housing industry, including background screening services, utility billing, affordable housing audit and audit services, insurance and payments, the Internet and e-commerce is evolving, and changes in regulations or our failure to comply with regulations could harm our operating results.

The rental housing industry is subject to extensive and complex federal, state and local laws and regulations. Our services and solutions must work within the extensive and evolving legal and regulatory requirements applicable to our customers and third-party service providers, including, but not limited to, those under the Fair Credit Reporting Act, the Fair Housing Act, the Deceptive Trade Practices Act, the Drivers Privacy Protection Act, the Gramm-Leach-Bliley Act, the Fair and Accurate Credit Transactions Act, the United States Tax Reform Act of 1986 (TRA86), which is an IRS law governing tax credits, the Privacy Rules, Safeguards Rule and Consumer Report Information Disposal Rule promulgated by the Federal Trade Commission, or FTC, the FTC’s Telemarketing Sales Rule, the Telephone Consumer Protection Act (TCPA), the CAN-SPAM Act, the Electronic Communications Privacy Act, the regulations of the United States Department of Housing and Urban Development, or HUD, HIPAA/HITECH, rules and regulations of the Consumer Financial Protection Bureau (CFPB) and complex and divergent state and local laws and regulations related to data privacy and security, credit and consumer reporting, deceptive trade practices, discrimination in housing, telemarketing, electronic communications, call recording, utility billing and energy and gas consumption. These regulations are complex, change frequently and may become more stringent over time. Although we attempt to structure and adapt our solutions and service offerings to comply with these complex and evolving laws and regulations, we may be found to be in violation. If we are found to be in violation of any applicable laws or regulations, we could be subject to administrative and other enforcement actions as well as class action lawsuits or demands for client reimbursement. Additionally, many applicable laws and regulations provide for penalties or assessments on a per occurrence basis. Due to the nature of our business, the type of services we provide and the large number of transactions processed by our solutions, our potential liability in an enforcement action or class action lawsuit could be significant. In addition, entities such as HUD, the FTC and the CFPB have the authority to promulgate rules and regulations that may impact our customers and our business. We believe increased regulation is likely in the area of data privacy, and laws and regulations applying to the solicitation, collection, processing or use of personally identifiable information or consumer information could affect our customers’ ability to use and share data, potentially reducing demand for our on demand software solutions.

Some of our LeaseStar products operate under the real estate brokerage laws of numerous states and require maintaining licenses in many of these states. Brokerage laws in these states could change, affecting our ability to provide some LeaseStar, or if applicable, other products in these states.

We deliver our on demand software solutions over the Internet and sell and market certain of our solutions over the Internet. As Internet commerce continues to evolve, increasing regulation by federal, state or foreign agencies becomes more likely. Taxation of products or services provided over the Internet or other charges imposed by government agencies or by private organizations for accessing the Internet may also be imposed. Any regulation imposing greater fees for Internet use or restricting information exchange over the Internet could result in a decline in the use of the Internet and the viability of on demand software solutions, which could harm our business and operating results.

Our business is subject to the risks of international operations.

Compliance with complex foreign and U.S. laws and regulations that apply to our international operations increases our cost of doing business. These numerous and sometimes conflicting laws and regulations include internal control and disclosure rules, data privacy and filtering requirements, anti-corruption laws, such as the Foreign Corrupt Practices Act,
and other local laws prohibiting corrupt payments to governmental officials, and antitrust and competition regulations, among others.

Violations of these laws and regulations could result in fines and penalties, criminal sanctions against us, our officers, or our employees, prohibitions on the conduct of our business and on our ability to carry on operations in one or more countries, and could also materially affect our brand, our international expansion efforts, our ability to attract and retain employees, our business, and our operating results. Although we have implemented policies and procedures designed to ensure compliance with these laws and regulations, there can be no assurance that our employees, contractors, or agents will not violate our policies.

In addition, we are subject to a variety of risks inherent in doing business internationally, including:

- political, social, economic, or environmental instability, terrorist attacks and security concerns in general;
- limitations of local infrastructure;
- fluctuations in currency exchange rates;
- higher levels of credit risk and payment fraud;
- reduced protection for intellectual property rights in some countries;
- difficulties in staffing and managing global operations and the increased travel, infrastructure and legal compliance costs associated with multiple international locations;
- compliance with statutory equity requirements and management of tax consequences; and
- outbreaks of highly contagious diseases.

If we are unable to manage the complexity of our international operations successfully, our financial results could be adversely affected.

**Our LeasingDesk insurance business is subject to governmental regulation which could reduce our profitability or limit our growth.**

Through our wholly owned subsidiary, Multifamily Internet Ventures LLC, we hold insurance agent licenses from a number of individual state departments of insurance and are subject to state governmental regulation and supervision in connection with the operation of our LeasingDesk insurance business. Furthermore, state insurance departments conduct periodic examinations, audits and investigations of the affairs of insurance agents. This state governmental supervision could reduce our profitability or limit the growth of our LeasingDesk insurance business by increasing the costs of regulatory compliance, limiting or restricting the solutions we provide or the methods by which we provide them or subjecting us to the possibility of regulatory actions or proceedings. Our continued ability to maintain these insurance agent licenses in the jurisdictions in which we are licensed depends on our compliance with the rules and regulations promulgated from time to time by the regulatory authorities in each of these jurisdictions.

In all jurisdictions, the applicable laws and regulations are subject to amendment or interpretation by regulatory authorities. Generally, such authorities are vested with relatively broad discretion to grant, renew and revoke licenses and approvals and to implement regulations, as well as regulate rates that may be charged for premiums on policies. Accordingly, we may be precluded or temporarily suspended from carrying on some or all of the activities of our LeasingDesk insurance business or fined or penalized in a given jurisdiction. No assurances can be given that our LeasingDesk insurance business can continue to be conducted in any given jurisdiction as it has been conducted in the past.

**We generate commission revenue from the insurance policies we sell as a registered insurance agent and if insurance premiums decline or if the insureds experience greater than expected losses, our revenues could decline and our operating results could be harmed.**

Through our wholly owned subsidiary, Multifamily Internet Ventures LLC, a managing general insurance agency, we generate commission revenue from offering liability and renter’s insurance. Through Multifamily Internet Ventures LLC we also sell additional insurance products, including auto and other personal lines insurance, to residents that buy renter’s insurance from us. These policies are ultimately underwritten by various insurance carriers. Some of the property owners and managers that participate in our programs opt to require residents to purchase rental insurance policies and agree to grant to Multifamily Internet Ventures LLC exclusive marketing rights at their properties. If demand for residential rental housing declines, property owners and managers may be forced to reduce their rental rates and to stop requiring the purchase of rental insurance in order to reduce the overall cost of renting. If property owners or managers cease to require renter’s insurance, elect to offer policies from competing providers or insurance premiums decline, our revenues from selling insurance policies will be adversely affected.

Additionally, one type of commission paid by insurance carriers to Multifamily Internet Ventures LLC is contingent commission, which is affected by claims experienced at the properties for which the residents purchase insurance. In
the event that the severity or frequency of claims by the insureds increase unexpectedly, the contingent commission we typically earn will be adversely affected. As a result, our quarterly, or annual, operating results could fall below the expectations of analysts or investors, in which case our stock price may decline.

Multifamily Internet Ventures LLC is required to maintain a 50-state general agency insurance license as well as individual insurance licenses for each sales agent involved in the solicitation of insurance products. Both the agency and individual licenses require compliance with state insurance regulations, payment of licensure fees, and continuing education programs. In the event that regulatory compliance requirements are not met, Multifamily Internet Ventures LLC could be subject to license suspension or revocation, state Department of Insurance audits, and regulatory fines. As a result, our ability to engage in the business of insurance could be restricted, and our operating revenue will be adversely affected.

**Our ability to use net operating losses to offset future taxable income may be subject to certain limitations.**

In general, under Section 382 of the Internal Revenue Code of 1986, as amended, or the Internal Revenue Code, a corporation that undergoes an “ownership change” is subject to limitations on its ability to utilize its pre-change net operating losses, or NOLs, to offset future taxable income. Our ability to utilize NOLs of companies that we may acquire in the future may be subject to limitations. Future changes in our stock ownership, some of which are outside of our control, could result in an ownership change under Section 382 of the Internal Revenue Code. For these reasons, we may not be able to utilize a material portion of the NOLs reflected on our balance sheet, even if we maintain profitability.

*If we are required to collect sales and use taxes on the solutions we sell in additional taxing jurisdictions, we may be subject to liability for past sales and our future sales may decrease.*

States and some local taxing jurisdictions have differing rules and regulations governing sales and use taxes, and these rules and regulations are subject to varying interpretations that may change over time. We review these rules and regulations periodically and currently collect and remit sales taxes in taxing jurisdictions where we believe we are required to do so. However, additional state and/or local taxing jurisdictions may seek to impose sales or other tax collection obligations on us, including for past sales. A successful assertion that we should be collecting additional sales or other taxes on our solutions could result in substantial tax liabilities for past sales, discourage customers from purchasing our solutions or may otherwise harm our business and operating results. This risk is greater with regard to solutions acquired through acquisitions.

We may also become subject to tax audits or similar procedures in jurisdictions where we already collect and remit sales taxes. A successful assertion that we have not collected and remitted taxes at the appropriate levels may also result in substantial tax liabilities for past sales. Liability for past taxes may also include very substantial interest and penalty charges. Our customer contracts provide that our customers must pay all applicable sales and similar taxes. Nevertheless, customers may be reluctant to pay back taxes and may refuse responsibility for interest or penalties associated with those taxes. If we are required to collect and pay back taxes and the associated interest and penalties, and if our customers fail or refuse to reimburse us for all or a portion of these amounts, we will incur unplanned expenses that may be substantial. Moreover, imposition of such taxes on our solutions going forward will effectively increase the cost of such solutions to our customers and may adversely affect our ability to continue to sell those solutions to existing customers or to gain new customers in the areas in which such taxes are imposed.

**Changes in our effective tax rate could harm our future operating results.**

We are subject to federal and state income taxes in the United States and various foreign jurisdictions, and our domestic and international tax liabilities are subject to the allocation of expenses in differing jurisdictions. Our tax rate is affected by changes in the mix of earnings and losses in jurisdictions with differing statutory tax rates, including jurisdictions in which we have completed or may complete acquisitions, certain non-deductible expenses arising from the requirement to expense stock options and the valuation of deferred tax assets and liabilities, including our ability to utilize our net operating losses. Increases in our effective tax rate could harm our operating results.

We rely on our management team and need additional personnel to grow our business, and the loss of one or more key employees or our inability to attract and retain qualified personnel could harm our business.

Our success and future growth depend on the skills, working relationships and continued services of our management team. The loss of our Chief Executive Officer or other senior executives could adversely affect our business. Our future success also will depend on our ability to attract, retain and motivate highly skilled software developers, marketing and sales personnel, technical support and product development personnel in the United States and internationally. All of our employees work for us on an at-will basis. Competition for these types of personnel is intense, particularly in the software industry. As a result, we may be unable to attract or retain qualified personnel. Our inability to attract and retain the necessary personnel could adversely affect our business.

Our corporate culture has contributed to our success, and if we cannot maintain this culture as we grow, we could lose the innovation, creativity and teamwork fostered by our culture, and our business may be harmed.
We believe that a strong corporate culture that nurtures core values and philosophies is essential to our long-term success. We call these values and philosophies the “RealPage Promise” and we seek to practice the RealPage Promise in our actions every day. The RealPage Promise embodies our corporate values with respect to customer service, investor communications, employee respect and professional development and management decision-making and leadership. As our organization grows and we are required to implement more complex organizational structures, we may find it increasingly difficult to maintain the beneficial aspects of our corporate culture which could negatively impact our future success.

Risks Related to Ownership of our Common Stock

The concentration of our capital stock owned by insiders may limit your ability to influence corporate matters.

Our executive officers, directors, and entities affiliated with them beneficially owned approximately 34.3% of our common stock as of September 30, 2014. Further, Stephen T. Winn, our President, Chief Executive Officer and Chairman of the Board, and entities beneficially owned by Mr. Winn held an aggregate of approximately 32.9% of our common stock as of September 30, 2014. This significant concentration of ownership may adversely affect the trading price for our common stock because investors often perceive disadvantages in owning stock in companies with controlling stockholders. Mr. Winn and entities beneficially owned by Mr. Winn may control our management and affairs and matters requiring stockholder approval, including the election of directors and the approval of significant corporate transactions, such as mergers, consolidations or the sale of substantially all of our assets. Consequently, this concentration of ownership may have the effect of delaying or preventing a change of control, including a merger, consolidation or other business combination involving us, or discouraging a potential acquirer from making a tender offer or otherwise attempting to obtain control, even if that change of control would benefit our other stockholders.

The trading price of our common stock price may be volatile.

The trading price of our common stock could be subject to wide fluctuations in response to various factors, including, but not limited to, those described in this “Risk Factors” section, some of which are beyond our control. Factors affecting the trading price of our common stock include:

- variations in our operating results or in expectations regarding our operating results;
- variations in operating results of similar companies;
- announcements of technological innovations, new solutions or enhancements, strategic alliances or agreements by us or by our competitors;
- announcements by competitors regarding their entry into new markets, and new product, service and pricing strategies;
- marketing, advertising or other initiatives by us or our competitors;
- increases or decreases in our sales of products and services for use in the management of units by customers and increases or decreases in the number of units managed by our customers;
- threatened or actual litigation;
- major changes in our board of directors or management;
- recruitment or departure of key personnel;
- changes in the estimates of our operating results or changes in recommendations by any research analysts that elect to follow our common stock;
- market conditions in our industry and the economy as a whole;
- the overall performance of the equity markets;
- sales of our shares of common stock by existing stockholders;
- volatility in our stock price, which may lead to higher stock-based compensation expense under applicable accounting standards; and
- adoption or modification of regulations, policies, procedures or programs applicable to our business.

In addition, the stock market in general, and the market for technology and specifically Internet-related companies, has experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of those companies. Broad market and industry factors may harm the market price of our common stock regardless of our actual operating performance. In addition, in the past, following periods of volatility in the overall market and the market price of a particular company’s securities, securities class action litigation has often been instituted against these companies. This litigation, if instituted against us, could result in substantial costs and a diversion of our management’s attention and our resources, whether or not we are successful in such litigation.
Our stock price could decline due to the large number of outstanding shares of our common stock eligible for future sale.

Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could cause the market price of our common stock to decline. These sales could also make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate.

As of September 30, 2014, we had 78,849,752 shares of common stock outstanding. Of these shares, 74,481,577 were immediately tradable without restriction or further registration under the Securities Act, unless these shares are held by “affiliates,” as that term is defined in Rule 144 under the Securities Act.

As of September 30, 2014, holders of 25,575,280 shares, or approximately 32.4%, of our outstanding common stock were entitled to rights with respect to the registration of these shares under the Securities Act. If we register their shares of common stock, these stockholders could sell those shares in the public market without being subject to the volume and other restrictions of Rule 144 and Rule 701.

In 2012, we registered a total of 4,694,073 shares of our outstanding common stock held by affiliates pursuant to a registration statement on Form S-3, which shares are now freely tradable in the public market.

In addition, we have registered approximately 22,134,259 shares of common stock that have been issued or reserved for future issuance under our stock incentive plans. Of these shares, 2,514,311 shares were eligible for sale upon the exercise of vested options as of September 30, 2014.

Our charter documents and Delaware law could prevent a takeover that stockholders consider favorable and could also reduce the market price of our stock.

Our amended and restated certificate of incorporation and our amended and restated bylaws contain provisions that could delay or prevent a change in control of our company. These provisions could also make it more difficult for stockholders to elect directors and take other corporate actions. These provisions include:

• a classified board of directors whose members serve staggered three-year terms;
• not providing for cumulative voting in the election of directors;
• authorizing our board of directors to issue, without stockholder approval, preferred stock with rights senior to those of our common stock;
• prohibiting stockholder action by written consent; and
• requiring advance notification of stockholder nominations and proposals.

These and other provisions of our amended and restated certificate of incorporation and our amended and restated bylaws, and under Delaware law, could discourage potential takeover attempts, reduce the price that investors might be willing to pay in the future for shares of our common stock and result in the market price of our common stock being lower than it would be without these provisions.

If securities analysts do not continue to publish research or reports about our business or if they publish negative evaluations of our stock, the price of our stock could decline.

We expect that the trading price for our common stock may be affected by research or reports that industry or financial analysts publish about us or our business. If one or more of the analysts who cover us downgrade their evaluations of our stock, the price of our stock could decline. If one or more of these analysts cease coverage of our company, we could lose visibility in the market for our stock, which in turn could cause our stock price to decline.

We do not anticipate paying any dividends on our common stock.

We do not anticipate paying any cash dividends on our common stock in the foreseeable future. If we do not pay cash dividends, you would receive a return on your investment in our common stock only if the market price of our common stock has increased when you sell your shares. In addition, the terms of our credit facilities currently restrict our ability to pay dividends.

Item 2. Unregistered Sales of Equity Securities and Use of Proceeds

(c) Purchases of Equity Securities.

The following table provides information with respect to repurchases of our common stock made during the three months ended September 30, 2014, by RealPage, Inc. or any "affiliated purchaser" of RealPage, Inc. as defined in Rule 10b-18(a)(3) under the Exchange Act:
<table>
<thead>
<tr>
<th>Period</th>
<th>Total Number of Shares Purchased</th>
<th>Average Price Paid per Share (including fees)</th>
<th>Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs</th>
<th>Approximate Dollar Value of Shares that May Yet Be Purchased Under the Plans or Programs</th>
</tr>
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<tr>
<td>July 1, 2014 through July 31, 2014</td>
<td>—</td>
<td>$ —</td>
<td>—</td>
<td>—</td>
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<tr>
<td>August 1, 2014 through August 31, 2014</td>
<td>698,986</td>
<td>15.60</td>
<td>698,986</td>
<td>36,776,460</td>
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<tr>
<td>September 1, 2014 through September 30, 2014</td>
<td>145,395</td>
<td>15.97</td>
<td>145,395</td>
<td>34,454,871</td>
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<tr>
<td></td>
<td>844,381</td>
<td>$ 15.66</td>
<td>844,381</td>
<td>$ 34,454,871</td>
</tr>
</tbody>
</table>

(1) On May 6, 2014, the Board of Directors approved a stock repurchase program authorizing repurchase of up to $50.0 million of our common stock. The stock repurchase program continues for a period of up to one year beginning May 8, 2014. During the periods covered by the table, no determination was made by us to terminate or suspend the stock repurchase program.

No shares were purchased from the end of the third quarter through November 4, 2014. In total, we have repurchased 966,595 shares at a weighted average cost of $16.06 per share and a total cost of $15.5 million.

**Item 5. Other Information**

**CEO Stock Ownership Guidelines Policy**

In order to more closely align our Chief Executive Officer’s financial interests with those of the Company and its stockholders, effective October 23, 2014, our Board of Directors (at the recommendation of our Nominating and Governance Committee) adopted a Stock Ownership Guidelines Policy that suggests minimum stock ownership guidelines for our Chief Executive Officer. The minimum stock ownership target suggested by the guidelines is based on a multiple of five times the Chief Executive Officer’s annual base salary. The Stock Ownership Guidelines Policy also suggests that the Chief Executive Officer achieve the suggested minimum stock ownership target within three years of assuming this position. Our Chief Executive Officer’s stock ownership currently exceeds the suggested minimum stock ownership threshold. “Stock ownership” is defined to include shares of common stock held outright, shares and share equivalents held in benefit plans, and unvested RSUs. Unvested performance units and unexercised stock options are not included in this calculation.

**Director Retirement Policy**

Effective October 23, 2014, our Board of Directors (at the recommendation of our Nominating and Governance Committee) adopted a Director Retirement Policy that, unless waived by our Nominating and Governance Committee and Board of Directors, requires non-employee directors to retire as a member of our Board of Directors at the expiration of his or her elected term following the date of his or her 75th birthday.

**Item 6. Exhibits**

The exhibits required to be furnished pursuant to Item 6 are listed in the Exhibit Index filed herewith, which Exhibit Index is incorporated herein by reference.
SIGNATURES

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

Date: November 7, 2014

RealPage, Inc.

By /s/ W. Bryan Hill

W. Bryan Hill

Chief Financial Officer and Treasurer
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<table>
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<th>Exhibit Description</th>
<th>Incorporated by Reference</th>
<th>Filed Herewith</th>
</tr>
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<td>10-Q</td>
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<td>Credit Agreement among the Registrant, the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent, dated September 30, 2014.</td>
<td></td>
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<tr>
<td>10.2</td>
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<tr>
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<td>Guaranty Agreement among certain subsidiaries of Registrant in favor of Wells Fargo Bank, National Association, as administrative agent.</td>
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<td>10.4</td>
<td>Amendment No. 1 to the Stock Bonus Agreement between Registrant and Stephen T. Winn, effective as of July 31, 2014.</td>
<td>8-K</td>
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<tr>
<td>31.1</td>
<td>Certification of Chief Executive Officer pursuant to Exchange Act Rules 13a-14(a) and 153-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</td>
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<td>31.2</td>
<td>Certification of Chief Financial Officer pursuant to Exchange Act Rules 13a-14(a) and 153-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</td>
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<td>32.2</td>
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<td>Taxonomy Extension Calculation†</td>
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<tr>
<td>101.DEF</td>
<td>Taxonomy Extension Definition†</td>
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* Furnished herewith

† In accordance with Rule 406T of Regulation S-T, the information in these exhibits is furnished and not deemed filed or a part of a registration statement or prospectus for purposes of Section 11 or 12 of the Securities Act of 1933, as amended, is deemed not filed for purposes of Section 18 of the Exchange Act of 1934, as amended, and otherwise is not subject to liability under these sections and shall not be incorporated by reference into any registration statement or other document filed under the Securities Act of 1933, as amended, except as set forth by specific reference in such filing.
$200,000,000

CREDIT AGREEMENT

dated as of September 30, 2014,
by and among

REALPAGE, INC.,
as Borrower,

the Lenders referred to herein,
as Lenders,

and

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

FIFTH THIRD BANK,
as Syndication Agent

WELLS FARGO SECURITIES, LLC,
as Sole Lead Arranger and Sole Bookrunner
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SCHEDULES

Schedule 1.1 - Revolving Credit Commitments and Revolving Credit Commitment Percentages
CREDIT AGREEMENT, dated as of September 30, 2014, by and among RealPage, Inc., a Delaware corporation, as Borrower, the lenders who are party to this Agreement and the lenders who may become a party to this Agreement pursuant to the terms hereof, as Lenders, and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as Administrative Agent for the Lenders.

STATEMENT OF PURPOSE

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

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

ARTICLE I

DEFINITIONS

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

“Acquisition” means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which the Borrower or any of its Subsidiaries (a) acquires any going business or all or substantially all of the assets of any corporation, partnership or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the securities of a corporation which have ordinary voting power for the election of directors (other than securities having such power only by reason of the happening of a contingency) or a majority (by percentage or voting power) of the outstanding ownership interests of a partnership or limited liability company.

“Administrative Agent” means Wells Fargo, in its capacity as Administrative Agent hereunder, and any successor thereto appointed pursuant to Section 11.6.

“Administrative Agent’s Office” means the office of the Administrative Agent specified in or determined in accordance with the provisions of Section 12.1(c).

“Administrative Questionnaire” means an administrative questionnaire in a form supplied by the Administrative Agent.

“Affiliate” means, with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified.

“Agreement” means this Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder.
“Applicable Law” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of courts or Governmental Authorities and all orders and decrees of all courts and arbitrators.

“Applicable Margin” means the corresponding percentages per annum as set forth below based on the Consolidated Net Leverage Ratio:

<table>
<thead>
<tr>
<th>Pricing Level</th>
<th>Consolidated Net Leverage Ratio</th>
<th>Commitment Fee</th>
<th>LIBOR +</th>
<th>Base Rate +</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Less than 1.50 to 1.00</td>
<td>0.25%</td>
<td>1.25%</td>
<td>0.25%</td>
</tr>
<tr>
<td>II</td>
<td>Greater than or equal to 1.50 to 1.00, but less than 2.50 to 1.00</td>
<td>0.25%</td>
<td>1.50%</td>
<td>0.50%</td>
</tr>
<tr>
<td>III</td>
<td>Greater than or equal to 2.50 to 1.00</td>
<td>0.30%</td>
<td>1.75%</td>
<td>0.75%</td>
</tr>
</tbody>
</table>

The Applicable Margin shall be determined and adjusted quarterly on the date one (1) Business Day after the day on which the Borrower provides an Officer’s Compliance Certificate pursuant to Section 8.2(a) for the most recently ended fiscal quarter of the Borrower (each such date, a “Calculation Date”); provided that (a) the Applicable Margin shall be based on Pricing Level I until the first Calculation Date occurring after the Closing Date and, thereafter the Pricing Level shall be determined by reference to the Consolidated Net Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, and (b) if the Borrower fails to provide an Officer’s Compliance Certificate when due as required by Section 8.2(a) for the most recently ended fiscal quarter of the Borrower preceding the applicable Calculation Date, the Applicable Margin from the date on which such Officer’s Compliance Certificate was required to have been delivered shall be based on Pricing Level III until such time as such Officer’s Compliance Certificate is delivered, at which time the Pricing Level shall be determined by reference to the Consolidated Net Leverage Ratio as of the last day of the most recently ended fiscal quarter of the Borrower preceding such Calculation Date. The applicable Pricing Level shall be effective from one Calculation Date until the next Calculation Date. Any adjustment in the Pricing Level shall be applicable to all Extensions of Credit then existing or subsequently made or issued.

Notwithstanding the foregoing, in the event that any financial statement or Officer’s Compliance Certificate delivered pursuant to Section 8.1 or 8.2(a) is shown to be inaccurate (regardless of whether (i) this Agreement is in effect, (ii) any Revolving Credit Commitments are in effect, or (iii) any Extension of Credit is outstanding when such inaccuracy is discovered or such financial statement or Officer’s Compliance Certificate was delivered), and such inaccuracy, if corrected, would have led to the application of a higher Applicable Margin for any period (an “Applicable Period”) than the Applicable Margin applied for such Applicable Period, then (A) the Borrower shall promptly deliver to the Administrative Agent a corrected Officer’s Compliance Certificate for such Applicable Period, (B) the Applicable Margin for such Applicable Period shall be determined as if the Consolidated Net Leverage Ratio in the corrected Officer’s Compliance Certificate were applicable for such Applicable Period, and (C) the Borrower shall promptly and retroactively be obligated to pay to the Administrative Agent the accrued additional interest and fees owing as a result of such increased Applicable Margin for such Applicable Period, which payment shall be promptly applied by the Administrative Agent in accordance with Section 5.4. Nothing in this paragraph shall limit the rights of the Administrative Agent and Lenders with respect to Sections 5.1(b) and 10.2 nor any of their other rights under
this Agreement or any other Loan Document. The Borrower’s obligations under this paragraph shall survive the termination of
the Revolving Credit Commitments and the repayment of all other Obligations hereunder.

“Approved Fund” means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an
entity or an Affiliate of an entity that administers or manages a Lender.

“Arranger” means Wells Fargo Securities, LLC, in its capacity as sole lead arranger and sole bookrunner, and its
successors.

“Asset Disposition” means the disposition of any or all of the assets (including, without limitation, any Equity Interests
owned thereby) owned by any Credit Party or any Subsidiary thereof whether by sale, lease, Sale Leaseback, transfer or
otherwise.

“Assignment and Assumption” means an assignment and assumption entered into by a Lender and an Eligible Assignee
(with the consent of any party whose consent is required by Section 12.9), and accepted by the Administrative Agent, in
substantially the form attached as Exhibit G or any other form approved by the Administrative Agent.

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

“Base Rate” means, at any time, the highest of (a) the Prime Rate, (b) the Federal Funds Rate plus 0.50% and (c)
LIBOR for an Interest Period of one month plus 1%; each change in the Base Rate shall take effect simultaneously with the
corresponding change or changes in the Prime Rate, the Federal Funds Rate or LIBOR (provided that clause (c) shall not
be applicable during any period in which LIBOR is unavailable or unascertainable).

“Base Rate Loan” means any Loan bearing interest at a rate based upon the Base Rate as provided in Section 5.1(a).

“Borrower” means RealPage, Inc., a Delaware corporation.

“Borrower Materials” has the meaning assigned thereto in Section 8.2.

“Business Day” means (a) for all purposes other than as set forth in clause (b) below, any day other than a Saturday,
Sunday or legal holiday on which banks in Charlotte, North Carolina and New York, New York, are open for the conduct of
their commercial banking business and (b) with respect to all notices and determinations in connection with, and payments of
principal and interest on, any LIBOR Rate Loan, or any Base Rate Loan as to which the interest rate is determined by reference
to LIBOR, any day that is a Business Day described in clause (a) and that is also a London Banking Day.

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

“Capital Lease Obligations” of any Person means the obligations of such Person to pay rent or other amounts under any
lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations
are required to be classified and accounted for as capital leases on

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a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

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

“Cash Equivalents” means, collectively, (a) marketable direct obligations issued or unconditionally guaranteed by the United States or any agency thereof maturing within one (1) year from the date of acquisition thereof; (b) commercial paper maturing no more than one (1) year from the date of creation thereof and currently having a rating of at least A-1 (or the then equivalent grade) or P-1 (or the then equivalent grade) obtainable from either S&P or Moody’s, respectively; (c) certificates of deposit maturing no more than one (1) year from the date of creation thereof issued by any Lender or any other commercial banks incorporated under the laws of the United States, each having combined capital, surplus and undivided profits of not less than $500,000,000 and having a rating of “A” or better by a nationally recognized rating agency, (d) overnight deposits or time deposits maturing no more than one (1) year from the date of creation thereof with any Lender or any other commercial banks or savings banks or savings and loan associations each having membership either in the FDIC or the deposits of which are insured by the FDIC and in amounts not exceeding the maximum amounts of insurance thereunder, and (e) solely in the case of a Foreign Subsidiary, instruments equivalent to those referred to in clauses (a) through (d) of this definition denominated in any foreign currency that is the local currency of such Foreign Subsidiary comparable in tenor and in credit quality to those referred to above and customarily used by corporations for cash management purposes in any jurisdiction outside the United States to the extent reasonably required in connection with any business conducted by such Foreign Subsidiary organized in such jurisdiction.

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

“Cash Management Bank” means any Person that, (a) at the time it enters into a Cash Management Agreement with a Credit Party, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent, or (b) at the time it (or its Affiliate) becomes a Lender (including on the Closing Date), is a party to a Cash Management Agreement with a Credit Party, in each case in its capacity as a party to such Cash Management Agreement.

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

(a) (i) any “person” or “group” (within the meaning of Sections 13(d) and 14(d) of the Exchange Act) (other than a Permitted Holder) becomes the “beneficial owner” (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a “person” or “group” shall be deemed to have “beneficial ownership” of all Equity Interests that such “person” or “group” has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”)), directly or indirectly, on a fully diluted basis (and taking into account all such securities that such “person” or “group” has the right to acquire

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pursuant to any option right), of thirty-five percent (35%) or more of the Equity Interests of the Borrower entitled to vote in the election of members of the board of directors (or equivalent governing body) of the Borrower, (ii) a majority of the members of the board of directors (or other equivalent governing body) of the Borrower shall not constitute Continuing Directors or (iii) the Borrower fails to own and control, directly or indirectly, one hundred percent (100%) of the Equity Interests of each other Credit Party (except with respect to MTS Minnesota, Inc., a Delaware corporation and MTS Connecticut, Inc., a Delaware corporation, for which the Borrower shall only be required to own and control 40% of the Equity Interests of each); provided, that any merger or liquidation permitted under Section 9.4 of the Agreement shall not constitute a Change in Control; or

(b) there shall have occurred under any indenture or other instrument evidencing any Indebtedness or Equity Interests in excess of the Threshold Amount any “change in control” or similar provision (as set forth in the indenture, agreement or other evidence of such Indebtedness) obligating the Borrower or any of its Subsidiaries to repurchase, redeem or repay all or any part of the Indebtedness or Equity Interests provided for therein.

“Change in Law” means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

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

“Closing Date” means the date of this Agreement.


“Collateral” means the collateral security for the Secured Obligations pledged or granted pursuant to the Security Documents.

“Collateral Agreement” means the collateral agreement of even date herewith executed by the Credit Parties in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, which shall be in form and substance reasonably acceptable to the Administrative Agent.

“Commitment Fee” has the meaning assigned thereto in Section 5.3(a).

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

“Connection Income Taxes” means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.
“Consolidated” means, when used with reference to financial statements or financial statement items of any Person, such statements or items on a consolidated basis in accordance with applicable principles of consolidation under GAAP.

“Consolidated EBITDA” means, for any period, the sum of the following determined on a Consolidated basis, without duplication, for the Borrower and its Subsidiaries in accordance with GAAP:

(a) Consolidated Net Income for such period

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

(i) provisions for taxes based on income, profits or capital, including federal, foreign and state income, franchise taxes, and similar taxes based on income, profits or capital paid or accrued during such period (including in respect of repatriated funds),

(ii) Consolidated Interest Expense,

(iii) amortization, depreciation and other non-cash charges, expenses or losses (except to the extent that such non-cash charges, expenses or losses are reserved for cash expenses to be taken in the future),

(iv) unusual or extraordinary losses (excluding extraordinary losses from discontinued operations),

(v) one-time restructuring and integration expenses (which for the avoidance of doubt, shall include, but not be limited to, retention, severance, systems establishment costs, contract termination costs, including future lease commitments, and costs to consolidate facilities and relocate employees) incurred by the Borrower and its Subsidiaries in connection with, and directly related to, any Permitted Acquisition (in an aggregate amount not to exceed $15,000,000 during any twelve (12) month period), only to the extent that such restructuring and integration expenses are incurred within twelve (12) months following the consummation of such Permitted Acquisition,

(vi) one-time out-of-pocket costs and expenses incurred by the Borrower and its Subsidiaries in connection with, and directly related to, (A) the Transactions, (B) any Permitted Acquisition, (C) issuances of any Equity Interests, (D) dispositions of any assets permitted hereunder, (E) incurrence, amendment, modification, refinancing or repayment of Indebtedness (in each case of clauses (B) through (E), whether or not successful), including, without limitation, legal, accounting and advisory fees, provided that to the extent incurred after the Closing Date or the consummation of the applicable transaction, such out-of-pocket costs and expenses may only be included to the extent that such out-of-pocket costs and expenses are incurred within twelve (12) months following the Closing Date or the consummation of such transaction, as applicable,

(vii) litigation fees, costs and expenses (but exclusive of any payments that are funded with proceeds of Borrower’s liability insurance) incurred by Borrower and its Subsidiaries during the preceding twelve (12) month period, not to exceed $5,000,000 in the aggregate for any such period,

(viii) one-time facility consolidation, closing and relocation costs and expenses incurred in connection with the transition or relocation of the Borrower’s headquarters location and
consolidation of the Borrower’s offices not currently a part of Borrower’s headquarters location, less

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

(i) interest income,

(ii) any unusual or extraordinary gains; and

(iii) non-cash gains or non-cash items increasing Consolidated Net Income;

provided that, to the extent included in determining Consolidated Net Income for such period, Consolidated EBITDA shall be calculated so as to exclude (x) the effects of adjustments (including, without limitation, in connection with the fair value adjustment tied to the Borrower’s deferred revenue and fair value adjustments determined in accordance with GAAP related to Earn-outs, Holdbacks or other contingent consideration obligations) resulting from the application of purchase accounting related to the Transactions, any Acquisition consummated prior to the date hereof or any Permitted Acquisition or the amortization or write-off of any amounts thereof, net of Taxes and (y) the cumulative effect of any changes in GAAP or accounting principles applied by management during such period. For purposes of this Agreement, Consolidated EBITDA shall be adjusted on a Pro Forma Basis.

“Consolidated Funded Indebtedness” means, as of any date of determination with respect to the Borrower and its Subsidiaries on a Consolidated basis, without duplication, the sum of (a) all Indebtedness of the type described in clauses (a), (b) (only to the extent of Earn-outs and Holdbacks payable in cash that are required to be set forth on the Consolidated balance sheet of the Borrower and its Subsidiaries in an amount calculated in accordance with GAAP) and (c) of the definition of Indebtedness on such date plus (b) guarantees of Indebtedness of the type described in clauses (a), (b) (only to the extent of Earn-outs and Holdbacks payable in cash that are required to be set forth on the Consolidated balance sheet of the Borrower and its Subsidiaries in an amount calculated in accordance with GAAP) and (c) of the definition of Indebtedness on such date plus (c) the aggregate amount of Indebtedness relating to the drawn and unreimbursed amounts outstanding under letters of credit (including standby and commercial) and bankers’ acceptances on such date less (d) the aggregate amount of Qualified Cash and Cash Equivalents in excess of $10,000,000 on such date (provided that if the aggregate Revolving Credit Outstandings (excluding L/C Obligations) exceed $50,000,000, the amount of Qualified Cash and Cash Equivalents permitted to be subtracted hereunder shall not exceed $60,000,0000) less (e) Real Estate Finance Indebtedness secured pursuant to Section 9.2(h).

“Consolidated Interest Coverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date less the excess (if any, and to the extent not less than zero) of (i) all scheduled principal in respect of any Real Estate Finance Indebtedness for such period less (ii) all lease or sublease income received with respect to real property financed with such Real Estate Finance Indebtedness or with respect to leased properties vacated in connection with the consolidation of other office locations of the Borrower and its Subsidiaries for such period to (b) Consolidated Interest Expense for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

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

“Consolidated Net Leverage Ratio” means, as of any date of determination, the ratio of (a) Consolidated Funded Indebtedness on such date to (b) Consolidated EBITDA for the period of four (4) consecutive fiscal quarters ending on or immediately prior to such date.

“Consolidated Net Income” means, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period, determined on a Consolidated basis, without duplication, in accordance with GAAP; provided, that in calculating Consolidated Net Income of the Borrower and its Subsidiaries for any period, there shall be excluded (without duplication) (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (c) below), in which the Borrower or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Borrower or any of its Subsidiaries by dividend or other distribution during such period, (b) subject to any pro forma adjustments required herein, the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Borrower or any of its Subsidiaries or is merged into or consolidated with the Borrower or any of its Subsidiaries or that Person’s assets are acquired by the Borrower or any of its Subsidiaries except to the extent included pursuant to the foregoing clause (a), (c) the net income (or loss), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Borrower or any of its Subsidiaries of such net income (is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary, but only to the extent of such prohibition and (d) any gain or loss from Asset Dispositions during such period.

“Continuing Directors” means the directors of the Borrower on the Closing Date and each other director of the Borrower, if, in each case, such other director's election or nomination for election to the board of directors (or equivalent governing body) of the Borrower is approved by more than 50% of the then Continuing Directors.

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

“Controlled Account” means each deposit account and securities account that is subject to an account control agreement in form and substance satisfactory to the Administrative Agent and the Issuing Lender that is entitled to Cash Collateral hereunder at the time such control agreement is executed.

“Credit Facility” means, collectively, the Revolving Credit Facility, the Swingline Facility and the L/C Facility.

“Credit Parties” means, collectively, the Borrower and the Subsidiary Guarantors.

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

“Default” means any of the events specified in Section 10.1 which with the passage of time, the giving of notice or any other condition, would constitute an Event of Default.
“Defaulting Lender” means, subject to Section 5.15(b), any Lender that (a) has failed to (i) fund all or any portion of the Revolving Credit Loans, participations in L/C Obligations or participations in Swingline Loans required to be funded by it hereunder within two Business Days of the date such Loans or participations were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, the Issuing Lender, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, the Issuing Lender or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender’s obligation to fund a Loan hereunder and states that such position is based on such Lender’s determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the FDIC or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 5.15(b)) upon delivery of written notice of such determination to the Borrower, the Issuing Lender, the Swingline Lender and each Lender.

“Disclosure Letter” means the Disclosure Letter, dated as of the date hereof, delivered by Borrower to the Administrative Agent in connection with this Agreement, as may be updated from time to time in accordance with the terms of this Agreement and the other Loan Documents.

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

“Dollars” or “$” means, unless otherwise qualified, dollars in lawful currency of the United States.

“Domestic Subsidiary” means any Subsidiary incorporated or organized under the laws of the United States or any political subdivision of the United States, provided such Subsidiary is owned by the Borrower or a Domestic Subsidiary of the Borrower.

“Earn-outs” means unsecured liabilities of a Credit Party arising under an agreement to make any deferred payment as a part of the purchase price for a Permitted Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the underlying target, in each case, to the extent that such deferred payment would be included as part of such purchase price; provided that Earn-outs shall not include payments consistent with the management incentive plan or professional incentive plan generally offered by the Borrower.

“Eligible Assignee” means any Person that meets the requirements to be an assignee under Section 12.9(b)(iii), (v) and (vi) (subject to such consents, if any, as may be required under Section 12.9(b)(iii)).

“Employee Benefit Plan” means (a) any employee benefit plan within the meaning of Section 3(3) of ERISA that is maintained for employees of any Credit Party or any ERISA Affiliate or (b) any Pension Plan or Multiemployer Plan that has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliate.

“Engagement Letter” means that certain Engagement Letter dated as of August 25, 2014, between Wells Fargo Securities, LLC and the Borrower, as amended, restated, supplemented or otherwise modified from time to time.

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

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

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


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

“Eurodollar Reserve Percentage” means, for any day, the percentage which is in effect for such day as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement (including, without limitation, any basic, supplemental or emergency reserves) in respect of eurocurrency liabilities or any similar category of liabilities for a member bank of the Federal Reserve System in New York City.

“Event of Default” means any of the events specified in Section 10.1; provided that any requirement for passage of time, giving of notice, or any other condition, has been satisfied.


“Excluded Subsidiary” means (a) RealPage Payment Processing Services, Inc., (b) any Subsidiary of the Borrower whose business consists solely of processing third party payments or operating a money services business for the transmission of third party funds and (c) any Foreign Subsidiary Holding Company.

“Excluded Swap Obligation” means, with respect to any Credit Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Credit Party for or the guarantee of such Credit Party of, or the grant by such Credit Party of a security interest to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Credit Party’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the guarantee of such Credit Party or the grant of such security interest becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Credit Party, including under the keepwell provisions of the Guaranty Agreement). If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

“Excluded Taxes” means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by

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net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are otherwise Other Connection Taxes, (b) in the case of a Lender, United States federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Revolving Credit Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Revolving Credit Commitment (other than pursuant to an assignment request by the Borrower under Section 5.12(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 5.11, amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Recipient’s failure to comply with Section 5.11(g) and (d) any United States federal withholding Taxes imposed under FATCA.

“Existing Credit Agreement” means that certain Amended and Restated Credit Agreement dated as of December 22, 2011, by and among the Borrower, the lenders party thereto and Wells Fargo Capital Finance, LLC, as administrative agent, as amended, restated, supplemented or otherwise modified from time to time.

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

“FATCA” means Sections 1471 through 1474 of the Code, as of the date of this Agreement (including, for the avoidance of doubt, any agreements between the governments of the United States and the jurisdiction in which the applicable Recipient is resident implementing such provisions), or any amended or successor version that is substantively comparable and not materially more onerous to comply with, any current or future regulations promulgated thereunder or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any law implementing an intergovernmental agreement that is included in this definition.

“FDIC” means the Federal Deposit Insurance Corporation.

“Federal Funds Rate” means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers on such day (or, if such day is not a Business Day, for the immediately preceding Business Day), as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent.

“First Tier Foreign Subsidiary” means any Foreign Subsidiary that is a “controlled foreign corporation” within the meaning of Section 957 of the Code and the Equity Interests of which are owned directly by any Credit Party.

“Fiscal Year” means the fiscal year of the Borrower and its Subsidiaries ending on December 31 of each calendar year, except in the case of RealPage India Private Limited for which the fiscal year ends on March 31 of each calendar year.
“Foreign Lender” means (a) if the Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which the Borrower is resident for tax purposes.

“Foreign Subsidiary” means any Subsidiary that is not a Domestic Subsidiary.

“Foreign Subsidiary Holding Company” means any Domestic Subsidiary substantially all of the assets of which consist of the Equity Interests of one or more Foreign Subsidiaries.

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

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

“GAAP” means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

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

“Governmental Authority” means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“Guarantee” of or by any Person (the “guarantor”) means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation of any other Person (the “primary obligor”) in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation or (e) for the purpose of assuming in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee.
against loss in respect thereof (whether in whole or in part); provided, that the term “Guarantee” shall not include endorsements for collection or deposit in the ordinary course of business.

“Guaranty Agreement” means the unconditional guaranty agreement of even date herewith executed by the Subsidiary Guarantors in favor of the Administrative Agent, for the ratable benefit and the Secured Parties, which shall be in form and substance reasonably acceptable to the Administrative Agent.

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

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

“Hedge Bank” means any Person that, (a) at the time it enters into a Hedge Agreement with a Credit Party permitted under Article IX, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent or (b) at the time it (or its Affiliate) becomes a Lender (including on the Closing Date), is a party to a Hedge Agreement with a Credit Party, in each case in its capacity as a party to such Hedge Agreement.

“Hedge Termination Value” means, in respect of any one or more Hedge Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedge Agreements, (a) for any date on or after the date such Hedge Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedge Agreements, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in Hedge Agreements of the same type as such Hedge Agreements (which may include a Lender or any Affiliate of a Lender).

