# UNITED STATES
# SECURITIES AND EXCHANGE COMMISSION
**Washington, DC 20549**

## FORM 10-K

**(Mark One)**

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

**For the fiscal year ended September 30, 2019**

**OR**

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

**For the transition period from _____ to _____**

**Commission File Number: 001-14129**

# STAR GROUP, L.P.

**(Exact name of registrant as specified in its charter)**

| **Delaware** | **06-1437793** |
|---|---|
| **(State or other jurisdiction of incorporation or organization)** | **(I.R.S. Employer Identification No.)** |
| **9 West Broad Street, Suite 310, Stamford, Connecticut** | **06902** |
| **(Address of principal executive office)** | **(Zip Code)** |

**(203) 328-7310**

**(Registrant's telephone number, including area code)**

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

| **Title of each class** | **Trading Symbol(s)** | **Name of each exchange on which registered** |
|---|---|---|
| **Common Units** | **SGU** | **New York Stock Exchange** |

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

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

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

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

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

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company or an emerging growth company. See definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act.

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | Accelerated filer | ☒ |
| Non-accelerated filer | ☐ | Smaller reporting company | ☐ |
| | | Emerging growth company | ☐ |

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

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

The aggregate market value of the registrant's common units held by non-affiliates on March 31, 2019 was approximately $437,267,000.

As of November 30, 2019, the registrant had 47,201,094 common units outstanding.

Documents Incorporated by Reference: None

**STAR GROUP, L.P.**
**2019 FORM 10-K ANNUAL REPORT**
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## PART I

**Statement Regarding Forward-Looking Disclosure**

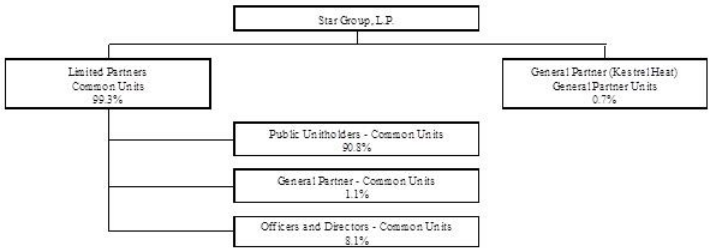
This Annual Report on Form 10-K (this "Report") includes "forward-looking statements" which represent our expectations or beliefs concerning future events that involve risks and uncertainties, including those associated with the effect of weather conditions on our financial performance, the price and supply of the products that we sell, the consumption patterns of our customers, our ability to obtain satisfactory gross profit margins, our ability to obtain new customers and retain existing customers, our ability to make strategic acquisitions, the impact of litigation, our ability to contract for our current and future supply needs, natural gas conversions, future union relations and the outcome of current and future union negotiations, the impact of current and future governmental regulations, including climate change, environmental, health, and safety regulations, the ability to attract and retain employees, customer credit worthiness, counterparty credit worthiness, marketing plans, potential cyber-attacks, general economic conditions and new technology. All statements other than statements of historical facts included in this Report including, without limitation, the statements under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere herein, are forward-looking statements. Without limiting the foregoing, the words "believe," "anticipate," "plan," "expect," "seek," "estimate," and similar expressions are intended to identify forward-looking statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we can give no assurance that such expectations will prove to be correct and actual results may differ materially from those projected as a result of certain risks and uncertainties. These risks and uncertainties include, but are not limited to, those set forth in this Report under the heading "Risk Factors" and "Business Strategy." Important factors that could cause actual results to differ materially from our expectations ("Cautionary Statements") are disclosed in this Report. All subsequent written and oral forward-looking statements attributable to the Company or persons acting on its behalf are expressly qualified in their entirety by the Cautionary Statements. Unless otherwise required by law, we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this Report.

### ITEM 1. BUSINESS

**Structure**

Star Group, L.P. ("Star" the "Company," "we," "us," or "our") is a home heating oil and propane distributor and services provider with one reportable operating segment that principally provides heating related services to residential and commercial customers. At a special meeting of unitholders held on October 25, 2017, our unitholders voted in favor of proposals to have the Company elect to be treated as a corporation, instead of a partnership, for federal income tax purposes (commonly referred to as a "check-the-box election"), along with amendments to our partnership agreement to effect such changes in income tax classification, in each case effective November 1, 2017. In addition, the Company changed its name, effective October 25, 2017, from "Star Gas Partners, L.P." to "Star Group, L.P." to more closely align our name with the scope of our product and service offerings. For tax years after December 31, 2017, unitholders will receive a Form 1099-DIV and will not receive a Schedule K-1 as in previous tax years. Our legal structure will remain a Delaware limited partnership and the distribution provisions under our limited partnership agreement, including the incentive distribution structure will remain unchanged. As of November 30, 2019, we had outstanding 47.2 million common partner units (NYSE: "SGU") representing a 99.3% limited partner interest in Star, and 0.3 million general partner units, representing a 0.7% general partner interest in Star.