“Holdback” means a portion of the purchase price for a Permitted Acquisition not paid at the closing therefor but held by a Credit Party for satisfaction of indemnification obligations and purchase price adjustments.
“Immaterial Subsidiary” means any Subsidiary (excluding any Excluded Subsidiaries) that (a) together with its Subsidiaries (excluding any Excluded Subsidiaries), (i) has assets (excluding restricted cash and Cash Equivalents) representing no more than five percent (5%) of the Consolidated total assets (excluding restricted cash and Cash Equivalents) of the Borrower and its Subsidiaries (excluding any Excluded Subsidiaries) or (ii) generates no more than five percent (5%) of the Consolidated revenues of the Borrower and its Subsidiaries (excluding any Excluded Subsidiaries), in each case, as reflected in the most recent financial statements delivered pursuant to Section 6.1(e)(i) or Sections 8.1(a) or (b), as applicable and (b) has been designated as an “Immaterial Subsidiary” by the Borrower in the manner provided below; provided that, if at any time, (A) the total assets of the Immaterial Subsidiaries (excluding restricted cash and Cash Equivalents), taken as a whole, as of the last day of the Borrower’s most recently ended fiscal quarter shall be greater than ten percent (10%) of the Consolidated total assets (excluding restricted cash and Cash Equivalents) of the Borrower and its Subsidiaries (excluding any Excluded Subsidiaries) or (B) ten percent (10%) the Consolidated total revenues of the Borrower and its Subsidiaries (excluding any Excluded Subsidiaries) on such date, then the Borrower shall take such actions as may be necessary, including causing an Immaterial Subsidiary to become a Subsidiary Guarantor and grant security interests pursuant to Section 8.13, to comply with the requirements set forth in the preceding clauses (A) and (B). The Borrower may from time to time designate any Subsidiary (including a newly-created or newly-acquired Subsidiary) as an Immaterial Subsidiary by delivering to the Administrative Agent a certificate of a Responsible Officer making such designation and confirming that (x) such Subsidiary meets the requirements set forth in this definition and (y) immediately after giving effect to such designation, no Event of Default shall have occurred and be continuing.

“Increase Effective Date” shall have the meaning assigned thereto in Section 2.7(c).

“Incremental Amendment” shall have the meaning assigned thereto in Section 2.7(d)(iii).

“Incremental Commitments” shall have the meaning assigned thereto in Section 2.7(a).

“Incremental Lender” shall have the meaning assigned thereto in Section 2.7(b).

“Incremental Term Loan” shall have the meaning assigned thereto in Section 2.7(a).

“Incremental Term Loan Commitment” shall have the meaning assigned thereto in Section 2.7(a).

“Incremental Term Loan Note” means a promissory note made by the Borrower in favor of a Lender evidencing Incremental Term Loans made by such Lender, substantially in the form of Exhibit A-3.

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

(a) all liabilities, obligations and indebtedness for borrowed money including, but not limited to, obligations evidenced by bonds, debentures, notes or other similar instruments of any such Person;

(b) all obligations to pay the deferred purchase price of property or services of any such Person (including Earnouts and Holdbacks solely to the extent payable in cash, in an amount calculated in accordance with GAAP and to the extent included on the Consolidated balance sheet of the Borrower and its Subsidiaries), except (i) trade payables arising in the ordinary course of business and repayable in accordance with customary trade practices, or that are currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity

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with GAAP have been provided for on the books of such Person, (ii) deferred compensation, deferred revenue and deferred tax liabilities;

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

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

(e) all Indebtedness of any third party secured by a Lien on any asset owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements except trade payables arising in the ordinary course of business), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse; provided, that the amount of such Indebtedness shall be limited to the lesser of such obligation and the value of the property subject to such Lien if such Person has not assumed or become liable for the payment of such obligation;

(f) all obligations, contingent or otherwise, of any such Person relative to the face amount of letters of credit, whether or not drawn, including, without limitation, any Reimbursement Obligation, and banker’s acceptances issued for the account of any such Person;

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

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

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

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, unless such Indebtedness is expressly made non-recourse to such Person. The amount of any net obligation under any Hedge Agreement on any date shall be deemed to be the Hedge Termination Value thereof as of such date.

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

“Indemnitee” has the meaning assigned thereto in Section 12.3(b).

“Interest Period” means, as to each LIBOR Rate Loan, the period commencing on the date such LIBOR Rate Loan is disbursed or converted to or continued as a LIBOR Rate Loan and ending on the date one (1), two (2), three (3), or six (6) months thereafter, in each case as selected by the Borrower in its Notice of Borrowing or Notice of Conversion/Continuation and subject to availability; provided that:

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

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

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

(d) no Interest Period shall extend beyond the Latest Maturity Date; and

(e) there shall be no more than six (6) Interest Periods in effect at any time.

“IP Reporting Certificate” means a certificate of a Responsible Officer of the Borrower substantially in the form attached as Exhibit I.

“IRS” means the United States Internal Revenue Service.


“Issuing Lender” means Wells Fargo in its capacity as issuing lender hereunder or any successor thereto.

“Junior Indebtedness” means (a) any Indebtedness of the Borrower or its Subsidiaries in an aggregate outstanding principal amount in excess of $5,000,000 that is unsecured, (b) any Real Estate Finance Indebtedness and (c) any Subordinated Indebtedness.

“Latest Maturity Date” means, at any date of determination, the latest maturity or expiration date applicable to any Loan, Revolving Credit Commitment or Incremental Commitment hereunder at such time, including the latest maturity or expiration date of any Incremental Term Loan.

“L/C Commitment” means the lesser of (a) $10,000,000 and (b) the Revolving Credit Commitment.

“L/C Facility” means the letter of credit facility established pursuant to Article III.

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

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

“Lender” means each Person executing this Agreement as a Lender on the Closing Date and any other Person that shall have become a party to this Agreement as a Lender pursuant to an Assignment and
Assumption or pursuant to Section 2.7, other than any Person that ceases to be a party hereto as a Lender pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

“Lending Office” means, with respect to any Lender, the office of such Lender maintaining such Lender’s Extensions of Credit.

“Letter of Credit Application” means an application, in the form specified by the Issuing Lender from time to time, requesting the Issuing Lender to issue a Letter of Credit.

“Letters of Credit” means the collective reference to letters of credit issued pursuant to Section 3.1. Notwithstanding anything to the contrary contained herein, a letter of credit issued by the Issuing Lender (other than Wells Fargo at any time it is also acting as Administrative Agent) shall not be a “Letter of Credit” for purposes of the Loan Documents until such time as the Administrative Agent has been notified in writing of the issuance thereof by the Issuing Lender.

“LIBOR” means,

(a) for any interest rate calculation with respect to a LIBOR Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for a period equal to the applicable Interest Period which appears on Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period. If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page), then “LIBOR” shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the first day of the applicable Interest Period for a period equal to such Interest Period.

(b) for any interest rate calculation with respect to a Base Rate Loan, the rate of interest per annum determined on the basis of the rate for deposits in Dollars for an Interest Period equal to one month (commencing on the date of determination of such interest rate) which appears on the Reuters Screen LIBOR01 Page (or any applicable successor page) at approximately 11:00 a.m. (London time) on such date of determination, or, if such date is not a Business Day, then the immediately preceding Business Day. If, for any reason, such rate does not appear on Reuters Screen LIBOR01 Page (or any applicable successor page) then “LIBOR” for such Base Rate Loan shall be determined by the Administrative Agent to be the arithmetic average of the rate per annum at which deposits in Dollars would be offered by first class banks in the London interbank market to the Administrative Agent at approximately 11:00 a.m. (London time) on such date of determination for a period equal to one month commencing on such date of determination.

Each calculation by the Administrative Agent of LIBOR shall be conclusive and binding for all purposes, absent manifest error.

“LIBOR Rate” means a rate per annum determined by the Administrative Agent pursuant to the following formula:

\[
\text{LIBOR Rate} = \frac{\text{LIBOR}}{1.00-\text{Eurodollar Reserve Percentage}}
\]

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Notwithstanding the foregoing, if the LIBOR Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

“LIBOR Rate Loan” means any Loan bearing interest at a rate based upon the LIBOR Rate as provided in Section 5.1(a).

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

“Liquidity” shall mean, as of any date, the sum of (a) all Qualified Cash and Cash Equivalents of the Borrower and its Subsidiaries on such date and (b) the amount available and permitted to be drawn under the Revolving Credit Facility as of such date.

“Loan Documents” means, collectively, this Agreement, each Note, the Letter of Credit Applications, the Security Documents, the Guaranty Agreement and each other document, instrument, certificate and agreement executed and delivered by the Credit Parties or any of their respective Subsidiaries in favor of or provided to the Administrative Agent or any Secured Party in connection with this Agreement or otherwise referred to herein or contemplated hereby (excluding any Secured Hedge Agreement and any Secured Cash Management Agreement).

“Loans” means the collective reference to the Revolving Credit Loans, the Swingline Loans and the Incremental Term Loans, and “Loan” means any of such Loans.

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

“Material Adverse Effect” means a material adverse change in (a) the business, operations, results of operations, assets, liabilities or financial condition of the Borrower and its Subsidiaries, taken as a whole, (b) the ability of any Credit Party to perform its obligations under any Loan Document to which it is a party, (c) the rights and remedies of the Administrative Agent or any Lender under any Loan Document, or (d) the legality, validity, binding effect or enforceability against any Credit Party of any Loan Document to which it is a party.

“Material Contract” means, with respect to any Credit Party, any contract, agreement, instrument or arrangement which is a type of material contract covered by Item 601(b)(10) of Regulation S-K.

“Maturity Date” means the earliest to occur of (a) September 30, 2019, (b) the date of termination of the entire Revolving Credit Commitment by the Borrower pursuant to Section 2.5 and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 10.2(a).

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or deposit account balances, an amount equal to 105% of the sum of (i) the Fronting Exposure of the Issuing Lender with respect to Letters of Credit issued and outstanding at such time and (ii) the Fronting Exposure of the Swingline Lender with respect to all Swingline Loans outstanding at such time and (b) otherwise, an amount determined by the Administrative Agent and the Issuing Lender at such time in their reasonable discretion.
“Moody’s” means Moody’s Investors Services, Inc.

“Multiemployer Plan” means a “multiemployer plan” as defined in Section 4001(a)(3) of ERISA to which any Credit Party or any ERISA Affiliate is making, or is accruing an obligation to make, or has accrued an obligation to make contributions within the preceding seven (7) years.

“Non-Consenting Lender” means any Lender that does not approve any consent, waiver, amendment, modification or termination that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of Section 12.2 and (b) has been approved by the Required Lenders.

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

“Non-Guarantor Subsidiary” means any Subsidiary of the Borrower that is not a Subsidiary Guarantor.

“Notes” means the collective reference to the Revolving Credit Notes, the Swingline Note and the Incremental Term Loan Notes.

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

“Notice of Borrowing” has the meaning assigned thereto in Section 2.3(a).

“Notice of Conversion/Continuation” has the meaning assigned thereto in Section 5.2.

“Notice of Prepayment” has the meaning assigned thereto in Section 2.4(c).

“Obligations” means, in each case, whether now in existence or hereafter arising: (a) the principal of and interest on (including interest accruing after the filing of any bankruptcy or similar petition) the Loans, (b) the L/C Obligations and (c) all other fees and commissions (including attorneys’ fees), charges, indebtedness, loans, liabilities, financial accommodations, obligations, covenants and duties owing by the Credit Parties and each of their respective Subsidiaries to the Lenders, the Issuing Lender or the Administrative Agent, in each case under any Loan Document, with respect to any Loan or Letter of Credit of every kind, nature and description, direct or indirect, absolute or contingent, due or to become due, contractual or tortious, liquidated or unliquidated, and whether or not evidenced by any note and including interest and fees that accrue after the commencement by or against any Credit Party or any Subsidiary thereof of any proceeding under any Debtor Relief Laws, naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Officer’s Compliance Certificate” means a certificate of the chief financial officer or the treasurer of the Borrower substantially in the form attached as Exhibit F.

“Operating Lease” means, as to any Person as determined in accordance with GAAP, any lease of Property (whether real, personal or mixed) by such Person as lessee which is not a Capital Lease.

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

“Other Taxes” means all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 5.12).

“Participant” has the meaning assigned thereto in Section 12.9(d).

“Participant Register” has the meaning assigned thereto in Section 12.9(d).

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

“PBGC” means the Pension Benefit Guaranty Corporation or any successor agency.

“Pension Plan” means any employee benefit plan within the meaning of Section 3(2) of ERISA, other than a Multiemployer Plan, which is subject to the provisions of Title IV of ERISA or Section 412 of the Code and which (a) is maintained, funded or administered for the employees of any Credit Party or any ERISA Affiliate or (b) has at any time within the preceding seven (7) years been maintained, funded or administered for the employees of any Credit Party or any current or former ERISA Affiliates.

“Permitted Acquisition” means any Acquisition by the Borrower or any Subsidiary if such Acquisition meets all of the following requirements:

(a) no less than ten (10) Business Days (or such shorter period of time as Administrative Agent may agree in its sole discretion) prior to the proposed closing date of such Acquisition, the Borrower shall have delivered written notice of such Acquisition to the Administrative Agent, which notice shall include the proposed closing date of such Acquisition;

(b) the Board of Directors and/or shareholders (or equivalent) of the Person to be acquired shall have approved the consummation of such Acquisition (which approval shall not have been withdrawn);

(c) the Person or business to be acquired shall be in a line of business permitted pursuant toSection 9.11;

(d) if such transaction is a merger or consolidation, (i) the Borrower shall be the surviving Person in any such transaction involving the Borrower, or if such transaction is a merger or consolidation involving a Subsidiary Guarantor, either a Subsidiary Guarantor shall be the surviving Person or the surviving Person shall become a Subsidiary Guarantor within the applicable time period specified in Section 8.13, and (ii) no Change in Control shall have been effected thereby;

(e) the Borrower shall have delivered or will deliver to the Administrative Agent all documents required to be delivered pursuant to, and in accordance with, Section 8.13 in the applicable time periods specified therein;
(f) for any Acquisition with aggregate consideration (including cash, Cash Equivalents, Equity Interests, Earn-outs, Holdbacks and other deferred payment obligations) in excess of $25,000,000, no later than five (5) Business Days (or such lesser time as determined by the Administrative Agent in its sole discretion) prior to the proposed closing date of such Acquisition, the Borrower shall have delivered to the Administrative Agent an Officer’s Compliance Certificate for the most recent fiscal quarter end preceding such Acquisition for which financial statements are available demonstrating that the Borrower is in compliance on a Pro Forma Basis (as of the last day of such fiscal quarter and after giving effect thereto and any Indebtedness incurred in connection therewith) with each covenant contained in Section 9.13;

(g) for any Acquisition with aggregate consideration (including cash, Cash Equivalents, Equity Interests, Earn-outs, Holdbacks and other deferred payment obligations) in excess of $50,000,000, no later than five (5) Business Days (or such lesser time as determined by the Administrative Agent in its sole discretion) prior to the proposed closing date of such Acquisition, the Borrower shall have delivered to the Administrative Agent:

(i) forecasted balance sheets, profit and loss statements and cash flow statements for the Person to be acquired, all prepared on a basis consistent with such Person’s historical financial statements, together with appropriate supporting details and a statement of underlying assumptions for the one (1) year period following the date of the proposed Acquisition, on a quarterly basis, in form and substance (including, without limitation, as to scope and underlying assumptions) reasonably satisfactory to the Administrative Agent; and

(ii) copies of substantially final documentation entered into in connection with such Acquisition, which shall be in form and substance reasonably satisfactory to the Administrative Agent;

(h) no Default or Event of Default shall have occurred and be continuing both before and immediately after giving effect to such Acquisition;

(i) the consideration for all Acquisitions of Non-Guarantor Subsidiaries consummated during the term of this Agreement shall not exceed $150,000,000 in the aggregate;

(j) the Borrower shall have Liquidity of not less than $35,000,000 immediately after giving effect to the Acquisition; and

(k) for any Acquisition with aggregate consideration (including cash, Cash Equivalents, Equity Interests, Earn-outs, Holdbacks and other deferred payment obligations) in excess of $25,000,000, not later than five (5) Business Days (or such later date as Administrative Agent may agree in its sole discretion) following the consummation of such Acquisition, the Borrower shall have delivered to the Administrative Agent a certificate of a Responsible Officer thereof certifying that all of the requirements set forth above have been satisfied.

“Permitted Holder” means Steve Winn and his Affiliates or any other entity to which Mr. Winn may be attributed beneficial ownership (as defined in Rule 13d-3 under the Exchange Act), other than affiliate portfolio companies.

“Permitted Liens” means the Liens permitted pursuant to Section 9.2.

“Permitted Refinancing Indebtedness” means any Indebtedness (the “Refinancing Indebtedness”), the proceeds of which are used to refinance, refund, renew, extend or replace outstanding Indebtedness (such
outstanding Indebtedness, the “Refinanced Indebtedness”); provided that (a) the principal amount (or accreted value, if applicable) of such Refinancing Indebtedness is not greater than the principal amount (or accreted value, if applicable) of the Refinanced Indebtedness at the time of such refinancing, refunding, renewal, extension or replacement, except by an amount equal to unpaid accrued interest and premium thereon plus other reasonable amounts paid, and fees and expenses reasonably incurred, in connection with such refinancing, refunding, renewal, extension or replacement, and by an amount equal to any existing commitments thereunder that have not been utilized at the time of such refinancing, refunding, renewal, extension or replacement, (b) the final maturity and weighted average life to maturity of such Refinancing Indebtedness shall not be prior to or shorter than that applicable to the Refinanced Indebtedness, (c) the primary obligor of such Refinancing Indebtedness shall be the same as the primary obligor of the Refinanced Indebtedness, (d) such Refinancing Indebtedness shall not be secured by (i) Liens on assets other than (x) assets securing the Refinanced Indebtedness at the time of such refinancing, refunding, renewal, extension or replacement, (y) any after-acquired property that is affixed or incorporated into the property covered by such Liens and (z) proceeds and products thereof, or (ii) Liens having a higher priority than the Liens, if any, securing the Refinanced Indebtedness, (e) such Refinancing Indebtedness shall not be guaranteed by or otherwise recourse to any Person other than the Person(s) to whom the Refinanced Indebtedness is recourse or by whom it is guaranteed, in each case as of the time of such refinancing, refunding, renewal, extension or replacement, (f) to the extent such Refinancing Indebtedness is subordinated in right of payment to the Obligations (or the Liens securing such Indebtedness were originally contractually subordinated to the Liens securing the Collateral pursuant to the Security Documents), such refinancing, refunding, renewal, extension or replacement is subordinated in right of payment to the Obligations (or the Liens securing such Indebtedness shall be subordinated to the Liens securing the Collateral pursuant to the Security Documents) on terms at least as favorable to the Lenders as those contained in the documentation governing such Refinanced Indebtedness, (g) the terms of such Refinancing Indebtedness, taken as a whole, are not materially more restrictive on the Borrower and its Subsidiaries than the terms of the Refinanced Indebtedness, taken as a whole, and (h) no Event of Default shall have occurred and be continuing at the time of such refinancing, refunding, renewal, extension or replacement.

“Person” means any individual, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Platform” has the meaning assigned thereto in Section 8.2.

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

“Pro Forma Basis” means, for purposes of calculating Consolidated EBITDA for any period during which one or more Specified Transactions occurs, that such Specified Transaction (and all other Specified Transactions that have been consummated during the applicable period) shall be deemed to have occurred as of the first day of the applicable period of measurement and:

(a) all income statement items (whether positive or negative) attributable to the Property or Person disposed of in a Specified Disposition shall be excluded and all income statement items (whether positive or negative) attributable to the Property or Person acquired in a Permitted Acquisition shall be included (provided that such income statement items to be included are reflected in financial statements or
other financial data reasonably acceptable to the Administrative Agent and based upon reasonable assumptions and calculations which are expected to have a continuous impact); and

(b) non-recurring costs, extraordinary expenses and other pro forma adjustments (including anticipated cost savings and other synergies) attributable to such Specified Transaction may be included to the extent that such costs, expenses or adjustments (i) are reasonably expected to be realized within twelve (12) months of such Specified Transaction as set forth in reasonable detail on a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent, (ii) are calculated on a basis consistent with GAAP and are, in each case, reasonably identifiable, factually supportable, and expected to have a continuing impact on the operations of the Borrower and its Subsidiaries and (iii) are either permitted as an adjustment pursuant to Article 11 of Regulation S-X under the Securities Act of 1933 or represent less than five percent (5%) of Consolidated EBITDA (determined without giving effect to this clause (b) in the aggregate); provided that the foregoing costs, expenses, adjustments, cost savings and other synergies shall be without duplication of any costs, expenses or adjustments that are already included in the calculation of Consolidated EBITDA or clause (a) above.

If a transaction which is conditioned on compliance on a Pro Forma Basis with the covenants set forth in Section 9.13 is consummated prior to the first date on which such covenant is required to be satisfied, the level required for such first date shall be deemed to apply for determining such compliance on a Pro Forma Basis.

“Property” means any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible, including, without limitation, Equity Interests.

“Public Lenders” has the meaning assigned thereto in Section 8.2.

“Qualified Cash and Cash Equivalents” means, as of any date of determination, the aggregate amount of Unrestricted cash and Cash Equivalents held by the Borrower and its Subsidiaries in deposit accounts or securities accounts located within the United States and covered by a control agreement in favor of the Administrative Agent. For purposes hereof, “Unrestricted” means, when referring to cash and Cash Equivalents of the Borrower and its Subsidiaries, that such cash and Cash Equivalents (a) do not appear or would not be required to appear as “restricted” on the financial statements of the Borrower or any such Subsidiary (unless related to the Loan Documents or the Liens created thereunder) or (b) are not subject to a Lien (other than Liens permitted under Section 9.2(a) or (k)).

“Qualified Equity Interests” means any Equity Interests that are not Disqualified Equity Interests.

“Real Estate Finance Indebtedness” has the meaning assigned thereto in Section 9.1(i).

“Recipient” means (a) the Administrative Agent, (b) any Lender and (c) the Issuing Lender, as applicable.

“Register” has the meaning assigned thereto in Section 12.9(c).

“Reimbursement Obligation” means the obligation of the Borrower to reimburse the Issuing Lender pursuant to Section 3.5 for amounts drawn under Letters of Credit issued by the Issuing Lender.

“Related Parties” means, with respect to any Person, such Person’s Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person’s Affiliates.
“Required Lenders” means, at any time, Lenders whose outstanding Loans (including such Lender’s participation in outstanding L/C Obligations and Swingline Loans) and unused Revolving Credit Commitments aggregate more than fifty percent (50%) of the outstanding Loans (including participations in outstanding L/C Obligations and Swingline Loans) and unused Revolving Credit Commitments of all Lenders. The outstanding Loans (including participations in outstanding L/C Obligations and Swingline Loans) and unused Revolving Credit Commitments of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Responsible Officer” means, as to any Person, the chief executive officer, president, chief financial officer, controller, treasurer or assistant treasurer of such Person or any other officer of such Person designated in writing by the Borrower or any Subsidiary Guarantor and reasonably acceptable to the Administrative Agent. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Person shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Person and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Person.

“Restricted Payment” has the meaning assigned thereto in Section 9.6.

“Revolving Commitment Increase” shall have the meaning assigned thereto in Section 2.7(a).

“Revolving Credit Commitment” means (a) as to any Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Credit Loans to, and to purchase participations in L/C Obligations and Swingline Loans for the account of, the Borrower hereunder in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender’s name on the Register, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 2.7) and (b) as to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Credit Loans, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 2.7). The aggregate Revolving Credit Commitment of all the Revolving Credit Lenders on the Closing Date shall be $200,000,000. The initial Revolving Credit Commitment of each Revolving Credit Lender is set forth opposite the name of such Lender on Schedule 1.1.

“Revolving Credit Commitment Percentage” means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders represented by such Revolving Credit Lender’s Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments. The initial Revolving Credit Commitment of each Revolving Credit Lender is set forth opposite the name of such Lender on Schedule 1.1.

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

“Revolving Credit Facility” means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility established pursuant to Section 2.7).

“Revolving Credit Lenders” means, collectively, all of the Lenders with a Revolving Credit Commitment.
“Revolving Credit Loan” means any revolving loan made to the Borrower pursuant to Section 2.1, and all such revolving loans collectively as the context requires.

“Revolving Credit Note” means a promissory note made by the Borrower in favor of a Revolving Credit Lender evidencing the Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form attached as Exhibit A-1, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Revolving Credit Outstandings” means the sum of (a) with respect to Revolving Credit Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Credit Loans and Swingline Loans, as the case may be, occurring on such date; plus (b) with respect to any L/C Obligations on any date, the aggregate outstanding amount thereof on such date after giving effect to any Extensions of Credit occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

“Revolving Extensions of Credit” means (a) any Revolving Credit Loan then outstanding, (b) any Letter of Credit then outstanding or (c) any Swingline Loan then outstanding.


“Sale Leaseback” means any arrangement pursuant to which any Credit Party or any Subsidiary thereof, directly or indirectly becomes or remains liable as lessee or as guarantor or other surety with respect to any lease, whether an operating lease or a Capital Lease, of any Property (whether real, personal or mixed), whether now owned or hereafter acquired, (a) which any Credit Party or any Subsidiary thereof has sold or transferred or is to sell or transfer to a Person which is not another Credit Party or Subsidiary thereof; or (b) which any Credit Party or any Subsidiary thereof intends to use for substantially the same purpose as any other Property that has been sold or is to be sold or transferred by such Credit Party or such Subsidiary to another Person which is not another Credit Party or Subsidiary of a Credit Party in connection with such lease.

“Sanctioned Country” means at any time, a country or territory which is itself the subject or target of any Sanctions (including, without limitation, Cuba, Iran, North Korea, Sudan and Syria).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b).

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC), the European Union, Her Majesty’s Treasury, or other relevant sanctions authority.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.
“Secured Cash Management Agreement” means any Cash Management Agreement between or among any Credit Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Hedge Agreement between or among any Credit Party and any Hedge Bank.

“Secured Obligations” means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Credit Party under (i) any Secured Hedge Agreement (other than an Excluded Swap Obligation) and (ii) any Secured Cash Management Agreement.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Lender, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 11.5, any other holder from time to time of any of any Secured Obligations and, in each case, their respective successors and permitted assigns.

“Security Documents” means the collective reference to the Collateral Agreement and each other agreement or writing pursuant to which any Credit Party pledges or grants a security interest in any Property or assets securing the Secured Obligations.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments generally as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

“Specified Disposition” means any Asset Disposition having gross sales proceeds in excess of $25,000,000.

“Specified Transactions” means (a) any Specified Disposition, (b) any Permitted Acquisition and (c) the Transactions.

“Subordinated Indebtedness” means the collective reference to any Indebtedness incurred by the Borrower or any of its Subsidiaries that is subordinated in right and time of payment to the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent.

“Subsidiary” means as to any Person, any corporation, partnership, limited liability company or other entity of which more than fifty percent (50%) of the outstanding Equity Interests having ordinary voting power to elect a majority of the board of directors (or equivalent governing body) or other managers of such corporation, partnership, limited liability company or other entity is at the time owned by (directly or indirectly) or the management is otherwise controlled by (directly or indirectly) such Person (irrespective of whether, at the time, Equity Interests of any other class or classes of such corporation, partnership, limited liability company or other entity shall have or might have voting power by reason of the happening of any
contingency). Unless otherwise qualified, references to “Subsidiary” or “Subsidiaries” herein shall refer to those of the Borrower.

“Subsidiary Guarantors” means, collectively, all direct and indirect Domestic Subsidiaries of the Borrower (other than any Immaterial Subsidiary and any Excluded Subsidiary) in existence on the Closing Date or which become a party to the Guaranty Agreement pursuant to Section 8.13.

“Swap Obligation” means, with respect to any Subsidiary Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a “swap” within the meaning of section 1a(47) of the Commodity Exchange Act.

“Swingline Commitment” means the lesser of (a) $20,000,000 and (b) the Revolving Credit Commitment.

“Swingline Facility” means the swingline facility established pursuant to Section 2.2.

“Swingline Lender” means Wells Fargo in its capacity as swingline lender hereunder or any successor thereto.

“Swingline Loan” means any swingline loan made by the Swingline Lender to the Borrower pursuant to Section 2.2, and all such swingline loans collectively as the context requires.

“Swingline Note” means a promissory note made by the Borrower in favor of the Swingline Lender evidencing the Swingline Loans made by the Swingline Lender, substantially in the form attached as Exhibit A-2, and any substitutes therefor, and any replacements, restatements, renewals or extension thereof, in whole or in part.

“Synthetic Lease” means any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an Operating Lease in accordance with GAAP.

“Taxes” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

“Termination Event” means the occurrence of any of the following which, individually or in the aggregate, has resulted or could reasonably be expected to result in liability of the Borrower in an aggregate amount in excess of the Threshold Amount: (a) a “Reportable Event” described in Section 4043 of ERISA for which the thirty (30) day notice requirement has not been waived by the PBGC, or (b) the withdrawal of any Credit Party or any ERISA Affiliate from a Pension Plan during a plan year in which it was a “substantial employer” as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA, or (c) the termination of a Pension Plan, the filing of a notice of intent to terminate a Pension Plan or the treatment of a Pension Plan amendment as a termination, under Section 4041 of ERISA, if the plan assets are not sufficient to pay all plan liabilities, or (d) the institution of proceedings to terminate, or the appointment of a trustee with respect to, any Pension Plan by the PBGC, or (e) any other event or condition which would constitute grounds under Section 4042(a) of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan, or (f) the imposition of a Lien pursuant to Section 430(k) of the Code or Section 303 of ERISA, or (g) the determination that any Pension Plan or Multiemployer Plan is considered an at-risk plan or plan in endangered or critical status with the meaning of Sections 430, 431 or 432 of the Code or Sections 303, 304 or 305 of ERISA or (h) the
partial or complete withdrawal of any Credit Party or any ERISA Affiliate from a Multiemployer Plan if withdrawal liability is asserted by such plan, or (i) any event or condition which results in the reorganization or insolvency of a Multiemployer Plan under Sections 4241 or 4245 of ERISA, or (j) any event or condition which results in the termination of a Multiemployer Plan under Section 4041A of ERISA or the institution by PBGC of proceedings to terminate a Multiemployer Plan under Section 4042 of ERISA, or (k) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Credit Party or any ERISA Affiliate.

“Threshold Amount” means $15,000,000.

“Transactions” means, collectively, (a) the repayment in full of all Indebtedness outstanding under the Existing Credit Agreement, (b) the initial Extensions of Credit and (c) the payment of all fees, commissions and expenses incurred in connection with the foregoing.

“UCC” means the Uniform Commercial Code as in effect in the State of New York.

“United States” means the United States of America.

“U.S. Borrower” means any Borrower that is a U.S. Person.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned thereto in Section 5.11(g).

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association.

“Wholly-Owned” means, with respect to a Subsidiary, that all of the Equity Interests of such Subsidiary are, directly or indirectly, owned or controlled by the Borrower and/or one or more of its Wholly-Owned Subsidiaries (except for directors’ qualifying shares or other shares required by Applicable Law to be owned by a Person other than the Borrower and/or one or more of its Wholly-Owned Subsidiaries).

“Withholding Agent” means the Borrower and the Administrative Agent.

SECTION 1.2 Other Definitions and Provisions. With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document: (a) the definitions of terms herein shall apply equally to the singular and plural forms of the terms defined, (b) whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms, (c) the words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”, (d) the word “will” shall be construed to have the same meaning and effect as the word “shall”, (e) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (f) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (g) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (h) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights, (i) the term “documents” includes any and all instruments, documents, agreements, certificates, notices, reports, financial statements and other writings, however evidenced, whether in physical or electronic form and (j) in the computation of periods of time from a specified date to
a later specified date, the word “from” means “from and including;” the words “to” and “until” each mean “to but excluding;” and the word “through” means “to and including.”

SECTION 1.3 Accounting Terms.

(a) All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with GAAP, applied on a consistent basis, as in effect from time to time and in a manner consistent with that used in preparing the audited financial statements required by Section 6.1(e)(i) or Section 8.1(a), as applicable, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of (i) FASB ASC 825 (ii) FASB ASC 470-20 and (iii) any accounting change described in the Proposed Accounting Standards Update to Leases (Topic 840) dated August 17, 2010, the Proposed Accounting Standards Update (Revised) to Leases (Topic 842) dated May 16, 2013 shall each be disregarded.

(b) If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP as in effect immediately prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP.

SECTION 1.4 UCC Terms. Terms defined in the UCC in effect on the Closing Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect.

SECTION 1.5 Rounding. Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.6 References to Agreement and Laws. Unless otherwise expressly provided herein, (a) any definition or reference to formation documents, governing documents, agreements (including the Loan Documents) and other contractual documents or instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other modifications thereto, but only to the extent that such amendments, restatements, extensions, supplements and other modifications are not prohibited by any Loan Document; and (b) any definition or reference to any Applicable Law, including, without limitation, the Code, the Commodity Exchange Act, ERISA, the Exchange Act, the PATRIOT Act, the Securities Act of 1933, the UCC, the Investment Company Act of 1940, the Interstate Commerce Act, the Trading with the Enemy Act of the United States or any of the foreign assets control regulations of the United States Treasury Department, shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law.

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SECTION 1.7  Times of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

SECTION 1.8  Letter of Credit Amounts. Unless otherwise specified, all references herein to the amount of a Letter of Credit at any time shall be deemed to mean the maximum face amount of such Letter of Credit after giving effect to all increases thereof contemplated by such Letter of Credit or the Letter of Credit Application therefor (at the time specified therefor in such applicable Letter of Credit or Letter of Credit Application and as such amount may be reduced by (a) any permanent reduction of such Letter of Credit or (b) any amount which is drawn, reimbursed and no longer available under such Letter of Credit).

SECTION 1.9  Guarantees. Unless otherwise specified, the amount of any Guarantee shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Guarantee.

SECTION 1.10  Covenant Compliance Generally. For purposes of determining compliance under Sections 9.1, 9.2, 9.3, 9.5 and 9.6, any amount in a currency other than Dollars will be converted to Dollars in a manner consistent with that used in calculating Consolidated Net Income in the most recent annual financial statements of the Borrower and its Subsidiaries delivered pursuant to Section 6.1(e)(i) or Section 8.1(a), as applicable. Notwithstanding the foregoing, for purposes of determining compliance with Sections 9.1, 9.2 and 9.3, with respect to any amount of Indebtedness or Investment in a currency other than Dollars, no breach of any basket contained in such Sections shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Indebtedness or Investment is incurred; provided that for the avoidance of doubt, the foregoing provisions of this Section 1.10 shall otherwise apply to such Sections, including with respect to determining whether any Indebtedness or Investment may be incurred at any time under such Sections.

ARTICLE II

REVOLVING CREDIT FACILITY

SECTION 2.1  Revolving Credit Loans. Subject to the terms and conditions of this Agreement and the other Loan Documents, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, each Revolving Credit Lender severally agrees to make Revolving Credit Loans to the Borrower from time to time from the Closing Date to, but not including, the Maturity Date as requested by the Borrower in accordance with the terms of Section 2.3, provided, that (a) the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (b) the Revolving Credit Exposure of any Revolving Credit Lender shall not at any time exceed such Revolving Credit Lender’s Revolving Credit Commitment. Each Revolving Credit Loan by a Revolving Credit Lender shall be in a principal amount equal to such Revolving Credit Lender’s Revolving Credit Commitment Percentage of the aggregate principal amount of Revolving Credit Loans requested on such occasion. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Revolving Credit Loans hereunder until the Maturity Date.

SECTION 2.2  Swingline Loans.

(c) Availability. Subject to the terms and conditions of this Agreement and the other Loan Documents, including, without limitation, Section 6.2(d) of this Agreement, and in reliance upon the representations and warranties set forth in this Agreement and the other Loan Documents, the Swingline
Lender may, in its sole discretion, make Swingline Loans to the Borrower from time to time from the Closing Date to, but not including, the Maturity Date; provided, that (a) after giving effect to any amount requested, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitment and (b) the aggregate principal amount of all outstanding Swingline Loans (after giving effect to any amount requested) shall not exceed the Swingline Commitment. Subject to the terms and conditions hereof, the Borrower may borrow, repay and reborrow Swingline Loans hereunder until the Maturity Date.

(d) Refunding.

(i) Swingline Loans shall be refunded by the Revolving Credit Lenders on demand by the Swingline Lender. Such refundings shall be made by the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages and shall thereafter be reflected as Revolving Credit Loans of the Revolving Credit Lenders on the books and records of the Administrative Agent. Each Revolving Credit Lender shall fund its respective Revolving Credit Commitment Percentage of Revolving Credit Loans as required to repay Swingline Loans outstanding to the Swingline Lender upon demand by the Swingline Lender but in no event later than 1:00 p.m. on the next succeeding Business Day after such demand is made. No Revolving Credit Lender’s obligation to fund its respective Revolving Credit Commitment Percentage of a Swingline Loan shall be affected by any other Revolving Credit Lender’s failure to fund its Revolving Credit Commitment Percentage of a Swingline Loan, nor shall any Revolving Credit Lender’s Revolving Credit Commitment Percentage be increased as a result of any such failure of any other Revolving Credit Lender to fund its Revolving Credit Commitment Percentage of a Swingline Loan.

(ii) The Borrower shall pay to the Swingline Lender on demand the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. In addition, the Borrower hereby authorizes the Administrative Agent to charge any account maintained by the Borrower with the Swingline Lender (up to the amount available therein) in order to immediately pay the Swingline Lender the amount of such Swingline Loans to the extent amounts received from the Revolving Credit Lenders are not sufficient to repay in full the outstanding Swingline Loans requested or required to be refunded. If any portion of any such amount paid to the Swingline Lender shall be recovered by or on behalf of the Borrower from the Swingline Lender in bankruptcy or otherwise, the loss of the amount so recovered shall be ratably shared among all the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitment Percentages (unless the amounts so recovered by or on behalf of the Borrower pertain to a Swingline Loan extended after the occurrence and during the continuance of an Event of Default of which the Administrative Agent has received notice in the manner required pursuant to Section 11.3 and which such Event of Default has not been waived by the Required Lenders or the Lenders, as applicable).

(iii) Each Revolving Credit Lender acknowledges and agrees that its obligation to refund Swingline Loans in accordance with the terms of this Section is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Article VI. Further, each Revolving Credit Lender agrees and acknowledges that if prior to the refunding of any outstanding Swingline Loans pursuant to this Section, one of the events described in Section 10.1(h) or (i) shall have occurred, each Revolving Credit Lender will, on the date the applicable Refunding Revolving Credit Loan would have been made, purchase an undivided participating interest in the Swingline Loan to be refunded in an amount equal to its Revolving Credit Commitment Percentage of the aggregate amount of such Swingline Loan. Each Revolving Credit Lender will immediately transfer to the Swingline Lender, in immediately available
funds, the amount of its participation and upon receipt thereof the Swingline Lender will deliver to such Revolving Credit Lender a certificate evidencing such participation dated the date of receipt of such funds and for such amount. Whenever, at any time after the Swingline Lender has received from any Revolving Credit Lender such Revolving Credit Lender’s participating interest in a Swingline Loan, the Swingline Lender receives any payment on account thereof, the Swingline Lender will distribute to such Revolving Credit Lender its participating interest in such amount (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender’s participating interest was outstanding and funded).

(e) Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, this Section 2.2 shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 2.3 Procedure for Advances of Revolving Credit Loans and Swingline Loans

(a) Requests for Borrowing. The Borrower shall give the Administrative Agent irrevocable prior written notice substantially in the form of Exhibit B (a “Notice of Borrowing”) not later than 12:00 p.m. (i) on the same Business Day as each Base Rate Loan and each Swingline Loan and (ii) at least three (3) Business Days before each LIBOR Rate Loan (or, in the case of any LIBOR Rate Loans to be borrowed on the Closing Date, such shorter period of time as may be agreed to by the Administrative Agent and the Lenders), of its intention to borrow, specifying (A) the date of such borrowing, which shall be a Business Day, (B) the amount of such borrowing, which shall be, (x) with respect to Base Rate Loans (other than Swingline Loans) in an aggregate principal amount of $3,000,000 or a whole multiple of $1,000,000 in excess thereof, (y) with respect to LIBOR Rate Loans in an aggregate principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof and (z) with respect to Swingline Loans in an aggregate principal amount of $500,000 or a whole multiple of $100,000 in excess thereof, (C) whether such Loan is to be a Revolving Credit Loan or Swingline Loan, (D) in the case of a Revolving Credit Loan whether the Loans are to be LIBOR Rate Loans or Base Rate Loans, and (E) in the case of a LIBOR Rate Loan, the duration of the Interest Period applicable thereto. If the Borrower fails to specify a type of Loan in a Notice of Borrowing, then the applicable Loans shall be made as Base Rate Loans. If the Borrower requests a borrowing of LIBOR Rate Loans in any such Notice of Borrowing, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. A Notice of Borrowing received after 12:00 p.m. shall be deemed received on the next Business Day. The Administrative Agent shall promptly notify the Revolving Credit Lenders of each Notice of Borrowing.

(b) Disbursement of Revolving Credit and Swingline Loans. Not later than 2:00 p.m. on the proposed borrowing date, (i) each Revolving Credit Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, such Revolving Credit Lender’s Revolving Credit Commitment Percentage of the Revolving Credit Loans to be made on such borrowing date and (ii) the Swingline Lender will make available to the Administrative Agent, for the account of the Borrower, at the office of the Administrative Agent in funds immediately available to the Administrative Agent, the Swingline Loans to be made on such borrowing date. The Borrower hereby irrevocably authorizes the Administrative Agent to disburse the proceeds of each borrowing requested pursuant to this Section in immediately available funds by crediting or wiring such proceeds to the deposit account of the Borrower identified in the most recent notice substantially in the form attached as Exhibit C (a “Notice of Account Designation”) delivered by the Borrower to the Administrative Agent or as may be otherwise agreed upon by the Borrower and the Administrative Agent from time to time. Subject to Section 5.7 hereof, the Administrative Agent shall not be obligated to disburse the portion of the proceeds of any Revolving Credit Loan requested pursuant to this Section to the extent that any Revolving Credit Lender has not made available to the Administrative Agent its Revolving Credit Commitment.

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Percentage of such Loan. Revolving Credit Loans to be made for the purpose of refunding Swingline Loans shall be made by the
Revolving Credit Lenders as provided in Section 2.2(b).

SECTION 2.4 Repayment and Prepayment of Revolving Credit and Swingline Loans

(a) Repayment on Termination Date. The Borrower hereby agrees to repay the outstanding principal amount of (i) all
Revolving Credit Loans in full on the Maturity Date, and (ii) all Swingline Loans in accordance with Section 2.2(b) (but, in any
event, no later than the Maturity Date), together, in each case, with all accrued but unpaid interest thereon.

(b) Mandatory Prepayments. If at any time the Revolving Credit Outstandings exceed the Revolving Credit Commitment, the Borrower agrees to repay immediately upon notice from the Administrative Agent, by payment to the
Administrative Agent for the account of the Revolving Credit Lenders, Extensions of Credit in an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Credit Loans and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to such excess (such Cash Collateral to be applied in accordance with Section 10.2(b)).

(c) Optional Prepayments. The Borrower may at any time and from time to time prepay Revolving Credit Loans and
Swingline Loans, in whole or in part, with irrevocable prior written notice to the Administrative Agent substantially in the form
attached as Exhibit D (a “Notice of Prepayment”) given not later than 12:00 p.m. (i) on the same Business Day as each Base
Rate Loan and each Swingline Loan and (ii) at least three (3) Business Days before each LIBOR Rate Loan, specifying the date
and amount of prepayment and whether the prepayment is of LIBOR Rate Loans, Base Rate Loans, Swingline Loans or a
combination thereof, and, if of a combination thereof, the amount allocable to each. Upon receipt of such notice, the
Administrative Agent shall promptly notify each Revolving Credit Lender. If any such notice is given, the amount specified in
such notice shall be due and payable on the date set forth in such notice. Partial prepayments shall be in an aggregate amount of
$3,000,000 or a whole multiple of $1,000,000 in excess thereof with respect to Base Rate Loans (other than Swingline Loans),
$5,000,000 or a whole multiple of $1,000,000 in excess thereof with respect to LIBOR Rate Loans and $500,000 or a whole
multiple of $100,000 in excess thereof with respect to Swingline Loans. A Notice of Prepayment received after 12:00 p.m. shall
be deemed received on the next Business Day. Each such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof. Notwithstanding the foregoing, any Notice of a Prepayment delivered in connection with any
refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the
occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation
of such refinancing or incurrence or occurrence of such other identifiable event or condition and may be revoked by the
Borrower in the event such condition is not satisfied (provided that the failure of such contingency shall not relieve the Borrower
from its obligations in respect thereof under Section 5.9).

(d) Limitation on Prepayment of LIBOR Rate Loans. The Borrower may not prepay any LIBOR Rate Loan on any day
other than on the last day of the Interest Period applicable thereto unless such prepayment is accompanied by any amount
required to be paid pursuant to Section 5.9 hereof.

(e) Hedge Agreements. No repayment or prepayment of the Loans pursuant to this Section shall affect any of the
Borrower’s obligations under any Hedge Agreement entered into with respect to the Loans.
SECTION 2.5  Permanent Reduction of the Revolving Credit Commitment

(a)  **Voluntary Reduction.** The Borrower shall have the right at any time and from time to time, upon at least three (3) Business Days prior irrevocable written notice to the Administrative Agent, to permanently reduce, without premium or penalty, (i) the entire Revolving Credit Commitment at any time or (ii) portions of the Revolving Credit Commitment, from time to time, in an aggregate principal amount not less than $3,000,000 or any whole multiple of $1,000,000 in excess thereof. Any reduction of the Revolving Credit Commitment shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Revolving Credit Commitment Percentage. All Commitment Fees accrued until the effective date of any termination of the Revolving Credit Commitment shall be paid on the effective date of such termination. Notwithstanding the foregoing, any notice to reduce the Revolving Credit Commitment delivered in connection with any refinancing of all of the Credit Facility with the proceeds of such refinancing or of any incurrence of Indebtedness or the occurrence of some other identifiable event or condition, may be, if expressly so stated to be, contingent upon the consummation of such refinancing or incurrence or occurrence of such identifiable event or condition and may be revoked by the Borrower in the event such condition is not satisfied (provided that the failure of such contingency shall not relieve the Borrower from its obligations in respect thereof under Section 5.9).

(b)  **Corresponding Payment.** Each permanent reduction permitted pursuant to this Section shall be accompanied by a payment of principal sufficient to reduce the aggregate outstanding Revolving Credit Loans, Swingline Loans and L/C Obligations, as applicable, after such reduction to the Revolving Credit Commitment as so reduced, and if the aggregate amount of all outstanding Letters of Credit exceeds the Revolving Credit Commitment as so reduced, the Borrower shall be required to deposit Cash Collateral in a Cash Collateral account opened by the Administrative Agent in an amount equal to such excess. Such Cash Collateral shall be applied in accordance with Section 10.2(b). Any reduction of the Revolving Credit Commitment to zero shall be accompanied by payment of all outstanding Revolving Credit Loans and Swingline Loans (and furnishing of Cash Collateral satisfactory to the Administrative Agent for all L/C Obligations) and shall result in the termination of the Revolving Credit Commitment and the Swingline Commitment and the Revolving Credit Facility. If the reduction of the Revolving Credit Commitment requires the repayment of any LIBOR Rate Loan, such repayment shall be accompanied by any amount required to be paid pursuant to Section 5.9 hereof.

SECTION 2.6  Termination of Revolving Credit Facility. The Revolving Credit Facility and the Revolving Credit Commitments shall terminate on the Maturity Date.

SECTION 2.7  Incremental Commitments

(a)  **Request for Incremental Commitments.** At any time and from time to time, the Borrower may by written notice to the Administrative Agent (who shall promptly notify the Lenders) request (i) one or more increases in the Revolving Credit Commitments (a “Revolving Commitment Increase”) or (ii) one or more incremental term loan commitments (an “Incremental Term Loan Commitment” and, together with any Revolving Commitment Increases, the “Incremental Commitments”) to make incremental term loans (an “Incremental Term Loan”); provided that (A) the total aggregate principal amount for all such Incremental Commitments and Incremental Term Loans made after the Closing Date shall not exceed an amount equal to (1) $150,000,000 plus (2) such amount as would not cause the Consolidated Net Leverage Ratio to exceed 3.25 to 1.00 (calculated on a Pro Forma Basis based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided after giving effect the incurrence of any then requested Incremental Commitment and the use of proceeds thereof, but without netting the proceeds thereof);
and (B) any such request for an Incremental Commitment shall be in a minimum amount of $5,000,000 or, if less, the remaining amount permitted pursuant to the foregoing clause (A).

(b) **Lenders.** Each notice from the Borrower pursuant to this Section shall set forth the requested amount and proposed terms of the relevant Incremental Commitment. Incremental Commitments may be provided by any existing Lender or by any other Persons (an “Incremental Lender”), provided that the Administrative Agent, the Issuing Lender and/or the Swingline Lender, as applicable, shall have consented (not to be unreasonably withheld, conditioned or delayed) to such Incremental Lender’s providing such Incremental Commitment to the extent any such consent would be required under Section 12.9(b) for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Incremental Lender. At the time of sending such notice, the Borrower (in consultation with the Administrative Agent) shall specify the time period within which each Incremental Lender is requested to respond, which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the proposed Incremental Lenders. Each proposed Incremental Lender may elect or decline, in its sole discretion, and shall notify the Administrative Agent within such time period whether it agrees, to provide an Incremental Commitment and, if so, whether by an amount equal to, greater than or less than requested. Any Person not responding within such time period shall be deemed to have declined to provide an Incremental Commitment.

(c) **Effective Date and Allocations.** The Administrative Agent and the Borrower shall determine the effective date (each, an “Increase Effective Date”) for each Incremental Commitment and the final allocation of such Incremental Commitment. The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocations of such Incremental Commitment and the Increase Effective Date.

(d) **Conditions to Effectiveness of Increase.** Each Incremental Commitment shall become effective as of the applicable Increase Effective Date; provided:

(i) no Default or Event of Default shall exist on such Increase Effective Date immediately prior to or after giving effect to (A) such Incremental Commitment or (B) the making of any Extensions of Credit pursuant thereto;

(ii) the Borrower is in pro forma compliance with the financial covenants set forth in Section 9.13 based on the financial statements most recently delivered pursuant to Section 8.1 after giving effect to such Incremental Commitment (assuming that the entire applicable Incremental Term Loan and/or Revolving Commitment Increase is fully funded on the effective date thereof and giving effect to any permanent repayment of Indebtedness in connection therewith);

(iii) each such Incremental Commitment shall be effected pursuant to an amendment (an “Incremental Amendment”) to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower, the Administrative Agent and the applicable Incremental Lenders, which Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.7;

(iv) in the case of each Incremental Term Loan (the terms of which shall be set forth in the relevant Incremental Amendment):

(A) such Incremental Term Loan will mature and amortize in a manner reasonably acceptable to the Incremental Lenders making such Incremental Term Loan and the Borrower, but will not in any event have a maturity date earlier than the Latest Maturity Date;
(B) the Applicable Margin and pricing grid, if applicable, for such Incremental Term Loan shall be determined by the applicable Incremental Lenders and the Borrower on the applicable Increase Effective Date and shall be consistent with then current market conditions; and

(C) except as provided above, all other terms and conditions applicable to any Incremental Term Loan, to the extent not consistent with the terms and conditions of this Agreement prior to giving effect thereto, shall be reasonably satisfactory to the Administrative Agent and the Borrower (but in no event shall such terms and conditions be more restrictive, taken as a whole, than those set forth in this Agreement and any other Loan Document);

(v) in the case of each Revolving Commitment Increase (the terms of which shall be set forth in the relevant Incremental Amendment):

(A) Revolving Credit Loans made with respect to the Revolving Commitment Increase shall mature on the Maturity Date and shall be subject to the same terms and conditions as the other Revolving Credit Loans;

(B) the outstanding Revolving Credit Loans and Revolving Credit Commitment Percentages of Swingline Loans and L/C Obligations will be reallocated by the Administrative Agent on the applicable Increase Effective Date among the Revolving Credit Lenders (including the Incremental Lenders providing such Revolving Commitment Increase) in accordance with their revised Revolving Credit Commitment Percentages (and the Revolving Credit Lenders (including the Incremental Lenders providing such Revolving Commitment Increase) agree to make all payments and adjustments necessary to effect such reallocation and the Borrower shall pay any and all costs required pursuant to Section 5.9 in connection with such reallocation as if such reallocation were a repayment); and

(C) except as provided above, all of the other terms and conditions applicable to such Revolving Commitment Increase shall, except to the extent otherwise provided in this Section 2.7, be identical to the terms and conditions applicable to the Revolving Credit Facility;

(vi) each Incremental Commitment shall constitute Obligations of the Borrower and shall be secured and guaranteed with the other Extensions of Credit on a pari passu basis; and

(vii) any Incremental Lender with a Revolving Commitment Increase shall be entitled to the same voting rights as the existing Revolving Credit Lenders under the Revolving Credit Facility and any Extensions of Credit made in connection with each Revolving Commitment Increase shall receive proceeds of prepayments on the same basis as the other Revolving Credit Loans made hereunder.

(e) Conflicting Provisions. This Section shall supersede any provisions in Sections 5.6 or 12.2 to the contrary.
ARTICLE III
LETTER OF CREDIT FACILITY

SECTION 3.1  L/C Facility

(f) **Availability.** Subject to the terms and conditions hereof, the Issuing Lender, in reliance on the agreements of the Revolving Credit Lenders set forth in Section 3.4(a), agrees to issue standby Letters of Credit in an aggregate amount not to exceed its L/C Commitment for the account of the Borrower or, subject to Section 3.8, any Subsidiary thereof, Letters of Credit may be issued on any Business Day from the Closing Date to but not including the fifth (5th) Business Day prior to the Maturity Date in such form as may be approved from time to time by the Issuing Lender; provided, that the Issuing Lender shall not issue any Letter of Credit if, after giving effect to such issuance, (a) the L/C Obligations would exceed the L/C Commitment or (b) the Revolving Credit Outstandings would exceed the Revolving Credit Commitment. Each Letter of Credit shall (i) be denominated in Dollars in a minimum amount of $500,000 (or such lesser amount as agreed to by the Issuing Lender and the Administrative Agent), (ii) expire on a date no more than twelve (12) months after the date of issuance or last renewal of such Letter of Credit (subject to automatic renewal for additional one (1) year periods pursuant to the terms of the Letter of Credit Application or other documentation acceptable to the Issuing Lender), which date shall be no later than the fifth (5th) Business Day prior to the Maturity Date and (iii) be subject to the ISP98, as set forth in the Letter of Credit Application or as determined by the Issuing Lender and, to the extent not inconsistent therewith, the laws of the State of New York. The Issuing Lender shall not at any time be obligated to issue any Letter of Credit hereunder if (A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Issuing Lender from issuing such Letter of Credit, or any Applicable Law applicable to the Issuing Lender or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Issuing Lender shall prohibit, or request that the Issuing Lender refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Issuing Lender with respect to letters of credit generally or such Letter of Credit in particular any restriction or reserve or capital requirement (for which the Issuing Lender is not otherwise compensated) not in effect on the Closing Date, or any unreimbursed loss, cost or expense that was not applicable, in effect or known to the Issuing Lender as of the Closing Date and that the Issuing Lender in good faith deems material to it, or (B) the conditions set forth in Section 6.2 are not satisfied. References herein to "issue" and derivations thereof with respect to Letters of Credit shall also include extensions or modifications of any outstanding Letters of Credit, unless the context otherwise requires.

(g) **Defaulting Lenders.** Notwithstanding anything to the contrary contained in this Agreement, Article III shall be subject to the terms and conditions of Section 5.14 and Section 5.15.

SECTION 3.2  Procedure for Issuance of Letters of Credit. The Borrower may from time to time request that the Issuing Lender issue a Letter of Credit by delivering to the Issuing Lender at its applicable office (with a copy to the Administrative Agent at the Administrative Agent’s Office) a Letter of Credit Application therefor, completed to the satisfaction of the Issuing Lender, and such other certificates, documents and other papers and information as the Issuing Lender or the Administrative Agent may request. Upon receipt of any Letter of Credit Application, the Issuing Lender shall process such Letter of Credit Application and the certificates, documents and other papers and information delivered to it in connection therewith in accordance with its customary procedures and shall, subject to Section 3.1 and Article VI, promptly issue the Letter of Credit requested thereby (but in no event shall the Issuing Lender be required to issue any Letter of Credit earlier than three (3) Business Days after its receipt of the Letter of Credit Application therefor and all such other certificates, documents and other papers and information relating
(f) **Letter of Credit Commissions.** Subject to Section 5.15(a)(iii)(B), the Borrower shall pay to the Administrative Agent, for the account of the Issuing Lender and the L/C Participants, a letter of credit commission with respect to each Letter of Credit in the amount equal to the daily amount available to be drawn under such standby Letters of Credit times the Applicable Margin with respect to Revolving Credit Loans that are LIBOR Rate Loans (determined, in each case, on a per annum basis). Such commission shall be payable quarterly in arrears on the last Business Day of each calendar quarter, on the Maturity Date and thereafter on demand of the Administrative Agent. The Administrative Agent shall, promptly following its receipt thereof, distribute to the Issuing Lender and the L/C Participants all commissions received pursuant to this Section 3.3 in accordance with their respective Revolving Credit Commitment Percentages.

(g) **Fronting Fee.** In addition to the foregoing commission, the Borrower shall pay directly to the Issuing Lender, for its own account, a fronting fee with respect to each Letter of Credit issued by the Issuing Lender as set forth in the Engagement Letter executed by the Issuing Lender. Such fronting fee shall be payable quarterly in arrears on the last Business Day of each calendar quarter commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date and thereafter on demand of the Issuing Lender.

(h) **Other Fees, Costs, Charges and Expenses.** In addition to the foregoing fees and commissions, the Borrower shall pay or reimburse the Issuing Lender for such normal and customary fees, costs, charges and expenses as are incurred or charged by the Issuing Lender in issuing, effecting payment under, amending or otherwise administering any Letter of Credit issued by it.

SECTION 3.4 **L/C Participations.**

(c) The Issuing Lender irrevocably agrees to grant and hereby grants to each L/C Participant, and, to induce the Issuing Lender to issue Letters of Credit hereunder, each L/C Participant irrevocably agrees to accept and purchase and hereby accepts and purchases from the Issuing Lender, on the terms and conditions hereinafter stated, for such L/C Participant’s own account and risk an undivided interest equal to such L/C Participant’s Revolving Credit Commitment Percentage in the Issuing Lender’s obligations and rights under and in respect of each Letter of Credit issued by it hereunder and the amount of each draft paid by the Issuing Lender thereunder. Each L/C Participant unconditionally and irrevocably agrees with the Issuing Lender that, if a draft is paid under any Letter of Credit issued by the Issuing Lender for which the Issuing Lender is not reimbursed in full by the Borrower through a Revolving Credit Loan or otherwise in accordance with the terms of this Agreement, such L/C Participant shall pay to the Issuing Lender upon demand at the Issuing Lender’s address for notices specified herein an amount equal to such L/C Participant’s Revolving Credit Commitment Percentage of the amount of such draft, or any part thereof, which is not so reimbursed.

(d) Upon becoming aware of any amount required to be paid by any L/C Participant to the Issuing Lender pursuant to Section 3.4(a) in respect of any unreimbursed portion of any payment made by the Issuing Lender under any Letter of Credit, issued by it, the Issuing Lender shall notify the Administrative Agent.
Agent of such unreimbursed amount and the Administrative Agent shall notify each L/C Participant (with a copy to the Issuing Lender) of the amount and due date of such required payment and such L/C Participant shall pay to the Administrative Agent (which, in turn shall pay the Issuing Lender) the amount specified on the applicable due date. If any such amount is paid to the Issuing Lender after the date such payment is due, such L/C Participant shall pay to the Issuing Lender on demand, in addition to such amount, the product of (i) such amount, times (ii) the daily average Federal Funds Rate as determined by the Administrative Agent during the period from and including the date such payment is due to the date on which such payment is immediately available to the Issuing Lender, times (iii) a fraction the numerator of which is the number of days that elapse during such period and the denominator of which is 360. A certificate of the Issuing Lender with respect to any amounts owing under this Section shall be conclusive in the absence of manifest error. With respect to payment to the Issuing Lender of the unreimbursed amounts described in this Section, if the L/C Participants receive notice that any such payment is due (A) prior to 1:00 p.m. on any Business Day, such payment shall be due that Business Day, and (B) after 1:00 p.m. on any Business Day, such payment shall be due on the following Business Day.

(e) Whenever, at any time after the Issuing Lender has made payment under any Letter of Credit issued by it and has received from any L/C Participant its Revolving Credit Commitment Percentage of such payment in accordance with this Section, the Issuing Lender receives any payment related to such Letter of Credit (whether directly from the Borrower or otherwise), or any payment of interest on account thereof, the Issuing Lender will distribute to such L/C Participant its pro rata share thereof; provided, that in the event that any such payment received by the Issuing Lender shall be required to be returned by the Issuing Lender, such L/C Participant shall return to the Issuing Lender the portion thereof previously distributed by the Issuing Lender to it.

SECTION 3.5 Reimbursement Obligation of the Borrower. In the event of any drawing under any Letter of Credit, the Borrower agrees to reimburse (either with the proceeds of a Revolving Credit Loan as provided for in this Section or with funds from other sources), in same day funds, the Issuing Lender on each date on which the Issuing Lender notifies the Borrower of the date and amount of a draft paid by it under any Letter of Credit for the amount of (a) such draft so paid and (b) any amounts referred to in Section 3.3(c) incurred by the Issuing Lender in connection with such payment. Unless the Borrower shall immediately notify the Issuing Lender that the Borrower intends to reimburse the Issuing Lender for such drawing from other sources or funds, the Borrower shall be deemed to have timely given a Notice of Borrowing to the Administrative Agent requesting that the Revolving Credit Lenders make a Revolving Credit Loan bearing interest at the Base Rate on the applicable repayment date in the amount of (i) such draft so paid and (ii) any amounts referred to in Section 3.3(c) incurred by the Issuing Lender in connection with such payment, and the Revolving Credit Lenders shall make a Revolving Credit Loan bearing interest at the Base Rate in such amount, the proceeds of which shall be applied to reimburse the Issuing Lender for the amount of the related drawing and such fees and expenses. Each Revolving Credit Lender acknowledges and agrees that its obligation to fund a Revolving Credit Loan in accordance with this Section to reimburse the Issuing Lender for any draft paid under a Letter of Credit issued by it is absolute and unconditional and shall not be affected by any circumstance whatsoever, including, without limitation, non-satisfaction of the conditions set forth in Section 2.3(a) or Article VI. If the Borrower has elected to pay the amount of such drawing with funds from other sources and shall fail to reimburse the Issuing Lender as provided above, the unreimbursed amount of such drawing shall bear interest at the rate which would be payable on any outstanding Base Rate Loans which were then overdue from the date such amounts become payable (whether at stated maturity, by acceleration or otherwise) until payment in full.

SECTION 3.6 Obligations Absolute. The Borrower’s obligations under this Article III (including, without limitation, the Reimbursement Obligation) shall be absolute and unconditional under
any and all circumstances and irrespective of any set off, counterclaim or defense to payment which the Borrower may have or have had against the Issuing Lender or any beneficiary of a Letter of Credit or any other Person. The Borrower also agrees that the Issuing Lender and the L/C Participants shall not be responsible for, and the Borrower’s Reimbursement Obligation under Section 3.5 shall not be affected by, among other things, the validity or genuineness of documents or any endorsements thereon, even though such documents shall in fact prove to be invalid, fraudulent or forged, or any dispute between or among the Borrower and any beneficiary of any Letter of Credit or any other party to which such Letter of Credit may be transferred or any claims whatsoever of the Borrower against any beneficiary of such Letter of Credit or any such transferee. No Issuing Lender shall be liable for any error, omission, interruption or delay in transmission, dispatch or delivery of any message or advice, however transmitted, in connection with any Letter of Credit issued by it, except for errors or omissions caused by the Issuing Lender’s gross negligence or willful misconduct, as determined by a court of competent jurisdiction by final nonappealable judgment. The Borrower agrees that any action taken or omitted by the Issuing Lender under or in connection with any Letter of Credit issued by it or the related drafts or documents, if done in the absence of gross negligence or willful misconduct shall be binding on the Borrower and shall not result in any liability of the Issuing Lender or any L/C Participant to the Borrower. The responsibility of the Issuing Lender to the Borrower in connection with any draft presented for payment under any Letter of Credit issued to it shall, in addition to any payment obligation expressly provided for in such Letter of Credit, be limited to determining that the documents (including each draft) delivered under such Letter of Credit in connection with such presentation substantially conforms to the requirements under such Letter of Credit.

SECTION 3.7 Effect of Letter of Credit Application. To the extent that any provision of any Letter of Credit Application related to any Letter of Credit is inconsistent with the provisions of this Article III, the provisions of this Article III shall apply.

SECTION 3.8 Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Borrower shall be obligated to reimburse, or to cause the applicable Subsidiary to reimburse, the Issuing Lender hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account of any of its Subsidiaries inures to the benefit of the Borrower and that the Borrower’s business derives substantial benefits from the businesses of such Subsidiaries.

ARTICLE IV [RESERVED]

ARTICLE V

GENERAL LOAN PROVISIONS

SECTION 5.1 Interest.

(i) Interest Rate Options. Subject to the provisions of this Section, at the election of the Borrower, (i) Revolving Credit Loans shall bear interest at (A) the Base Rate plus the Applicable Margin or (B) the LIBOR Rate plus the Applicable Margin (provided that the LIBOR Rate shall not be available until three (3) Business Days after the Closing Date unless the Borrower has delivered to the Administrative Agent a letter in form and substance reasonably satisfactory to the Administrative Agent indemnifying the Lenders in the manner set forth in Section 5.2 of this Agreement) and (ii) any Swingline Loan shall bear interest at the Base Rate plus the Applicable Margin. The Borrower shall select the rate of interest and Interest Period, if any, applicable to any Loan at the time a Notice of Borrowing is given or at the time a Notice of Conversion/Continuation is given pursuant to Section 5.2.
(j) Default Rate. Subject to Section 10.3, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 10.1(a), (b), (h) or (i), or (ii) at the election of the Required Lenders, upon the occurrence and during the continuance of any other Event of Default, (A) the Borrower shall no longer have the option to request LIBOR Rate Loans, Swingline Loans or Letters of Credit, (B) all outstanding LIBOR Rate Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to LIBOR Rate Loans until the end of the applicable Interest Period and thereafter at a rate equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans, (C) all outstanding Base Rate Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum equal to two percent (2%) in excess of the rate (including the Applicable Margin) then applicable to Base Rate Loans or such other Obligations arising hereunder or under any other Loan Document and (D) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by or against the Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(k) Interest Payment and Computation. Interest on each Base Rate Loan shall be due and payable in arrears on the last Business Day of each calendar quarter commencing with the calendar quarter ending December 31, 2014; and interest on each LIBOR Rate Loan shall be due and payable on the last day of each Interest Period applicable thereto, and if such Interest Period extends over three (3) months, at the end of each three (3) month interval during such Interest Period. All computations of interest for Base Rate Loans when the Base Rate is determined by the Prime Rate shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest provided hereunder shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365/366-day year).

(l) Maximum Rate. In no contingency or event whatsoever shall the aggregate of all amounts deemed interest under this Agreement charged or collected pursuant to the terms of this Agreement exceed the highest rate permissible under any Applicable Law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such a court determines that the Lenders have charged or received interest hereunder in excess of the highest applicable rate, the rate in effect hereunder shall automatically be reduced to the maximum rate permitted by Applicable Law and the Lenders shall at the Administrative Agent’s option (i) promptly refund to the Borrower any interest received by the Lenders in excess of the maximum lawful rate or (ii) apply such excess to the principal balance of the Obligations. It is the intent hereof that the Borrower not pay or contract to pay, and that neither the Administrative Agent nor any Lender receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may be paid by the Borrower under Applicable Law.

SECTION 5.2 Notice and Manner of Conversion or Continuation of Loans. Provided that no Default or Event of Default has occurred and is then continuing, the Borrower shall have the option to (a) convert at any time all or any portion of any outstanding Base Rate Loans (other than Swingline Loans) in a principal amount equal to $5,000,000 or any whole multiple of $1,000,000 in excess thereof into one or more LIBOR Rate Loans and (b) upon the expiration of any Interest Period, (i) convert all or any part of its outstanding LIBOR Rate Loans in a principal amount equal to $3,000,000 or a whole multiple of $1,000,000 in excess thereof into Base Rate Loans (other than Swingline Loans) or (ii) continue such LIBOR Rate Loans as LIBOR Rate Loans. Whenever the Borrower desires to convert or continue Loans as provided above, the Borrower shall give the Administrative Agent irrevocable prior written notice in the form attached as Exhibit E (a “Notice of Conversion/Continuation”) not later than 12:00 p.m. (A) on the same Business Day as, in the case of a conversion to a Base Rate Loan, or (B) three (3) Business Days before, in the case of a conversion to, or continuation of, a LIBOR Rate Loan, the day on which a proposed conversion or
continuation of such Loan is to be effective specifying (1) the Loans to be converted or continued, and, in the case of any LIBOR Rate Loan to be converted or continued, the last day of the Interest Period therefor, (2) the effective date of such conversion or continuation (which shall be a Business Day), (3) the principal amount of such Loans to be converted or continued, and (4) the Interest Period to be applicable to such converted or continued LIBOR Rate Loan. If the Borrower fails to give a timely Notice of Conversion/Continuation prior to the end of the Interest Period for any LIBOR Rate Loan, then the applicable LIBOR Rate Loan shall be converted to a Base Rate Loan. Any such automatic conversion to a Base Rate Loan shall be effective as of the last day of the Interest Period then in effect with respect to the applicable LIBOR Rate Loan. If the Borrower requests a conversion to, or continuation of, LIBOR Rate Loans, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swingline Loan may not be converted to a LIBOR Rate Loan. The Administrative Agent shall promptly notify the affected Lenders of such Notice of Conversion/Continuation.

SECTION 5.3 Fees.

(a) Commitment Fee. Commencing on the Closing Date, subject to Section 5.15(a)(iii)(A), the Borrower shall pay to the Administrative Agent, for the account of the Revolving Credit Lenders, a non-refundable commitment fee (the “Commitment Fee”) at a rate per annum equal to the Applicable Margin on the average daily unused portion of the Revolving Credit Commitment of the Revolving Credit Lenders (other than the Defaulting Lenders, if any); provided, that the amount of outstanding Swingline Loans shall not be considered usage of the Revolving Credit Commitment for the purpose of calculating the Commitment Fee. The Commitment Fee shall be payable in arrears on the last Business Day of each calendar quarter during the term of this Agreement commencing with the calendar quarter ending December 31, 2014 and ending on the date upon which all Obligations (other than contingent indemnification obligations not then due) arising under the Revolving Credit Facility shall have been indefeasibly and irrevocably paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Revolving Credit Commitment has been terminated. The Commitment Fee shall be distributed by the Administrative Agent to the Revolving Credit Lenders (other than any Defaulting Lender) pro rata in accordance with such Revolving Credit Lenders’ respective Revolving Credit Commitment Percentages.

(b) Other Fees. The Borrower shall pay to the Arranger and the Administrative Agent for their own respective accounts fees in the amounts and at the times specified in the Engagement Letter. The Borrower shall pay to the Lenders such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified.

SECTION 5.4 Manner of Payment. Each payment by the Borrower on account of the principal of or interest on the Loans or of any fee, commission or other amounts (including the Reimbursement Obligation) payable to the Lenders under this Agreement shall be made not later than 1:00 p.m. on the date specified for payment under this Agreement to the Administrative Agent at the Administrative Agent’s Office for the account of the Lenders entitled to such payment in Dollars, in immediately available funds and shall be made without any set off, counterclaim or deduction whatsoever. Any payment received after such time but before 2:00 p.m. on such day shall be deemed a payment on such date for the purposes of Section 10.1, but for all other purposes shall be deemed to have been made on the next succeeding Business Day. Any payment received after 2:00 p.m. shall be deemed to have been made on the next succeeding Business Day for all purposes. Upon receipt by the Administrative Agent of each such payment, the Administrative Agent shall distribute to each such Lender at its address for notices set forth herein its Revolving Credit Commitment Percentage (or other applicable share as provided herein) of such payment and shall wire advice of the amount of such credit to each Lender. Each payment to the Administrative Agent on account of the principal of or
interest on the Swingline Loans or of any fee, commission or other amounts payable to the Swingline Lender shall be made in like manner, but for the account of the Swingline Lender. Each payment to the Administrative Agent of the Issuing Lender’s fees or L/C Participants’ commissions shall be made in like manner, but for the account of the Issuing Lender or the L/C Participants, as the case may be. Each payment to the Administrative Agent of Administrative Agent’s fees or expenses shall be made for the account of the Administrative Agent and any amount payable to any Lender under Sections 5.9, 5.10, 5.11 or 12.3 shall be paid to the Administrative Agent for the account of the applicable Lender. Subject to the definition of Interest Period, if any payment under this Agreement shall be specified to be made upon a day which is not a Business Day, it shall be made on the next succeeding day which is a Business Day and such extension of time shall in such case be included in computing any interest if payable along with such payment. Notwithstanding the foregoing, if there exists a Defaulting Lender each payment by the Borrower to such Defaulting Lender hereunder shall be applied in accordance with Section 5.15(a)(ii).

SECTION 5.5 Evidence of Indebtedness.

(a) Extensions of Credit. The Extensions of Credit made by each Lender and the Issuing Lender shall be evidenced by one or more accounts or records maintained by such Lender or the Issuing Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender or the Issuing Lender shall be conclusive absent manifest error of the amount of the Extensions of Credit made by the Lenders or the Issuing Lender to the Borrower and its Subsidiaries and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender or the Issuing Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrower shall execute and deliver to such Lender (through the Administrative Agent) a Revolving Credit Note and/or Swingline Note, as applicable, which shall evidence such Lender’s Revolving Credit Loans and/or Swingline Loans, as applicable, in addition to such accounts or records. Each Lender may attach schedules to its Notes and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

(b) Participations. In addition to the accounts and records referred to in subsection (a), each Revolving Credit Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Revolving Credit Lender of participations in Letters of Credit and Swingline Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Revolving Credit Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

SECTION 5.6 Sharing of Payments by Lenders. If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or other obligations hereunder resulting in such Lender’s receiving payment of a proportion of the aggregate amount of its Loans and accrued interest thereon or other such obligations (other than pursuant to Sections 5.9, 5.10, 5.11 or 12.3) greater than its pro rata share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and such other obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them; provided that:

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if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and

the provisions of this paragraph shall not be construed to apply to (A) any payment made by the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in Section 5.14 or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in Swingline Loans and Letters of Credit to any assignee or participant, other than to the Borrower or any of its Subsidiaries or Affiliates (as to which the provisions of this paragraph shall apply).

Each Credit Party consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against each Credit Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of each Credit Party in the amount of such participation.

SECTION 5.7 Administrative Agent’s Clawback.

(a) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender (i) in the case of Base Rate Loans, not later than 1:00 p.m. on the date of any proposed borrowing and (ii) otherwise, prior to the proposed date of any borrowing that such Lender will not make available to the Administrative Agent such Lender’s share of such borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.3(b) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the daily average Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent, then the amount so paid shall constitute such Lender’s Loan included in such borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(b) Payments by the Borrower; Presumptions by Administrative Agent. Unless the Administrative Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders, the Issuing Lender or the Swingline Lender hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders, the Issuing Lender or the Swingline Lender, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, the Issuing Lender or the Swingline Lender, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, Issuing Lender or the Swingline Lender,
with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(c) Nature of Obligations of Lenders Regarding Extensions of Credit. The obligations of the Lenders under this Agreement to make the Loans and issue or participate in Letters of Credit are several and are not joint or joint and several. The failure of any Lender to make available its Revolving Credit Commitment Percentage of any Loan requested by the Borrower shall not relieve it or any other Lender of its obligation, if any, hereunder to make its Revolving Credit Commitment Percentage of such Loan available on the borrowing date, but no Lender shall be responsible for the failure of any other Lender to make its Revolving Credit Commitment Percentage of such Loan available on the borrowing date.

SECTION 5.8 Changed Circumstances

(a) Circumstances Affecting LIBOR Rate Availability. In connection with any request for a LIBOR Rate Loan or a conversion to or continuation thereof, if for any reason (i) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable amount and Interest Period of such Loan, (ii) the Administrative Agent shall determine (which determination shall be conclusive and binding absent manifest error) that reasonable and adequate means do not exist for the ascertaining the LIBOR Rate for such Interest Period with respect to a proposed LIBOR Rate Loan or (iii) the Required Lenders shall determine (which determination shall be conclusive and binding absent manifest error) that the LIBOR Rate does not adequately and fairly reflect the cost to such Lenders of making or maintaining such Loans during such Interest Period, then the Administrative Agent shall promptly give notice thereof to the Borrower. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, the obligation of the Lenders to make LIBOR Rate Loans and the right of the Borrower to convert any Loan to or continue any Loan as a LIBOR Rate Loan shall be suspended, and the Borrower shall either (A) repay in full (or cause to be repaid in full) the then outstanding principal amount of each such LIBOR Rate Loan together with accrued interest thereon (subject to Section 5.1(d)), on the last day of the then current Interest Period applicable to such LIBOR Rate Loan; or (B) convert the then outstanding principal amount of each such LIBOR Rate Loan to a Base Rate Loan as of the last day of such Interest Period.

(b) Laws Affecting LIBOR Rate Availability. If, after the date hereof, the introduction of, or any change in, any Applicable Law or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any of the Lenders (or any of their respective Lending Offices) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, shall make it unlawful or impossible for any of the Lenders (or any of their respective Lending Offices) to honor its obligations hereunder to make or maintain any LIBOR Rate Loan, such Lender shall promptly give notice thereof to the Administrative Agent and the Administrative Agent shall promptly give notice to the Borrower and the other Lenders. Thereafter, until the Administrative Agent notifies the Borrower that such circumstances no longer exist, (i) the obligations of the Lenders to make LIBOR Rate Loans, and the right of the Borrower to convert any Loan to a LIBOR Rate Loan or continue any Loan as a LIBOR Rate Loan shall be suspended and thereafter the Borrower may select only Base Rate Loans and (ii) if any of the Lenders may not lawfully continue to maintain a LIBOR Rate Loan to the end of the then current Interest Period applicable thereto, the applicable Loan shall immediately be converted to a Base Rate Loan for the remainder of such Interest Period.
SECTION 5.9 Indemnity. The Borrower hereby indemnifies each of the Lenders against any loss or expense (including any loss (other than loss of anticipated profit) or expense arising from the liquidation or reemployment of funds obtained by it to maintain a LIBOR Rate Loan or from fees payable to terminate the deposits from which such funds were obtained) which may arise or be attributable to each Lender’s obtaining, liquidating or employing deposits or other funds acquired to effect, fund or maintain any Loan (a) as a consequence of any failure by the Borrower to make any payment when due of any amount due hereunder in connection with a LIBOR Rate Loan, (b) due to any failure of the Borrower to borrow, continue or convert on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation or (c) due to any payment, prepayment or conversion of any LIBOR Rate Loan on a date other than the last day of the Interest Period therefor. The amount of such loss (other than loss of anticipated profit) or expense shall be determined, in the applicable Lender’s sole discretion, based upon the assumption that such Lender funded its Revolving Credit Commitment Percentage of the LIBOR Rate Loans in the London interbank market and using any reasonable attribution or averaging methods which such Lender deems appropriate and practical. A certificate of such Lender setting forth the basis for determining such amount or amounts necessary to compensate such Lender shall be forwarded to the Borrower through the Administrative Agent and shall be conclusively presumed to be correct save for manifest error.

SECTION 5.10 Increased Costs.

(a) Increased Costs Generally. If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or advances, loans or other credit extended or participated in by, any Lender (except any reserve requirement reflected in the LIBOR Rate) or the Issuing Lender;

(ii) subject any Recipient to any Taxes (other than (A) Indemnified Taxes, (B) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes and (C) Connection Income Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) impose on any Lender or the Issuing Lender or the London interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or LIBOR Rate Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender, the Issuing Lender or such other Recipient of making, converting to, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender, the Issuing Lender or such other Recipient of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender, the Issuing Lender or such other Recipient hereunder (whether of principal, interest or any other amount) then, upon written request of such Lender, the Issuing Lender or other Recipient, the Borrower shall promptly pay to any such Lender, the Issuing Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender, the Issuing Lender or other Recipient, as the case may be, for such additional costs incurred or reduction suffered.

(b) Capital Requirements. If any Lender or the Issuing Lender determines that any Change in Law affecting such Lender or the Issuing Lender or any lending office of such Lender or such Lender’s or the Issuing Lender’s holding company, if any, regarding capital or liquidity requirements, has or would have the effect of reducing the rate of return on such Lender’s or the Issuing Lender’s capital or on the capital of
such Lender’s or the Issuing Lender’s holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitment of such Lender or the Loans made by, or participations in Letters of Credit or Swingline Loans held by, such Lender, or the Letters of Credit issued by the Issuing Lender, to a level below that which such Lender or the Issuing Lender or such Lender’s or the Issuing Lender’s holding company could have achieved but for such Change in Law (taking into consideration such Lender’s or the Issuing Lender’s policies and the policies of such Lender’s or the Issuing Lender’s holding company with respect to capital adequacy), then from time to time upon written request of such Lender or the Issuing Lender the Borrower shall promptly pay to such Lender or the Issuing Lender, as the case may be, such additional amount or amounts as will compensate such Lender or the Issuing Lender or such Lender’s or the Issuing Lender’s holding company for any such reduction suffered.

(c) **Certificates for Reimbursement.** A certificate of a Lender, or the Issuing Lender or such other Recipient setting forth the amount or amounts necessary to compensate such Lender or the Issuing Lender, such other Recipient or any of their respective holding companies, as the case may be, as specified in paragraph (a) or (b) of this Section and delivered to the Borrower, shall be conclusive absent manifest error. The Borrower shall pay such Lender or the Issuing Lender or such other Recipient, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or the Issuing Lender or such other Recipient to demand compensation pursuant to this Section shall not constitute a waiver of such Lender’s or the Issuing Lender’s or such other Recipient’s right to demand such compensation; **provided** that the Borrower shall not be required to compensate any Lender or the Issuing Lender or any other Recipient pursuant to this Section for any increased costs incurred or reductions suffered more than one hundred eighty (180) days prior to the date that such Lender or the Issuing Lender or such other Recipient, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions, and of such Lender’s or the Issuing Lender’s or such other Recipient’s intention to claim compensation therefor (except that if the Change in Law giving rise to such increased costs or reductions is retroactive, then the one hundred eighty (180) day period referred to above shall be extended to include the period of retroactive effect thereof).

**SECTION 5.11 Taxes.**

(a) **Defined Terms.** For purposes of this Section 5.11, the term “Lender” includes the Issuing Lender and the term “Applicable Law” includes FATCA.

(b) **Payments Free of Taxes.** Any and all payments by or on account of any obligation of any Credit Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If any Applicable Law (as determined in the good faith discretion of an applicable Withholding Agent) requires the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with Applicable Law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Credit Party shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section), the applicable Recipient receives an amount equal to the sum it would have received had no such deduction or withholding been made.

(c) **Payment of Other Taxes by the Credit Parties.** The Credit Parties shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.
(d) **Indemnification by the Credit Parties.** The Credit Parties shall jointly and severally indemnify each Recipient, within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrower by a Recipient (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Recipient, shall be conclusive absent manifest error.

(e) **Indemnification by the Lenders.** Each Lender shall severally indemnify the Administrative Agent, within ten (10) days after demand therefor, for (i) any Indemnified Taxes attributable to such Lender (but only to the extent that any Credit Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Credit Parties to do so), (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.9(d) relating to the maintenance of a Participant Register and (iii) any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (e).

(f) **Evidence of Payments.** As soon as practicable after any payment of Taxes by any Credit Party to a Governmental Authority pursuant to this Section 5.11, such Credit Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(g) **Status of Lenders.**

   (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.11(g)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

   (ii) Without limiting the generality of the foregoing:
(A) Any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the “interest” article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN or W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit II-1 to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) executed copies of IRS Form W-8BEN or W-8BEN-E;

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN, a U.S. Tax Compliance Certificate substantially in the form of Exhibit II-2 or Exhibit II-3, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit II-4 on behalf of each such direct and indirect partner;

(C) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States
federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender’s obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), “FATCA” shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(h) Treatment of Certain Refunds. If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.11 (including by the payment of additional amounts pursuant to this Section 5.11), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (h) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (h), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (h) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(i) Survival. Each party’s obligations under this Section 5.11 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Revolving Credit Commitments and the repayment, satisfaction or discharge of all obligations under any Loan Document.

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SECTION 5.12 Mitigation Obligations; Replacement of Lenders

(a) Designation of a Different Lending Office. If any Lender requests compensation under Section 5.10, or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, then such Lender shall, at the request of the Borrower, use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.10 or Section 5.11, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) Replacement of Lenders. If any Lender requests compensation under Section 5.10, or if the Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 5.11, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with Section 5.12(a), or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 12.9), all of its interests, rights (other than its existing rights to payments pursuant to Section 5.10 or Section 5.11) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); provided that:

(i) the Borrower shall have paid to the Administrative Agent the assignment fee (if any) specified in Section 12.9;

(ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in Letters of Credit, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 5.9) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(iii) in the case of any such assignment resulting from a claim for compensation under Section 5.10 or payments required to be made pursuant to Section 5.11, such assignment will result in a reduction in such compensation or payments thereafter;

(iv) such assignment does not conflict with Applicable Law; and

(v) in the case of any assignment resulting from a Lender becoming a Non-Consenting Lender, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.
SECTION 5.14  Cash Collateral. At any time that there shall exist a Defaulting Lender, within one Business Day following the written request of the Administrative Agent, the Issuing Lender (with a copy to the Administrative Agent) or the Swingline Lender (with a copy to the Administrative Agent), the Borrower shall Cash Collateralize the Fronting Exposure of the Issuing Lender and/or the Swingline Lender, as applicable, with respect to such Defaulting Lender (determined after giving effect to Section 5.15(a)(iv) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the Minimum Collateral Amount.

(a) Grant of Security Interest. The Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to the Administrative Agent, for the benefit of the Issuing Lender and the Swingline Lender, and agrees to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lender’s obligation to fund participations in respect of L/C Obligations and Swingline Loans, to be applied pursuant to subsection (b) below. If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent, the Issuing Lender and the Swingline Lender as herein provided (other than, to the extent agreed by the Administrative Agent in its reasonable discretion, Permitted Liens in favor of a depository bank), or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(b) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section 5.14 or Section 5.15 in respect of Letters of Credit and Swingline Loans shall be applied to the satisfaction of the Defaulting Lender’s obligation to fund participations in respect of L/C Obligations and Swingline Loans (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(c) Termination of Requirement. Cash Collateral (or the appropriate portion thereof) provided to reduce the Fronting Exposure of the Issuing Lender and/or the Swingline Lender, as applicable, shall no longer be required to be held as Cash Collateral pursuant to this Section 5.14 following (i) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (ii) the determination by the Administrative Agent, the Issuing Lender and the Swingline Lender that there exists excess Cash Collateral; provided that, subject to Section 5.15, the Person providing Cash Collateral, the Issuing Lender and the Swingline Lender may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure or other obligations; and provided further that to the extent that such Cash Collateral was provided by the Borrower, such Cash Collateral shall remain subject to the security interest granted pursuant to the Loan Documents.

SECTION 5.15  Defaulting Lenders.

(a) Defaulting Lender Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(i) Waivers and Amendments. Such Defaulting Lender’s right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders and Section 12.2.
(ii) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article X or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 12.4 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to the Issuing Lender or the Swingline Lender hereunder; third, to Cash Collateralize the Fronting Exposure of the Issuing Lender and the Swingline Lender with respect to such Defaulting Lender in accordance with Section 5.14; fourth, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan or funded participation in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (A) satisfy such Defaulting Lender’s potential future funding obligations with respect to Loans and funded participations under this Agreement and (B) Cash Collateralize the Issuing Lender’s future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Swingline Loans issued under this Agreement, in accordance with Section 5.14; sixth, to the payment of any amounts owing to the Lenders, the Issuing Lender or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Lender or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender’s breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (1) such payment is a payment of the principal amount of any Loans or funded participations in Letters of Credit or Swingline Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (2) such Loans were made or the related Letters of Credit or Swingline Loans were issued at a time when the conditions set forth in Section 6.2 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and funded participations in Letters of Credit or Swingline Loans owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or funded participations in Letters of Credit or Swingline Loans owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Revolving Credit Commitments under the applicable Revolving Credit Facility without giving effect to Section 5.15(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 5.15(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees.

(A) No Defaulting Lender shall be entitled to receive any Commitment Fee for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).
(B) Each Defaulting Lender shall be entitled to receive letter of credit commissions pursuant to Section 3.3 for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 5.14.

(C) With respect to any Commitment Fee or letter of credit commission not required to be paid to any Defaulting Lender pursuant to clause (A) or (B) above, the Borrower shall (1) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender’s participation in L/C Obligations or Swingline Loans that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (2) pay to the Issuing Lender and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to the Issuing Lender’s or Swingline Lender’s Fronting Exposure to such Defaulting Lender, and (3) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender’s participation in L/C Obligations and Swingline Loans shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (calculated without regard to such Defaulting Lender’s Revolving Credit Commitment) but only to the extent that such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender’s Revolving Credit Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender’s increased exposure following such reallocation.

(v) Cash Collateral, Repayment of Swingline Loans. If the reallocation described in clause (iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, repay Swingline Loans in an amount equal to the Swingline Lenders’ Fronting Exposure and (y) second, Cash Collateralize the Issuing Lender’s Fronting Exposure in accordance with the procedures set forth in Section 5.14.

(b) Defaulting Lender Cure. If the Borrower, the Administrative Agent, the Issuing Lender and the Swingline Lender agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), such Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with the Revolving Credit Commitments under the applicable Credit Facility (without giving effect to Section 5.15(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender.
ARTICLE VI

CONDITIONS OF CLOSING AND BORROWING

SECTION 6.1 Conditions to Closing and Initial Extensions of Credit. The obligation of the Lenders to close this Agreement and to make the initial Loans or issue or participate in the initial Letter of Credit, if any, is subject to the satisfaction (or waiver) of each of the following conditions (other than those items set forth on Schedule 8.18 to the Disclosure Letter):

(f) Executed Loan Documents. This Agreement, a Revolving Credit Note in favor of each Revolving Credit Lender requesting a Revolving Credit Note, a Swingline Note in favor of the Swingline Lender (if requested thereby), the Security Documents and the Guaranty Agreement, together with any other applicable Loan Documents, shall have been duly authorized, executed and delivered to the Administrative Agent by the parties thereto, shall be in full force and effect and no Default or Event of Default shall exist hereunder or thereunder.

(g) Closing Certificates; Etc. The Administrative Agent shall have received each of the following in form and substance reasonably satisfactory to the Administrative Agent:

(i) Officer’s Certificate. A certificate from a Responsible Officer of the Borrower to the effect that (A) all representations and warranties of the Credit Parties contained in this Agreement and the other Loan Documents are true, correct and complete in all material respects (except to the extent any such representation and warranty is qualified by materiality or reference to Material Adverse Effect, in which case, such representation and warranty shall be true, correct and complete in all respects); (B) none of the Credit Parties is in violation of any of the covenants contained in this Agreement and the other Loan Documents; (C) after giving effect to the Transactions, no Default or Event of Default has occurred and is continuing; (D) since December 31, 2013, no event has occurred or condition arisen, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect; and (E) each of the Credit Parties, as applicable, has satisfied each of the conditions set forth in Section 6.1 and Section 6.2.

(ii) Certificate of Secretary of each Credit Party. A certificate of a Responsible Officer of each Credit Party certifying as to the incumbency and genuineness of the signature of each officer of such Credit Party executing Loan Documents to which it is a party and certifying that attached thereto is a true, correct and complete copy of (A) the articles or certificate of incorporation or formation (or equivalent), as applicable, of such Credit Party and all amendments thereto, certified as of a recent date by the appropriate Governmental Authority in its jurisdiction of incorporation, organization or formation (or equivalent), as applicable, (B) the bylaws or other governing document of such Credit Party as in effect on the Closing Date, and (C) resolutions duly adopted by the board of directors (or other governing body) of such Credit Party authorizing and approving the transactions contemplated hereunder and the execution, delivery and performance of this Agreement and the other Loan Documents to which it is a party.

(iii) Certificates of Good Standing. Certificates as of a recent date of the good standing of each Credit Party under the laws of its jurisdiction of incorporation, organization or formation (or equivalent), as applicable.
(iv) Opinions of Counsel. Opinions of counsel to the Credit Parties addressed to the Administrative Agent and the Lenders with respect to the Credit Parties, the Loan Documents and such other matters as the Administrative Agent shall reasonably request.

(h) Personal Property Collateral.

(i) Filings and Recordings. The Administrative Agent shall have received all filings and recordations that are necessary to perfect the security interests of the Administrative Agent, on behalf of the Secured Parties, in the Collateral and the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that upon such filings and recordations such security interests constitute valid and perfected first priority Liens thereon (subject to Permitted Liens).

(ii) Pledged Collateral. The Administrative Agent shall have received (A) original stock certificates or other certificates evidencing the certificated Equity Interests pledged pursuant to the Security Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note pledged pursuant to the Security Documents together with an undated allonge for each such promissory note duly executed in blank by the holder thereof; provided that no pledge shall be required of more than sixty-five percent (65%) of the total outstanding voting stock of a Foreign Subsidiary or Foreign Subsidiary Holding Company.

(iii) Lien Search. The Administrative Agent shall have received the results of a Lien search (including a search as to bankruptcy, tax and intellectual property matters), in form and substance reasonably satisfactory thereto, made against the Credit Parties under the Uniform Commercial Code as in effect in each jurisdiction in which filings or recordations under the Uniform Commercial Code should be made to evidence or perfect security interests in all assets of such Credit Party, indicating among other things that the assets of each such Credit Party are free and clear of any Lien (except for certain Permitted Liens).

(iv) Property and Liability Insurance. The Administrative Agent shall have received, in each case in form and substance reasonably satisfactory to the Administrative Agent, evidence of property and liability insurance covering each Credit Party, evidence of payment of all insurance premiums for the current policy year of each policy (with appropriate endorsements naming the Administrative Agent as lender’s loss payee on all policies for property hazard insurance and as additional insured on all policies for liability insurance), and if requested by the Administrative Agent, copies of such insurance policies.

(v) Other Collateral Documentation. The Administrative Agent shall have received any documents reasonably requested thereby or as required by the terms of the Security Documents to evidence its security interest in the Collateral (including, without limitation, any landlord waivers or collateral access agreements, control agreements and filings evidencing a security interest in any intellectual property included in the Collateral.

(i) Consents; Defaults.

(iv) Governmental and Third Party Approvals. The Credit Parties shall have received all material governmental, shareholder and third party consents and approvals necessary in connection with the transactions contemplated by this Agreement and the other Loan Documents and all applicable waiting periods shall have expired without any action being taken by any Person.

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that could reasonably be expected to restrain, prevent or impose any material adverse conditions on any of the Credit Parties or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could reasonably be expected to have such effect.

(v) No Injunction, Etc. No action, suit, proceeding or investigation shall be pending or, to the knowledge of the Borrower, threatened in writing in any court or before any arbitrator or Governmental Authority that could reasonably be expected to have a Material Adverse Effect.

(j) Financial Matters.

(i) Financial Statements. The Administrative Agent shall have received (A) the audited Consolidated balance sheet of the Borrower and its Subsidiaries as of December 31, 2013 and the related audited statements of income and retained earnings and cash flows for the Fiscal Year then ended and (B) unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of June 30, 2014 and related unaudited interim statements of income and retained earnings for the fiscal quarter then ended.

(ii) Financial Projections. The Administrative Agent shall have received pro forma Consolidated financial statements for the Borrower and its Subsidiaries, and projections prepared by management of the Borrower, of balance sheets, income statements and cash flow statements on a quarterly basis for the first year following the Closing Date and on an annual basis for each year thereafter during the term of the Credit Facility, which shall not be materially inconsistent with any financial information or projections previously delivered to the Administrative Agent.

(iii) Solvency Certificate. The Borrower shall have delivered to the Administrative Agent a certificate, in form and substance reasonably satisfactory to the Administrative Agent, and certified as accurate by the chief financial officer of the Borrower, that on a pro forma basis after giving effect to the Transactions, the Credit Parties, taken as a whole, are Solvent.

(iv) Payment at Closing. The Borrower shall have paid or made arrangements to pay contemporaneously with closing (A) to the Administrative Agent, the Arranger and the Lenders the fees set forth or referenced in Section 5.3 and any other accrued and unpaid fees or commissions due hereunder, (B) all reasonable and documented fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) and (C) to any other Person such amount as may be due thereto in connection with the transactions contemplated hereby, including all taxes, fees and other charges in connection with the execution, delivery, recording, filing and registration of any of the Loan Documents.

(k) Revolving Credit Facility Availability. After giving effect to all Extensions of Credit occurring on the Closing Date, the Borrower shall have Liquidity of not less than $50,000,000.

(l) Miscellaneous.

(vi) Notice of Account Designation. The Administrative Agent shall have received a Notice of Account Designation specifying the account or accounts to which the proceeds of any Loans made on or after the Closing Date are to be disbursed.

(vii) Existing Indebtedness. All existing Indebtedness of the Borrower and its Subsidiaries (including Indebtedness under the Existing Credit Agreement but excluding
Indebtedness permitted pursuant to Section 9.1) shall be repaid in full, all commitments (if any) in respect thereof shall have been terminated and all guarantees therefor and security therefor shall be released, and the Administrative Agent shall have received pay-off letters in form and substance reasonably satisfactory to it evidencing such repayment, termination and release.

(viii) **PATRIOT Act, etc.** The Borrower and each of the Subsidiary Guarantors shall have provided to the Administrative Agent and the Lenders at least five Business Days prior to the Closing Date the documentation and other information requested by the Administrative Agent in order to comply with requirements of the PATRIOT Act, applicable “know your customer” and anti-money laundering rules and regulations.

(ix) **Other Documents.** All opinions, certificates and other instruments and all proceedings in connection with the transactions contemplated by this Agreement shall be reasonably satisfactory in form and substance to the Administrative Agent. The Administrative Agent shall have received copies of all other documents, certificates and instruments reasonably requested thereby, with respect to the transactions contemplated by this Agreement.

Without limiting the generality of the provisions of the last paragraph of Section 11.3, for purposes of determining compliance with the conditions specified in this Section 6.1, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**SECTION 6.2 Conditions to All Extensions of Credit.** The obligations of the Lenders to make or participate in any Extensions of Credit (including the initial Extension of Credit), and/or the Issuing Lender to issue or extend any Letter of Credit are subject to the satisfaction of the following conditions precedent on the relevant borrowing, issuance or extension date:

(c) **Continuation of Representations and Warranties.** The representations and warranties contained in this Agreement and the other Loan Documents shall be true and correct in all material respects, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects, on and as of such borrowing, issuance or extension date with the same effect as if made on and as of such date (except for any such representation and warranty that by its terms is made only as of an earlier date, which representation and warranty shall remain true and correct in all material respects as of such earlier date, except for any representation and warranty that is qualified by materiality or reference to Material Adverse Effect, which such representation and warranty shall be true and correct in all respects as of such earlier date).

(d) **No Existing Default.** No Default or Event of Default shall have occurred and be continuing (i) on the borrowing date with respect to such Loan or after giving effect to the Loans to be made on such date or (ii) on the issuance or extension date with respect to such Letter of Credit or after giving effect to the issuance or extension of such Letter of Credit on such date.

(e) **Notices.** The Administrative Agent shall have received a Notice of Borrowing or Letter of Credit Application, as applicable, from the Borrower in accordance with Section 2.3(a) or Section 3.2, as applicable.

(f) **New Swingline Loans/Letters of Credit.** So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have
no Fronting Exposure after giving effect to such Swingline Loan and (ii) the Issuing Lender shall not be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES OF THE CREDIT PARTIES

To induce the Administrative Agent and Lenders to enter into this Agreement and to induce the Lenders to make Extensions of Credit, the Credit Parties hereby represent and warrant to the Administrative Agent and the Lenders both before and after giving effect to the transactions contemplated hereunder, which representations and warranties shall be deemed made on the Closing Date and as otherwise set forth in Section 6.2, that:

SECTION 7.1 Organization; Power; Qualification. Each Credit Party and each Subsidiary thereof (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the power and authority to own its Properties and to carry on its business as now being and hereafter proposed to be conducted and (c) is duly qualified and authorized to do business in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification and authorization except in jurisdictions where the failure to be so qualified or in good standing could not reasonably be expected to result in a Material Adverse Effect. The jurisdictions in which each Credit Party and each Subsidiary thereof are organized and qualified to do business as of the Closing Date are described on Schedule 7.1 to the Disclosure Letter.

SECTION 7.2 Ownership. Each Subsidiary of each Credit Party as of the Closing Date is listed on Schedule 7.2 to the Disclosure Letter. As of the Closing Date, the capitalization of each Credit Party (other than the Borrower) and its Subsidiaries consists of the number of shares, authorized, issued and outstanding, of such classes and series, with or without par value, described on Schedule 7.2 to the Disclosure Letter. All outstanding shares have been duly authorized and validly issued and are fully paid and nonassessable. As of the Closing Date, no outstanding shares are subject to any preemptive or similar rights, except as described in Schedule 7.2 to the Disclosure Letter. As of the Closing Date, there are no outstanding stock purchase warrants, subscriptions, options, securities, instruments or other rights of any type or nature whatsoever, which are convertible into, exchangeable for or otherwise provide for or require the issuance of Equity Interests of any Credit Party or any Subsidiary thereof, except as described on Schedule 7.2 to the Disclosure Letter.

SECTION 7.3 Authorization; Enforceability. Each Credit Party and each Subsidiary thereof has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement and each of the other Loan Documents to which it is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents to which each such Person is a party in accordance with their respective terms. This Agreement and each of the other Loan Documents have been duly executed and delivered by the duly authorized officers of each Credit Party and each Subsidiary thereof that is a party thereto, and each such document constitutes the legal, valid and binding obligation of each Credit Party and each Subsidiary thereof that is a party thereto, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect which affect the enforcement of creditors’ rights in general and the availability of equitable remedies.

SECTION 7.4 Compliance of Agreement, Loan Documents and Borrowing with Laws, Etc. The execution, delivery and performance by each Credit Party and each Subsidiary thereof of the Loan Documents to which each such Person is a party, in accordance with their respective terms, the Extensions
of Credit hereunder and the transactions contemplated hereby or thereby do not and will not, by the passage of time, the giving of notice or otherwise, (a) require any Governmental Approval or violate any Applicable Law relating to any Credit Party or any Subsidiary thereof where the failure to obtain such Governmental Approval or such violation could reasonably be expected to have a Material Adverse Effect, (b) conflict with, result in a breach of or constitute a default under any articles of incorporation, bylaws or other organizational documents of any Credit Party or any Subsidiary thereof, (c) conflict with, result in a breach of or constitute a default under any Material Contract or any Governmental Approval relating to such Person, which could, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (d) result in or require the creation or imposition of any Lien upon or with respect to any property now owned or hereafter acquired by such Person other than Permitted Liens or (e) require any consent or authorization of, filing with, or other act in respect of, an arbitrator or Governmental Authority and no consent of any other Person is required in connection with the execution, delivery, performance, validity or enforceability of this Agreement other than (i) consents, authorizations, filings or other acts or consents for which the failure to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (ii) consents or filings under the UCC or with respect to the Collateral to be made, or otherwise delivered to Administrative Agent for filing and/or recordation, as of the Closing Date, (iii) filings with the United States Copyright Office and/or the United States Patent and Trademark Office and (iv) consents and authorizations that have been obtained and are in full force and effect.

SECTION 7.5 Compliance with Law; Governmental Approvals. Each Credit Party and each Subsidiary thereof (a) has all Governmental Approvals required by any Applicable Law for it to conduct its business, each of which is in full force and effect, is final and not subject to review on appeal and is not the subject of any pending or, to its knowledge, threatened (in writing) attack by direct or collateral proceeding, (b) is in compliance with each Governmental Approval applicable to it and in compliance with all other Applicable Laws relating to it or any of its respective properties and (c) has timely filed all material reports, documents and other materials required to be filed by it under all Applicable Laws with any Governmental Authority and has retained all material records and documents required to be retained by it under Applicable Law except in each case (a), (b) or (c) where the failure to have, comply or file could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.6 Tax Returns and Payments. Each Credit Party and each Subsidiary thereof has duly filed or caused to be filed all federal and state income tax returns and all other material tax returns required by Applicable Law to be filed, and has paid, or made adequate provision for the payment of, all federal and state income taxes and all other material taxes, assessments and governmental charges or levies upon it and its property, income, profits and assets which are due and payable (other than any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party or Subsidiary). Such returns accurately reflect in all material respects all liability for taxes of any Credit Party or any Subsidiary thereof for the periods covered thereby. As of the Closing Date, except as set forth on Schedule 7.6 to the Disclosure Letter, there is no ongoing audit or examination or, to its knowledge, other investigation by any Governmental Authority of any material tax liability of any Credit Party or any Subsidiary thereof. No Governmental Authority has asserted any Lien or other claim against any Credit Party or any Subsidiary thereof with respect to material unpaid taxes which has not been discharged or resolved (other than (a) any amount the validity of which is currently being contested in good faith by appropriate proceedings and with respect to which reserves in conformity with GAAP have been provided for on the books of the relevant Credit Party and (b) Permitted Liens).

SECTION 7.7 Intellectual Property Matters. Each Credit Party and each Subsidiary thereof owns or possesses rights to use all franchises, licenses, copyrights, copyright applications, patents, patent
rights or licenses, patent applications, trademarks, trademark rights, service mark, service mark rights, trade names, trade name rights, copyrights and other rights with respect to the foregoing which are material and reasonably necessary to conduct its business. No event has occurred which permits, or after notice or lapse of time or both would permit, the revocation or termination of any such rights which are material and reasonably necessary to conduct its business, and to the knowledge of any Credit Party, no Credit Party nor any Subsidiary thereof is liable to any Person for infringement under Applicable Law with respect to any such rights which are material and reasonably necessary to conduct its business as a result of its business operations.

SECTION 7.8 Environmental Matters.

(e) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, the real properties owned, leased or operated by each Credit Party and each Subsidiary thereof now or, to the knowledge of any Credit Party, in the past do not contain, and to their knowledge have not previously contained, any Hazardous Materials in amounts or concentrations which constitute or constituted a violation of applicable Environmental Laws;

(f) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, to its knowledge, each Credit Party and each Subsidiary thereof and such real properties owned, leased or operated by each Credit Party and each Subsidiary thereof and all operations conducted in connection therewith by the Credit Parties or their respective Subsidiaries are in compliance, and have been in compliance, with all applicable Environmental Laws, and there is no contamination at, under or about such real properties or such operations which could interfere with the continued operation of such real properties or impair the fair saleable value thereof;

(g) No Credit Party nor any Subsidiary thereof has received any notice of violation, alleged violation, non-compliance, liability or potential liability regarding environmental matters, Hazardous Materials, or compliance with Environmental Laws that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, nor does any Credit Party or any Subsidiary thereof have knowledge or reason to believe that any such notice will be received or is being threatened in writing;

(h) Except as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, to its knowledge, Hazardous Materials have not been transported or disposed of to or from the real properties owned, leased or operated by any Credit Party or any Subsidiary thereof in violation of, or in a manner or to a location which could give rise to liability under, Environmental Laws, nor have any Hazardous Materials been generated, treated, stored or disposed of at, on or under any of such properties in violation of, or in a manner that could give rise to liability under, any applicable Environmental Laws;

(i) No judicial proceedings or governmental or administrative action is pending, or, to the knowledge of the Borrower, threatened in writing, under any Environmental Law to which any Credit Party or any Subsidiary thereof is or will be named as a potentially responsible party, nor are there any consent decrees or other decrees, consent orders, administrative orders or other orders, or other administrative or judicial requirements outstanding under any applicable Environmental Law with respect to any Credit Party, any Subsidiary thereof, with respect to any real property owned, leased or operated by any Credit Party or any Subsidiary thereof or operations conducted in connection therewith that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect; and

(j) There has been no release, or to its knowledge, threat of release, of Hazardous Materials at or from real properties owned, leased or operated by any Credit Party or any Subsidiary, now or in the past,
in violation of or in amounts or in a manner that could give rise to liability under applicable Environmental Laws that could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect.

SECTION 7.9 Employee Benefit Matters.

(j) Each Credit Party and each ERISA Affiliate is in compliance with all applicable provisions of ERISA, the Code and the regulations published thereunder with respect to all Employee Benefit Plans except for any required amendments for which the remedial amendment period as defined in Section 401(b) of the Code has not yet expired and except where a failure to so comply could not reasonably be expected to have a Material Adverse Effect. No liability has been incurred by any Credit Party or any ERISA Affiliate which remains unsatisfied for any taxes or penalties assessed with respect to any Employee Benefit Plan or any Multiemployer Plan except for a liability that could not reasonably be expected to have a Material Adverse Effect;

(k) As of the Closing Date, no Pension Plan has been terminated, nor has any Pension Plan become subject to funding based benefit restrictions under Section 436 of the Code, nor has any funding waiver from the IRS been received or requested with respect to any Pension Plan, nor has any Credit Party or any ERISA Affiliate failed to make any contributions or to pay any amounts due and owing as required by Sections 412 or 430 of the Code, Section 302 of ERISA or the terms of any Pension Plan on or prior to the due dates of such contributions under Sections 412 or 430 of the Code or Section 302 of ERISA, nor has there been any event requiring any disclosure under Section 4041(c)(3)(C) or 4063(a) of ERISA with respect to any Pension Plan;

(l) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no Credit Party nor any ERISA Affiliate has: (i) engaged in a nonexempt prohibited transaction described in Section 406 of the ERISA or Section 4975 of the Code, (ii) incurred any liability to the PBGC which remains outstanding other than the payment of premiums and there are no premium payments which are due and unpaid, (iii) failed to make a required contribution or payment to a Multiemployer Plan, or (iv) failed to make a required installment or other required payment under Sections 412 or 430 of the Code;

(m) No Termination Event has occurred or is reasonably expected to occur;

(n) Except where the failure of any of the following representations to be correct could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect, no proceeding, claim (other than a benefits claim in the ordinary course of business), lawsuit and/or investigation is existing or, to its knowledge, threatened in writing concerning or involving (i) any employee welfare benefit plan (as defined in Section 3(1) of ERISA) currently maintained or contributed to by any Credit Party or any ERISA Affiliate, (ii) any Pension Plan or (iii) any Multiemployer Plan.

SECTION 7.10 Margin Stock. No Credit Party nor any Subsidiary thereof is engaged principally or as one of its activities in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” (as each such term is defined or used, directly or indirectly, in Regulation U of the Board of Governors of the Federal Reserve System). No part of the proceeds of any of the Loans or Letters of Credit will be used for purchasing or carrying margin stock or for any purpose which violates, or which would be inconsistent with, the provisions of Regulation T, U or X of such Board of Governors.

SECTION 7.11 Government Regulation. No Credit Party nor any Subsidiary thereof is an “investment company” or a company “controlled” by an “investment company” (as each such term is defined or used in the Investment Company Act of 1940) and no Credit Party nor any Subsidiary thereof is, or after
giving effect to any Extension of Credit will be, subject to regulation under the Interstate Commerce Act, or any other Applicable Law, in each case which limits its ability to incur or consummate the transactions contemplated hereby.

SECTION 7.12 Material Contracts. As of the Closing Date, no Credit Party nor any Subsidiary thereof (nor, to its knowledge, any other party thereto) is in breach of or in default under any Material Contract in any material respect.

SECTION 7.13 Employee Relations. As of the Closing Date, no Credit Party or any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 7.13 to the Disclosure Letter. The Borrower knows of no pending, threatened in writing or contemplated strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 7.14 Financial Statements. The audited and unaudited financial statements delivered pursuant to Section 6.1(e)(i) are complete and correct in all material respects and fairly present in all material respects on a Consolidated basis the assets, liabilities and financial position of the Borrower and its Subsidiaries as at such dates, and the results of the operations and changes of financial position for the periods then ended (other than customary year-end adjustments for unaudited financial statements and the absence of footnotes from unaudited financial statements). All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP. The pro forma projections delivered pursuant to Section 6.1(e)(ii) were prepared in good faith on the basis of the assumptions stated therein, which assumptions are believed by the Borrower to be reasonable in light of then existing conditions except that such financial projections shall be subject to normal year end closing and audit adjustments and the absence of footnote disclosures (it being recognized by the Lenders that projections are not to be viewed as facts and that the actual results during the period or periods covered by such projections may vary from such projections and such variations could be material).

SECTION 7.15 No Material Adverse Change. Since December 31, 2013, no event has occurred or condition arisen that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 7.16 Solvency. The Credit Parties, taken as a whole, are Solvent.

SECTION 7.17 Title to Properties. As of the Closing Date, the real property listed on Schedule 7.17 to the Disclosure Letter constitutes all of the real property that is owned, leased or subleased by any Credit Party or any of its Subsidiaries. Each Credit Party and each Subsidiary thereof has such title to the real property owned or leasehold interests leased by it as is necessary or desirable to the conduct of its business and valid and legal title to all of its personal property and assets, except those which have been disposed of by the Credit Parties and their Subsidiaries subsequent to such date which dispositions have been in the ordinary course of business or as otherwise expressly permitted hereunder and except where the failure to have such title, could not reasonably be expected to have a Material Adverse Effect.

SECTION 7.18 Litigation. Except for matters existing on the Closing Date and set forth on Schedule 7.18 to the Disclosure Letter, there are no actions, suits or proceedings pending nor, to its knowledge, threatened in writing against or in any other way relating adversely to or affecting any Credit Party or any Subsidiary thereof or any of their respective properties in any court or before any arbitrator of any kind or before or by any Governmental Authority that could reasonably be expected to have a Material Adverse Effect.
SECTION 7.19  Anti-Corruption Laws and Sanctions. None of (a) the Borrower, any Subsidiary or to the knowledge of the Borrower or such Subsidiary any of their respective directors, officers or employees, or (b) to the knowledge of the Borrower, any agent of the Borrower or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person or currently the subject or target of any Sanctions.

SECTION 7.20  Disclosure. No financial statement, material report, material certificate or other written material information (other than projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, other forward-looking information and information of a general or economic or industry specific nature) furnished by or on behalf of any Credit Party or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished), taken together as a whole with Borrower’s filings with the SEC, as of the date furnished, contains any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, such information was prepared in good faith based upon assumptions believed by the Borrower to be reasonable at the time (it being recognized by the Lenders that projections are not to be viewed as facts and that the actual results during the period or periods covered by such projections may vary from such projections or estimates and such variations could be material).

SECTION 7.21  Leases. The Borrower and/or its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, except to the extent being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP, all of such material leases are valid and subsisting and no material default by the Borrower or its Subsidiaries, as applicable, exists under any of them.

SECTION 7.22  Credit Parties. Except for any Subsidiary of the Borrower that is an Excluded Subsidiary, or an Immaterial Subsidiary that is not required to become a Credit Party pursuant to Section 8.13, each Domestic Subsidiary of the Borrower is a Credit Party to the extent required by Section 8.13.

SECTION 7.23  Existing Obligations Pertaining to Acquisitions. Set forth on Schedule 7.23 to the Disclosure Letter is a true and complete list of all payment obligations, contingent or otherwise, owing by any Credit Party pursuant to any Acquisition consummated prior to the Closing Date including, without limitation, any Earn-outs, Holdbacks and principal payments in respect of Indebtedness, and such Schedule accurately sets forth the aggregate amount of each such obligation owing as of the Closing Date.

ARTICLE VIII
AFFIRMATIVE COVENANTS

Until all of the Obligations (other than contingent indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Revolving Credit Commitments terminated, each Credit Party will, and will cause each of its Subsidiaries to:

SECTION 8.1  Financial Statements and Budgets. Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):
(f) **Annual Financial Statements.** As soon as available and in any event within one hundred twenty (120) days (or, if earlier, on the date of any required public filing thereof after giving effect to any extension permitted by the SEC) after the end of each Fiscal Year (commencing with the Fiscal Year ended December 31, 2014), an audited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such Fiscal Year and audited Consolidated statements of income, retained earnings and cash flows including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the preceding Fiscal Year and prepared in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the year. Such annual financial statements shall be audited by an independent certified public accounting firm of recognized national standing or otherwise reasonably acceptable to the Administrative Agent, and accompanied by a report and opinion thereon by such certified public accountants prepared in accordance with generally accepted auditing standards that is not subject to any “going concern” or similar qualification or exception or any qualification as to the scope of such audit (other than a qualification related solely to the maturity of the Loans in the 15-month period following such report).

(g) **Quarterly Financial Statements.** As soon as available and in any event within forty-five (45) days (or, if earlier, on the date of any required public filing thereof after giving effect to any extension permitted by the SEC) after the end of the first three fiscal quarters of each Fiscal Year (commencing with the fiscal quarter ended September 30, 2014), an unaudited Consolidated balance sheet of the Borrower and its Subsidiaries as of the close of such fiscal quarter and unaudited Consolidated statements of income, retained earnings and cash flows, including the notes thereto, all in reasonable detail setting forth in comparative form the corresponding figures as of the end of and for the corresponding period in the preceding Fiscal Year and prepared by the Borrower in accordance with GAAP and, if applicable, containing disclosure of the effect on the financial position or results of operations of any change in the application of accounting principles and practices during the period, and certified by the chief financial officer of the Borrower to present fairly in all material respects the financial condition of the Borrower and its Subsidiaries on a Consolidated basis as of their respective dates and the results of operations of the Borrower and its Subsidiaries for the respective periods then ended, subject to normal year-end adjustments and the absence of footnotes.

(h) **Annual Business Plan and Budget.** As soon as practicable and in any event within ninety (90) days after the end of each Fiscal Year (commencing with the Fiscal Year ended December 31, 2014), a business plan and operating and capital budget, in form and detail consistent with such business plan and operating capital budget most recently delivered to the Administrative Agent prior to the Closing Date, of the Borrower and its Subsidiaries for the immediately following Fiscal Year, such plan to be prepared in accordance with GAAP and to include, on a quarterly basis, the following: a quarterly operating and capital budget, a projected income statement, statement of cash flows and balance sheet, and a reasonable disclosure of the key assumptions and drivers with respect to such budget, accompanied by a certificate from a Responsible Officer of the Borrower to the effect that such budget contains good faith estimates (utilizing assumptions believed to be reasonable at the time of delivery of such budget) of the financial condition and operations of the Borrower and its Subsidiaries for such period.

SECTION 8.2 **Certificates; Other Reports.** Deliver to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(c) at each time financial statements are delivered pursuant to Sections 8.1(a) or (b) and at such other times as the Administrative Agent shall reasonably request, a duly completed Officer’s Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of the Borrower;
(d) at each time financial statements are delivered pursuant to Sections 8.1(a) or (b) and at such other times as the Administrative Agent shall reasonably request, a duly completed IP Reporting Certificate signed by a Responsible Officer of the Borrower;

(e) promptly after the same are filed, copies of all annual, regular, periodic and special reports and registration statements which the Borrower may file or be required to file with the SEC under Section 13 or 15(d) of the Exchange Act, or with any national securities exchange, and in any case not otherwise required to be delivered to the Administrative Agent pursuant hereto;

(f) promptly upon the request thereof, such other information and documentation required by bank regulatory authorities under applicable “know your customer” and anti-money laundering rules and regulations (including, without limitation, the PATRIOT Act), as from time to time reasonably requested by the Administrative Agent or any Lender (through the Administrative Agent); and

(g) such other information regarding the operations, business affairs and financial condition of any Credit Party or any Subsidiary thereof as the Administrative Agent or any Lender may reasonably request.

Documents required to be delivered pursuant to Sections 8.1(a), (b) or (c) or Section 8.2(c) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower’s website on the Internet at the website address www.realpage.com; or (ii) on which such documents are posted on the Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that the Borrower shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Borrower hereby acknowledges that (a) the Administrative Agent and/or the Arranger will make available to the Lenders and the Issuing Lender materials and/or information provided by or on behalf of the Borrower hereunder (collectively, “Borrower Materials”) by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak Online or another similar electronic system (the “Platform”) and (b) certain of the Lenders may be “public-side” Lenders (i.e., Lenders that do not wish to receive material non-public information with respect to the Borrower or its securities) (each, a “Public Lender”). The Borrower hereby agrees that it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked “PUBLIC” which, at a minimum, means that the word “PUBLIC” shall appear prominently on the first page thereof; (x) by marking Borrower Materials “PUBLIC,” the Borrower shall be deemed to have authorized the Administrative Agent, the Arranger, the Issuing Lender and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 12.10); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor;” and (z) the Administrative Agent and the Arranger shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor.”
Notwithstanding the foregoing, the Borrower shall be under no obligation to mark any Borrower Materials “PUBLIC”.

SECTION 8.3 Notice of Litigation and Other Matters. Promptly (but in no event later than ten (10) days after any Responsible Officer of any Credit Party obtains knowledge thereof) notify the Administrative Agent in writing of (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(b) the occurrence of any Default or Event of Default; and

(c) the commencement of all proceedings and investigations by or before any Governmental Authority and all actions and proceedings in any court or before any arbitrator against or involving any Credit Party or any Subsidiary thereof or any of their respective properties, assets or businesses in each case that could reasonably be expected to result in a Material Adverse Effect.

Each notice pursuant to Section 8.3 shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 8.3(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

SECTION 8.4 Preservation of Corporate Existence and Related Matters. Except as permitted by Section 9.4, preserve and maintain its separate corporate (or equivalent form) existence and all rights, franchises, licenses and privileges necessary to the conduct of its business if the failure to maintain such rights, franchises, licenses or privileges would reasonably be expected to result in a Material Adverse Effect, and qualify and remain qualified as a foreign corporation or other entity and authorized to do business in each jurisdiction in which the failure to so qualify could reasonably be expected to have a Material Adverse Effect.

SECTION 8.5 Maintenance of Property. In addition to the requirements of any of the Security Documents, protect and preserve all Properties necessary in and material to its business, including copyrights, patents, trade names, service marks and trademarks; maintain in good working order and condition, ordinary wear and tear, casualty and condemnation excepted, all buildings, equipment and other tangible real and personal property; and from time to time make or cause to be made all repairs, renewals and replacements thereof and additions to such Property necessary for the conduct of its business, so that the business carried on in connection therewith may be conducted in a commercially reasonable manner, in each case except as such action or inaction would not reasonably be expected to result in a Material Adverse Effect.

SECTION 8.6 Insurance. Maintain insurance with financially sound and reputable insurance companies against at least such risks and in at least such amounts as are customarily maintained by similar businesses and as may be required by Applicable Law and as are required by any Security Documents (including, without limitation, hazard and business interruption insurance). All such insurance shall, (a) provide that if such policies are cancelled before their respective expiration dates, notice will be delivered in accordance with such policy provisions, (b) in the case of general liability insurance policies, name the Administrative Agent as an additional insured party thereunder as its interests may appear and (c) in the case of each casualty insurance policy, name the Administrative Agent as lender’s loss payee as its interests may appear. Deliver to the Administrative Agent upon its request information in reasonable detail as to the insurance then in effect, stating the names of the insurance companies, the amounts and rates of the insurance, the dates of the expiration thereof and the properties and risks covered thereby.
SECTION 8.7  **Accounting Methods and Financial Records.** Maintain a system of accounting, and keep proper books, records and accounts (which shall be true and complete in all material respects) as may be required or as may be necessary to permit the preparation of financial statements in accordance with GAAP and in material compliance with the regulations of any Governmental Authority having jurisdiction over it or any of its Properties.

SECTION 8.8  **Payment of Taxes.** Pay all material taxes, assessments and other governmental charges that may be levied or assessed upon it or any of its Property, except where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) the Borrower or such other Credit Party has set aside on its books adequate reserves with respect thereto in accordance with GAAP, (iii) such contest effectively suspends collection of the contested obligation and the enforcement of any Lien securing such obligation and (iv) the failure to make payment pending such contest could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.9  **Compliance with Laws and Approvals.** Observe and remain in compliance with all Applicable Laws and maintain in full force and effect all Governmental Approvals, in each case applicable to the conduct of its business except in each case where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 8.10  **Environmental Laws.** In addition to and without limiting the generality of Section 8.9, and except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, (a) comply with, and take commercially reasonable efforts to ensure such compliance by all tenants and subtenants, if any, with all applicable Environmental Laws and obtain and comply with and maintain, and ensure that all tenants and subtenants, if any, obtain and comply with and maintain, any and all licenses, approvals, notifications, registrations or permits required by applicable Environmental Laws, and (b) conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions required under Environmental Laws, and promptly comply with all lawful orders and directives of any Governmental Authority regarding Environmental Laws.

SECTION 8.11  **Compliance with ERISA.** In addition to and without limiting the generality of Section 8.9, (a) except where the failure to so comply could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) comply with applicable provisions of ERISA, the Code and the regulations and published interpretations thereunder with respect to all Employee Benefit Plans, (ii) not take any action or fail to take action the result of which could reasonably be expected to result in a liability to the PBGC or to a Multiemployer Plan, (iii) not participate in any prohibited transaction that could result in any civil penalty under ERISA or tax under the Code and (iv) operate each Employee Benefit Plan in such a manner that will not incur any tax liability under Section 4980B of the Code or any liability to any qualified beneficiary as defined in Section 4980B of the Code and (b) furnish to the Administrative Agent upon the Administrative Agent’s request such additional information about any Employee Benefit Plan as may be reasonably requested by the Administrative Agent.

SECTION 8.12  **Visits and Inspections.** Permit representatives of the Administrative Agent or any Lender, from time to time upon reasonable notice and at such times during normal business hours, all at the expense of the Borrower, to visit and inspect its properties; inspect, audit and make extracts from its books, records and files, including, but not limited to, management letters prepared by independent accountants; and discuss with its principal officers, and its independent accountants, its business, assets, liabilities, financial condition, results of operations and business prospects; provided that (a) such visits and exceptions shall be subject to reasonable data security restrictions imposed by the Borrower that are customary in the Borrower’s industry, (b) upon the occurrence and during the continuance of an Event of Default, the
Administrative Agent or any Lender may do any of the foregoing at the expense of the Borrower at any time without advance notice and (c) unless an Event of Default has occurred and is continuing, such visitation, inspection and audit rights may only be exercised once per calendar year.

**SECTION 8.13 Additional Subsidiaries.**

(a) **Additional Domestic Subsidiaries.** Promptly (and, in any event, within thirty (30) days, as such time period may be extended by the Administrative Agent in its sole discretion) after (i) the creation or Acquisition of any Domestic Subsidiary (other than an Excluded Subsidiary or an Immaterial Subsidiary) or (ii) a Domestic Subsidiary (other than an Excluded Subsidiary) ceases to be an Immaterial Subsidiary, in each case, cause such Person to (A) become a Subsidiary Guarantor by delivering to the Administrative Agent a duly executed supplement to the Guaranty Agreement or such other document as the Administrative Agent shall reasonably request and deem appropriate for such purpose, (B) grant a security interest in all Collateral (subject to the exceptions specified in the Collateral Agreement) owned by such Subsidiary by delivering to the Administrative Agent a duly executed supplement to each applicable Security Document or such other document as the Administrative Agent shall reasonably request and deem appropriate for such purpose and comply with the terms of each applicable Security Document, (C) deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (D) deliver to the Administrative Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests of such Person, (E) deliver to the Administrative Agent such updated Schedules to the Disclosure Letter and Loan Documents as requested by the Administrative Agent with respect to such Domestic Subsidiary, and (F) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) **Additional Foreign Subsidiaries.** Promptly (and, in any event, within forty five (45) days, as such time period may be extended by the Administrative Agent in its sole discretion) after any Person becomes a First Tier Foreign Subsidiary or a Foreign Subsidiary Holding Company (other than an Immaterial Subsidiary or a Subsidiary described in clause (a) or (b) of the definition of “Excluded Subsidiary”), cause (i) the applicable Credit Party to deliver to the Administrative Agent Security Documents pledging sixty-five percent (65%) of the total outstanding voting Equity Interests (and one hundred percent (100%) of the non-voting Equity Interests) of any such new First Tier Foreign Subsidiary or Foreign Subsidiary Holding Company, as applicable, and a consent thereto executed by such new First Tier Foreign Subsidiary or Foreign Subsidiary Holding Company (including, without limitation, if applicable, original certificated Equity Interests or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction), as applicable, evidencing the Equity Interests of such new First Tier Foreign Subsidiary or Foreign Subsidiary Holding Company, as applicable, together with an appropriate undated stock or other transfer power for each certificate duly executed in blank by the registered owner thereof, (ii) such Person to deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 6.1 as may be reasonably requested by the Administrative Agent, (iii) such Person to deliver to the Administrative Agent such updated Schedules to the Disclosure Letter and Loan Documents as requested by the Administrative Agent with regard to such Person and (iv) such Person to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) **Merger Subsidiaries.** Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to a Permitted Acquisition, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction, such new Subsidiary shall
SECTION 8.14 Compliance with Anti-Corruption Laws and Sanctions. The Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance in all material respects by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

SECTION 8.15 Use of Proceeds.

(a) The Borrower shall use the proceeds of the Extensions of Credit solely (i) to finance the Transactions, and (ii) for working capital and general corporate purposes of the Borrower and its Subsidiaries.

(b) The Borrower will not request any Extension of Credit, and the Borrower shall not use, and shall ensure that its Subsidiaries and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Extension of Credit (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, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the material violation of any Sanctions applicable to any party hereto.

SECTION 8.16Disclosure Updates. Promptly (and, in any event, within five (5) Business Days after obtaining knowledge thereof) notify the Administrative Agent if any written information, exhibit, or report (other than projected financial information, pro forma financial information, estimated financial information and other projected or estimated information, other forward-looking information and information of a general or economic or industry specific nature) furnished to the Administrative Agent and/or the Lenders contained, at the time it was furnished, when taken together with the Borrower’s filings with the SEC, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any other Loan Document.

SECTION 8.17Further Assurances. Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien, all at the expense of the Credit Parties. The Borrower also agrees to provide to the Administrative Agent, from time to time upon the reasonable request by the Administrative Agent, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Security Documents.

SECTION 8.18Post-Closing Matters. Execute and deliver the documents and complete the tasks set forth on Schedule 8.18 to the Disclosure Letter, in each case within the time limits specified on such schedule.
ARTICLE IX
NEGATIVE COVENANTS

Until all of the Obligations (other than contingent, indemnification obligations not then due) have been paid and satisfied in full in cash, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Revolving Credit Commitments terminated, the Credit Parties will not, and will not permit any of their respective Subsidiaries to.

SECTION 9.1  Indebtedness. Create, incur, assume or suffer to exist any Indebtedness except:

(h) the Obligations;

(i) Indebtedness owing under Hedge Agreements entered into in order to manage existing or anticipated interest rate, exchange rate or commodity price risks and not for speculative purposes;

(j) Indebtedness existing on the Closing Date and listed on Schedule 9.1 to the Disclosure Letter, and any Permitted Refinancing Indebtedness in respect thereof;

(k) Indebtedness incurred in connection with Capital Leases and purchase money Indebtedness in an aggregate amount not to exceed $25,000,000 at any time outstanding and any Permitted Refinancing Indebtedness in respect thereof;

(l) Indebtedness of a Person existing at the time such Person became a Subsidiary or assets were acquired from such Person in connection with an Investment permitted pursuant to Section 9.3, to the extent that (i) such Indebtedness was not incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or the acquisition of such assets, (ii) neither the Borrower nor any Subsidiary thereof (other than such Person or any other Person that such Person merges with or that acquires the assets of such Person) shall have any liability or other obligation with respect to such Indebtedness and (iii) the aggregate outstanding principal amount of such Indebtedness does not exceed $10,000,000 at any time outstanding;

(m) Guarantees with respect to Indebtedness permitted pursuant to this Section (other than Section 9.1(g));

(n) unsecured intercompany Indebtedness:

(i) owed by any Credit Party to another Credit Party;

(ii) owed by any Credit Party to any Non-Guarantor Subsidiary provided that such Indebtedness shall be subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent;

(i) owed by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary; and

(iv) owed by any Non-Guarantor Subsidiary to any Credit Party to the extent permitted pursuant to Section 9.3(a)(vi);

(o) Indebtedness arising as a result of, or pursuant to, Cash Management Agreements (entered into in the ordinary course of business) and other Indebtedness arising from the honoring by a bank or other
financial institution of a check, draft or other similar instrument drawn against insufficient funds in the ordinary course of business;

(p) Indebtedness of the Borrower or any of its Subsidiaries incurred to finance the purchase and development of real property (including any Sale Leaseback transaction in connection therewith) in connection with the relocation of the Borrower’s corporate offices and the consolidation of certain other office locations of the Borrower and its Subsidiaries (“Real Estate Finance Indebtedness”); provided that (i) the aggregate principal amount of such Real Estate Finance Indebtedness shall not exceed the lesser of (A) $60,000,000 and (B) seventy percent (70%) of the fair market value of the real property to be financed in connection therewith (measured at the time of incurrence of such Real Estate Finance Indebtedness, without giving effect to any change in fair market value thereafter), (ii) such Real Estate Finance Indebtedness is permitted to be secured by only the real property (and any improvements thereon) to be financed with the proceeds of such Real Estate Finance Indebtedness, (iii) the terms of such Real Estate Finance Indebtedness shall be no more restrictive (as determined by the Borrower in good faith), taken as a whole, than those set forth in this Agreement and the other Loan Documents, (iv) the final maturity with respect to such Real Estate Finance Indebtedness shall be no earlier than the Latest Maturity Date, (v) the Borrower shall have demonstrated, in a manner reasonably satisfactory to the Administrative Agent, that any amortization with respect to such Real Estate Finance Indebtedness shall not (on a Pro Forma Basis after giving effect to adjustments for any sublease income and/or lease expense and related savings) have a materially adverse impact on the free cash flow of the Borrower and its Subsidiaries and (vi) no Event of Default shall have occurred and be continuing both before and after giving effect to the incurrence of such Real Estate Finance Indebtedness;

(q) obligations in respect of bankers’ acceptances, performance bonds, surety bonds, release, appeal and similar bonds, completion guarantees, statutory obligations or with respect to workers’ compensation claims, payment obligations in connection with self insurance or similar obligations provided by the Borrower or any of its Subsidiaries in the ordinary course of business, and obligations owed to (including in respect of letters of credit for the benefit of) any Person in connection with workers’ compensation, health, disability, or other employee benefit or property, casualty or liability insurance provided by such Person to the Borrower or any of its Subsidiaries pursuant to reimbursement or indemnification obligations to such Person, in each case incurred in the ordinary course of business,;

(r) contingent liabilities, to the extent constituting Indebtedness, in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of the Borrower or any of its Subsidiaries incurred in connection with the consummation of one or more Permitted Acquisitions;

(s) Earn-outs and Holdbacks; provided that any such Indebtedness in the form of Earn-outs or Holdbacks shall be unsecured;

(t) Indebtedness composing Investments permitted pursuant to Section 9.3;

(u) contingent liabilities in respect of any indemnification obligation given by a Credit Party or its Subsidiaries to a licensee or customer in the ordinary course of business;

(v) Indebtedness with respect to letters of credit not issued under this Agreement, so long as the aggregate liability in respect of all such letters of credit does not exceed $5,000,000 at any time;
unsecured Guarantees (other than Guarantees of Indebtedness for borrowed money) in the ordinary course of business of the obligations of suppliers, customers, franchisees and licensees of the Borrower and its Subsidiaries;

Indebtedness consisting of insurance premium financing in the ordinary course of business;

unsecured Indebtedness of any Credit Party or any Subsidiary thereof not otherwise permitted pursuant to this Section; provided (i) the Borrower shall have demonstrated compliance with the financial covenants set forth in Section 9.13, on a Pro Forma Basis (based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided) immediately after giving effect to the incurrence of such Indebtedness, (ii) the final maturity of such Indebtedness shall not be prior to the date that is ninety-one (91) days after the Latest Maturity Date, (iii) such Indebtedness will not have mandatory prepayment or mandatory amortization, redemption, sinking fund or similar prepayments (other than asset sale, change of control, fundamental change or similar mandatory offers to repurchase customary for high-yield or convertible debt securities) prior to the date that is ninety-one (91) days after the Latest Maturity Date at the time of the issuance of such Indebtedness, (iv) such Indebtedness is not guaranteed by any Domestic Subsidiary that is not a Subsidiary Guarantor, (v) to the extent such Indebtedness is subordinated in right of payment to the Obligations, any guaranty thereof by the Credit Parties shall be expressly subordinated to the Secured Obligations on terms materially not less favorable to the Lenders than the subordination terms of such Indebtedness, (vi) the terms of such Indebtedness, taken as a whole, are not materially more restrictive on the Borrower and its Subsidiaries than the terms of the Loan Documents, taken as a whole, and (vii) no Event of Default shall have occurred and be continuing or result from the incurrence of such Indebtedness; and

other Indebtedness in an aggregate principal amount outstanding at any time not to exceed $5,000,000.

SECTION 9.2 Liens. Create, incur, assume or suffer to exist, any Lien on or with respect to any of its Property, whether now owned or hereafter acquired, except:

Liens created pursuant to the Loan Documents (including, without limitation, Liens in favor of the Swingline Lender and/or the Issuing Lender, as applicable, on Cash Collateral granted pursuant to the Loan Documents);

Liens in existence on the Closing Date and described on Schedule 9.2 to the Disclosure Letter, and the replacement, renewal or extension thereof (including Liens incurred, assumed or suffered to exist in connection with any Permitted Refinancing Indebtedness pursuant to Section 9.1(c) (solely to the extent that such Liens were in existence on the Closing Date and described on Schedule 9.2 to the Disclosure Letter)); provided that the scope of any such Lien shall not be increased, or otherwise expanded, to cover any additional property or type of asset, as applicable, beyond that in existence on the Closing Date, except for products and proceeds of the foregoing;

Liens for taxes, assessments and other governmental charges or levies (excluding any Lien imposed pursuant to any of the provisions of ERISA or Environmental Laws) (i) not yet due or as to which the period of grace (not to exceed thirty (30) days), if any, related thereto has not expired or (ii) which are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP;

the claims of materialmen, mechanics, carriers, warehousemen, processors or landlords for labor, materials, supplies or rentals incurred in the ordinary course of business, which (i) are not overdue
for a period of more than thirty (30) days, or if more than thirty (30) days overdue, no action has been taken to enforce such Liens and such Liens are being contested in good faith and by appropriate proceedings if adequate reserves are maintained to the extent required by GAAP and (ii) do not, individually or in the aggregate, materially impair the use thereof in the operation of the business of the Borrower or any of its Subsidiaries;

(h) deposits or pledges made in the ordinary course of business in connection with, or to secure payment of, obligations under workers’ compensation, unemployment insurance and other types of social security or similar legislation, or to secure the performance of bids, trade contracts and leases (other than Indebtedness), statutory obligations, surety bonds (other than bonds related to judgments or litigation), performance bonds and other obligations of a like nature incurred in the ordinary course of business, in each case, so long as no foreclosure sale or similar proceeding has been commenced with respect to any material portion of the Collateral on account thereof;

(i) encumbrances in the nature of zoning restrictions, easements and rights or restrictions of record on the use of real property, which in the aggregate are not substantial in amount and which do not, in any case, materially detract from the value of such property or materially impair the use thereof in the ordinary conduct of business;

(j) Liens arising from the filing of precautionary UCC financing statements relating solely to personal property leased pursuant to operating leases entered into in the ordinary course of business of the Borrower and its Subsidiaries;

(k) Liens securing Indebtedness permitted under Section 9.1(d) and (i); provided that (i) such Liens shall be created substantially simultaneously with the acquisition, repair, improvement or lease, as applicable, of the related Property, (ii) such Liens do not at any time encumber any property other than the Property financed by such Indebtedness, (iii) the amount of Indebtedness secured thereby is not increased and (iv) the principal amount of Indebtedness secured by any such Lien shall at no time exceed one hundred percent (100%) of the original price for the purchase, repair improvement or lease amount (as applicable) of such Property at the time of purchase, repair, improvement or lease (as applicable);

(l) Liens securing judgments for the payment of money not constituting an Event of Default under Section 10.1(l) or securing appeal or other surety bonds relating to such judgments;

(m) (i) Liens on Property (i) of any Subsidiary which are in existence at the time that such Subsidiary is acquired pursuant to a Permitted Acquisition or an Investment permitted pursuant to Section 9.3 and (ii) of the Borrower or any of its Subsidiaries existing at the time such tangible property or tangible assets are purchased or otherwise acquired by the Borrower or such Subsidiary thereof pursuant to a transaction permitted pursuant to this Agreement; provided that, with respect to each of the foregoing clauses (i) and (ii), (A) such Liens are not incurred in connection with, or in anticipation of, such Permitted Acquisition or other Investment, (B) such Liens do not attach to any other Property of the Borrower or any of its Subsidiaries not securing such Indebtedness at the date of such Permitted Acquisition or other Investment and (C) the Indebtedness secured by such Liens is permitted under Section 9.1(e);

(n) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depositary bank in connection with statutory, common law and contractual rights of set-off and recoupment with respect to any deposit account of the Borrower or any Subsidiary thereof;
contractual or statutory Liens of landlords to the extent relating to the property and assets relating to any lease agreements with such landlord, and (ii) contractual Liens of suppliers (including sellers of goods) or customers granted in the ordinary course of business to the extent limited to the property or assets relating to such contract;

Liens solely on any cash earnest money deposits made by the Borrower or any of its Subsidiaries in connection with any letter of intent or purchase agreement with respect to a Permitted Acquisition;

any interest or title of a licensor, sublicensor, lessor or sublessor with respect to any assets under any lease agreement entered into in the ordinary course of business which do not (i) interfere in any material respect with the business of the Borrower or its Subsidiaries or materially detract from the value of the relevant assets of the Borrower or its Subsidiaries or (ii) secure any Indebtedness;

leases, licenses, subleases and sublicenses granted to others in the ordinary course of business that do not interfere in any material respect with the business of the Borrower and its Subsidiaries, taken as a whole; and

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;

Liens on cash collateral to secure the letters of credit permitted under Section 9.1(o);

Liens arising out of conditional sale, title retention, consignment or similar arrangements for sale of goods by any of the Borrower or its Subsidiaries in the ordinary course of business;

customary encumbrances or restrictions (including put and call arrangements) with respect to the Equity Interests of any joint venture in favor of the other parties to such joint venture;

Liens on specific items of inventory or other goods and the proceeds thereof securing obligations in respect of documentary letters of credit or bankers’ acceptances issued or created for the account of Borrower or any of its Subsidiaries in the ordinary course of business to facilitate the purchase, shipment or storage of such inventory or other goods;

Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under Section 9.1(q); and

Liens not otherwise permitted hereunder on assets (other than intellectual property or Equity Interests in Subsidiaries constituting Collateral) securing Indebtedness or other obligations in the aggregate principal amount not to exceed $5,000,000 at any time outstanding.

SECTION 9.3 Investments. Purchase, own, invest in or otherwise acquire (in one transaction or a series of transactions) any Equity Interests, interests in any partnership or joint venture (including, without limitation, the creation or capitalization of any Subsidiary), evidence of Indebtedness or other obligation or security, substantially all or a portion of the business or assets of any other Person or any other investment or interest whatsoever in any other Person, or make or permit to exist any loans, advances or extensions of credit to, or any investment in cash or by delivery of Property in, any Person (all the foregoing, “Investments”) except:
(d) (i) Investments existing on the Closing Date in Subsidiaries existing on the Closing Date;

(ii) Investments existing on the Closing Date (other than Investments in Subsidiaries existing on the Closing Date) and described on Schedule 9.3 to the Disclosure Letter;

(iii) Investments (including the creation and capitalization of new Subsidiaries) made after the Closing Date by any Credit Party in any other Credit Party;

(iv) Investments (including the creation and capitalization of new Subsidiaries) made after the Closing Date by any Non-Guarantor Subsidiary in any other Non-Guarantor Subsidiary;

(v) Investments made after the Closing Date by any Non-Guarantor Subsidiary in any Credit Party; provided that any Indebtedness owing by such Credit Party to such Non-Guarantor Subsidiary shall be subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to the Administrative Agent; and

(vi) Investments (including the creation and capitalization of new Subsidiaries) made after the Closing Date by any Credit Party in any Non-Guarantor Subsidiary in an aggregate amount at any time outstanding not to exceed $20,000,000; provided that (A) no Default or Event of Default shall have occurred and be continuing, (B) the Borrower shall have Liquidity of not less than $35,000,000 after giving effect thereto and (C) any Investments in the form of loans or advances made by any Credit Party to any Non-Guarantor Subsidiary pursuant to this clause (vi) shall be evidenced by a demand note in form and substance reasonably satisfactory to the Administrative Agent and shall be pledged and delivered to the Administrative Agent pursuant to the Security Documents);

(e) Investments in cash and Cash Equivalents;

(f) Investments by the Borrower or any of its Subsidiaries consisting of capital expenditures permitted by this Agreement;

(g) deposits made in the ordinary course of business to secure the performance of leases or other obligations as permitted by Section 9.2;

(h) Hedge Agreements permitted pursuant to Section 9.1;

(i) purchases of assets in the ordinary course of business;

(j) Investments by the Borrower or any Subsidiary thereof in the form of Permitted Acquisitions to the extent that any Person or Property acquired in such Permitted Acquisition becomes a part of the Borrower or a Subsidiary Guarantor or becomes (whether or not such Person is a Wholly-Owned Subsidiary) a Subsidiary Guarantor to the extent required by Section 8.13;

(k) Investments in the form of non-cash loans to employees, officers, and directors of the Borrower or any of its Subsidiaries for the purpose of purchasing Equity Interests in the Borrower so long as the proceeds of such loans are used, in their entirety, to purchase such Equity Interests in the Borrower;

(l) Investments in the form of Restricted Payments permitted pursuant to Section 9.6;

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(m) Guarantees permitted pursuant to Section 9.1 and Guarantees of liabilities not constituting Indebtedness to the extent such guarantees or liabilities are not otherwise prohibited by this Agreement;

(n) Investments acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to any Credit Party or any Subsidiary thereof (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims;

(o) Investments received in connection with Assets Dispositions permitted by Section 9.5;

(p) Investments consisting of extensions of trade credit in the ordinary course of business;

(q) Loans or advances to officers, directors and employees of the Borrower and its Subsidiaries for reasonable and customary business-related travel, entertainment, relocation and similar ordinary business purposes;

(r) Advances of payroll payments to employees in the ordinary course of business;

(s) Investments consisting of deposit and investment accounts holding cash and Cash Equivalents of the Borrower and its Subsidiaries;

(t) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;

(u) Advances made in connection with purchases of goods or services in the ordinary course of business;

(v) Investments consisting of earnest money deposits required in connection with a Permitted Acquisition or consisting of earnest money deposits required in connection with an acquisition of property not otherwise prohibited hereunder;

(w) Investments not otherwise permitted pursuant to this Section in an aggregate amount not to exceed $5,000,000 at any time outstanding; provided that, immediately before and immediately after giving pro forma effect to any such Investments, (i) no Default or Event of Default shall have occurred and be continuing, (ii) the Borrower shall have demonstrated compliance (based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided) with the financial covenants set forth in Section 9.13 and (iii) the Borrower shall have Liquidity of not less than $35,000,000; and

(x) Investments not otherwise permitted pursuant to this Section; provided that, immediately before and immediately after giving pro forma effect to any such Investments, (i) no Default or Event of Default shall have occurred and be continuing, (ii) the Borrower shall be in compliance (based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided) with a Consolidated Net Leverage Ratio of not greater than 3.25 to 1.00 and (iii) the Borrower shall have Liquidity of not less than $35,000,000.

For purposes of determining the amount of any Investment outstanding for purposes of this Section 9.3, such amount shall be deemed to be the amount of such Investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such Investment) less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).
SECTION 9.4  Fundamental Changes. Merge, consolidate or consummate any similar combination with, or enter into any Asset Disposition of all or substantially all of its assets (whether in a single transaction or a series of transactions) with, any other Person or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution) except:

(c) (i) any Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into, or be liquidated into, the Borrower (provided that the Borrower shall be the continuing or surviving entity) or (ii) any Subsidiary of the Borrower may be merged, amalgamated or consolidated with or into, or be liquidated into, any Subsidiary Guarantor (provided that the Subsidiary Guarantor shall be the continuing or surviving entity or simultaneously with such transaction, the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with Section 8.13 in the time periods specified therein in connection with such transaction);

(d) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary (ii) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may be merged, amalgamated or consolidated with or into, or be liquidated into, any other Non-Guarantor Subsidiary that is a Domestic Subsidiary;

(e) Asset Dispositions permitted by Section 9.5;

(f) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to the Borrower or any Subsidiary Guarantor; provided that, with respect to any such disposition by any Non-Guarantor Subsidiary, the consideration for such disposition shall not exceed the fair value of such assets;

(g) (i) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any other Non-Guarantor Subsidiary and (ii) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation, dissolution, winding up or otherwise) to any other Non-Guarantor Subsidiary that is a Domestic Subsidiary;

(h) any Subsidiary of the Borrower may merge with or into the Person such Subsidiary was formed to acquire in connection with any acquisition permitted hereunder (including, without limitation, any Permitted Acquisition permitted pursuant to Section 9.3(g)); provided that in the case of any merger involving a Subsidiary that is a Subsidiary Guarantor, (i) a Subsidiary Guarantor shall be the continuing or surviving entity or (ii) simultaneously with such transaction, the continuing or surviving entity shall become a Subsidiary Guarantor and the Borrower shall comply with Section 8.13 in the time periods specified therein in connection with such transaction; and

(i) any Person may merge into the Borrower or any of its Subsidiaries in connection with a Permitted Acquisition permitted pursuant to Section 9.3(g); provided that (i) in the case of a merger involving the Borrower or a Subsidiary Guarantor, the continuing or surviving Person shall be the Borrower or such Subsidiary Guarantor and (ii) the continuing or surviving Person shall be the Borrower or a Subsidiary of the Borrower.

SECTION 9.5  Asset Dispositions. Make any Asset Disposition except:

(a) the sale of obsolete, worn-out or surplus assets no longer used or usable in the business of the Borrower or any of its Subsidiaries or non-core assets acquired in a Permitted Acquisition;
(b) non-exclusive licenses and sublicenses of intellectual property rights in the ordinary course of business not interfering, individually or in the aggregate, in any material respect with the conduct of the business of the Borrower and its Subsidiaries;

(c) leases, subleases, licenses or sublicenses of real or personal property granted by the Borrower or any of its Subsidiaries to others in the ordinary course of business not detracting from the value of such real or personal property or interfering in any material respect with the business of the Borrower or any of its Subsidiaries;

(d) Asset Dispositions in connection with the receipt by any Credit Party or any of its Subsidiaries of any cash insurance proceeds or condemnation award payable by reason of theft, loss, physical destruction or damage, taking or similar event with respect to any of their respective Property;

(e) Assets Dispositions in connection with transactions permitted by Section 9.2, Section 9.4 and Section 9.3, in each case to the extent constituting Asset Dispositions;

(f) the sale of inventory in the ordinary course of business;

(g) the transfer of assets to the Borrower or any Subsidiary Guarantor pursuant to any other transaction permitted pursuant to Section 9.4;

(h) the write-off, discount, sale or other disposition of defaulted or past-due receivables and similar obligations in the ordinary course of business and not undertaken as part of an accounts receivable financing transaction;

(i) the disposition of Investments in cash and Cash Equivalents;

(j) the transfer (i) by any Credit Party of its assets to any other Credit Party, (ii) by any Non-Guarantor Subsidiary of its assets to any Credit Party (provided that in connection with any new transfer, such Credit Party shall not pay more than an amount equal to the fair market value of such assets as determined in good faith at the time of such transfer), (iii) by any Non-Guarantor Subsidiary of its assets to any other Non-Guarantor Subsidiary and (iv) by any Credit Party of its assets to any Non-Guarantor Subsidiary subject to the limitation and requirements set forth in Section 9.3(a)(vi) (provided that in connection with any new transfer, such Non-Guarantor Subsidiary shall not pay less than an amount equal to the fair market value of such assets as determined in good faith at the time of such transfer);

(k) the lapse of registered intellectual property of the Borrower and its Subsidiaries to the extent not economically desirable in the conduct of their business;

(l) (i) the sale of any Subsidiary’s Equity Interests to the Borrower or any Subsidiary Guarantor and (ii) the issuance of directors’ qualifying shares and nominal shares issued to foreign nationals to the extent required by Applicable Law;

(m) (i) the transfer for fair value of Property (including Equity Interests of Subsidiaries) to another Person in connection with a joint venture arrangement with respect to such transferred Property so long as, after accounting for the value of such transferred Property, the requirements of Section 9.3 are complied with in connection therewith, and (ii) Asset Dispositions of Investments in joint ventures to the extent required by, or made pursuant to customary buy/sell arrangements between, the joint venture parties set forth in joint venture arrangements and similar binding arrangements;
the unwinding of Hedge Agreements permitted hereunder pursuant to their terms;

Asset Dispositions in respect of fixed assets (which, for the avoidance of doubt, shall not include any intellectual property) to the extent that (i) such fixed assets are exchanged for credit against the purchase price of similar replacement fixed assets or (ii) the proceeds of such Asset Disposition are promptly applied to the purchase price of such replacement fixed assets;

Asset Dispositions in Sale Leaseback transactions in connection with Indebtedness permitted pursuant to Sections 9.1(d) and (i); and

Asset Dispositions not otherwise permitted pursuant to this Section; provided that (i) at the time of such Asset Disposition, no Default or Event of Default shall exist or would result from such Asset Disposition, (ii) such Asset Disposition is made for fair market value and the consideration received shall be no less than seventy-five percent (75%) in cash, and (iii) the aggregate fair market value of all property disposed of in reliance on this clause (q) shall not exceed ten percent (10%) of the Consolidated tangible assets of the Borrower and its Subsidiaries, as shown on the most recent balance sheet of the Borrower delivered pursuant to Section 6.1(e)(i) or Section 8.1(a) or (b), as applicable, in any Fiscal Year.

SECTION 9.6 Restricted Payments. Declare or pay any dividend on, or make any payment or other distribution on account of, or purchase, redeem, retire or otherwise acquire, or set apart assets for a sinking or other analogous fund for the purchase, redemption, retirement or other acquisition of, any class of Equity Interests of any Credit Party or any Subsidiary thereof, or make any distribution of cash, property or assets to the holders of shares of any Equity Interests of any Credit Party or any Subsidiary thereof (all of the foregoing, the “Restricted Payments”) provided that:

so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower or any of its Subsidiaries may pay dividends in shares of its own Qualified Equity Interests;

any Subsidiary of the Borrower may pay cash dividends to the Borrower or any Subsidiary Guarantor (and, if applicable, to other holders of its outstanding Qualified Equity Interests on a pro rata basis);

(i) any Non-Guarantor Subsidiary that is a Domestic Subsidiary may make Restricted Payments to any other Non-Guarantor Subsidiary that is a Domestic Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis) and (ii) any Non-Guarantor Subsidiary that is a Foreign Subsidiary may make Restricted Payments to any other Non-Guarantor Subsidiary (and, if applicable, to other holders of its outstanding Equity Interests on a ratable basis);

so long as no Default or Event of Default has occurred and is continuing or would result therefrom, the Borrower may make Restricted Payments to redeem, retire or otherwise acquire shares of its Equity Interests or options or other equity or phantom equity in respect of its Equity Interests from present or former officers, employees, directors or consultants (or their family members or trusts or other entities for the benefit of any of the foregoing) (i) to the extent that such purchase is made with the net cash proceeds of any offering of equity securities of or capital contributions to the Borrower or (ii) otherwise in an aggregate amount not to exceed $5,000,000 during any Fiscal Year;

the Borrower may make Restricted Payments consisting of the repurchase of fractional shares of its Equity Interests arising out of stock dividends, splits or combinations, or conversions of convertible securities;
(p) to the extent constituting Restricted Payments, the Borrower and its Subsidiaries may enter into and consummate transactions expressly permitted pursuant to any provision of Sections 9.4 and 9.5.

(q) the Borrower may declare and make Restricted Payments not otherwise permitted pursuant to this Section in an aggregate amount, when taken together with payments made under Section 9.9(b)(v), not to exceed $20,000,000 in any Fiscal Year; provided that, immediately before and immediately after giving pro forma effect to the making of any such Restricted Payment, (i) no Default or Event of Default shall have occurred and be continuing and (ii) the Borrower shall (A) have demonstrated compliance (based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided) with the financial covenants set forth in Section 9.13 and (B) have Liquidity of not less than $35,000,000; and

(r) the Borrower may declare and make Restricted Payments not otherwise permitted pursuant to this Section; provided that, immediately before and immediately after giving pro forma effect to the making of any such Restricted Payment, (i) no Default or Event of Default shall have occurred and be continuing and (ii) the Borrower shall (A) have demonstrated compliance (based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided) with a Consolidated Net Leverage Ratio of not greater than 3.25 to 1.00 and (B) have Liquidity of not less than $35,000,000.

SECTION 9.7 Transactions with Affiliates. Directly or indirectly enter into any transaction, including, without limitation, any purchase, sale, lease or exchange of Property, the rendering of any service or the payment of any management, advisory or similar fees, with any Affiliate of the Borrower or any of its Subsidiaries, other than:

(o) transactions permitted by Sections 9.1, 9.3, 9.4, 9.5 and 9.6;

(p) transactions existing on the Closing Date and described on Schedule 9.7 to the Disclosure Letter;

(q) transactions among Credit Parties;

(r) other transactions in the ordinary course of business on terms as favorable as would be obtained by it on a comparable arm’s-length transaction with an independent, unrelated third party;

(s) employment and severance arrangements (including equity incentive plans and employee benefit plans and arrangements) with their respective officers and employees in the ordinary course of business; and

(t) payment of customary fees and reasonable out of pocket costs to, and indemnities for the benefit of, directors (or their equivalent), officers and employees of the Borrower and its Subsidiaries in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Subsidiaries.

SECTION 9.8 Accounting Changes; Organizational Documents.

(c) Change its Fiscal Year end or make any material change in its accounting treatment and reporting practices except as permitted by GAAP, in each case, without the consent of the Administrative Agent.
(d) Amend, modify or change its articles of incorporation (or corporate charter or other similar organizational documents) or amend, modify or change its bylaws (or other similar documents) in any manner materially adverse to the rights or interests of the Lenders.

SECTION 9.9 Payments and Modifications of Junior Indebtedness.

(a) Amend, modify, waive or supplement (or permit the modification, amendment, waiver or supplement of) any of the terms or provisions of any Junior Indebtedness in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and Lenders hereunder.

(b) Make any payment or prepayment on, or redeem or acquire for value (including, without limitation, (x) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due and (y) at the maturity thereof) any Junior Indebtedness, except:

(i) with the proceeds of Permitted Refinancing Indebtedness in respect thereof;

(ii) payments in exchange for, or with proceeds of any issuance of, Qualified Equity Interests of the Borrower or any Subsidiary;

(iii) payments as a result of the conversion of all or any portion of any Junior Indebtedness into Qualified Equity Interests of the Borrower or any Subsidiary;

(iv) payments of interest and customary fees, expenses and premiums in respect of any Junior Indebtedness permitted pursuant to Section 9.1 (to the extent not prohibited by any subordination provisions set forth therein or in any subordination agreement with respect thereto);

(v) the payments not otherwise permitted pursuant to this Section in an aggregate amount, when taken together with Restricted Payments made under Section 9.6(g), not to exceed $20,000,000 in any Fiscal Year; provided that, immediately before and immediately after giving pro forma effect to the making of any such payment, (A) no Default or Event of Default shall have occurred and be continuing and (B) the Borrower shall (1) have demonstrated compliance (based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided) with the financial covenants set forth in Section 9.13 and (2) have Liquidity of not less than $35,000,000;

(vi) payments not otherwise permitted pursuant to this Section; provided that, immediately before and immediately after giving pro forma effect to the making of any such payment, (A) no Default or Event of Default shall have occurred and be continuing and (B) the Borrower shall (1) be in compliance (based on the financial statements for the most recent fiscal quarter end for which financial statements have been provided) with a Consolidated Net Leverage Ratio of not greater than 3.25 to 1.00 and (2) have Liquidity of not less than $35,000,000;

(vii) (A) scheduled principal and interest payments on Real Estate Finance Indebtedness (including any mandatory prepayments required from any disposition or insurance event with respect to the real estate financed thereby) and (B) non-scheduled principal and interest payments on Real Estate Finance Indebtedness in an aggregate amount not to exceed twenty percent (20%) of Consolidated EBITDA in any Fiscal Year (determined as of the last day of the most recent Fiscal Year for which financial statements have been delivered pursuant to Section 8.1(a)); and
(viii) payments of Earn-outs and Holdbacks; provided that, immediately before and immediately after the making of any such payment, no Default or Event of Default shall have occurred and be continuing.

SECTION 9.10 No Further Negative Pledges; Restrictive Agreements

(d) Enter into, assume or be subject to any agreement prohibiting or otherwise restricting the creation or assumption of any Lien upon its properties or assets, whether now owned or hereafter acquired, or requiring the grant of any security for such obligation if security is given for some other obligation, except (i) pursuant to this Agreement and the other Loan Documents, (ii) pursuant to any document or instrument governing Indebtedness incurred pursuant to Section 9.1(d), (i) and (s) (provided that any such restriction contained therein relates only to the asset or assets financed thereby), (iii) restrictions contained in the organizational documents of any Non-Guarantor Subsidiary, (iv) restrictions in connection with any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (v) obligations that are binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower (which obligation is not applicable to any Person, or the properties or assets of any Person, other than such Subsidiary), so long as such obligations are not entered into in contemplation of such Person becoming a Subsidiary, and any extension or renewal thereof so long as such extension or renewal does not expand the scope of such restrictions in any material respect, (vi) customary anti-assignment provisions in contracts restricting the assignment thereof, (vii) restrictions existing on the Closing Date and described on Schedule 9.10 to the Disclosure Letter and any extension or renewal thereof so long as such extension or renewal does not expand the scope of such restrictions in any material respect, (viii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 9.3, (ix) restrictions imposed by Applicable Law, (x) customary restrictions contained in leases, subleases or licenses otherwise permitted hereby so long as such restrictions relate only to the assets subject thereto, (xi) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower and its Subsidiaries, (xii) restrictions on cash or Cash Equivalents or deposits imposed by customers under contracts entered into in the ordinary course of business (or otherwise constituting Liens permitted by Section 9.2 on such cash or Cash Equivalents or deposits), (xiii) customary net worth provisions contained in real property leases or licenses of intellectual property entered into by the Borrower or any of its Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Credit Parties and their Subsidiaries to meet their ongoing obligations and (xiv) customary restrictions and conditions contained in asset sale agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) entered into by the Borrower or any Subsidiary and permitted by this Agreement, solely to the extent in effect pending consummation of such transaction and so long as such restrictions relate only to the assets subject thereto.

(e) Create or otherwise cause or suffer to exist or become effective any consensual encumbrance or restriction on the ability of any Credit Party or any Subsidiary thereof to (i) pay dividends or make any other distributions to any Credit Party or any Subsidiary on its Equity Interests or with respect to any other interest or participation in, or measured by, its profits, (ii) pay any Indebtedness or other obligation owed to any Credit Party, (iii) make loans or advances to any Credit Party or (iv) sell, lease or transfer any of its properties or assets to any Credit, except in each case for such encumbrances or restrictions existing under or by reason of (A) this Agreement and the other Loan Documents, (B) Applicable Law, (C) any document or instrument governing Indebtedness incurred pursuant to Section 9.1(d) (provided that any such restriction contained therein relates only to the asset or assets acquired in connection therewith), (D) any Permitted Lien or any document or instrument governing any Permitted Lien (provided that any such restriction contained therein relates only to the asset or assets subject to such Permitted Lien), (E) obligations that are
binding on a Subsidiary at the time such Subsidiary first becomes a Subsidiary of the Borrower, so long as such obligations are not entered into in contemplation of such Person becoming a Subsidiary, and any extension or renewal thereof so long as such extension or renewal does not expand the scope of such restrictions in any material respect, (F) customary restrictions contained in an agreement related to the sale of Property (to the extent such sale is permitted pursuant to Section 9.5) that limit the transfer of such Property pending the consummation of such sale, (G) customary restrictions in leases, subleases, licenses and sublicenses or asset sale agreements otherwise permitted by this Agreement so long as such restrictions relate only to the assets subject thereto, (H) customary provisions restricting assignment of any agreement entered into in the ordinary course of business (I) restrictions existing on the Closing Date and described on Schedule 9.10 to the Disclosure Letter and any extension or renewal thereof so long as such extension or renewal does not expand the scope of such restrictions in any material respect, (J) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted under Section 6.3, (K) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of the Borrower and its Subsidiaries, (L) restrictions on cash or Cash Equivalents or deposits imposed by customers under contracts entered into in the ordinary course of business (or otherwise constituting Liens permitted by Section 9.2 on such cash or Cash Equivalents or deposits), (M) customary net worth provisions contained in real property leases or licenses of intellectual property entered into by the Borrower or any of its Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions could not reasonably be expected to impair the ability of the Credit Parties and their Subsidiaries to meet their ongoing obligations and (N) customary restrictions and conditions contained in asset sale agreements, purchase agreements, acquisition agreements (including by way of merger, acquisition or consolidation) entered into by the Borrower or any Subsidiary solely to the extent in effect pending consummation of such transaction and so long as such restrictions relate only to the assets subject thereto.

SECTION 9.11 Nature of Business. Engage in any business other than the business conducted by the Borrower and its Subsidiaries as of the Closing Date and business activities reasonably related, incidental, complimentary or ancillary thereto.

SECTION 9.12 Amendments of Other Documents. Amend, modify, waive or supplement (or permit modification, amendment, waiver or supplement of) any of the terms or provisions of any Material Contract, in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and the Lenders hereunder, in each case, without the prior written consent of the Administrative Agent.

SECTION 9.13 Financial Covenants.

(a) Consolidated Net Leverage Ratio. As of the last day of any fiscal quarter, permit the Consolidated Net Leverage Ratio to be greater than 3.50 to 1.00; provided that upon the consummation of any Permitted Acquisition having aggregate consideration (including cash, Cash Equivalents, Equity Interests, Earn-outs, Holdbacks and other deferred payment obligations) in excess of $50,000,000, the Borrower may, at its election (in connection with such Permitted Acquisition and by not less than five (5) Business Days’ written notice to the Administrative Agent prior to delivery of financial statements pursuant to Section 8.1(a) or (b) for the fiscal quarter ended immediately after the consummation of such Permitted Acquisition), increase the required Consolidated Net Leverage Ratio pursuant to this Section to 3.75 to 1.00 solely for each fiscal quarter ending during the twelve (12) month period immediately following such Permitted Acquisition; provided further that the Borrower shall be permitted to exercise such increase option hereunder no more than one time during any consecutive twenty-four (24) month period.
(b) **Consolidated Interest Coverage Ratio.** As of the last day of any fiscal quarter, permit the Consolidated Interest Coverage Ratio to be less than 3.00 to 1.00.

**ARTICLE X**

**DEFAULT AND REMEDIES**

**SECTION 10.1 Events of Default.** Each of the following shall constitute an Event of Default:

(z) **Default in Payment of Principal of Loans and Reimbursement Obligations.** The Borrower shall default in any payment of principal of any Loan or Reimbursement Obligation when and as due (whether at maturity, by reason of acceleration or otherwise).

(aa) **Other Payment Default.** The Borrower shall default in the payment when and as due (whether at maturity, by reason of acceleration or otherwise) of interest on any Loan or Reimbursement Obligation or the payment of any other Obligation, and such default shall continue for a period of three (3) Business Days.

(bb) **Misrepresentation.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Subsidiary thereof in this Agreement, in any other Loan Document, or in any document delivered in connection herewith or therewith that is subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any respect when made or deemed made or any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Credit Party or any Subsidiary thereof in this Agreement, any other Loan Document, or in any document delivered in connection herewith or therewith that is not subject to materiality or Material Adverse Effect qualifications, shall be incorrect or misleading in any material respect when made or deemed made.

(cc) **Default in Performance of Certain Covenants.** Any Credit Party or any Subsidiary thereof shall default in the performance or observance of any covenant or agreement contained in Sections 8.1, 8.2, 8.3, 8.4 (with respect to the existence of any Credit Party), 8.12, 8.13, 8.14 or 8.15 or Article IX.

(dd) **Default in Performance of Other Covenants and Conditions.** Any Credit Party or any Subsidiary thereof shall default in the performance or observance of any term, covenant, condition or agreement contained in this Agreement (other than as specifically provided for in this Section) or any other Loan Document and such default shall continue for a period of thirty (30) days after the earlier of (i) the Administrative Agent’s delivery of written notice thereof to the Borrower and (ii) a Responsible Officer of any Credit Party having obtained knowledge thereof.

(ee) **Indebtedness Cross-Default.** Any Credit Party or any Subsidiary thereof shall (i) default in the payment of any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount beyond the period of grace if any, provided in the instrument or agreement under which such Indebtedness was created, or (ii) default in the observance or performance of any other agreement or condition relating to any Indebtedness (other than the Loans or any Reimbursement Obligation) the aggregate principal amount (including undrawn committed or available amounts), or with respect to any Hedge Agreement, the Hedge Termination Value, of which is in excess of the Threshold Amount or contained in any instrument or agreement evidencing, securing or relating thereto or any other event shall occur or condition exist, the effect of which default or
other event or condition is to cause, or to permit the holder or holders of such Indebtedness (or a trustee or agent on behalf of such holder or holders) to cause, with the giving of notice and/or lapse of time, if required, any such Indebtedness to become due prior to its stated maturity (any applicable grace period having expired).

(ff) **Change in Control.** Any Change in Control shall occur.

(gg) **Voluntary Bankruptcy Proceeding.** Any Credit Party or any Subsidiary (other than any Immaterial Subsidiary or any Excluded Subsidiary) thereof shall (i) commence a voluntary case under any Debtor Relief Laws, (ii) file a petition seeking to take advantage of any Debtor Relief Laws, (iii) consent to or fail to contest in a timely and appropriate manner any petition filed against it in an involuntary case under any Debtor Relief Laws, (iv) apply for or consent to, or fail to contest in a timely and appropriate manner, the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of a substantial part of its property, domestic or foreign, (v) admit in writing its inability to pay its debts as they become due, (vi) make a general assignment for the benefit of creditors, or (vii) take any corporate action for the purpose of authorizing any of the foregoing.

(hh) **Involuntary Bankruptcy Proceeding.** A case or other proceeding shall be commenced against any Credit Party or any Subsidiary (other than any Immaterial Subsidiary or any Excluded Subsidiary) thereof in any court of competent jurisdiction seeking (i) relief under any Debtor Relief Laws, or (ii) the appointment of a trustee, receiver, custodian, liquidator or the like for any Credit Party or any Subsidiary thereof or for all or any substantial part of their respective assets, domestic or foreign, and such case or proceeding shall continue without dismissal or stay for a period of sixty (60) consecutive days, or an order granting the relief requested in such case or proceeding (including, but not limited to, an order for relief under such federal bankruptcy laws) shall be entered.

(ii) **Failure of Agreements.** Any provision of this Agreement or any provision of any other Loan Document shall for any reason cease to be valid and binding on any Credit Party or any Subsidiary thereof or any such Person shall so state in writing, or any Loan Document shall for any reason cease to create a valid and perfected first priority Lien (subject to Permitted Liens) on, or security interest in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof.

(jj) **ERISA Events.** The occurrence of any of the following events: (i) any Credit Party or any ERISA Affiliate fails to make full payment when due of all amounts which, under the provisions of any Pension Plan or sections 412 or 430 of the Code, any Credit Party or any ERISA Affiliate is required to pay as contributions thereto and such unpaid amounts are in excess of the Threshold Amount, (ii) a Termination Event or (iii) any Credit Party or any ERISA Affiliate as employers under one or more Multiemployer Plans makes a complete or partial withdrawal from any such Multiemployer Plan and the plan sponsor of such Multiemployer Plans notifies such withdrawing employer that such employer has incurred a withdrawal liability requiring payments in an amount exceeding the Threshold Amount.

(kk) **Judgment.** A judgment or order for the payment of money which causes the aggregate amount of all such judgments or orders (net of any amounts paid or fully covered by independent third party insurance as to which the relevant insurance company does not dispute coverage) to exceed the Threshold Amount shall be entered against any Credit Party or any Subsidiary thereof by any court and such judgment or order shall continue without having been discharged, vacated or stayed for a period of thirty (30) consecutive days after the entry thereof.
SECTION 10.2 Remedies. Upon the occurrence and during the continuance of an Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower:

(y) Acceleration; Termination of Credit Facility. Terminate the Revolving Credit Commitment and declare the principal of and interest on the Loans and the Reimbursement Obligations at the time outstanding, and all other amounts owed to the Lenders and to the Administrative Agent under this Agreement or any of the other Loan Documents (including, without limitation, all L/C Obligations, whether or not the beneficiaries of the then outstanding Letters of Credit shall have presented or shall be entitled to present the documents required thereunder) and all other Obligations, to be forthwith due and payable, whereupon the same shall immediately become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or the other Loan Documents to the contrary notwithstanding, and terminate the Credit Facility and any right of the Borrower to request borrowings or Letters of Credit thereunder; provided, that upon the occurrence of an Event of Default specified in Section 10.1(i) or (j), the Credit Facility shall be automatically terminated and all Obligations shall automatically become due and payable without presentment, demand, protest or other notice of any kind, all of which are expressly waived by each Credit Party, anything in this Agreement or in any other Loan Document to the contrary notwithstanding.

(z) Letters of Credit. With respect to all Letters of Credit with respect to which presentment for honor shall not have occurred at the time of an acceleration pursuant to the preceding paragraph, the Borrower shall at such time deposit in a Cash Collateral account opened by the Administrative Agent an amount equal to the aggregate then undrawn and unexpired amount of such Letters of Credit. Amounts held in such Cash Collateral account shall be applied by the Administrative Agent to the payment of drafts drawn under such Letters of Credit, and the unused portion thereof after all such Letters of Credit shall have expired or been fully drawn upon, if any, shall be applied to repay the other Secured Obligations on a pro rata basis. After all such Letters of Credit shall have expired or been fully drawn upon, the Reimbursement Obligation shall have been satisfied and all other Secured Obligations shall have been paid in full, the balance, if any, in such Cash Collateral account shall be returned to the Borrower.

(aa) General Remedies. Exercise on behalf of the Secured Parties all of its other rights and remedies under this Agreement, the other Loan Documents and Applicable Law, in order to satisfy all of the Secured Obligations.

SECTION 10.3 Rights and Remedies Cumulative; Non-Waiver; etc.

(j) The enumeration of the rights and remedies of the Administrative Agent and the Lenders set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent and the Lenders of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. No delay or failure to take action on the part of the Administrative Agent or any Lender in exercising any right, power or privilege shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between the Borrower, the Administrative Agent and the Lenders or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any of the other Loan Documents or to constitute a waiver of any Event of Default.
(k) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Credit Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 10.2 for the benefit of all the Lenders and the Issuing Lender; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Issuing Lender or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as the Issuing Lender or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 12.4 (subject to the terms of Section 5.6), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Credit Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 10.2 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 5.6, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 10.4 Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 10.2 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall be applied by the Administrative Agent as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such, the Issuing Lender in their capacity as such and the Swingline Lender in its capacity as such, ratably among the Administrative Agent, the Issuing Lender and Swingline Lender in proportion to the respective amounts described in this clause First payable to them;

Second, to payment of that portion of the Secured Obligations constituting fees, indemnities and other amounts (other than principal and interest) payable to the Lenders under the Loan Documents, including attorney fees, ratably among the Lenders in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid interest on the Loans and Reimbursement Obligations, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, Reimbursement Obligations and payment obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Issuing Lender, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to the Administrative Agent for the account of the Issuing Lender, to Cash Collateralize any L/C Obligations then outstanding; and
Last, the balance, if any, after all of the Secured Obligations (other than contingent indemnification obligations not then due) have been paid in full, to the Borrower or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article XI for itself and its Affiliates as if a “Lender” party hereto.

SECTION 10.5 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Credit Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(s) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Lender and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Lender and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Lender and the Administrative Agent under Sections 3.3, 5.3 and 12.3) allowed in such judicial proceeding; and

(t) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Issuing Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Lender, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 3.3, 5.3 and 12.3.

SECTION 10.6 Credit Bidding.

(u) The Administrative Agent, on behalf of itself and the Lenders, shall have the right to credit bid and purchase for the benefit of the Administrative Agent and the Lenders all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Applicable Law.

(v) Each Lender hereby agrees that, except as otherwise provided in any Loan Documents or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any Loan Documents, or exercise any right that it might otherwise
have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

ARTICLE XI

THE ADMINISTRATIVE AGENT

SECTION 11.1 Appointment and Authority

(bb) Each of the Lenders and the Issuing Lender hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Lender, and neither the Borrower nor any Subsidiary thereof shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(cc) The Administrative Agent shall also act as the “collateral agent” under the Loan Documents, and each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Lender hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the Issuing Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Credit Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto (including, without limitation, to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Secured Parties). In this connection, the Administrative Agent, as “collateral agent” and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article XI for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of Articles XI and XII (including Section 12.3, as though such co-agents, sub-agents and attorneys-in-fact were the “collateral agent” under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 11.2 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.
SECTION 11.3 Exculpatory Provisions.

(r) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(s) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 12.2 and Section 10.2) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent by the Borrower, a Lender or the Issuing Lender.

(t) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article VI or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vi) the utilization of the Issuing Lender's L/C Commitment (it being understood and agreed that the Issuing Lender shall monitor compliance with its own L/C Commitment without any further action by the Administrative Agent).

SECTION 11.4 Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise
authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the Issuing Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Issuing Lender unless the Administrative Agent shall have received notice to the contrary from such Lender or the Issuing Lender prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 11.5 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the Credit Facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and nonappealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 11.6 Resignation of Administrative Agent.

(e) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Lender and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the consent of the Borrower (provided that the consent of the Borrower shall not be required if an Event of Default has occurred and is continuing), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the “Resignation Effective Date”), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Lender, appoint a successor Administrative Agent meeting the qualifications set forth above and acceptable to the Borrower (provided that the consent of the Borrower shall not be required if an Event of Default has occurred and is continuing). Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(f) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrower and such Person, remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the “Removal Effective Date”), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.
(g) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Lender under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Issuing Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent’s resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 12.3 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(h) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as the Issuing Lender and Swingline Lender. Upon the acceptance of a successor’s appointment as Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Lender, if in its sole discretion it elects to, and Swingline Lender, (b) the retiring Issuing Lender and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Issuing Lender, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Lender to effectively assume the obligations of the retiring Issuing Lender with respect to such Letters of Credit.

SECTION 11.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and the Issuing Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Issuing Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 11.8 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, arrangers or bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Issuing Lender hereunder.

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SECTION 11.9 Collateral and Guaranty Matters.

(c) Each of the Lenders (including in its or any of its Affiliate’s capacities as a potential Hedge Bank or Cash Management Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent, for the ratable benefit of the Secured Parties, under any Loan Document (A) upon the termination of the Revolving Credit Commitment and payment in full of all Secured Obligations (other than (1) contingent indemnification obligations and (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the Issuing Lender shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted under the Loan Documents, or (C) if approved, authorized or ratified in writing in accordance with Section 12.2;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien permitted pursuant to Section 9.2; and

(iii) to release any Subsidiary Guarantor from its obligations under any Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent’s authority to release or subordinate its interest in particular types or items of property, or to release any Subsidiary Guarantor from its obligations under the Guaranty Agreement pursuant to this Section 11.9. In each case as specified in this Section 11.9, the Administrative Agent will, at the Borrower’s expense, execute and deliver to the applicable Credit Party such documents as such Credit Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Subsidiary Guarantor from its obligations under the Guaranty Agreement, in each case in accordance with the terms of the Loan Documents and this Section 11.9. In the case of any such sale, transfer or disposal of any property constituting Collateral in a transaction constituting an Asset Disposition permitted pursuant to Section 9.5, the Liens created by any of the Security Documents on such property shall be automatically released without need for further action by any person.

(d) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent’s Lien thereon, or any certificate prepared by any Credit Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 11.10 Secured Hedge Agreements and Secured Cash Management Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 10.4 or any Collateral by virtue of the provisions hereof or of any Security Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents.
Notwithstanding any other provision of this Article XI to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Secured Cash Management Agreements and Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE XII

MISCELLANEOUS

SECTION 12.1 Notices

(1) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile as follows:

If to the Borrower:
RealPage, Inc.
4000 International Parkway
Carrollton, Texas 75007
Attention of: James W. Harrison, Senior Vice President & Deputy General Counsel
Telephone No.: (972) 820 3923
Facsimile No.: (972) 820 3932
E-mail: jim.harrison@realpage.com

With copies to:
Wilson Sonsini Goodrich & Rosati
Attention of: Andrew H. Hirsch
650 Page Mill Road
Palo Alto, CA 94304
Telephone No.: (650) 354-4210
Facsimile No.: (650) 493-6811
E-mail: ahirsch@wsgr.com

If to Wells Fargo as Administrative Agent:
Wells Fargo Bank, National Association
MAC D1109-019
1525 West W.T. Harris Blvd.
Charlotte, NC 28262
Attention of: Syndication Agency Services
Telephone No.: (704) 590-2703  
Facsimile No.: (704) 715-0092

With copies to:

Attention of: John O'Leary Nocita  
2450 Colorado Ave, Suite 3000W  
Santa Monica, CA 90404  
Telephone No.: (310) 453-7329  
E-mail: john.o.nocita@wellsfargo.com

If to any Lender:

To the address set forth on the Register

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices delivered through electronic communications to the extent provided in paragraph (b) below, shall be effective as provided in said paragraph (b).

(m) **Electronic Communications.** Notices and other communications to the Lenders and the Issuing Lender hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Issuing Lender pursuant to Article II if such Lender or the Issuing Lender, as applicable, has notified the Administrative Agent that is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender’s receipt of an acknowledgement from the intended recipient (such as by the “return receipt requested” function, as available, return e-mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or other communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(n) **Administrative Agent’s Office.** The Administrative Agent hereby designates its office located at the address set forth above, or any subsequent office which shall have been specified for such purpose by written notice to the Borrower and Lenders, as the Administrative Agent’s Office referred to herein, to which payments due are to be made and at which Loans will be disbursed and Letters of Credit requested.

(o) **Change of Address, Etc.** Any party hereto may change its address or facsimile number for notices and other communications hereunder by notice to the other parties hereto.
(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Borrower Materials available to the Issuing Lender and the other Lenders by posting the Borrower Materials on the Platform.

(ii) The Platform is provided “as is” and “as available.” The Agent Parties (as defined below) do not warrant the accuracy or completeness of the Borrower Materials or the adequacy of the Platform, and expressly disclaim liability for errors or omissions in the Borrower Materials. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Borrower Materials or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the “Agent Parties”) have any liability to any Credit Party, any Lender or any other Person or entity for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Credit Party’s or the Administrative Agent’s transmission of communications through the Internet (including, without limitation, the Platform), except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided that in no event shall any Agent Party have any liability to any Credit Party, any Lender, the Issuing Lender or any other Person for indirect, special, incidental, consequential or punitive damages, losses or expenses (as opposed to actual damages, losses or expenses).

(q) Private Side Designation. Each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the “Private Side Information” or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender’s compliance procedures and Applicable Law, including United States Federal and state securities Applicable Laws, to make reference to Borrower Materials that are not made available through the “Public Side Information” portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities Applicable Laws.

SECTION 12.2 Amendments, Waivers and Consents. Except as set forth below or as specifically provided in any Loan Document, any term, covenant, agreement or condition of this Agreement or any of the other Loan Documents may be amended or waived by the Lenders, and any consent given by the Lenders, if, but only if, such amendment, waiver or consent is in writing signed by the Required Lenders (or by the Administrative Agent with the consent of the Required Lenders) and delivered to the Administrative Agent and, in the case of an amendment, signed by the Borrower; provided, that no amendment, waiver or consent shall:

(u) increase the Revolving Credit Commitment of any Lender (or reinstate any Revolving Credit Commitment terminated pursuant to Section 10.2) or the amount of Loans of any Lender, in any case, without the written consent of such Lender;

(v) waive, extend or postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby;
reduce the principal of, or the rate of interest specified herein on, any Loan or Reimbursement Obligation, or (subject to clause (iv) of the proviso set forth in the paragraph below) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender directly and adversely affected thereby; provided that only the consent of the Required Lenders shall be necessary (i) to waive any obligation of the Borrower to pay interest at the rate set forth in Section 5.1(b) during the continuance of an Event of Default or (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Obligation or to reduce any fee payable hereunder;

(x) change Section 5.6 or Section 10.4 in a manner that would alter the pro rata sharing of payments or order of application required thereby without the written consent of each Lender directly and adversely affected thereby;

(y) except as otherwise permitted by this Section 12.2 change any provision of this Section or reduce the percentages specified in the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender directly and adversely affected thereby;

(z) consent to the assignment or transfer by any Credit Party of such Credit Party’s rights and obligations under any Loan Document to which it is a party (except as permitted pursuant to Section 9.4), in each case, without the written consent of each Lender; or

(aa) release (i) all of the Subsidiary Guarantors or (iii) Subsidiary Guarantors comprising substantially all of the credit support for the Secured Obligations, in any case, from any Guaranty Agreement (other than as authorized in Section 11.9), without the written consent of each Lender; or

(bb) release all or substantially all of the Collateral or release any Security Document (other than as authorized in Section 11.9 or as otherwise specifically permitted or contemplated in this Agreement or the applicable Security Document) without the written consent of each Lender; provided further, that (i) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Lender in addition to the Lenders required above, affect the rights or duties of the Issuing Lender under this Agreement or any Letter of Credit Application relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swingline Lender in addition to the Lenders required above, affect the rights or duties of the Swingline Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the Engagement Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto, (v) each Letter of Credit Application may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; provided that a copy of such amended Letter of Credit Application shall be promptly delivered to the Administrative Agent upon such amendment or waiver, and (vi) the Administrative Agent and the Borrower shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder, except
that the Revolving Credit Commitment of such Lender may not be increased or extended without the consent of such Lender.

Notwithstanding anything in this Agreement to the contrary, each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent, to enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 12.2) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 2.7 (including, without limitation, as applicable, (1) to permit the Incremental Term Loans and the Incremental Commitment Increases to share ratably in the benefits of this Agreement and the other Loan Documents and (2) to include the Incremental Term Loan Commitments and the Incremental Commitment Increases, as applicable, or outstanding Incremental Term Loans and outstanding Incremental Commitment Increases, as applicable, in any determination of (i) Required Lenders or (ii) similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender’s Revolving Credit Commitment or any increase in any Lender’s Revolving Credit Commitment Percentage, in each case, without the written consent of such affected Lender.

SECTION 12.3 Expenses; Indemnity.

(u) **Costs and Expenses.** The Borrower and any other Credit Party, jointly and severally, shall pay (i) all reasonable and documented out of pocket expenses incurred by the Administrative Agent and its Affiliates (including the reasonable and documented fees, expenses and charges of one firm of counsel and one local counsel, as necessary, in each appropriate jurisdiction, for the Administrative Agent, within thirty (30) days following written demand therefor, together with reasonable backup documentation), in connection with the syndication of the Credit Facility, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out of pocket expenses incurred by the Issuing Lender in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all reasonable and documented out of pocket expenses incurred by the Administrative Agent, any Lender or the Issuing Lender (including the reasonable and documented fees, expenses and charges of one firm of counsel and, one local counsel, as necessary, in each appropriate jurisdiction and, in the case of an actual or perceived conflict of interest of any of the aforementioned counsel, another firm of counsel for such affected parties) for the Administrative Agent, any Lender or the Issuing Lender, within thirty (30) days following written demand therefor, together with reasonable backup documentation), in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(v) **Indemnification by the Borrower.** The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Lender and the Issuing Lender, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnitee”) against, and hold each Indemnitee harmless from, and shall pay or reimburse any such Indemnitee for, any and all losses, claims (including, without limitation, any Environmental Claims), penalties, damages, liabilities and related expenses (including the reasonable and documented fees, expenses and charges of one firm of counsel for all Indemnitees and, one local counsel, as necessary, in each appropriate jurisdiction and, in the case of an actual or perceived conflict of interest of any of the aforementioned counsel, another firm of counsel for such affected Indemnites), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the
Borrower or any other Credit Party), other than such Indemnitee and its Related Parties, arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder or the consummation of the transactions contemplated hereby or thereby (including, without limitation, the Transactions), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Issuing Lender to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Credit Party or any Subsidiary thereof, or any Environmental Claim related in any way to any Credit Party or any Subsidiary, (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by any Credit Party or any Subsidiary thereof, and regardless of whether any Indemnitee is a party thereto, or (v) any claim (including, without limitation, any Environmental Claims), investigation, litigation or other proceeding (whether or not the Administrative Agent or any Lender is a party thereto) and the prosecution and defense thereof, arising out of or in any way connected with the Loans, this Agreement, any other Loan Document, or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby, including without limitation, reasonable attorneys and consultant’s fees, provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee or (B) result from (1) a material breach by such Indemnitee of its express obligations under this Agreement or any other Loan Document, (2) any claim, litigation, investigation or proceeding between or among Indemnitees not arising from any act or omission by the Borrower or any of its Affiliates (other than any such claim, litigation, investigation or proceeding of any Indemnitee solely in its capacity as, or fulfilling its role as, an agent or arranger or similar role hereunder), or (3) any settlement entered into by such Indemnitee without the Borrower’s written consent (which consent shall not be unreasonably withheld, delayed or conditioned). This Section 12.3(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(w) **Reimbursement by Lenders.** To the extent that the Borrower for any reason fails to indefeasibly pay any amount required under clause (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), the Issuing Lender, the Swingline Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the Issuing Lender, the Swingline Lender or such Related Party, as the case may be, such Lender’s pro rata share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender’s share of the unused Revolving Credit Commitments and the Revolving Credit Exposure at such time, or if the unused Revolving Credit Commitments and the Revolving Credit Exposure has been reduced to zero, then based on such Lender’s share of the unused Revolving Credit Commitments and the Revolving Credit Exposure immediately prior to such reduction) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender); provided that with respect to such unpaid amounts owed to the Issuing Lender or the Swingline Lender solely in its capacity as such, only the Revolving Credit Lenders shall be required to pay such unpaid amounts, such payment to be made severally among them based on such Revolving Credit Lenders’ Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought or, if the Revolving Credit Commitment has been reduced to zero as of such time, determined immediately prior to such reduction); provided, further, that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in its capacity as such, or against any
Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), the Issuing Lender or the Swingline Lender in connection with such capacity. The obligations of the Lenders under this clause (c) are subject to the provisions of Section 5.7.

(x) Waiver of Consequential Damages, Etc. To the fullest extent permitted by Applicable Law, the Borrower and each other Credit Party, the Administrative Agent, each Lender, the Issuing Lender, the Swingline Lender and each Secured Party shall not assert, and hereby waives, any claim against any other party, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in clause (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby, except to the extent of such Indemnitee's gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment.

(y) Payments. All amounts due under this Section shall be payable promptly after demand therefor.

(z) Survival. Each party’s obligations under this Section shall survive the termination of the Loan Documents and payment of the obligations hereunder.

SECTION 12.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, the Issuing Lender, the Swingline Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Issuing Lender, the Swingline Lender or any such Affiliate to or for the credit or the account of the Borrower or any other Credit Party against any and all of the obligations of the Borrower or such Credit Party now or hereafter existing under this Agreement or any other Loan Document to such Lender, the Issuing Lender or the Swingline Lender or any of their respective Affiliates, irrespective of whether or not such Lender, the Issuing Lender, the Swingline Lender or any such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower or such Credit Party may be contingent or unmatured or are owed to a branch or office of such Lender, the Issuing Lender, the Swingline Lender or such Affiliate different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 10.4 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the Issuing Lender, the Swingline Lender and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, the Issuing Lender, the Swingline Lender and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Issuing Lender, the Swingline Lender or their respective Affiliates may have. Each Lender, the Issuing Lender and the Swingline Lender agree to notify the Borrower and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.
SECTION 12.5  Governing Law; Jurisdiction, Etc.

(i)  Governing Law. This Agreement and the other Loan Documents and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement or any other Loan Document (except, as to any other Loan Document, as expressly set forth therein) and the transactions contemplated hereby and thereby shall be governed by, and construed in accordance with, the law of the State of New York.

(j)  Submission to Jurisdiction. The Borrower and each other Credit Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, against the Administrative Agent, any Lender, the Issuing Lender, the Swingline Lender, or any Related Party of the foregoing in any way relating to this Agreement or any other Loan Document or the transactions relating hereto or thereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent, any Lender, the Issuing Lender or the Swingline Lender may otherwise have to bring any action or proceeding relating to this Agreement or any other Loan Document against the Borrower or any other Credit Party or its properties in the courts of any jurisdiction.

(k)  Waiver of Venue. The Borrower and each other Credit Party irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(l)  Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.1. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

SECTION 12.6  Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.
SECTION 12.7 Reversal of Payments. To the extent any Credit Party makes a payment or payments to the Administrative Agent for the ratable benefit of the Lenders or the Administrative Agent receives any payment or proceeds of the Collateral which payments or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any Debtor Relief Law, other Applicable Law or equitable cause, then, to the extent of such payment or proceeds repaid, the Obligations or part thereof intended to be satisfied shall be revived and continued in full force and effect as if such payment or proceeds had not been received by the Administrative Agent.

SECTION 12.8 Injunctive Relief. The Borrower recognizes that, in the event the Borrower fails to perform, observe or discharge any of its obligations or liabilities under this Agreement, any remedy of law may prove to be inadequate relief to the Lenders. Therefore, the Borrower agrees that the Lenders, at the Lenders’ option, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

SECTION 12.9 Successors and Assigns; Participations.

(d) Successors and Assigns Generally. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that neither the Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (e) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(e) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it); provided that, in each case with respect to any Credit Facility, any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender’s Revolving Credit Commitment and/or the Loans at the time owing to it (in each case with respect to any Credit Facility) or contemporaneous assignments to related Approved Funds (determined after giving effect to such assignments) that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Revolving Credit Commitment (which for this purpose includes Loans outstanding thereunder) or, if the applicable Revolving Credit Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject
to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $5,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); provided that the Borrower shall be deemed to have given its consent ten (10) Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Borrower prior to such tenth (10th) Business Day;

(ii) **Proportionate Amounts.** Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loan or the Revolving Credit Commitment assigned;

(iii) **Required Consents.** No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (x) an Event of Default has occurred and is continuing at the time of such assignment or (y) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund; provided, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and provided, further, that the Borrower’s consent shall not be required during the primary syndication of the Credit Facility;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of the Revolving Credit Facility if such assignment is to a Person that is not a Lender with a Revolving Credit Commitment, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consents of the Issuing Lender and the Swingline Lender shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500 for each assignment; provided that (A) only one such fee will be payable in connection with simultaneous assignments to two or more related Approved Funds by a Lender and (B) the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) **No Assignment to Certain Persons.** No such assignment shall be made to (A) the Borrower or any of its Subsidiaries or Affiliates or (B) any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute a Defaulting Lender or a Subsidiary thereof.
(vi) **No Assignment to Natural Persons.** No such assignment shall be made to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person).

(vii) **Certain Additional Payments.** In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested, but not funded by, the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (A) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent, the Issuing Lender, the Swingline Lender and each other Lender hereunder (and interest accrued thereon), and (B) acquire (and fund as appropriate) its full pro rata share of all Loans and participations in Letters of Credit and Swingline Loans in accordance with its Revolving Credit Commitment Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under Applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 5.8, 5.9, 5.10, 5.11 and 12.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender’s having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (d) of this Section (other than a purported assignment to a natural Person (or a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural Person) or the Borrower or any of the Borrower’s Subsidiaries or Affiliates, which shall be null and void.)

(f) **Register.** The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower, shall maintain at one of its offices in Charlotte, North Carolina, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitment of, and principal amounts of (and stated interest on) the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “Register”). The entries in the Register shall be conclusive, absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any
Lender (but only to the extent of entries in the Register that are applicable to such Lender), at any reasonable time and from time
to time upon reasonable prior notice.

(g) **Participations.** Any Lender may at any time, without the consent of, or notice to, the Borrower or the
Administrative Agent, sell participations to any Person (other than a natural Person or a holding company, investment vehicle or
trust for, or owned and operated for the primary benefit of, a natural Person, or the Borrower or any of the Borrower's
Subsidiaries or Affiliates) (each, a “Participant”) in all or a portion of such Lender’s rights and/or obligations under this
Agreement (including all or a portion of its Commitment and/or the Loans owing to it); provided that (i) such Lender’s
obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties
herefor for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Issuing Lender, the
Swingline Lender and the other Lenders shall continue to deal solely and directly with such Lender in connection with such
Lender’s rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the
indemnity under Section 12.3(c) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the
sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement;
provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree
to any amendment, modification or waiver or modification described in Section 12.2(a), (b), (c) or (d) that directly and adversely
affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 5.9, 5.10 and 5.11
(subject to the requirements and limitations therein, including the requirements under Section 5.11(g) (it being understood that
the documentation required under Section 5.11(g) shall be delivered to the participating Lender)) to the same extent as if it were
a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A)
agrees to be subject to the provisions of Section 5.12 as if it were an assignee under paragraph (b) of this Section; and (B) shall
not be entitled to receive any greater payment under Sections 5.10 or 5.11, with respect to any participation, than its participating
Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a
Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation
agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the
provisions of Section 5.12(b) with respect to any Participant. To the extent permitted by law, each Participant also shall be
entitled to the benefits of Section 12.4 as though it were a Lender; provided that such Participant agrees to be subject to
Section 5.6 as though it were a Lender.

Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a
register on which it enters the name and address of each Participant and the principal amounts of (and stated interest on) each
Participant’s interest in the Loans or other obligations under the Loan Documents (the “Participant Register”); provided that no
Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any
Participant or any information relating to a Participant’s interest in any commitments, loans, letters of credit or its other
obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such
commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States
Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall
treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this
Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as
Administrative Agent) shall have no responsibility for maintaining a Participant Register.
(h) **Certain Pledges.** Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 12.10 **Treatment of Certain Information; Confidentiality.** Each of the Administrative Agent, the Lenders and the Issuing Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Related Parties on a need-to-know basis (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by, or required to be disclosed to, any regulatory or similar authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners) (in which case the Administrative Agent, the Lender or the Issuing Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by bank accountants or any governmental regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent permitted by Applicable Law), (c) as to the extent required by Applicable Laws or regulations or in any legal, judicial, administrative or other compulsory proceeding (in which case the Administrative Agent, the Lender or the Issuing Lender, as applicable, shall use commercially reasonable efforts to promptly notify the Borrower, in advance, to the extent permitted by Applicable Law), (d) to any other party hereto, (e) in connection with the exercise of any remedies under this Agreement, under any other Loan Document or under any Secured Hedge Agreement or Secured Cash Management Agreement, or any action or proceeding relating to this Agreement, any other Loan Document or any Secured Hedge Agreement or Secured Cash Management Agreement, or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights and obligations under this Agreement or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the Credit Facility or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers with respect to the Credit Facility, (h) with the consent of the Borrower, (i) to Gold Sheets and other similar bank trade publications, such information to consist of deal terms and other information customarily found in such publications, (j) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Lender, the Issuing Lender or any of their respective Affiliates from a third party that is not, to such Person’s knowledge, subject to confidentiality obligations to the Borrower, (k) to governmental regulatory authorities in connection with any regulatory examination of the Administrative Agent or any Lender or in accordance with the Administrative Agent’s or any Lender’s regulatory compliance policy if the Administrative Agent or such Lender deems necessary for the mitigation of claims by those authorities against the Administrative Agent or such Lender or any of its subsidiaries or affiliates (in which case the Administrative Agent, the Lender or the Issuing Lender, as applicable, shall use commercially reasonable efforts to, except with respect to any audit or examination conducted by any governmental regulatory authority exercising examination or regulatory authority, promptly notify the Borrower, in advance, to the extent permitted by Applicable Law), (l) to the extent that such information is independently developed by the Administrative Agent, a Lender or the Issuing Lender, so long as such Person has not otherwise breached its confidentiality obligations hereunder and has not developed such information based on information received from a third party that to its knowledge has breached confidentiality obligations owing to the Borrower, its Subsidiaries or their Affiliates, or (m) for purposes of establishing a “due diligence”
defense. For purposes of this Section, “Information” means all information received from any Credit Party or any Subsidiary thereof relating to any Credit Party or any Subsidiary thereof or any of their respective businesses, other than any such information that is available to the Administrative Agent, any Lender or the Issuing Lender on a nonconfidential basis prior to disclosure by any Credit Party or any Subsidiary thereof; provided that, in the case of information received from a Credit Party or any Subsidiary thereof after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 12.11 Performance of Duties. Each of the Credit Party’s obligations under this Agreement and each of the other Loan Documents shall be performed by such Credit Party at its sole cost and expense.

SECTION 12.12 All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lenders, the Administrative Agent and any Persons designated by the Administrative Agent or any Lender pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Obligations remain unpaid or unsatisfied, any of the Revolving Credit Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 12.13 Survival.

(a) All representations and warranties set forth in Article VII and all representations and warranties contained in any certificate, or any of the Loan Documents (including, but not limited to, any such representation or warranty made in or in connection with any amendment thereto) shall constitute representations and warranties made under this Agreement. All representations and warranties made under this Agreement shall be made or deemed to be made at and as of the Closing Date (except those that are expressly made as of a specific date), shall survive the Closing Date and shall not be waived by the execution and delivery of this Agreement, any investigation made by or on behalf of the Lenders or any borrowing hereunder.

(b) Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the Lenders are entitled under the provisions of this Article XII and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the Lenders against events arising after such termination as well as before.

SECTION 12.14 Titles and Captions. Titles and captions of Articles, Sections and subsections in, and the table of contents of, this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement.

SECTION 12.15 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 12.16 Counterparts; Integration; Effectiveness; Electronic Execution.
(a) **Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees payable to the Administrative Agent, the Issuing Lender, the Swingline Lender and/or the Arranger, constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.1, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or in electronic (i.e., “pdf” or “tif”) format shall be effective as delivery of a manually executed counterpart of this Agreement.

(b) **Electronic Execution of Assignments.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

SECTION 12.17 **Term of Agreement.** This Agreement shall remain in effect from the Closing Date through and including the date upon which all Obligations (other than contingent indemnification obligations not then due) arising hereunder or under any other Loan Document shall have been paid and satisfied in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) or otherwise satisfied in a manner acceptable to the Issuing Lender) and the Revolving Credit Commitment has been terminated. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination or in respect of any provision of this Agreement which survives such termination.

SECTION 12.18 **USA PATRIOT Act.** The Administrative Agent and each Lender hereby notifies the Borrower that pursuant to the requirements of the PATRIOT Act, each of them is required to obtain, verify and record information that identifies each Credit Party, which information includes the name and address of each Credit Party and other information that will allow such Lender to identify each Credit Party in accordance with the PATRIOT Act.

SECTION 12.19 **Independent Effect of Covenants.** The Borrower expressly acknowledges and agrees that each covenant contained in Articles VIII or IX hereof shall be given independent effect.

SECTION 12.20 **No Advisory or Fiduciary Responsibility.**

(a) In connection with all aspects of each transaction contemplated hereby, each Credit Party acknowledges and agrees, and acknowledges its Affiliates’ understanding, that (i) the facilities provided for hereunder and any related arranging or other services in connection therewith (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document) are an arm’s-length commercial transaction between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arranger and the Lenders, on the other hand, and the Borrower is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof)
or thereof), (ii) in connection with the process leading to such transaction, each of the Administrative Agent, the Arranger and
the Lenders is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Borrower or
any of its Affiliates, stockholders, creditors or employees or any other Person, (iii) none of the Administrative Agent, the
Arranger or the Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Borrower
with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any
amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether the Arranger or any
Lender has advised or is currently advising the Borrower or any of its Affiliates on other matters) and none of the Administrative
Agent, the Arranger or the Lenders has any obligation to the Borrower or any of its Affiliates with respect to the financing
transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents, (iv) the
Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests
that differ from, and may conflict with, those of the Borrower and its Affiliates, and none of the Administrative Agent, the
Arranger or the Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary
relationship and (v) the Administrative Agent, the Arranger and the Lenders have not provided and will not provide any legal,
accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment,
waiver or other modification hereof or of any other Loan Document) and the Credit Parties have consulted their own legal,
accounting, regulatory and tax advisors to the extent they have deemed appropriate.

(b) Each Credit Party acknowledges and agrees that each Lender, the Arranger and any Affiliate thereof may lend
money to, invest in, and generally engage in any kind of business with, any of the Borrower, the Parent, any Affiliate thereof or
any other person or entity that may do business with or own securities of any of the foregoing, all as if such Lender, Arranger or
Affiliate thereof were not a Lender or Arranger or an Affiliate thereof (or an agent or any other person with any similar role
under the Credit Facilities) and without any duty to account therefor to any other Lender, the Arranger, the Parent, the Borrower
or any Affiliate of the foregoing. Each Lender, the Arranger and any Affiliate thereof may accept fees and other consideration
from the Parent, the Borrower or any Affiliate thereof for services in connection with this Agreement, the Credit Facilities or
otherwise without having to account for the same to any other Lender, the Arranger, the Parent, the Borrower or any Affiliate of
the foregoing.

SECTION 12.21 Inconsistencies with Other Documents. In the event there is a conflict or inconsistency between this
Agreement and any other Loan Document, the terms of this Agreement shall control; provided that any provision of the Security
Documents which imposes additional burdens on the Borrower or any of its Subsidiaries or further restricts the rights of the
Borrower or any of its Subsidiaries or gives the Administrative Agent or Lenders additional rights shall not be deemed to be in
conflict or inconsistent with this Agreement and shall be given full force and effect.

[Signature pages to follow]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their duly authorized officers, all as of the day and year first written above.

REALPAGE, INC., as Borrower

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Executive Vice President, Chief Financial Officer and Treasurer
AGENTS AND LENDERS:

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

By: /s/ John Nocita
Name: John Nocita
Title: Managing Director

Credit Agreement
RealPage, Inc.
Signature Page
FIFTH THIRD BANK, as Lender

By: /s/ Glen Mastey
Name: Glen Mastey
Title: Managing Director

Credit Agreement
RealPage, Inc.
COMERICA BANK, as Lender

By:  /s/ Charles Fell
Name: Charles Fell
Title: Vice President

Credit Agreement
RealPage, Inc.
Signature Page
BANK OF AMERICA, N.A., as Lender

By:  /s/ R. Ruining Nguyen
Name: R. Ruining Nguyen
Title: Vice President

Credit Agreement
RealPage, Inc.
Signature Page
JPMORGAN CHASE BANK, N.A., as Lender

By: /s/ Scott R. Maggard
Name: Scott R. Maggard
Title: Underwriter III

Credit Agreement
RealPage, Inc.
Signature Page
## Schedule 1.1

### COMMITMENTS AND COMMITMENT PERCENTAGES

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<tr>
<td>Wells Fargo Bank, National Association</td>
<td>$65,000,000.00</td>
<td>32.500000000%</td>
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<tr>
<td>Fifth Third Bank</td>
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<tr>
<td>Comerica Bank</td>
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<tr>
<td>Bank of America, N.A.</td>
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<tr>
<td>JPMorgan Chase Bank, N.A.</td>
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<tr>
<td><strong>Total</strong></td>
<td>$200,000,000.00</td>
<td>100.000000000%</td>
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Credit Agreement  
RealPage, Inc.
COLLATERAL AGREEMENT

dated as of September 30, 2014,

by and among

REALPAGE, INC.,
and
certain of its Subsidiaries,
as Grantors,

in favor of

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent
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COLLATERAL AGREEMENT (this “Agreement”), dated as of September 30, 2014, by and among RealPage, Inc., a Delaware corporation (the “Borrower”), certain Domestic Subsidiaries of the Borrower as identified on the signature pages hereto and any Additional Grantor (as defined below) who may become party to this Agreement (such Domestic Subsidiaries and Additional Grantors, collectively with the Borrower, the “Grants”), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (in such capacity, the “Administrative Agent”) for the benefit of the Secured Parties.

STATEMENT OF PURPOSE

Pursuant to the Credit Agreement dated as of the date hereof by and among the Borrower, the Lenders from time to time party thereto and the Administrative Agent (as amended, restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), the Lenders have agreed to make Extensions of Credit to the Borrower upon the terms and subject to the conditions set forth therein.

Pursuant to the terms of the Guaranty Agreement of even date herewith, certain Subsidiaries of the Borrower who are parties hereto have guaranteed the payment and performance of the Secured Obligations.

It is a condition precedent to the obligation of the Lenders to make their respective Extensions of Credit to the Borrower under the Credit Agreement that the Grants shall have executed and delivered this Agreement to the Administrative Agent, for the benefit of the Secured Parties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective Extensions of Credit to the Borrower thereunder, each Grantor hereby agrees with the Administrative Agent, for the benefit of the Secured Parties, as follows:

ARTICLE I

DEFINED TERMS

SECTION 1.1 Terms Defined in the Uniform Commercial Code


(b) Terms defined in the UCC and not otherwise defined herein or in the Credit Agreement shall have the meaning assigned in the UCC as in effect from time to time.

(c) If any term used herein has a meaning assigned to it in the UCC and such term is defined in Article 9 of the UCC differently than how such term is defined in another Article of the UCC such term shall have the meaning assigned thereto in Article 9 of the UCC.

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60010211_5
SECTION 1.2 Definitions. The following terms when used in this Agreement shall have the meanings assigned to them below:

“Additional Grantor” means each Domestic Subsidiary of the Borrower that hereafter becomes a Grantor pursuant to Section 7.17, (as required pursuant to Section 8.13 of the Credit Agreement).

“Administrative Agent” has the meaning assigned thereto in the Preamble to this Agreement.

“Agency Agreement” means that certain General Agency and Administration Agreement, effective as of January 1, 2014, by and between Multifamily and AMHIC, as in effect on the Closing Date.

“Agreement” has the meaning assigned thereto in the Preamble to this Agreement.


“Assignment of Claims Act” means the Assignment of Claims Act of 1940 (41 U.S.C. Section 15 and 31 U.S.C. Section 3727), including all regulations promulgated thereunder.

“Borrower” has the meaning assigned thereto in the Preamble to this Agreement.

“Collateral” has the meaning assigned thereto in Section 2.1.

“Collateral Account” has the meaning assigned thereto in Section 5.2.

“Collateral Disclosure Letter” means the Collateral Disclosure Letter, dated as of the date hereof, delivered by Grantors to the Administrative Agent in connection with this Agreement, as may be updated from time to time in accordance with the terms of this Agreement.

“Control” means the manner in which “control” is achieved under the UCC with respect to any Collateral for which the UCC specifies a method of achieving “control”.

“Controlled Depositary” has the meaning assigned thereto in Section 4.6.

“Controlled Intermediary” has the meaning assigned thereto in Section 4.6.

“Copyright License” means any agreement now or hereafter in existence naming any Grantor as licensor or licensee, including, without limitation, those listed in Schedule 3.11 to the Collateral Disclosure Letter, granting any right under any Copyright, including, without limitation, the grant of rights to manufacture, distribute, exploit and sell materials derived from any Copyright.

“Copyrights” means, collectively, all of the following of any Grantor: (a) all copyrights, works protectable by copyright, copyright registrations and copyright applications anywhere in the world, including, without limitation, those listed on Schedule 3.11 to the Collateral Disclosure Letter, (b) all reissues, extensions, continuations (in whole or in part) and renewals of any of the foregoing, (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages or payments for past, present and future
infringements of any of the foregoing, (d) the right to sue for past, present and future infringements of any of the foregoing and (e) all rights corresponding to any of the foregoing throughout the world.

“Credit Agreement” has the meaning assigned thereto in the Statement of Purpose to this Agreement.

“Deposit Account Control Agreement” has the meaning assigned thereto in Section 3.4.

“Effective Endorsement and Assignment” means, with respect to any specific type of Collateral, all such endorsements, assignments and other instruments of transfer reasonably requested by the Administrative Agent with respect to the Security Interest granted in such Collateral, and in each case, in form and substance satisfactory to the Administrative Agent.

“Excluded Assets” means (a) any lease, license, contract, document, instrument or agreement to which any Grantor is a party, to the extent that the creation of a Lien on such assets would, under the express terms of such lease, license, contract, document, instrument or agreement, result in a breach of the terms of, or constitute a default under, such lease license, contract, document, instrument or agreement (other than to the extent that any such term (i) has been waived or (ii) would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, 9-409 or other applicable provisions of the UCC of any relevant jurisdiction or any other Applicable Law); provided that, (x) immediately upon the ineffectiveness, lapse or termination of any such express term, such assets shall automatically cease to constitute “Excluded Assets” and (y) this clause shall not affect, limit, restrict or impair the grant by any Grantor of a Security Interest in any corresponding Account or any corresponding money or other amounts due and payable to any Grantor or to become due and payable to any Grantor under any such lease, license, contract, document, instrument or agreement; (b) any property that is subject to a purchase money Lien or a Capital Lease Obligation permitted under the Loan Documents if the agreement pursuant to which such Lien is granted (or the document providing for such Capital Lease Obligation) prohibits or requires the consent of any Person other than the Borrower and/or its Affiliates which has not been obtained as a condition to the creation of any other Lien on such property; provided that, immediately upon receipt of such consent, such assets shall automatically cease to constitute “Excluded Assets”; (c) any real property and leasehold interests in real property owned by a Grantor; (d) Equity Interests in any Person that is not a Wholly-Owned Subsidiary of a Grantor, to the extent a Lien thereon is prohibited by or requires consent under the organizational documents of such Person and such consent has not been obtained or such Equity Interests constitute minority ownership of a non-United States entity; (e) Specified Deposit Accounts (other than such Deposit Accounts described in clause (d) of the definition of “Specified Deposit Accounts”); (f) any “intent-to-use” application for registration of a Trademark filed pursuant to Section 1(b) of the Lanham Act, 15 U.S.C. § 1051, prior to the filing of a “Statement of Use” pursuant to Section 1(d) of the Lanham Act of an “Amendment to Allege Use” pursuant to Section 1(c) of the Lanham Act with respect thereto, solely to the extent, if any, that and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of any registration that issues from such intent-to-use application under applicable federal law; (g) any Equity Interests in or assets of (i) an Excluded Subsidiary, a direct or indirect Foreign Subsidiary or a Foreign Subsidiary Holding Company, except that Excluded Assets shall not include 65% of the outstanding voting Equity Interests and 100% of the non-voting Equity Interests of each First-Tier Foreign Subsidiary (other than an Excluded Subsidiary) or Foreign Subsidiary Holding Company (other than an Excluded Subsidiary), (ii) a direct or indirect Domestic Subsidiary of a Foreign Subsidiary; (h) motor vehicles or other assets that are subject to certificates of title, except to the extent perfection of a security interest therein may be accomplished by filing of financing statements; (i) any other property, to the extent the granting of a Lien therein is prohibited by any Applicable Law (other than to the extent that such prohibition would be rendered ineffective pursuant to Sections 9-406, 9-407, 9-408, 9-409 or other applicable provisions of the UCC of any relevant jurisdiction or any other Applicable Law); (j) any obligation or property of any kind due from,
owed by or belonging to any Sanctioned Person; (k) any assets of any Grantor where the Administrative Agent and the Borrower determine that the cost of obtaining or perfecting a Lien in such assets is excessive in relation to the value afforded thereby; and (l) “Expiration and Records” (as defined in the Agency Agreement) and Trust Property that is subject to a Lien in favor of AMHIC.

Notwithstanding the foregoing, (x) Excluded Assets shall not include the Proceeds, products, substitutions or replacements of any Excluded Assets (except to the extent that such Proceeds, products, substitutions or replacements shall themselves constitute Excluded Assets) and (y) in the event that any Excluded Assets cease to constitute Excluded Assets, then immediately upon such property ceasing to constitute Excluded Assets for any reason, such property shall be deemed at all times from and after the date hereof to constitute Collateral without any further action hereunder.

“Government Contract” means a contract between any Grantor and an agency, department or instrumentality of the United States or any state, municipal or local Governmental Authority located in the United States or all obligations of any such Governmental Authority arising under any Account now or hereafter owing by any such Governmental Authority, as Account Debtor, to any Grantor.

“Grantors” has the meaning assigned thereto in the Preamble of this Agreement.

“Intellectual Property” means, collectively, all of the following of any Grantor: (a) all systems software and applications software (including, without limitation, source code and object code), all documentation for such software, including, without limitation, user manuals, flowcharts, functional specifications, operations manuals, and all formulas, processes, ideas and know-how embodied in any of the foregoing, (b) concepts, discoveries, improvements and ideas, know-how, technology, reports, design information, trade secrets, practices, specifications, test procedures, maintenance manuals, research and development, (c) Patents and Patent Licenses, Copyrights and Copyright Licenses, Trademarks and Trademark Licenses, and (d) other licenses to use any of the items described in the foregoing clauses (a), (b), and (c).

“Issuer” means any issuer of any Investment Property or Partnership/LLC Interests (including, without limitation, any Issuer as defined in the UCC).

“Multifamily” means Multifamily Internet Ventures, LLC.

“Partnership/LLC Agreement” has the meaning assigned thereto in Section 2.2.

“Partnership/LLC Interests” means, with respect to any Grantor, the entire partnership interest, membership interest or limited liability company interest, as applicable, of such Grantor in each partnership, limited partnership or limited liability company owned thereby, including, without limitation, such Grantor’s capital account, its interest as a partner or member, as applicable, in the net cash flow, net profit and net loss, and items of income, gain, loss, deduction and credit of any such partnership, limited partnership or limited liability company, as applicable, such Grantor’s interest in all distributions made or to be made by any such partnership, limited partnership or limited liability company, as applicable, to such Grantor and all of the other economic rights, titles and interests of such Grantor as a partner or member, as applicable, of any such partnership, limited partnership or limited liability company, as applicable, whether set forth in the partnership agreement, membership agreement, limited liability company agreement or operating agreement, as applicable, of such partnership, limited partnership or limited liability company, as applicable, by separate agreement or otherwise.
“Patent License” means any agreement now or hereafter in existence providing for the grant by or to any Grantor of any right to manufacture, use or sell any invention covered in whole or in part by a Patent, including, without limitation, any of the foregoing referred to in Schedule 3.11 to the Collateral Disclosure Letter.

“Patents” means collectively, all of the following of any Grantor: (a) all patents, all inventions and patent applications anywhere in the world, including, without limitation, those listed on Schedule 3.11 to the Collateral Disclosure Letter, (b) all reissues, extensions, continuations (in whole or in part) and renewals of any of the foregoing, (c) all income, royalties, damages or payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages or payments for past, present or future infringements of any of the foregoing, (d) the right to sue for past, present and future infringements of any of the foregoing and (e) all rights corresponding to any of the foregoing throughout the world.

“Restricted Securities Collateral” has the meaning assigned thereto in Section 5.3.

“Securities Account Control Agreement” has the meaning assigned thereto in Section 3.4.

“Securities Act” means the Securities Act of 1933, including all regulations promulgated thereunder.

“Security Interests” means the security interests granted pursuant to Article II, as well as all other security interests created or assigned as additional security for any of the Secured Obligations pursuant to the provisions of any Loan Document.

“Specified Deposit Account” means, collectively, (a) Deposit Accounts established solely for the purpose of funding payroll, payroll taxes and other compensation and benefits to employees, and zero-balance disbursement accounts (that are not collection accounts), (b) Deposit Accounts utilized solely to hold amounts on deposit of any party other than a Grantor or any Subsidiary thereof, (c) Deposit Accounts established solely for the purpose of holding amounts on deposit for use as cash collateral for credit card and automated clearing house processing services arrangements and reimbursement obligations under letters of credit (other than the Letters of Credit) and (d) so long as no Default or Event of Default has occurred and is continuing, (i) Deposit Accounts (other than those specified in clauses (a), (b) and (c)) established in the United States with aggregate amounts on deposit not to exceed $250,000 for each such Deposit Account and, when aggregated with the amounts on deposit in all other Deposit Accounts established in the United States for which control agreements have not been obtained (other than those specified in clauses (a), (b) and (c)), do not exceed $500,000 at any time and (ii) Deposit Accounts established outside of the United States with amounts on deposit not to exceed $1,000,000 for each such Deposit Account and, when aggregated with the amounts on deposit in all other Deposit Accounts established outside of the United States for which control agreements have not been obtained (other than those specified in clauses (a), (b) and (c)), do not exceed $5,000,000 at any time.

“Specified Investment Property” means, collectively, Securities Accounts established solely for the purpose of funding payroll, payroll taxes and other compensation and benefits to employees.

“Trademark License” means any agreement now or hereafter in existence providing for the grant by or to any Grantor of any right to use any Trademark, including, without limitation, any of the foregoing referred to in Schedule 3.11 to the Collateral Disclosure Letter.

“Trademarks” means, collectively, all of the following of any Grantor: (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, internet domain names,
trade styles, service marks, logos, other business identifiers, whether registered or unregistered, all registrations and recordings thereof, and all applications in connection therewith (other than each application to register any trademark or service mark prior to the filing under Applicable Law of a verified statement of use for such trademark or service mark) anywhere in the world, including, without limitation, those listed on Schedule 3.11 to the Collateral Disclosure Letter, (b) all reissues, extensions, continuations (in whole or in part) and renewals of any of the foregoing, (c) all income, royalties, damages and payments now or hereafter due and/or payable under any of the foregoing or with respect to any of the foregoing, including, without limitation, damages or payments for past, present or future infringements of any of the foregoing, (d) the right to sue for past, present or future infringements of any of the foregoing and (e) all rights corresponding to any of the foregoing (including the goodwill) throughout the world.

“Trust Account” means a premium trust account established by Multifamily to hold all premiums, applicable taxes and surcharges paid in respect of policies covering the insurance business described in the Agency Agreement until the same are delivered to AMHIC (such delivery being net of commissions payable to Multifamily in respect thereof) pursuant to the terms of the Agency Agreement.

“Trust Property” means the Trust Account and all funds held from time to time in the Trust Account other than funds in the Trust Account to be paid as commissions to Multifamily pursuant to the terms of the Agency Agreement.

“Vehicles” means all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title under any Applicable Law and which cannot be perfected under such Applicable Law unless the applicable security interest is noted on the face of the applicable certificate of title, and all tires and all other appurtenances to any of the foregoing. For the avoidance of doubt, the term Vehicle shall exclude Vessels.

“Vessel” means any watercraft or artificial contrivance used, or capable of being used, as a means of transportation on water (including any “documented vessel” as defined in 46 U.S.C. Section 106) or similar asset that is covered by a certificate of title under any Applicable Law and which cannot be perfected solely by a financing statement filed pursuant to the UCC and is not a Vehicle.

ARTICLE II
SECURITY INTEREST

SECTION 2.1 Grant of Security Interest. Each Grantor hereby grants and pledges to the Administrative Agent, for the benefit of itself and the other Secured Parties, a continuing security interest in, all of such Grantor’s right, title and interest in the following property and such Grantor’s power to transfer

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rights in such property, whether now owned or at any time hereafter acquired by such Grantor or in which such Grantor now has or at any time in the future may acquire any right, title or interest, or the power to transfer rights therein, and wherever located or deemed located (collectively, the “Collateral”), as collateral security for the prompt and complete payment and performance when due (whether at the stated maturity, by acceleration or otherwise) of the Secured Obligations:

(a) all Accounts;
(b) all cash and currency;
(c) all Chattel Paper;
(d) all Commercial Tort Claims identified on Schedule 3.9 to the Collateral Disclosure Letter;
(e) all Deposit Accounts;
(f) all Documents;
(g) all Equipment;
(h) all Fixtures;
(i) all General Intangibles;
(j) all Instruments;
(k) all Intellectual Property;
(l) all Inventory;
(m) all Investment Property;
(n) all Letter-of-Credit Rights;
(o) all other Goods not otherwise described above;
(p) all books and records pertaining to the Collateral; and
(q) to the extent not otherwise included, all Proceeds and products of any and all of the foregoing, all Accessions to any of the foregoing and all collateral security and Supporting Obligations given by any Person with respect to any of the foregoing; provided, that the Security Interests shall not extend to, and the term “Collateral” shall not include, any Excluded Assets.

Notwithstanding the foregoing, (i) the payment and performance of the Secured Obligations shall not be secured by any Hedge Agreement between any Grantor and any Secured Party and (ii) this Agreement shall not to be construed as an assignment of any Intellectual Property.

SECTION 2.2 Partnership/LLC Interests. Subject to Section 7.16, each limited liability company agreement, operating agreement, membership agreement, partnership agreement or similar agreement
relating to any Partnership/LLC Interests included in the Collateral (a “Partnership/LLC Agreement”) shall be amended in a manner satisfactory to the Administrative Agent to the extent necessary to permit each member, manager and partner that is a Grantor to pledge all of the Partnership/LLC Interests in which such Grantor has rights to, and grant and collaterally assign to, the Secured Parties a lien and security interest in its Partnership/LLC Interests in which such Grantor has rights without any further consent, approval or action by any other party, including, without limitation, any other party to any Partnership/LLC Agreement or otherwise, with the effect that, upon the occurrence and during the continuance of an Event of Default, the Secured Parties or their respective designees shall have the right (but not the obligation) to be substituted for the applicable Grantor as a member, manager or partner under the applicable Partnership/LLC Agreement and the Secured Parties shall have all rights, powers and benefits of such Grantor as a member, manager or partner, as applicable, under such Partnership/LLC Agreement (which for the avoidance of doubt, such rights, powers and benefits of a substituted member shall include all voting and other rights and not merely the rights of an economic interest holder).

SECTION 2.3 Grantors Remain Liable.

Anything herein to the contrary notwithstanding: (a) each Grantor shall remain liable to perform all of its duties and obligations under the contracts and agreements included in the Collateral to the same extent as if this Agreement had not been executed, (b) the exercise by the Administrative Agent or any other Secured Party of any of the rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, (c) neither the Administrative Agent nor any other Secured Party shall have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement, nor shall the Administrative Agent nor any other Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder, and (d) neither the Administrative Agent nor any other Secured Party shall have any liability in contract or tort for any Grantor’s acts or omissions.

SECTION 2.4 Security Interest Absolute.

(a) All rights of the Administrative Agent and the other Secured Parties and the Liens and Security Interests hereunder, and all of the Secured Obligations of the Grantors hereunder, to the extent permitted by Applicable Law, shall be absolute and unconditional, irrespective of, and unaffected by:

(i) the genuineness, legality, validity, regularity, enforceability or any future amendment or modification of, or change in, or supplement to, the Credit Agreement, any other Loan Document, any Hedge Agreement, any Cash Management Agreement or any other agreement, document or instrument to which the Borrower, any Subsidiary Guarantor or any of their respective Subsidiaries or Affiliates is or may become a party (including any increase in the Secured Obligations resulting from any extension of additional credit or otherwise);

(ii) any extension or waiver of the time for performance by any Grantor or any other Person of, or compliance with, any term, covenant or agreement on its part to be performed or observed under a Loan Document, a Cash Management Agreement or a Hedge Agreement, or waiver of such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

(iii) the taking and holding of security or collateral for the payment of the Secured Obligations or the sale, exchange, release, disposal of, or other dealing with, any property pledged, mortgaged or conveyed, or in which the Administrative Agent or the other Secured Parties have been
granted a Lien, to secure any Indebtedness of any Grantor or any other guarantor to the Administrative Agent or the other Secured Parties;

(iv) the release of anyone who may be liable in any manner for the payment of any amounts owed by any Grantor to the Administrative Agent or any other Secured Party;

(v) any action under or in respect of the Credit Agreement, any other Loan Document, any Cash Management Agreement or any Hedge Agreement in the exercise of any remedy, power or privilege contained therein or available to any of them at law, in equity or otherwise, or waiver or refraining from exercising any such remedies, powers or privileges (including any manner of sale, disposition or any application of any sums by whomever paid or however realized to any Secured Obligations owing by any Grantor to the Administrative Agent or any other Secured Party in such manner as the Administrative Agent or any other Secured Party shall determine in its reasonable discretion);

(vi) the absence of any action to enforce this Agreement, any other Loan Document, any Cash Management Agreement or Hedge Agreement or the waiver or consent by the Administrative Agent or any other Secured Party with respect to any of the provisions of this Agreement, the Credit Agreement, any other Loan Document, any Cash Management Agreement or Hedge Agreement;

(vii) the existence, value or condition of, or failure to perfect its Lien against, any Collateral or any other security for or guaranty of the Secured Obligations or any action, or the absence of any action, by the Administrative Agent or any other Secured Party in respect of such security or guaranty (including, without limitation, the release of any such security or guaranty); and

(viii) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor.

(b) Each Grantor represents, warrants and agrees that the Secured Obligations and its obligations under this Agreement and the other Loan Documents to which it is a party are not and shall not be subject to any counterclaims, offsets or defenses of any kind (other than the defense of payment or performance) against the Administrative Agent, the other Secured Parties or any other Grantor whether now existing or which may arise in the future.

(c) Each Grantor hereby agrees and acknowledges that the Secured Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Agreement, and all dealings among any of the Grantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Agreement.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Secured Parties to make their respective Extensions of Credit to, and/or to enter into Secured Cash
Management Agreements and/or Secured Hedge Agreements with, as applicable, to the Borrower or any other Credit Party (as the case may be), each Grantor hereby represents and warrants to the Administrative Agent and each other Secured Party that:

SECTION 3.1 Organization; Power; Qualification. Such Grantor (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the power and authority to own, lease and operate its Properties and to carry on its business as now being and hereafter proposed to be conducted and (c) is duly qualified, authorized to do business and in good standing in each jurisdiction in which the character of its Properties or the nature of its business requires such qualification and authorization, except in jurisdictions where the failure to be so qualified, authorized or in good standing could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.2 Authorization of Agreement; Compliance with Laws; Non Contravention. Such Grantor has the right, power and authority and has taken all necessary corporate and other action to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by the duly authorized officers of such Grantor and this Agreement constitutes the legal, valid and binding obligation of such Grantor, enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal Debtor Relief Laws from time to time in effect that affect the enforcement of creditors’ rights in general and the availability of equitable remedies. The execution, delivery and performance by the Grantors of this Agreement and the transactions contemplated hereby do not and will not, by the passage of time, the giving of notice or otherwise, (a) require any Governmental Approval or violate any Applicable Law where the failure to obtain such Governmental Approval or such violation could reasonably be expected to have a Material Adverse Effect, (b) conflict with, result in a breach of, or constitute a default under, the articles of incorporation, bylaws or other organizational documents of any Grantor, (c) conflict with, result in a breach of, or constitute a default under, any indenture, agreement or other instrument to which such Person is a party or by which any of its properties may be bound or any Governmental Approval relating to such Person, in each case, which could individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, or (d) result in or require the creation or imposition of any Lien, upon or with respect to any property now owned or hereafter acquired by such Person other than Permitted Liens.

SECTION 3.3 Governmental Approvals. No consent or authorization of, filing with, or other act, in respect of an arbitrator or Governmental Authority and no consent of any other Person is required in connection with the execution, delivery or performance by, or enforcement against, any Grantor or any Issuer of this Agreement, except (a) as may be required by laws affecting the offering and sale of securities generally, (b) filings with the United States Copyright Office and/or the United States Patent and Trademark Office, (c) filings under the UCC and/or the Assignment of Claims Act, (d) consents, authorizations, filings or other acts or consents for which the failure to obtain or make could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (e) consents and authorizations that have been obtained and are in full force and effect.

SECTION 3.4 Perfected First Priority Liens. Each financing statement naming any Grantor as a debtor and the Administrative Agent as secured party is in appropriate form for filing in the appropriate offices of the states specified on Schedule 3.6 to the Collateral Disclosure Letter (as such schedule shall be updated from time to time pursuant to Section 4.3) and contains an adequate description of the Collateral for purposes of perfecting a security interest in such Collateral to the extent that a security interest therein may be perfected by filing pursuant to the UCC. The Security Interests granted pursuant to this Agreement constitute valid and enforceable security interests in all of the Collateral in favor of the Administrative Agent, for the benefit of the Secured Parties, as collateral security for the Secured Obligations, the Security Interest
will constitute a perfected security interest in all right, title and interest of the applicable Grantor named as debtor in such financing statement in the Collateral described therein, and the power to transfer rights in such Collateral, in each case to the extent that a security interest therein may be perfected by filing pursuant to the UCC, prior to all other Liens and rights of others therein, except for Permitted Liens. When the applicable Controlled Depositary, the Administrative Agent and the applicable Grantor have Authenticated a record providing that the applicable Controlled Depositary will comply with instructions originated by the Administrative Agent directing disposition of funds in the Deposit Account subject to such record without any further consent by the applicable Grantor (such a record, a “Deposit Account Control Agreement”), the Security Interest will constitute a perfected security interest in all right, title and interest of the applicable Grantor in such Deposit Account, and the power to transfer rights in such Deposit Account, in each case prior to all other Liens and rights of others therein and subject to no adverse claims, except for Permitted Liens. When the applicable Controlled Intermediary, the Administrative Agent and the applicable Grantor have Authenticated a record providing that the applicable Controlled Intermediary will comply with instructions originated by the Administrative Agent directing disposition of funds in the Securities Account subject to such record without any further consent by the applicable Grantor (such a record, a “Securities Account Control Agreement”), the Security Interest will constitute a perfected security interest in all right, title and interest of the applicable Grantor in such Securities Account, and the power to transfer rights in such Securities Account, in each case prior to all other Liens and rights of others therein and subject to no adverse claims, except for Permitted Liens. When the applicable Grantor shall have delivered any Instruments, Tangible Chattel Paper, money or Certificated Securities (together with an Effective Endorsement and Assignment in the case of Instruments and Certificated Securities) to the Administrative Agent, the Security Interest will constitute a perfected security interest in all right, title and interest of the applicable Grantor in such Instruments, Tangible Chattel Paper, money or Certificated Securities, and the power to transfer rights in such Instruments, Tangible Chattel Paper, money or Certificated Securities, prior to all other Liens and rights of others therein and subject to no adverse claims, except for Permitted Liens.

SECTION 3.5 Title, No Other Liens; Conduct of Business

Except for the Security Interests, such Grantor owns each item of the Collateral free and clear of any and all Liens or claims other than Permitted Liens. No Grantor has Authenticated any agreement authorizing any secured party thereunder to file a financing statement, except to perfect Permitted Liens. Except to the extent permitted by Section 4.6, no Collateral is in the possession of, or subject to Control by, any Person asserting any claim thereto or security interest therein, except that (a) the Administrative Agent, or its designee, may have possession or Control as contemplated hereby and (b) a depositary bank may, to the extent constituting a Permitted Lien, have Control of a Deposit Account owned by a Grantor at such depositary bank; provided that, in the case of a Deposit Account that is not a Specified Deposit Account, such Deposit Account is subject to a Deposit Account Control Agreement.

SECTION 3.6 State of Organization; Location of Inventory, Equipment and Fixtures; other Information

(a) The exact legal name of such Grantor is set forth on Schedule 3.6 to the Collateral Disclosure Letter (as such schedule shall be updated from time to time pursuant to Section 4.3).

(b) Such Grantor is a Registered Organization organized under the laws of the state identified on Schedule 3.6 of the Collateral Agreement Disclosure Letter under such Grantor’s name (as such schedule shall be updated from time to time pursuant to Section 4.3) and such Grantor is not a Transmitting Utility. The taxpayer identification number and, to the extent applicable, Registered Organization number of such Grantor is set forth on Schedule 3.6 of the Disclosure Letter under such Grantor’s name (as such schedule shall be updated from time to time pursuant to Section 4.3).
(c) All Collateral consisting of Inventory, Equipment and Fixtures (whether now owned or hereafter acquired) is (or will be) located at the locations specified on Schedule 3.6 to the Collateral Disclosure Letter (as such schedule shall be updated from time to time upon the reasonable request of the Administrative Agent or as provided by the Borrower), except (i) Inventory which is, in the ordinary course of business, in transit, (ii) Equipment and Inventory in the hands of employees, consultants or customers in the ordinary course of business, including without limitation, laptop computers, (iii) Equipment out for repair or (iv) as otherwise permitted hereunder.

(d) The mailing address, principal place of business, chief executive office and office where such Grantor keeps its books and records relating to the Accounts, Documents, General Intangibles, Instruments and Investment Property in which it has any interest is located at the locations specified on Schedule 3.6 to the Collateral Disclosure Letter under such Grantor’s name (as such schedule shall be updated from time to time pursuant to Section 4.3). As of the Closing Date, no Grantor has any other places of business except those separately set forth on Schedule 3.6 to the Collateral Disclosure Letter under such Grantor’s name. As of the Closing Date, except as disclosed on Schedule 3.6 to the Collateral Disclosure Letter under such Grantor’s name, no Grantor has acquired assets in excess of $1,000,000 from any Person, other than assets acquired in the ordinary course of such Grantor’s business from a Person engaged in the business of selling goods of such kind, during the past five years.

SECTION 3.7 Accounts; Receivables. Each existing Account constitutes, and each hereafter arising Account will, when such Account arises, constitute, the legally valid and binding obligation of the Account Debtor, except where the failure to do so could not reasonably be expected, individually or in the aggregate, to materially adversely affect the value or collectability of the Accounts included in the Collateral, taken as a whole. No Account Debtor has any defense, set-off, claim or counterclaim against any Grantor that can be asserted against the Administrative Agent, whether in any proceeding to enforce the Administrative Agent’s rights in the Accounts included in the Collateral, or otherwise, except for defenses, setoffs, claims or counterclaims that could not reasonably be expected, individually or in the aggregate, to materially adversely affect the value or collectability of the Accounts included in the Collateral, taken as a whole. None of the Grantors’ accounts receivables are, nor will any hereafter arising account receivable be, evidenced by a promissory note or other Instrument (other than a check) that has not been pledged to the Administrative Agent in accordance with the terms hereof.

SECTION 3.8 Chattel Paper. As of the date hereof, no Grantor holds any Chattel Paper in the ordinary course of its business.

SECTION 3.9 Commercial Tort Claims. As of the date hereof, all Commercial Tort Claims owned by any Grantor are listed on Schedule 3.9 to the Collateral Disclosure Letter (as such schedule shall be updated from time to time pursuant to Section 4.4).

SECTION 3.10 Deposit Accounts and Securities Accounts. As of the date hereof, all Deposit Accounts (including, without limitation, all Specified Deposit Accounts), Securities Accounts (including, without limitation, all Specified Investment Property) and lockboxes are listed on Schedule 3.10 to the Collateral Disclosure Letter (as such schedule shall be updated from time to time pursuant to Section 4.3 or Section 4.4).

SECTION 3.11 Intellectual Property.

(a) As of the date hereof, all Copyright registrations, Copyright applications, issued Patents, Patent applications, Trademark registrations and Trademark applications owned by any Grantor in its own

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name are listed on Schedule 3.11 to the Collateral Disclosure Letter (as such schedule shall be updated from time to time pursuant to Section 4.9(c)).

(b) Except as set forth in Schedule 3.11 to the Collateral Disclosure Letter on the date hereof (as such schedule shall be updated from time to time pursuant to Section 4.9(c)), none of the Intellectual Property owned by any Grantor is the subject of any licensing or franchise agreement pursuant to which such Grantor is the licensor or franchisor, except as could not reasonably be expected to have a material adverse effect on the value of such Intellectual Property.

SECTION 3.12 Inventory. Except as could not reasonably be expected to have a Material Adverse Effect, Collateral consisting of Inventory is of good and merchantable quality, free from any material defects. To the knowledge of such Grantor, none of such Inventory is subject to any licensing, Patent, Trademark, trade name or Copyright with any Person that restricts any Grantor’s ability to manufacture and/or sell such Inventory. The completion of the manufacturing process of such Inventory by a Person other than the applicable Grantor would be permitted under any contract to which such Grantor is a party or to which the Inventory is subject.

SECTION 3.13 Investment Property; Partnership/LLC Interests.

(a) As of the date hereof, all Investment Property and all Partnership/LLC Interests owned by any Grantor are listed on Schedule 3.13 to the Collateral Disclosure Letter (as such schedule shall be updated from time to time pursuant to Section 4.3 or Section 4.4).

(b) All Investment Property and all Partnership/LLC Interests issued by any Issuer to any Grantor and included in the Collateral (i) have been duly and validly issued and, if applicable, are fully paid and nonassessable, (ii) are beneficially owned as of record by such Grantor and (iii) constitute all the issued and outstanding shares of all classes of the Equity Interests or Partnership/LLC Interests of such Issuer issued to such Grantor.

(c) None of the Partnership/LLC Interests (i) are dealt in or traded on a Securities exchange or in Securities markets, (ii) by their terms expressly provide that they are Securities governed by Article 8 of the UCC, (iii) are Investment Company Securities or (iv) are held in a Securities Account.

(d) No consent, approval or action by any other party, including, without limitation, any other party to the Partnership/LLC Agreement included in the Collateral or otherwise, shall be necessary to permit the Secured Parties to be substituted as a member, manager or partner thereunder and to receive the benefits of all rights of a member, manager or partner thereunder (including, without limitation, all voting rights and rights of an economic interest holder) in the exercise of their rights and remedies hereunder except for consents, approvals or actions that have been obtained, or taken, and are in full force and effect.

SECTION 3.14 Instruments.

Except as set forth on Schedule 3.14, as of the date hereof, no Grantor holds any Instrument or is named a payee of any promissory note or other evidence of indebtedness in either case, having a face amount in excess of $500,000.

SECTION 3.15 Government Contracts. Except as set forth on Schedule 3.15 to the Collateral Disclosure Letter, as of the date hereof, no Grantor is party to any contract with a Governmental Authority under which such Governmental Authority, as Account Debtor, owes a monetary obligation to any Grantor under any Account.
SECTION 3.16 Various Asset Types. None of the Collateral constitutes, or is the proceeds of, (a) an aircraft, airframe, aircraft engine or related property, (b) an aircraft leasehold interest, (c) Consumer Goods, (d) As-Extracted Collateral, (e) Farm Products, (f) a Manufactured Home, (g) standing timber or timber to be cut, (h) Vessels, (i) railroad cars, locomotives, other rolling stock, accessories used on such railroad cars, locomotives or other rolling stock (such as superstructures and racks) or other assets of the type that would be subject to the filing requirements of 49 U.S.C. Section 11301 or (j) any other interest in or to any of the foregoing.

ARTICLE IV
COVENANTS

Until the Obligations (other than contingent indemnity obligations not yet due) shall have been paid in full, all Letters of Credit have been terminated or expired (or been Cash Collateralized) and the Revolving Credit Commitments terminated, unless consent has been obtained in the manner provided for in Section 7.2, each Grantor covenants and agrees that:

SECTION 4.1 Maintenance of Perfected Security Interest; Further Information

(a) Such Grantor shall (i) maintain the Security Interest created by this Agreement as a first priority perfected Security Interest (subject only to Permitted Liens), (ii) defend such Security Interest against the claims and demands of all Persons whomsoever (other than the holders of Permitted Liens) and (iii) execute and deliver to the Administrative Agent such agreements, assignments or instruments as the Administrative Agent may reasonably request to assure to the Administrative Agent of its Security Interests granted hereunder and to perfect and maintain the Security Interests granted hereunder in accordance with the UCC.

(b) Such Grantor will furnish to the Administrative Agent upon the reasonable request of the Administrative Agent, from time to time, statements and schedules further identifying and describing the assets and property of such Grantor and such other reports in connection therewith as the Administrative Agent or such Lender may reasonably request, all in reasonable detail.

SECTION 4.2 Maintenance of Insurance. Such Grantor shall maintain insurance covering the Collateral in accordance with the provisions of Section 8.6 of the Credit Agreement.

SECTION 4.3 Changes in Locations; Changes in Name or Structure. No Grantor will, except upon five (5) Business Days’ prior written notice to the Administrative Agent (which time period may be reduced by the Administrative Agent in its sole discretion by written notice to such Grantor) and delivery to the Administrative Agent of (a) all additional financing statements (executed if necessary for any particular filing jurisdiction) and other instruments and documents reasonably requested by the Administrative Agent to maintain the validity, perfection and priority of the Security Interests and (b) a written supplement to Schedule 3.6 to the Collateral Disclosure Letter:

(i) change its jurisdiction of organization or the location of its chief executive office or principal place of business (or the location where any Grantor maintains its books and records relating to Accounts, Documents, General Intangibles, Instruments and Investment Property in which it has any interest) from that identified on Schedule 3.6 to the Collateral Disclosure Letter; or
(ii) change its name, identity or organizational type to such an extent that any financing statement filed by the Administrative Agent in connection with this Agreement would become seriously misleading under the UCC.

SECTION 4.4 Required Notifications. Such Grantor shall promptly (a) notify the Administrative Agent, in writing, of: (i) any Lien (other than the Security Interests or Permitted Liens) on any of the Collateral that would adversely affect the ability of the Administrative Agent to exercise any of its remedies hereunder, (ii) the occurrence of any other event which could reasonably be expected to have a material adverse effect on the aggregate value of the Collateral or on the Security Interests, (iii) any Collateral which, to the knowledge of such Grantor, constitutes a Government Contract exceeding $10,000,000, and (iv) the acquisition or ownership by such Grantor of any Commercial Tort Claim with a value in excess of $1,000,000 after the date hereof and (b) solely in the case of an event described in clause (iv) of subsection (a) of this Section, deliver to the Administrative Agent a written supplement to the Schedules to the Collateral Disclosure Letter.

SECTION 4.5 Delivery Covenants. Such Grantor will deliver and pledge to the Administrative Agent, for the benefit of the Secured Parties, all (a) Certificated Securities (other than those Certificated Securities evidencing Specified Investment Property), (b) Partnership/LLC Interests evidenced by a certificate, (c) negotiable Documents, (d) Instruments, (e) Tangible Chattel Paper owned or held by such Grantor, in each case, together with an Effective Endorsement and Assignment and (f) Supporting Obligations, as applicable, unless, in each case, such delivery and pledge has been waived in writing by the Administrative Agent.

SECTION 4.6 Control Covenants; Covenants as to Third Parties

(a) Such Grantor shall instruct (and otherwise use its commercially reasonable efforts to cause) (i) each depositary bank holding a Deposit Account (other than Specified Deposit Accounts) owned by such Grantor to execute and deliver a Deposit Account Control Agreement and (ii) each Securities Intermediary holding any Investment Property (other than Specified Investment Property) owned by such Grantor, to execute and deliver a Securities Account Control Agreement (any such depositary bank executing and delivering any such control agreement, a “Controlled Depositary”, and any such Securities Intermediary executing and delivering any such control agreement, a “Controlled Intermediary”). Except as provided in Schedule 8.18 to the Disclosure Letter, in the event any such depositary bank or Securities Intermediary refuses to execute and deliver such control agreement within thirty (30) days of such request (or within ninety (90) days of such request in the case of such Deposit Account or Investment Property acquired in connection with a Permitted Acquisition), the Administrative Agent, in its sole discretion, may require the funds held within the applicable Deposit Account and the applicable Investment Property to be transferred to the Administrative Agent or a Controlled Depositary or Controlled Intermediary, as applicable. After the date hereof, all Deposit Accounts (other than Specified Deposit Accounts) and all certificated Investment Property or uncertificated Investment Property held in a Securities Account (in each case, other than Specified Investment Property) will be maintained with the Administrative Agent or with a Controlled Depositary or a Controlled Intermediary, as applicable.

(b) Upon the request of the Administrative Agent, such Grantor will take such actions and deliver all such agreements as are reasonably requested by the Administrative Agent to provide the Administrative Agent with Control of all Letter-of-Credit Rights and Electronic Chattel Paper owned or held by such Grantor and included in the Collateral, including, without limitation, with respect to any such Electronic Chattel Paper, by having the Administrative Agent identified as the assignee of the Record(s) pertaining to the single authoritative copy thereof.
Such Grantor shall use its commercially reasonable efforts to obtain a landlord waiver or other agreement, in form and substance reasonably satisfactory to the Administrative Agent, from the lessor of each leased property, mortgagee of owned property or bailee or consignee with respect to any warehouse, processor or converter facility or other location where Collateral (other than (i) Equipment and Inventory in the hands of employees, consultants or customers in the ordinary course of business, including, without limitation, laptop computers, and (ii) Equipment out for repair) in excess of $5,000,000 is stored or located, which agreement or letter shall provide access rights, contain a waiver or subordination of all Liens or claims that the landlord, mortgagee, bailee or consignee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Administrative Agent.

SECTION 4.7 Filing Covenants. Pursuant to Section 9-509 of the UCC and any other Applicable Law, such Grantor authorizes the Administrative Agent to prepare, file or record financing statements (including continuation statements) or amendments thereof or supplements thereto or other instruments as the Administrative Agent may from time to time deem necessary or appropriate in order to perfect and maintain the security interests granted hereunder in accordance with the UCC (including authorization to describe the Collateral as “all personal property”, “all assets” or words of similar meaning).

SECTION 4.8 Accounts. Other than in the ordinary course of business consistent with past practice, no Grantor will (i) grant any extension of the time of payment of any Account, (b) compromise or settle any Account for less than the full amount thereof, (c) release, wholly or partially, any Account Debtor, (d) allow any credit or discount whatsoever on any Account or (e) amend, supplement or modify any Account in any manner that could reasonably be likely to adversely affect the value thereof, except where such extension, compromise, settlement, release credit, discount, amendment, supplement or modification could not reasonably be expected, in the aggregate, to have a Material Adverse Effect.

SECTION 4.9 Intellectual Property.

(a) Except as could not reasonably be expected to have a material adverse effect on the value of the Intellectual Property, taken as a whole, such Grantor (either itself or through licensees) (i) will use each registered Trademark (owned by such Grantor) and Trademark for which an application (owned by such Grantor) is pending, to the extent reasonably necessary to maintain such Trademark in full force free from any claim of abandonment for non-use, (ii) will maintain products and services offered under such Trademark at a level substantially consistent with the quality of such products and services as of the date hereof, (iii) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby such Trademark could reasonably be expected to become invalidated or impaired in any way, (iv) will not do any act, or knowingly omit to do any act, whereby any issued Patent owned by such Grantor would reasonably be expected to become forfeited, abandoned or dedicated to the public, (v) will not (and will not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any registered Copyright owned by such Grantor or Copyright for which an application is pending (owned by such Grantor) could reasonably be expected to become invalidated or otherwise impaired and (vi) will not (either itself or through licensees) do any act whereby any material portion of such Copyrights may fall into the public domain.

(b) Such Grantor will notify the Administrative Agent and the Lenders promptly if it knows, or has reason to know, that any application or registration relating to any material Intellectual Property owned by such Grantor may become forfeited, abandoned or dedicated to the public, or of any adverse determination or development (including, without limitation, the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court or tribunal in any country) regarding such Grantor’s ownership of, or the validity of, any material
Whenever any Grantor, either by itself or through any agent, employee, licensee or designee, shall file an application for the registration of any Intellectual Property with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, such Grantor shall report such filing to the Administrative Agent in accordance with Section 8.2(b) of the Credit Agreement and shall be deemed to have provided a written supplement to Schedule 3.11 to the Collateral Disclosure Letter at the time of delivery of a duly completed IP Reporting Certificate to the Administrative Agent. Upon request of the Administrative Agent, such Grantor shall execute and deliver, and have recorded, any and all agreements, instruments, documents, and papers as the Administrative Agent may reasonably request to evidence the security interest of the Secured Parties in any material Copyright, Patent or Trademark and the goodwill and General Intangibles of such Grantor relating thereto or represented thereby.

Such Grantor will take all reasonable and necessary steps, at such Grantor’s sole cost and expense, including, without limitation, in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of the material Intellectual Property, including, without limitation, filing of applications for renewal, affidavits of use and affidavits of incontestability.

In the event that any material Intellectual Property owned by a Grantor is infringed, misappropriated or otherwise violated by a third party, the applicable Grantor shall (i) at such Grantor’s sole cost and expense, take such actions as such Grantor shall reasonably deem appropriate under the circumstances to protect such Intellectual Property and (ii) if such Intellectual Property is of material economic value, promptly notify the Administrative Agent after it learns of such infringement, misappropriation or violation.

SECTION 4.10 Investment Property; Partnership/LLC Interests.

(a) Without the prior written consent of the Administrative Agent, no Grantor will (i) vote to enable, or take any other action to permit, any applicable Issuer to issue any Investment Property or Partnership/LLC Interests, except for those additional Investment Property or Partnership/LLC Interests that will be subject to the Security Interest granted herein in favor of the Secured Parties and issuance of directors’ qualifying shares, or (ii) enter into any agreement or undertaking restricting the right or ability of such Grantor or the Administrative Agent to sell, assign or transfer any Investment Property or Partnership/LLC Interests or Proceeds thereof, except as permitted by Section 9.10 of the Credit Agreement. The Grantors will defend the right, title and interest of the Administrative Agent in and to any Investment Property and Partnership/LLC Interests against the claims and demands of all Persons whomsoever.

(b) If any Grantor shall become entitled to receive or shall receive (i) any Certificated Securities (including, without limitation, any certificate representing a stock dividend or a distribution in connection with any reclassification, increase or reduction of capital or any certificate issued in connection with any reorganization), option or rights in respect of the ownership interests of any Issuer, whether in addition to, in substitution of, as a conversion of, or in exchange for, any Investment Property, or otherwise in respect thereof, or (ii) any sums paid upon or in respect of any Investment Property upon the liquidation or dissolution of any Issuer, such Grantor shall accept the same as the agent of the Secured Parties, hold the same in trust
for the Secured Parties, segregated from other funds of such Grantor, and promptly deliver the same to the Administrative Agent, on behalf of the Secured Parties, in accordance with the terms hereof.

SECTION 4.11 Equipment. Such Grantor will maintain each item of Equipment in good working order and condition (reasonable wear and tear and obsolescence excepted).

SECTION 4.12 Government Contracts. Such Grantor shall promptly notify the Administrative Agent, in writing, if it enters into any contract with a Governmental Authority under which such Governmental Authority, as Account Debtor, owes a monetary obligation to any Grantor in an amount in excess of $10,000,000.

SECTION 4.13 Further Assurances. Upon the request of the Administrative Agent and at the sole expense of such Grantor, such Grantor will promptly and duly use its commercially reasonable efforts to execute and deliver, and have recorded, such further instruments and documents and take such further actions as the Administrative Agent may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, (a) after the occurrence and during the continuance of an Event of Default, the assignment of any Material Contract, (b) with respect to Government Contracts, assignment agreements and notices of assignment with a value in excess of $10,000,000, in form and substance satisfactory to the Administrative Agent, duly executed by any Grantors party to such Government Contract in compliance with the Assignment of Claims Act (or analogous state Applicable Law) and acknowledged in writing by the appropriate Governmental Authority, and (c) all applications, certificates, instruments, registration statements, and all other documents and papers the Administrative Agent may reasonably request and as may be required by law in connection with the obtaining of any consent, approval, registration, qualification, or authorization of any Person deemed necessary or appropriate for the effective exercise of any rights under this Agreement.

ARTICLE V

REMEDIAL PROVISIONS

SECTION 5.1 General Remedies. If an Event of Default shall occur and be continuing, the Administrative Agent, on behalf of the Secured Parties, may exercise, in addition to all other rights and remedies granted to them in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Secured Obligations, all rights and remedies of a secured party under the UCC or any other Applicable Law. Without limiting the generality of the foregoing, the Administrative Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by Applicable Law referred to below) to or upon any Grantor or any other Person (all and each of which demands, defenses, advertisements and notices are hereby waived to the extent permitted by Applicable Law), may in such circumstances forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, assign, give option or options to purchase, or otherwise dispose of and deliver the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker’s board or office of the Administrative Agent or any other Secured Party or elsewhere upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Administrative Agent may disclaim all warranties in connection with any sale or other disposition of the Collateral, including, without limitation, all warranties of title, possession, quiet enjoyment and the like. The Administrative Agent or any other Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by Applicable Law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Grantor,

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which right or equity is hereby waived and released. Each Grantor further agrees, at the Administrative Agent’s request, to
assemble the Collateral and make it available to the Administrative Agent at places which the Administrative Agent shall
reasonably select, whether at such Grantor’s premises or elsewhere. To the extent permitted by Applicable Law, each Grantor
waives all claims, damages and demands it may acquire against the Administrative Agent or any other Secured Party arising out
of the exercise by them of any rights hereunder except to the extent any such claims, damages, or demands result solely from the
gross negligence or willful misconduct of the Administrative Agent or any other Secured Party, in each case against whom such
claim is asserted. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be
deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

SECTION 5.2 Specific Remedies.

(a) The Administrative Agent hereby authorizes each Grantor to collect such Grantor’s Accounts; provided that, the
Administrative Agent may curtail or terminate such authority at any time upon the occurrence and during the continuance of an
Event of Default.

(b) Upon the occurrence and during the continuance of an Event of Default:

(i) the Administrative Agent may communicate with Account Debtors of any Account subject to a Security
Interest and upon the request of the Administrative Agent, each Grantor shall notify (such notice to be in form and
substance satisfactory to the Administrative Agent) its Account Debtors and parties to the Material Contracts subject to a
Security Interest that such Accounts and the Material Contracts have been assigned to the Administrative Agent, for the
benefit of the Secured Parties;

(ii) upon the request of the Administrative Agent, each Grantor shall forward to the Administrative Agent, on
the last Business Day of each week, deposit slips related to all cash, money, checks or any other similar items of payment
received by the Grantor during such week, and, if requested by the Administrative Agent, copies of such checks or any
other similar items of payment, together with a statement showing the application of all payments on the Collateral during
such week and a collection report with regard thereto, in form and substance satisfactory to the Administrative Agent;

(iii) whenever any Grantor shall receive any cash, money, checks or any other similar items of payment relating
to any Collateral (including any Proceeds of any Collateral), subject to the terms of any Permitted Liens, such Grantor
agrees that it will, within one (1) Business Day of such receipt, deposit all such items of payment into a cash collateral
account at the Administrative Agent (the “Collateral Account”) or in a Deposit Account (other than a Specified Deposit
Account) at a Controlled Depositary, and until such Grantor shall deposit such cash, money, checks or any other similar
items of payment in the Collateral Account or in a Deposit Account (other than a Specified Deposit Account) at a
Controlled Depositary, such Grantor shall hold such cash, money, checks or any other similar items of payment in trust
for the Administrative Agent and the other Secured Parties and as property of the Secured Parties, separate from the other
funds of such Grantor, and the Administrative Agent shall have the right in to transfer or direct the transfer of the balance
of each Deposit Account (other than a Specified Deposit Account) to the Collateral Account. All such Collateral and
Proceeds of Collateral received by the Administrative Agent hereunder shall be held by the Administrative Agent in the
Collateral Account as collateral security for all the Secured Obligations and shall not constitute payment thereof until
applied as provided in Section 5.4.
(iv) the Administrative Agent shall have the right to receive any and all cash dividends, payments or distributions made in respect of any Investment Property, or Partnership/LLC Interests or other Proceeds paid in respect of any Investment Property, or Partnership/LLC Interests, and any or all of any Investment Property, or Partnership/LLC Interests may, at the option of the Administrative Agent and the other Secured Parties, be registered in the name of the Administrative Agent or its nominee, and the Administrative Agent or its nominee may thereafter exercise (A) all voting, corporate and other rights pertaining to such Investment Property, or any such Partnership/LLC Interests at any meeting of shareholders, partners or members of the relevant Issuers or otherwise and (B) any and all rights of conversion, exchange and subscription and any other rights, privileges or options pertaining to such Investment Property, or Partnership/LLC Interests as if it were the absolute owner thereof (including, without limitation, the right to exchange at its discretion any and all of such Investment Property, or Partnership/LLC Interests upon the merger, consolidation, reorganization, recapitalization or other fundamental change in the corporate, partnership or limited liability company structure of any Issuer or upon the exercise by any Grantor or the Administrative Agent of any right, privilege or option pertaining to such Investment Property, or Partnership/LLC Interests, and in connection therewith, the right to deposit and deliver any and all of such Investment Property, or Partnership/LLC Interests with any committee, depositary, transfer agent, registrar or other designated agency upon such terms and conditions as the Administrative Agent may determine), all without liability except to account for property actually received by it, but the Administrative Agent shall have no duty to any Grantor to exercise any such right, privilege or option and the Administrative Agent and the other Secured Parties shall not be responsible for any failure to do so or delay in so doing. In furtherance thereof, each Grantor hereby authorizes and instructs each Issuer with respect to any Collateral consisting of Investment Property and Partnership/LLC Interests to (i) comply with any instruction received by it from the Administrative Agent in writing that (A) states that an Event of Default has occurred and is continuing and (B) is otherwise in accordance with the terms of this Agreement, without any other or further instructions from such Grantor, and each Grantor agrees that each Issuer shall be fully protected in so complying following receipt of such notice and prior to notice that such Event of Default is no longer continuing, and (ii) except as otherwise expressly permitted hereby, pay any dividends, distributions or other payments with respect to any Investment Property, or Partnership/LLC Interests directly to the Administrative Agent; and

(v) the Administrative Agent shall be entitled to (but shall not be required to): (A) proceed to perform any and all obligations of the applicable Grantor under any Material Contract and exercise all rights of such Grantor thereunder as fully as such Grantor itself could, (B) do all other acts which the Administrative Agent may deem necessary or proper to protect its Security Interest granted hereunder, provided such acts are not inconsistent with or in violation of the terms of any of the Credit Agreement, of the other Loan Documents or Applicable Law, and (C) sell, assign or otherwise transfer any Material Contract in accordance with the Credit Agreement, the other Loan Documents and Applicable Law, subject, however, to the prior approval of each other party to such Material Contract, to the extent required under the Material Contract.

(c) Unless an Event of Default shall have occurred and be continuing and the Administrative Agent shall have given notice to the relevant Grantor of the Administrative Agent’s intent to exercise its corresponding rights pursuant to Section 5.2(b), each Grantor shall be permitted to receive all cash dividends, payments or other distributions made in respect of any Investment Property and any Partnership/LLC Interests, in each case paid in the normal course of business of the relevant Issuer and consistent with past practice, to the extent permitted in the Credit Agreement, and to exercise all voting and other corporate, company and partnership rights with respect to any Investment Property and Partnership/LLC Interests.
SECTION 5.3  Registration Rights.

(a) If, after the occurrence and during the continuance of an Event of Default, the Administrative Agent shall reasonably determine that in order to exercise its right to sell any or all of the Collateral it is necessary or advisable to have such Collateral registered under the provisions of the Securities Act (any such Collateral, the “Restricted Securities Collateral”), the relevant Grantor will cause each applicable Issuer (and the officers and directors thereof) that is a Grantor or a Subsidiary of a Grantor to (i) execute and deliver all such instruments and documents, and do or cause to be done all such other acts as may be, in the opinion of the Administrative Agent, necessary or advisable to register such Restricted Securities Collateral, or that portion thereof to be sold, under the provisions of the Securities Act, (ii) use its commercially reasonable efforts to cause the registration statement relating thereto to become effective and to remain effective for a period of one year from the date of the first public offering of such Restricted Securities Collateral, or that portion thereof to be sold, and (iii) make all amendments thereto and/or to the related prospectus which, in the opinion of the Administrative Agent, are necessary or advisable, all in conformity with the requirements of the Securities Act and the rules and regulations of the SEC applicable thereto. Each Grantor agrees to cause each applicable Issuer (and the officers and directors thereof) to comply with the provisions of the securities or “Blue Sky” laws of any and all jurisdictions which the Administrative Agent shall designate and to make available to its security holders, as soon as practicable, an earnings statement (which need not be audited) which will satisfy the provisions of the Securities Act.

(b) Each Grantor recognizes that the Administrative Agent may be unable to effect a public sale of any or all the Restricted Securities Collateral, by reason of certain prohibitions contained in the Securities Act and applicable state securities laws or otherwise, and may be compelled to resort to one or more private sales thereof to a restricted group of purchasers who will be obliged to agree, among other things, to acquire such securities for their own account for investment and not with a view to the distribution or resale thereof. Each Grantor acknowledges and agrees that any such private sale may result in prices and other terms less favorable than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall be deemed to have been made in a commercially reasonable manner. The Administrative Agent shall be under no obligation to delay a sale of any of the Restricted Securities Collateral for the period of time necessary to permit the Issuer thereof to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if such Issuer would agree to do so.

(c) Each Grantor agrees to use its commercially reasonable efforts to do or cause to be done all such other acts as may be necessary to make such sale or sales of all or any portion of the Restricted Securities Collateral valid and binding and in compliance with any and all other Applicable Laws. Each Grantor further agrees that a breach of any of the covenants contained in this Section 5.3 will cause irreparable injury to the Administrative Agent and the other Secured Parties, that the Administrative Agent and the other Secured Parties have no adequate remedy at law in respect of such breach and, as a consequence, that each and every covenant contained in this Section 5.3 shall be specifically enforceable against such Grantor, and such Grantor hereby waives, to the extent permitted by Applicable Law, and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that no Event of Default has occurred under the Credit Agreement.

SECTION 5.4  Application of Proceeds. If an Event of Default shall have occurred and be continuing, the Administrative Agent may apply all or any part of the Collateral or any Proceeds of the Collateral in payment in whole or in part of the Secured Obligations (after deducting all reasonable costs and expenses of every kind incurred in connection therewith or incidental to the care or safekeeping of any of the Collateral or in any way relating to the Collateral or the rights of the Administrative Agent and the other Secured Parties hereunder, including, without limitation, reasonable attorneys’ fees and disbursements)
in accordance with Section 10.4 of the Credit Agreement. Only after (i) the payment by the Administrative Agent of any other amount required by any provision of Applicable Law, including, without limitation, Section 9-610 and Section 9-615 of the UCC and (ii) the payment in full of the Secured Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) and the termination of the Revolving Credit Commitments, shall the Administrative Agent account for the surplus, if any, to any Grantor, or to whomever may be lawfully entitled to receive the same (if such Person is not a Grantor).

SECTION 5.5 Waiver, Deficiency. Each Grantor hereby waives, to the extent permitted by Applicable Law, all rights of redemption, appraisement, valuation, stay, extension or moratorium now or hereafter in force under any Applicable Law in order to prevent or delay the enforcement of this Agreement or the absolute sale of the Collateral or any portion thereof. Each Grantor shall remain liable for any deficiency if the proceeds of any sale or other disposition of the Collateral are insufficient to pay its Secured Obligations and the fees and disbursements of any attorneys employed by the Administrative Agent or any other Secured Party to collect such deficiency.

ARTICLE VI

THE ADMINISTRATIVE AGENT

SECTION 6.1 Appointment of Administrative Agent as Attorney-In-Fact.

(a) Each Grantor hereby irrevocably constitues and appoints each of the Administrative Agent and any officer or agent thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of such Grantor and in the name of such Grantor or in its own name, for the purpose of carrying out the terms of this Agreement to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or desirable to accomplish the purposes of this Agreement, and, without limiting the generality of the foregoing, each Grantor hereby gives each of the Administrative Agent and any officer or agent thereof the power and right, on behalf of such Grantor, without notice to or assent by such Grantor, to do any or all of the following upon the occurrence and during the continuation of an Event of Default:

(i) in the name of such Grantor or its own name, or otherwise, take possession of and indorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any Account or Material Contract subject to a Security Interest or with respect to any other Collateral and file any claim or take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by the Administrative Agent for the purpose of collecting any and all such moneys due under any Account or Material Contract subject to a Security Interest or with respect to any other Collateral whenever payable;

(ii) in the case of any Intellectual Property, execute and deliver, and have recorded, any and all agreements, instruments, documents and papers as the Administrative Agent may request to evidence the Administrative Agent’s and the Secured Parties’ security interest in such Intellectual Property and the goodwill and General Intangibles of such Grantor relating thereto or represented thereby;
(iii) pay or discharge taxes and Liens levied or placed on or threatened against the Collateral, effect any repairs or any insurance called for by the terms of this Agreement and pay all or any part of the premiums therefor and the costs thereof;

(iv) execute, in connection with any sale provided for in this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral; and

(v) (A) direct any party liable for any payment under any of the Collateral to make payment of any and all moneys due or to become due thereunder directly to the Administrative Agent or as the Administrative Agent shall direct; (B) ask or demand for, collect, and receive payment of and receipt for, any and all moneys, claims and other amounts due or to become due at any time in respect of or arising out of any Collateral; (C) sign and indorse any invoices, freight or express bills, bills of lading, storage or warehouse receipts, drafts against debtors, assignments, verifications, notices and other documents in connection with any of the Collateral; (D) commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any portion thereof and to enforce any other right in respect of any Collateral; (E) defend any suit, action or proceeding brought against such Grantor with respect to any Collateral; (F) settle, compromise or adjust any such suit, action or proceeding and, in connection therewith, give such discharges or releases as the Administrative Agent may deem appropriate; (G) license or assign any Copyright, Patent or Trademark (along with the goodwill of the business to which any such Copyright, Patent or Trademark pertains), for such term or terms, on such conditions, and in such manner, as the Administrative Agent shall in its sole discretion determine; and (H) generally, sell, transfer, pledge and make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though the Administrative Agent was the absolute owner thereof for all purposes, and do, at the Administrative Agent’s option and such Grantor’s expense, at any time, or from time to time, all acts and things that the Administrative Agent deems necessary to protect, preserve or realize upon the Collateral and the Administrative Agent’s and the other Secured Parties’ Security Interests therein and to effect the intent of this Agreement, all as fully and effectively as such Grantor might do.

(b) If any Grantor fails to perform or comply with any of its agreements contained herein, the Administrative Agent, at its option, but without any obligation so to do, may perform or comply, or otherwise cause performance or compliance, with such agreement in accordance with the provisions of Section 6.1(a).

(c) The expenses of the Administrative Agent incurred in connection with actions taken pursuant to the terms of this Agreement, shall be payable by such Grantor to the Administrative Agent on demand.

(d) Each Grantor hereby ratifies all that said attorneys shall lawfully do or cause to be done by virtue hereof in accordance with Section 6.1(a). All powers, authorizations and agencies contained in this Agreement are coupled with an interest and are irrevocable until this Agreement is terminated and the Security Interests created hereby are released.

SECTION 6.2 Duty of Administrative Agent. The sole duty of Administrative Agent with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the UCC or otherwise, shall be to deal with it in the same manner as the Administrative Agent deals with similar property for its own account. None of the Administrative Agent, any other Secured Party or any of their respective Related Parties shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any
Collateral upon the request of any Grantor or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Administrative Agent and the other Secured Parties hereunder are solely to protect the interests of the Administrative Agent and the other Secured Parties in the Collateral and shall not impose any duty upon the Administrative Agent or any other Secured Party or any of their respective Related Parties to exercise any such powers. The Administrative Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their respective Related Parties shall be responsible to any Grantor for any act or failure to act hereunder, except for their own gross negligence or willful misconduct.

SECTION 6.3 Authority of Administrative Agent. Each Grantor acknowledges that the rights and responsibilities of the Administrative Agent under this Agreement with respect to any action taken by the Administrative Agent or the exercise or non-exercise by the Administrative Agent of any option, voting right, request, judgment or other right or remedy provided for herein or resulting from or arising out of this Agreement shall, as between the Administrative Agent and the Lenders, be governed by the Credit Agreement and by such other agreements with respect thereto as may exist from time to time among them, but, as between the Administrative Agent and the Grantors, the Administrative Agent shall be conclusively presumed to be acting as agent for the Secured Parties with full and valid authority so to act or refrain from acting, and no Grantor shall be under any obligation, or entitlement to make any inquiry respecting such authority.

ARTICLE VII
MISCELLANEOUS

SECTION 7.1 Notices. All notices and communications hereunder shall be given to the addresses and otherwise made in accordance with Section 12.1 of the Credit Agreement; provided that notices and communications to the Grantors shall be directed to the Grantors, at the address of the Borrower set forth in Section 12.1 of the Credit Agreement.

SECTION 7.2 Amendments, Waivers and Consents. None of the terms or provisions of this Agreement may be amended, supplemented or otherwise modified, nor may they be waived, nor may any consent be given, except in accordance with Section 12.2 of the Credit Agreement.

SECTION 7.3 Expenses, Indemnification, Waiver of Consequential Damages, etc

(a) The Grantors, jointly and severally, shall pay all reasonable out-of-pocket expenses (including, without limitation, reasonable and documented attorneys’ fees and expenses) incurred by the Administrative Agent and each other Secured Party in connection with enforcing or preserving any rights under this Agreement to the extent the Borrower would be required to do so pursuant to Section 12.3 of the Credit Agreement.

(b) The Grantors, jointly and severally, shall pay and shall indemnify each Indemnitee (which for purposes of this Agreement shall include, without limitation, all Secured Parties) against Indemnified Taxes and Other Taxes to the extent the Borrower would be required to do so pursuant to Section 5.11 of the Credit Agreement.

(c) The Grantors, jointly and severally, shall indemnify each Indemnitee to the extent the Borrower would be required to do so pursuant to Section 12.3 of the Credit Agreement.

(d) Notwithstanding anything to the contrary contained in this Agreement, to the fullest extent permitted by Applicable Law, each Grantor shall not assert, and hereby waives, any claim against any
Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document, or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) No Indemnitee referred to in this Section 7.3 shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement, or the other Loan Documents or the transactions contemplated hereby or thereby so long as such Indemnitee has not otherwise breached its confidentiality obligations under the Loan Documents.

(f) All amounts due under this Section 7.3 shall be payable within the time periods provided in Section 5.11 and 12.3 of the Credit Agreement, as applicable, after demand therefor.

(g) Each party’s obligations under this Section 7.3 shall survive the termination of the Loan Documents and payment of the obligations thereunder.

SECTION 7.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Secured Party and each of its respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by Applicable Law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Secured Party or any such Affiliate to or for the credit or the account of such Grantor to the same extent a Lender could do so under Section 12.4 of the Credit Agreement. The rights of each Secured Party and its respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Secured Party or its respective Affiliates may have. Each Secured Party agrees to notify such Grantor and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 7.5 Governing Law; Jurisdiction; Venue; Service of Process.

(a) Governing Law. This Agreement and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Agreement and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the State of New York.

(b) Submission to Jurisdiction. Each Grantor irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether relating to this Agreement or the transactions relating hereto in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York state court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement or in any other Loan Document shall affect any right that the Administrative Agent or any other Secured Party may otherwise have to bring any action, litigation or proceeding relating to this Agreement or any other Loan Document against any Grantor or its properties in the courts of any jurisdiction.
(c) **Waiver of Venue.** Each Grantor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, litigation or proceeding arising out of or relating to this Agreement or any other Loan Document in any court referred to in paragraph (b) of this Section. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) **Service of Process.** Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.1 of the Credit Agreement. Nothing in this Agreement will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

(e) **Appointment of the Borrower as Agent for the Grantors.** Each Grantor hereby irrevocably appoints and authorizes the Borrower to act as its agent for service of process and notices required to be delivered under this Agreement or under the other Loan Documents, it being understood and agreed that receipt by the Borrower of any summons, notice or other similar item shall be deemed effective receipt by each Grantor and its Subsidiaries.

SECTION 7.6 **Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 7.6.

SECTION 7.7 **Injunctive Relief.** Each Grantor recognizes that, in the event such Grantor fails to perform, observe or discharge any of its obligations or liabilities under this Agreement or any other Loan Document, any remedy of law may prove to be inadequate relief to the Administrative Agent and the other Secured Parties. Therefore, each Grantor agrees that the Administrative Agent and the other Secured Parties, at the option of the Administrative Agent and the other Secured Parties, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages.

SECTION 7.8 **No Waiver By Course of Conduct; Cumulative Remedies.** The enumeration of the rights and remedies of the Administrative Agent and the other Secured Parties set forth in this Agreement is not intended to be exhaustive and the exercise by the Administrative Agent or the other Secured Parties of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at law or in equity or by suit or otherwise. Neither the Administrative Agent nor any other Secured Party shall by any act (except by a written instrument pursuant to Section 7.2), delay, indulgence, omission or otherwise be deemed to have waived any right or remedy hereunder or to have acquiesced in any Default or Event of Default. No delay or failure to take action on the part of the Administrative Agent or any other Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right,
power or privilege or shall be construed to be a waiver of any Default or Event of Default. A waiver by the Administrative Agent or any other Secured Party of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Administrative Agent or such other Secured Party would otherwise have on any future occasion. No course of dealing between any Grantor, the Administrative Agent or any Secured Party or their respective agents or employees shall be effective to change, modify or discharge any provision of this Agreement or any other Loan Document or to constitute a waiver of any Default or Event of Default.

SECTION 7.9 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns; except that no Grantor may assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Administrative Agent and the other Lenders (except as otherwise provided by the Credit Agreement).

SECTION 7.10 Survival of Indemnities. Notwithstanding any termination of this Agreement, the indemnities to which the Administrative Agent and the other Secured Parties are entitled under the provisions of Section 7.3 and any other provision of this Agreement and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the other Secured Parties against events arising after such termination as well as before.

SECTION 7.11 Severability of Provisions. Any provision of this Agreement or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 7.12 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in separate counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Agreement or any document or instrument delivered in connection herewith by facsimile or in electronic (i.e. “pdf” or “tif”) form shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

SECTION 7.13 Integration. This Agreement and the other Loan Documents, and any separate letter agreements with respect to fees, constitute the entire contract among the parties relating to the subject matter hereof and thereof and supersede any and all previous agreements and understandings, written or oral, relating to the subject matter hereof. In the event of any conflict between the provisions of this Agreement and those of the Credit Agreement, the provisions of the Credit Agreement shall control, and in the event of any conflict between the provisions of this Agreement and any other Security Documents, the provisions of this Agreement shall control; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the other Secured Parties in any other Loan Document shall not be deemed a conflict with this Agreement.

SECTION 7.14 Advice of Counsel; No Strict Construction. Each of the parties represents to each other party hereto that it has discussed this Agreement with its counsel. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement 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.
SECTION 7.15 Acknowledgements.

(a) Each Grantor hereby acknowledges that:

(i) it has received a copy of the Credit Agreement and has reviewed and understands same;

(ii) neither the Administrative Agent nor any other Secured Party has any fiduciary relationship with or duty to any Grantor arising out of or in connection with this Agreement or any of the other Loan Documents, and the relationship between the Grantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(iii) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby or thereby among the Secured Parties or among the Grantors and the Secured Parties.

(b) Each Issuer party to this Agreement acknowledges receipt of a copy of this Agreement and agrees to be bound thereby and to comply with the terms thereof insofar as such terms are applicable to it. Each Issuer agrees to provide such notices to the Administrative Agent as may be necessary to give full effect to the provisions of this Agreement.

SECTION 7.16 Releases.

(a) Subject to Section 11.9 of the Credit Agreement, at such time as the Secured Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) shall have been paid in full in cash and the Revolving Credit Commitments have been terminated, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to the Grantors.

(b) Subject to Section 11.9 of the Credit Agreement, if any of the Collateral shall be sold or otherwise disposed of by any Grantor in a transaction permitted by the Loan Documents, then such Collateral shall be released from the Liens created thereby, without delivery of any instrument or performance of any act by any party. The Administrative Agent, at the request and sole expense of such Grantor, shall execute and deliver to such Grantor all releases or other documents reasonably necessary or desirable to evidence the release of the Liens created hereby on such Collateral. In the event that all the Equity Interests of any Grantor that is a Subsidiary of the Borrower shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement, then, at the request of the Borrower and at the expense of the Grantors, such Grantor shall be released from its obligations hereunder; provided that the Borrower shall have delivered to the Administrative Agent, at least ten (10) Business Days (or such shorter period as the Administrative Agent may agree in its sole discretion) prior to the date of the proposed release, written notification thereof identifying the relevant Grantor and a description of the sale or other disposition in reasonable detail, together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.
SECTION 7.17 Additional Grantors. Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to Section 8.13 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon execution and delivery by such Subsidiary of a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent.

SECTION 7.18 All Powers Coupled With Interest. All powers of attorney and other authorizations granted to the Secured Parties, the Administrative Agent and any Persons designated by the Administrative Agent or any other Secured Party pursuant to any provisions of this Agreement or any of the other Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Secured Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) remain unpaid or unsatisfied, any of the Revolving Credit Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 7.19 Secured Parties. Each Secured Party not a party to the Credit Agreement who obtains the benefit of this Agreement shall be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of the Credit Agreement, and that with respect to the actions and omissions of the Administrative Agent hereunder or otherwise relating hereto that do or may affect such Secured Party, the Administrative Agent and each of its Affiliates and Related Parties shall be entitled to all of the rights, benefits and immunities conferred under Article XI of the Credit Agreement.

[Signature Pages to Follow]
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed under seal by their duly authorized officers, all as of the day and year first written above.

REALPAGE, INC., as Grantor

By: /s/ W. Bryan Hill  
Name: W. Bryan Hill  
Title: Executive Vice President, Chief Financial Officer and Treasurer

MULTIFAMILY INTERNET VENTURES, LLC, as Grantor

By: /s/ W. Bryan Hill  
Name: W. Bryan Hill  
Title: Vice President, Chief Financial Officer and Treasurer

PROPERTYWARE LLC, as Grantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill  
Name: W. Bryan Hill  
Title: Executive Vice President, Chief Financial Officer and Treasurer

LEVEL ONE LLC, as Grantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill  
Name: W. Bryan Hill  
Title: Executive Vice President, Chief Financial Officer and Treasurer

Collateral Agreement  
RealPage, Inc.  
Signature Pages
RP NEWCO II LLC, as Grantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Executive Vice President, Chief Financial Officer and Treasurer

SENIOR-LIVING.COM, INC., as Grantor

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Vice President, Chief Financial Officer and Treasurer

MULTIFAMILY TECHNOLOGY SOLUTIONS, INC., as Grantor

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Vice President, Chief Financial Officer and Treasurer

VELOCITY UTILITY SOLUTIONS LLC, as Grantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Executive Vice President, Chief Financial Officer and Treasurer

Collateral Agreement
RealPage, Inc.
Signature Pages
KIGO, INC., as Grantor

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Vice President, Chief Financial Officer and Treasurer

LEASESTAR LLC, as Grantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Executive Vice President, Chief Financial Officer and Treasurer

Collateral Agreement
RealPage, Inc.
Signature Pages
Acknowledged by the Administrative Agent as of the day and year first written above:

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

By: /s/ John Nocita
Name: John Nocita
Title: Managing Director

Collateral Agreement
RealPage, Inc.
Signature Pages
GUARANTY AGREEMENT

dated as of September 30, 2014

by and among

Certain Domestic Subsidiaries

of

REALPAGE, INC.,
as Guarantors,

in favor of

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent
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THIS GUARANTY AGREEMENT (this “Guaranty”), dated as of September 30, 2014, is made by certain Domestic Subsidiaries of REALPAGE, INC., a Delaware corporation (such Subsidiaries, collectively, the “Guarantors” and each, a “Guarantor”), in favor of WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent (in such capacity, the “Administrative Agent”) for the benefit of itself and the Secured Parties.

STATEMENT OF PURPOSE

Pursuant to the terms of the Credit Agreement dated of even date herewith (the “Credit Agreement”), by and among the Borrower, the Lenders and the Administrative Agent, the Lenders have agreed to make Extensions of Credit to the Borrower upon the terms and subject to the conditions set forth therein.

The Borrower and the Guarantors, though separate legal entities, comprise one integrated financial enterprise, and all Extensions of Credit to the Borrower will inure, directly or indirectly, to the benefit of each of the Guarantors.

It is a condition precedent to the obligation of the Lenders to make their respective Extensions of Credit to the Borrower under the Credit Agreement that the Guarantors shall have executed and delivered this Guaranty to the Administrative Agent, for the benefit of the Secured Parties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, and to induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Lenders to make their respective Extensions of Credit to the Borrower thereunder, the Guarantors hereby, jointly and severally agree with the Administrative Agent, for the benefit of the Secured Parties, as follows:

ARTICLE I

DEFINED TERMS

SECTION 1.1 Definitions. The following terms when used in this Guaranty shall have the meanings assigned to them below:

“Additional Guarantor” means each Domestic Subsidiary of the Borrower which hereafter becomes a Guarantor pursuant to Section 5.18 hereof and Section 8.13 of the Credit Agreement.

“Guaranteed Obligations” has the meaning assigned thereto in Section 2.1.

SECTION 1.2 Other Definitional Provisions.

(a) Terms defined in the Credit Agreement and not otherwise defined herein shall have the meaning assigned thereto in the Credit Agreement.

(b) The terms of Sections 1.2, 1.6, 1.7 and 12.15 of the Credit Agreement are incorporated herein by reference as if fully set forth herein; provided that references therein to “Agreement” shall mean this Guaranty.

(c) Where the context requires, terms relating to the Collateral or any part thereof, when used in relation to a Guarantor, shall refer to such Guarantor’s Collateral or the relevant part thereof.

1
ARTICLE II
GUARANTY

SECTION 2.1 Guaranty. Each Guarantor hereby, jointly and severally with the other Guarantors, absolutely, irrevocably and unconditionally guarantees as a primary obligor and not merely as a surety to the Administrative Agent for the benefit of the Secured Parties, and their respective permitted successors, endorsee, transferees and assignees, the prompt payment and performance of all Secured Obligations of the Borrower and the other Credit Parties, whether primary or secondary (whether by way of endorsement or otherwise), whether now existing or hereafter arising, whether or not from time to time reduced or extinguished (except by payment thereof) or hereafter increased or incurred, whether enforceable or unenforceable as against the Borrower or any of the other Credit Parties, whether or not discharged, stayed or otherwise affected by any Debtor Relief Law or proceeding thereunder, whether created directly with the Administrative Agent or any other Secured Party or acquired by the Administrative Agent or any other Secured Party through assignment or endorsement or otherwise, whether matured or unmatured, whether joint or several, as and when the same become due and payable (whether at maturity or earlier, by reason of acceleration, mandatory repayment or otherwise), in accordance with the terms of any such instruments evidencing any such obligations, including all renewals, extensions or modifications thereof (all of the foregoing being hereafter collectively referred to as the “Guaranteed Obligations”).

SECTION 2.2 Bankruptcy Limitations on Guarantors. Notwithstanding anything to the contrary contained in Section 2.1, it is the intention of each Guarantor and the Secured Parties that, in any proceeding involving the bankruptcy, reorganization, arrangement, adjustment of debts, relief of debtors, dissolution or insolvency or any similar proceeding with respect to any Guarantor or its assets, the amount of such Guarantor’s obligations with respect to the Guaranteed Obligations (or any other obligations of such Guarantor to the Secured Parties) shall be equal to, but not in excess of, the maximum amount thereof not subject to avoidance or recovery by operation of Debtor Relief Laws after giving effect to Section 2.3(a). To that end, but only in the event and to the extent that after giving effect to Section 2.3(a), such Guarantor’s obligations with respect to the Guaranteed Obligations (or any other obligations of such Guarantor to the Secured Parties) or any payment made pursuant to such Guaranteed Obligations (or any other obligations of such Guarantor to the Secured Parties) would, but for the operation of the first sentence of this Section 2.2, be subject to avoidance or recovery in any such proceeding under Debtor Relief Laws after giving effect to Section 2.3(a), the amount of such Guarantor’s obligations with respect to the Guaranteed Obligations (or any other obligations of such Guarantor to the Secured Parties) shall be limited to the largest amount which, after giving effect thereto, would not, under Debtor Relief Laws, render such Guarantor’s obligations with respect to the Guaranteed Obligations (or any other obligations of such Guarantor to the Secured Parties) unenforceable or avoidable or otherwise subject to recovery under Debtor Relief Laws. To the extent any payment actually made pursuant to the Guaranteed Obligations exceeds the limitation of the first sentence of this Section 2.2 and is otherwise subject to avoidance and recovery in any such proceeding under Debtor Relief Laws, the amount subject to avoidance shall in all events be limited to the amount by which such actual payment exceeds such limitation and the Guaranteed Obligations as limited by the first sentence of this Section 2.2 shall in all events remain in full force and effect and be fully enforceable against such Guarantor. The first sentence of this Section 2.2 is intended solely to preserve the rights of the Secured Parties hereunder against such Guarantor in such proceeding to the maximum extent permitted by Debtor Relief Laws and neither such Guarantor, the Borrower, any other Guarantor nor any other Person shall have any right or claim under such sentence that would not otherwise be available under Debtor Relief Laws in such proceeding.
SECTION 2.3  Agreements for Contribution

(a) Each Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to any Secured Party under this Guaranty or any other guaranty, such Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Guarantor so as to maximize the aggregate amount paid to the Secured Parties under or in respect of the Loan Documents.

(b) No Subrogation. Notwithstanding any payment or payments by any of the Guarantors hereunder, or any setoff or application of funds of any of the Guarantors by the Administrative Agent or any other Secured Party, or the receipt of any amounts by the Administrative Agent or any other Secured Party with respect to any of the Guaranteed Obligations, none of the Guarantors shall be entitled to be subrogated to any of the rights of the Administrative Agent or any other Secured Party against the Borrower or the other Guarantors or against any collateral security held by the Administrative Agent or any other Secured Party for the payment of the Guaranteed Obligations nor shall any of the Guarantors seek any reimbursement or contribution from the Borrower or any of the other Guarantors in respect of payments made by such Guarantor in connection with the Guaranteed Obligations, until all amounts owing to the Administrative Agent and the Secured Parties on account of the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) are indefeasibly paid in full in cash and the Revolving Credit Commitments are terminated. If any amount shall be paid to any Guarantor on account of such subrogation reimbursement or contribution rights at any time when all of such Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) shall not have been indefeasibly paid in full, such amount shall be held by such Guarantor in trust for the Administrative Agent, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly endorsed by such Guarantor to the Administrative Agent, if required) to be applied against the Guaranteed Obligations, whether matured or unmatured, in such order as set forth in the Credit Agreement.

SECTION 2.4  Nature of Guaranty

(a) Each Guarantor agrees that this Guaranty is a continuing, unconditional guaranty of payment and performance and not of collection, and that to the extent permitted by Applicable Law, its obligations under this Guaranty shall be primary, absolute and unconditional, irrespective of, and unaffected by:

(i) the genuineness, legality, validity, enforceability or any future amendment of, or change in, or supplement to, the Credit Agreement, any other Loan Document, any Cash Management Agreement or any Hedge Agreement or any other agreement, document or instrument to which the Borrower, any Guarantor or any of their respective Subsidiaries or Affiliates is or may become a party, (including any increase in the Secured Obligations resulting from any extension of additional credit or otherwise);

(ii) any action under or in respect of the Credit Agreement, any other Loan Document, any Cash Management Agreement or any Hedge Agreement in the exercise of any remedy, power or privilege contained therein or available to any of them at law, in equity or otherwise, or waiver
or refraining from exercising any such remedies, power or privileges (including any manner of sale, disposition or any application of any sums by whomever paid or however realized to any Guaranteed Obligations owing by the Borrower or any Guarantor to the Administrative Agent or any other Secured Party in such manner as the Administrative Agent or any other Secured Party shall determine in its reasonable discretion);

(iii) the absence of any action to enforce this Guaranty, the Credit Agreement, any other Loan Document, any Cash Management Agreement or any Hedge Agreement or the waiver or consent by the Administrative Agent or any other Secured Party with respect to any of the provisions of this Guaranty, the Credit Agreement, any other Loan Document, any Cash Management Agreement or any Hedge Agreement;

(iv) the existence, value or condition of, or failure to perfect its Lien against, any security for or other guaranty of the Guaranteed Obligations or any action, or the absence of any action, by the Administrative Agent or any other Secured Party in respect of such security or guaranty (including, without limitation, the release of any such security or guaranty);

(v) any structural change in, restructuring of or other similar organizational change of the Borrower, any Guarantor, any other guarantors or any of their respective Subsidiaries or Affiliates; or

(vi) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor;

it being agreed by each Guarantor that, subject to the first sentence of Section 2.2, its obligations under this Guaranty shall not be discharged until the final indefeasible payment and performance, in full, of the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) and the termination of the Revolving Credit Commitments.

(b) Each Guarantor represents, warrants and agrees that to the extent permitted by Applicable Law the Guaranteed Obligations and its obligations under this Guaranty are not and shall not be subject to any counterclaims, offsets or defenses of any kind (other than the defense of payment or performance) against the Administrative Agent, the other Secured Parties or the Borrower whether now existing or which may arise in the future.

(c) Each Guarantor hereby agrees and acknowledges that the Guaranteed Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon this Guaranty, and all dealings among the Borrower and any of the Guarantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon this Guaranty.

SECTION 2.5 Waivers. To the extent permitted by Applicable Law, each Guarantor expressly waives all of the following rights and defenses (and agrees not to take advantage of or assert any such right or defense):

(a) any rights it may now or in the future have under any statute, or at law or in equity, or otherwise, to compel the Administrative Agent or any other Secured Party to proceed in respect of the
Guaranteed Obligations against the Borrower or any other Person or against any security for or other guaranty of the payment and performance of the Guaranteed Obligations before proceeding against, or as a condition to proceeding against, such Guarantor;

(b) any defense based upon the failure of the Administrative Agent or any other Secured Party to commence an action in respect of the Guaranteed Obligations against the Borrower, such Guarantor, any other guarantor or any other Person or any security for the payment and performance of the Guaranteed Obligations;

(c) any right to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshalling of assets or redemption laws, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by such Guarantor of its obligations under, or the enforcement by the Administrative Agent or the other Secured Parties of this Guaranty;

(d) any right of diligence, presentment, demand, protest and notice (except as specifically required herein or in the other Loan Documents) of whatever kind or nature with respect to any of the Guaranteed Obligations or any requirement that any Secured Party protect, secure, perfect or insure any Lien or any property subject thereto and waives, to the fullest extent permitted by Applicable Law, the benefit of all provisions of Applicable Law which are or might be in conflict with the terms of this Guaranty;

(e) any and all right to notice of the creation, renewal, extension or accrual of any of the Guaranteed Obligations and notice of or proof of reliance by the Administrative Agent or any other Secured Party upon, or acceptance of, this Guaranty; and

(f) any right of setoff or recoupment or counterclaim against or in respect of the Guaranteed Obligations.

Each Guarantor agrees that any notice or directive given at any time to the Administrative Agent or any other Secured Party which is inconsistent with any of the foregoing waivers shall be null and void and may be ignored by the Administrative Agent or such Secured Party, and, in addition, may not be pleaded or introduced as evidence in any litigation relating to this Guaranty for the reason that such pleading or introduction would be at variance with the written terms of this Guaranty, unless the Administrative Agent and the Required Lenders have specifically agreed otherwise in writing. The foregoing waivers are of the essence of the transaction contemplated by the Credit Agreement, the other Loan Documents, the Cash Management Agreements and the Hedge Agreements and, but for this Guaranty and such waivers, the Administrative Agent and other Secured Parties would decline to enter into the Credit Agreement, the other Loan Documents, the Cash Management Agreements and the Hedge Agreements.

SECTION 2.6 Modification of Loan Documents, etc. Neither the Administrative Agent nor any other Secured Party shall incur any liability to any Guarantor as a result of any of the following, and none of the following shall impair or release this Guaranty or any of the obligations of any Guarantor under this Guaranty:

(a) any change or extension of the manner, place or terms of payment of, or renewal or alteration of all or any portion of, the Guaranteed Obligations;

(b) any action under or in respect of the Credit Agreement, any other Loan Document, any Cash Management Agreement or any Hedge Agreement in the exercise of any remedy, power or privilege.
contained therein or available to any of them at law, in equity or otherwise, or waiver or refraining from exercising any such remedies, powers or privileges;

(c) any amendment to, or modification of, in any manner whatsoever, any Loan Document, any Cash Management Agreement or any Hedge Agreement;

(d) any extension or waiver of the time for performance by any Guarantor, any other guarantor, the Borrower or any other Person of, or compliance with, any term, covenant or agreement on its part to be performed or observed under a Loan Document, a Cash Management Agreement or a Hedge Agreement, or waiver of such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

(e) the taking and holding of security or collateral for the payment of the Guaranteed Obligations or the sale, exchange, release, disposal of, or other dealing with, any property pledged, mortgaged or conveyed, or in which the Administrative Agent or the other Secured Parties have been granted a Lien, to secure any Indebtedness of any Guarantor, any other guarantor or the Borrower to the Administrative Agent or the other Secured Parties;

(f) the release of anyone who may be liable in any manner for the payment of any amounts owed by any Guarantor, any other guarantor or the Borrower to the Administrative Agent or any other Secured Party;

(g) any modification or termination of the terms of any intercreditor or subordination agreement pursuant to which claims of other creditors of any Guarantor, any other guarantor or the Borrower are subordinated to the claims of the Administrative Agent or any other Secured Party; or

(h) any application of any sums by whomever paid or however realized to any Guaranteed Obligations owing by any Guarantor, any other guarantor or the Borrower to the Administrative Agent or any other Secured Party in such manner as the Administrative Agent or any other Secured Party shall determine in its reasonable discretion.

SECTION 2.7 Demand by the Administrative Agent. In addition to the terms set forth in this Article II and in no manner imposing any limitation on such terms, if all or any portion of the then outstanding Guaranteed Obligations are declared to be immediately due and payable, then the Guarantors shall, upon demand in writing therefor by the Administrative Agent to the Guarantors, pay all or such portion of the outstanding Guaranteed Obligations due hereunder then declared due and payable.

SECTION 2.8 Remedies. Upon the occurrence and during the continuance of any Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, enforce against the Guarantors their obligations and liabilities hereunder and exercise such other rights and remedies as may be available to the Administrative Agent hereunder, under the Credit Agreement, the other Loan Documents, the Cash Management Agreements, the Hedge Agreements or otherwise.

SECTION 2.9 Benefits of Guaranty. The provisions of this Guaranty are for the benefit of the Administrative Agent and the other Secured Parties and their respective permitted successors, transferees, endorsee and assigns, and nothing herein contained shall impair, as between the Borrower and its Subsidiaries, the Administrative Agent and the other Secured Parties, the obligations of the Borrower and its Subsidiaries under the Loan Documents, the Cash Management Agreements or the Hedge Agreements.
SECTION 2.10 Termination; Reinstatement.

(a) Subject to clause (c) below, this Guaranty shall remain in full force and effect until all the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) and all the obligations of the Guarantors shall have been indefeasibly paid in full in cash and the Revolving Credit Commitments terminated.

(b) No payment made by the Borrower, any Guarantor, any other guarantor or any other Person received or collected by the Administrative Agent or any other Secured Party from the Borrower, any Guarantor, any other guarantor or any other Person by virtue of any action or proceeding or any setoff or appropriation or application at any time or from time to time in reduction of or in payment of the Guaranteed Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the obligations of the Guarantors under this Guaranty or any payment received or collected from such Guarantor in respect of the obligations of the Guarantors under this Guaranty), remain liable for the obligations of the Guarantors up to the maximum liability of such Guarantor hereunder until the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) and all the obligations of the Guarantors under this Guaranty shall have been indefeasibly paid in full in cash and the Revolving Credit Commitments terminated.

(c) Each Guarantor agrees that, if any payment made by the Borrower or any other Person applied to the Guaranteed Obligations is at any time avoided, annulled, set aside, rescinded, invalidated, declared to be fraudulent or preferential or otherwise required to be refunded or repaid, or is repaid in whole or in part pursuant to a good faith settlement of a pending or threatened avoidance claim, or the proceeds of any Collateral are required to be refunded by the Administrative Agent or any other Secured Party to the Borrower, its estate, trustee, receiver or any other Person, including, without limitation, any Guarantor, under any Applicable Law or equitable cause, then, to the extent of such payment or repayment, each Guarantor’s liability hereunder (and any Lien or Collateral securing such liability) shall be and remain in full force and effect, as fully as if such payment had never been made, and, if prior thereto, this Guaranty shall have been canceled or surrendered (and if any Lien or Collateral securing such Guarantor’s liability hereunder shall have been released or terminated by virtue of such cancellation or surrender), this Guaranty (and such Lien or Collateral) shall be reinstated in full force and effect, and such prior cancellation or surrender shall not diminish, release, discharge, impair or otherwise affect the obligations of such Guarantor in respect of the amount of such payment (or any Lien or Collateral securing such obligation).

SECTION 2.11 Payments. Any payments by the Guarantors shall be made to the Administrative Agent, to be credited and applied to the Guaranteed Obligations in accordance with Section 10.4 of the Credit Agreement, in immediately available Dollars to an account designated by the Administrative Agent or at the Administrative Agent’s Office or at any other address that may be specified in writing from time to time by the Administrative Agent.
SECTION 2.12 Keepwell. Each Qualified ECP Guarantor (as defined below) hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds and other support as may be needed from time to time by each other Credit Party to honor all of its obligations under this Guaranty and the other Loan Documents in respect of Swap Obligations (provided, however, that each Qualified ECP Guarantor shall only be liable under this Section for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section, or otherwise under this Agreement or any other Loan Document, voidable under Debtor Relief Laws and not for any greater amount). Subject to Section 2.10, the obligations of each Qualified ECP Guarantor under this Section shall remain in full force and effect until all of the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) and all the obligations of the Guarantors under this Guaranty shall have been paid in full in cash and the Revolving Credit Commitments terminated. Each Qualified ECP Guarantor intends that this Section constitute, and this Section shall be deemed to constitute, a “keepwell, support or other agreement” for the benefit of each other Credit Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act. For purposes of this Section, “Qualified ECP Guarantor” means, in respect of any Swap Obligation, each Credit Party that has total assets exceeding $10,000,000 at the time the relevant guarantee or grant of the relevant security interest becomes effective with respect to such Swap Obligation or such other Person as constitutes an “eligible contract participant” under the Commodity Exchange Act or any regulations promulgated thereunder and can cause another Person to qualify as an “eligible contract participant” at such time by entering into a keepwell under Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

To induce the Administrative Agent and the Lenders to enter into the Credit Agreement and to induce the Secured Parties to make their respective Extensions of Credit, Secured Cash Management Agreements and/or Secured Hedge Agreements, as applicable, to the Borrower or another Credit Party (as the case may be), each Guarantor hereby represents and warrants to the Administrative Agent and each Secured Party that each representation and warranty contained in Article VII of the Credit Agreement relating to such Guarantor is true and correct as if made by such Guarantor herein.

ARTICLE IV
COVENANTS

Until the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) and all the obligations of the Guarantors under this Guaranty shall have been indefeasibly paid in full in cash and the Revolving Credit Commitments terminated each Guarantor covenants and agrees that it will perform and observe, and cause each of its Subsidiaries to perform and observe, all of the terms, covenants and agreements set forth in the Loan Documents that are required to be, or that the Borrower has agreed to cause to be, performed or observed by such Guarantor or Subsidiary.
ARTICLE V
MISCELLANEOUS

SECTION 5.1 Notices. All notices and communications hereunder shall be given to the addresses and otherwise made in accordance with Section 12.1 of the Credit Agreement; provided that notices and communications to the Guarantors shall be directed to the Guarantors, at the address of the Borrower set forth in Section 12.1 of the Credit Agreement.

SECTION 5.2 Amendments, Waivers and Consents. None of the terms or provisions of this Guaranty may be waived, amended, supplemented or otherwise modified, nor any consent be given, except in accordance with Section 12.2 of the Credit Agreement.

SECTION 5.3 Expenses; Indemnification; Waiver of Consequential Damages, etc.

(a) The Guarantors shall, jointly and severally, pay all out-of-pocket expenses (including, without limitation, attorney’s fees and expenses) incurred by the Administrative Agent and each other Secured Party to the extent the Borrower would be required to do so pursuant to Section 12.3 of the Credit Agreement.

(b) The Guarantors shall, jointly and severally, pay and indemnify each Indemnitee against Indemnified Taxes and Other Taxes to the extent the Borrower would be required to do so pursuant to Section 5.11 of the Credit Agreement.

(c) The Guarantors shall, jointly and severally, indemnify each Indemnitee to the extent the Borrower would be required to do so pursuant to Section 12.3 of the Credit Agreement.

(d) Notwithstanding anything to the contrary contained in this Guaranty, to the fullest extent permitted by Applicable Law, each Guarantor agrees that it shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Guaranty, any other Loan Document, any Cash Management Agreement, any Hedge Agreement or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) No Indemnitee referred to in this Section 5.3 shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Guaranty, the other Loan Documents, any Cash Management Agreements, any Hedge Agreements or the transactions contemplated hereby or thereby so long as such Indemnitee has not otherwise breached its confidentiality obligations under the Loan Documents.

(f) All amounts due under this Section 5.3 shall be payable within the time periods provided in Sections 5.11 and 12.3 of the Credit Agreement, as applicable, after demand therefor.

(g) Each party’s obligations under this Section 5.3 shall survive the termination of the Loan Documents and the payment of the Obligations thereunder.

SECTION 5.4 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Secured Party and each of its respective Affiliates is hereby authorized at any time and from time to time,
to the fullest extent permitted by Applicable Law, to setoff and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Secured Party or any such Affiliate to or for the credit or the account of such Guarantor to the same extent a Lender could do so under Section 12.4 of the Credit Agreement. The rights of each Secured Party and its respective Affiliates under this Section 5.4 are in addition to other rights and remedies (including other rights of setoff) that such Secured Party or its respective Affiliates may have. Each Secured Party agrees to notify such Guarantor and the Administrative Agent promptly after any such setoff and application; provided that the failure to give such notice shall not affect the validity of such setoff and application.

SECTION 5.5 Governing Law; Jurisdiction; Venue; Service of Process.

(a) Governing Law. This Guaranty and any claim, controversy, dispute or cause of action (whether in contract or tort or otherwise) based upon, arising out of or relating to this Guaranty and the transactions contemplated hereby shall be governed by, and construed in accordance with, the laws of the State of New York.

(b) Submission to Jurisdiction. Each Guarantor agrees that it will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise against the Administrative Agent, or any other Secured Party or any Related Party of the foregoing, in any way relating to this Guaranty or the transactions relating hereto in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof and each of the parties hereto irrevocably and unconditionally submits to the jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by Applicable Law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Guaranty or in any other Loan Document shall affect any right that the Administrative Agent or any other Secured Party may otherwise have to bring any action, litigation or proceeding relating to this Guaranty or any other Loan Document against any Guarantor or its Properties in the courts of any jurisdiction.

(c) Waiver of Venue. Each Guarantor irrevocably and unconditionally waives, to the fullest extent permitted by Applicable Law, any objection that it may now or hereafter have to the laying of venue of any action, litigation or proceeding arising out of or relating to this Guaranty or any other Loan Document in any court referred to in paragraph (b) of this Section 5.5. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by Applicable Law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Service of Process. Each party hereto irrevocably consents to service of process in the manner provided for notices in Section 12.1 of the Credit Agreement. Nothing in this Guaranty will affect the right of any party hereto to serve process in any other manner permitted by Applicable Law.

(e) Appointment of the Borrower as Agent for the Guarantors. Each Guarantor hereby irrevocably appoints and authorizes the Borrower to act as its agent for service of process and notices required to be delivered under this Guaranty or under the other Loan Documents, it being understood and agreed that receipt by the Borrower of any summons, notice or other similar item shall be deemed effective receipt by such Guarantor and its Subsidiaries.
SECTION 5.6  Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE 
FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY 
LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR 
ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER 
BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO 
REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR 
OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE 
THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN 
INDUCED TO ENTER INTO THIS GUARANTY AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER 
THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.6.

SECTION 5.7  Injunctive Relief. Each Guarantor recognizes that, in the event such Guarantor fails to perform, 
observe or discharge any of its obligations or liabilities under this Guaranty or any other Loan Document, any remedy of law 
may prove to be inadequate relief to the Administrative Agent and the other Secured Parties. Therefore, each Guarantor agrees 
that the Administrative Agent and the other Secured Parties, at the option of the Administrative Agent and the other Secured 
Parties, shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual 
damages.

SECTION 5.8  No Waiver by Course of Conduct, Cumulative Remedies. No course of dealing between any 
Guarantor, the Administrative Agent or any Secured Party or their respective agents or employees shall be effective to change, 
modify or discharge any provision of this Guaranty or any other Loan Documents or to constitute a waiver of any Event of 
Default. The enumeration of the rights and remedies of the Administrative Agent and the other Secured Parties set forth in this 
Guaranty is not intended to be exhaustive and the exercise by the Administrative Agent and the other Secured Parties of any 
right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in 
addition to any other right or remedy given hereunder or under the other Loan Documents or that may now or hereafter exist at 
law or in equity or by suit or otherwise. Neither the Administrative Agent nor any other Secured Party shall by any act (except by 
a written instrument pursuant to Section 5.2), delay, indulgence, omission or otherwise be deemed to have waived any right or 
remedy hereunder or to have acquiesced in any Default or Event of Default. No delay or failure to take action on the part of the 
Administrative Agent or any other Secured Party in exercising any right, power or privilege hereunder shall operate as a waiver 
thereof nor shall any single or partial exercise of any such right, power or privilege hereunder preclude any other or further 
exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of 
Default. A waiver by the Administrative Agent or any other Secured Party of any right or remedy hereunder on any one occasion 
shall not be construed as a bar to any right or remedy which the Administrative Agent or such Secured Party would otherwise 
have on any future occasion.

SECTION 5.9  Successors and Assigns. The provisions of this Guaranty shall be binding upon and inure to the benefit 
of the parties hereto and their respective successors and permitted assigns; except that no Guarantor may assign or otherwise 
transfer any of its rights or obligations under this Guaranty without the prior written consent of the Administrative Agent and the 
other Secured Parties (except as otherwise provided by the Credit Agreement).

SECTION 5.10  All Powers Coupled With Interest. All powers of attorney and other authorizations granted to the 
Secured Parties, the Administrative Agent and any Persons designated by the Administrative Agent or any other Secured Party 
pursuant to any provisions of this Guaranty or any of the other Loan Documents shall be deemed coupled with an interest and 
shall be irrevocable so long as any of the Guaranteed
Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) remain unpaid or unsatisfied, any of the Revolving Credit Commitments remain in effect or the Credit Facility has not been terminated.

SECTION 5.11 Survival of Indemnities. Notwithstanding any termination of this Guaranty, the indemnities to which the Administrative Agent and the other Secured Parties are entitled under the provisions of Section 5.3 and any other provision of this Guaranty and the other Loan Documents shall continue in full force and effect and shall protect the Administrative Agent and the other Secured Parties against events arising after such termination as well as before.

SECTION 5.12 Severability of Provisions. Any provision of this Guaranty or any other Loan Document which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.

SECTION 5.13 Counterparts. This Guaranty may be executed in any number of counterparts (and by different parties hereto in separate counterparts), each of which shall constitute an original, but all of which taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page to this Guaranty or any document or instrument delivered in connection herewith by facsimile or in electronic (i.e., “pdf” or “tif”) form shall be effective as delivery of a manually executed counterpart of this Guaranty or such other document or instrument, as applicable.

SECTION 5.14 Integration. This Guaranty and the other Loan Documents, and any separate letter agreements with respect to fees constitute the entire contract of the parties relating to the subject matter hereof and supersede all previous agreements and understandings, written or oral, relating to the subject matter hereof. In the event of any conflict between the provisions of this Guaranty and those of (a) the Credit Agreement, the provisions of the Credit Agreement shall control, (b) the Collateral Agreement, the provisions of the Collateral Agreement shall control and (c) any other Loan Document not referenced in clauses (a) and (b) above, the provisions of this Guaranty shall control; provided that the inclusion of supplemental rights or remedies in favor of the Administrative Agent or the other Secured Parties in any other Loan Document shall not be deemed a conflict with this Guaranty.

SECTION 5.15 Advice of Counsel, No Strict Construction. Each of the parties represents to each other party hereto that it has discussed this Guaranty with its counsel. The parties hereto have participated jointly in the negotiation and drafting of this Guaranty. In the event an ambiguity or question of intent or interpretation arises, this Guaranty 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 Guaranty.

SECTION 5.16 Acknowledgements. Each Guarantor hereby acknowledges that:

(a) it has received a copy of the Credit Agreement and has reviewed and understands the same;

(b) neither the Administrative Agent nor any other Secured Party has any fiduciary relationship with or duty to any Guarantor arising out of or in connection with this Guaranty or any of the
other Loan Documents, and the relationship between the Guarantors, on the one hand, and the Administrative Agent and the other Secured Parties, on the other hand, in connection herewith or therewith is solely that of debtor and creditor; and

(c) no joint venture is created hereby or by the other Loan Documents or otherwise exists by virtue of the transactions contemplated hereby or therewith among the Secured Parties or among the Guarantors and the Secured Parties.

SECTION 5.17 Releases.

(a) Subject to Section 11.9 of the Credit Agreement, at such time as the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) shall have been paid in full in cash and the Revolving Credit Commitments have been terminated, this Guaranty and all obligations (other than those expressly stated to survive such termination or as may be reinstated after such termination) of the Administrative Agent and each Guarantor hereunder shall terminate, all without delivery of any instrument or performance of any act by any party.

(b) In the event that all the Equity Interests of any Guarantor of the Borrower shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement, then, at the request of the Borrower and at the expense of the Guarantor, such Guarantor shall be released from its obligations hereunder; provided that the Borrower shall have delivered to the Administrative Agent, at least ten (10) Business Days (or such shorter time as the Administrative Agent may agree in its sole discretion) prior to the date of the proposed release, written notification thereof identifying the relevant Guarantor and a description of the sale or other disposition in reasonable detail, together with a certification by the Borrower stating that such transaction is in compliance with the Credit Agreement and the other Loan Documents.

SECTION 5.18 Additional Guarantors. Each Subsidiary of the Borrower that is required to become a party to this Guaranty pursuant to Section 8.13 of the Credit Agreement shall become a Guarantor for all purposes of this Guaranty upon execution and delivery by such Subsidiary of a supplement in form and substance satisfactory to the Administrative Agent.

SECTION 5.19 Secured Parties. Each Secured Party not a party to the Credit Agreement who obtains the benefit of this Guaranty shall be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of the Credit Agreement, and that with respect to the actions and omissions of the Administrative Agent hereunder or otherwise relating hereto that do or may affect such Secured Party, the Administrative Agent and each of its Affiliates shall be entitled to all the rights, benefits and immunities conferred under Article XI of the Credit Agreement.

SECTION 5.20 Subordination of Intercompany Indebtedness. Any Indebtedness of the Borrower or any other Credit Party now or hereafter held by any Guarantor is hereby subordinated in right of payment to the prior indefeasible payment in full in cash of all of the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized). Notwithstanding the foregoing, prior to the occurrence of an Event of Default, the Borrower or any other Credit Party may make payments to any Guarantor on account of any such Indebtedness. After the occurrence and during the continuance of an Event of Default, none of the Guarantors will demand, sue
for, or otherwise attempt to collect any such Indebtedness until the indefeasible payment in full in cash of the Guaranteed Obligations (other than (1) contingent indemnification obligations, (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made and (3) Letters of Credit that have been Cash Collateralized) and termination or expiration of the Revolving Credit Commitments under the Credit Agreement. If any amount shall erroneously be paid to any Guarantor on account of any such Indebtedness of any Credit Party, such amount shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to the Administrative Agent to be credited against the payment of the Guaranteed Obligations, whether matured or unmatured, in accordance with the terms of the Credit Agreement.

[Signature Pages to Follow]
IN WITNESS WHEREOF, each of the Guarantors has executed and delivered this Guaranty under seal by their duly authorized officers, all as of the day and year first above written.

MULTIFAMILY INTERNET VENTURES, LLC, as Guarantor

By: /s/ W. Bryan Hill  
Name: W. Bryan Hill  
Title: Vice President, Chief Financial Officer and Treasurer

PROPERTYWARE LLC, as Guarantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill  
Name: W. Bryan Hill  
Title: Executive Vice President, Chief Financial Officer and Treasurer

LEVEL ONE LLC, as Guarantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill  
Name: W. Bryan Hill  
Title: Executive Vice President, Chief Financial Officer and Treasurer

RealPage, Inc.  
Guaranty Agreement  
Signature Pages
RP NEWCO II LLC, as Guarantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Executive Vice President, Chief Financial Officer and Treasurer

SENIOR-LIVING.COM, INC., as Guarantor

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Vice President, Chief Financial Officer and Treasurer

MULTIFAMILY TECHNOLOGY SOLUTIONS, INC., as Guarantor

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Vice President, Chief Financial Officer and Treasurer

VELOCITY UTILITY SOLUTIONS LLC, as Guarantor

By: RealPage, Inc., its Sole Member

By: /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Executive Vice President, Chief Financial Officer and Treasurer

RealPage, Inc.
Guaranty Agreement
Signature Pages
KIGO, INC., as Guarantor

By:   /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Vice President, Chief Financial Officer and Treasurer

LEASESTAR LLC, as Guarantor

By: RealPage, Inc., its Sole Member

By:   /s/ W. Bryan Hill
Name: W. Bryan Hill
Title: Executive Vice President, Chief Financial Officer and Treasurer

RealPage, Inc.
Guaranty Agreement
Signature Pages
Acknowledged by the Administrative Agent as of the day and year first written above:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent

By: /s/ John Nocita
Name: John Nocita
Title: Managing Director

RealPage, Inc.
Guaranty Agreement
Signature Pages
I, Stephen T. Winn, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of RealPage, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 7, 2014

/s/ Stephen T. Winn

Stephen T. Winn
Chairman of the Board, Chief Executive Officer and Director
CERTIFICATION PURSUANT TO RULE 13a-14(a) OR 15d-14(a) OF 
THE SECURITIES EXCHANGE ACT OF 1934, 
AS ADOPTED PURSUANT TO SECTION 302 OF 
THE SARBANES-OXLEY ACT OF 2002

I, W. Bryan Hill, certify that:

1. I have reviewed this Quarterly Report on Form 10-Q of RealPage, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
   (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
   (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
   (c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
   (d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):
   (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and
   (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Date: November 7, 2014

/s/ W. Bryan Hill
W. Bryan Hill
Chief Financial Officer
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of RealPage, Inc. (the “Company”) on Form 10-Q for the period ending September 30, 2014 (the “Report”), I, Stephen T. Winn, Chairman of the Board, Chief Executive Officer and Director of RealPage Inc., certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of RealPage, Inc.

Date: November 7, 2014

/s/ Stephen T. Winn

Stephen T. Winn
Chairman of the Board, Chief Executive Officer and Director

A signed original of this written statement required by Section 906 has been provided to RealPage, Inc. and will be retained by RealPage, Inc. and furnished to the Securities and Exchange Commission or its staff upon request. The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.
CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Quarterly Report of RealPage, Inc. (the “Company”) on Form 10-Q for the period ending September 30, 2014 (the “Report”), I, W. Bryan Hill, Chief Financial Officer and Treasurer of RealPage, Inc, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) the Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) the information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of RealPage, Inc.

Date: November 7, 2014

/s/ W. Bryan Hill
W. Bryan Hill
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to RealPage, Inc. and will be retained by RealPage, Inc. and furnished to the Securities and Exchange Commission or its staff upon request. The foregoing certification is being furnished solely pursuant to 18 U.S.C. Section 1350 and is not being filed as part of the Report or as a separate disclosure document.