The following chart depicts the ownership of Star as of November 30, 2019:



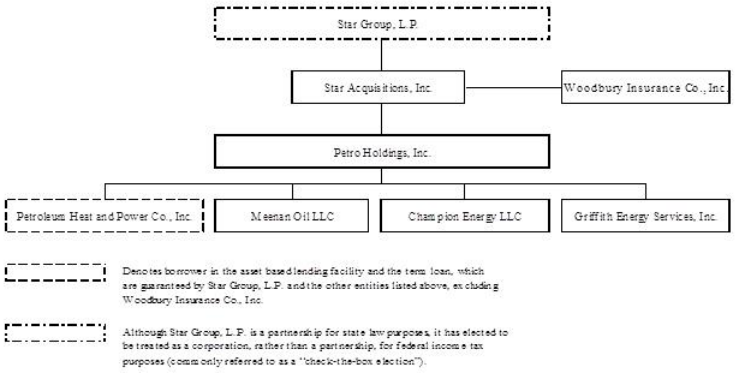

Star is organized as follows:

- Our general partner is Kestrel Heat, LLC, a Delaware limited liability company (“Kestrel Heat” or the “general partner”). The Board of Directors of Kestrel Heat (the “Board”) is appointed by its sole member, Kestrel Energy Partners, LLC, a Delaware limited liability company (“Kestrel”).
- Our operations are conducted through Petro Holdings, Inc., a Minnesota corporation that is a wholly owned subsidiary of Star Acquisitions, Inc., and its subsidiaries.
- Petroleum Heat and Power Co., Inc. (“PH&P”) is a wholly owned subsidiary of Star. PH&P is the borrower and Star is a guarantor of the fourth amended and restated credit agreement’s $100 million five-year senior secured term loan and the $300 million ($450 million during the heating season of December through April of each year) revolving credit facility, both due July 2, 2023. (See Note 13 of the Notes to the Consolidated Financial Statements — Long-Term Debt and Bank Facility Borrowings). In December 2019, the Company refinanced its five-year term loan and the revolving credit facility with the execution of the fifth amended and restated revolving credit facility agreement. (See Note 13—Long-Term Debt and Bank Facility Borrowings and Note 21—Subsequent Events).

We file annual, quarterly, current and other reports and information with the Securities and Exchange Commission, or SEC. These filings can be viewed and downloaded from the Internet at the SEC’s website at www.sec.gov. In addition, these SEC filings are available at no cost as soon as reasonably practicable after the filing thereof on our website at www.stargrouplp.com/sec.cfm. You may also obtain copies of these filings and other information at the offices of the New York Stock Exchange located at 11 Wall Street, New York, New York 10005. Please note that any Internet addresses provided in this Annual Report on Form 10-K are for informational purposes only and are not intended to be hyperlinks. Accordingly, no information found and/or provided at such Internet addresses is intended or deemed to be incorporated by reference herein.

**Legal Structure**

The following chart summarizes our structure as of September 30, 2019.




**Business Overview**

We are a home heating oil and propane distributor and service provider to residential and commercial customers who heat their homes and buildings in the Northeast, Central and Southeast U.S. regions. Our customers are concentrated in the northern and eastern states. As of September 30, 2019, we sold home heating oil and propane to approximately 453,000 full service residential and commercial customers and 56,000 customers on a delivery only basis. Approximately 236,000 of these customers, or 46%, are located in the New York City metropolitan area. We believe we are the largest retail distributor of home heating oil in the United States, based upon sales volume with a market share in excess of 5.5%. We also sell gasoline and diesel fuel to approximately 27,000 customers. We install, maintain, and repair heating and air conditioning equipment and to a lesser extent provide these services outside our heating oil and propane customer base including 17,000 service contracts for natural gas and other heating systems. During fiscal 2019, total sales were comprised approximately 63% from sales of home heating oil and propane, 21% from other petroleum products, the majority of which is diesel and gasoline, and 16% from the installation and repair of heating and air conditioning equipment and ancillary services. We provide home heating equipment repair service and natural gas service 24-hours-a-day, seven-days-a-week, 52 weeks a year. These services are an integral part of our business, and are intended to maximize customer satisfaction and loyalty.

We conduct our business through an operating subsidiary, Petro Holdings, Inc., utilizing multiple local brand names, such as Petro Home Services, Meenan, and Griffith Energy Services, Inc.

We also offer several pricing alternatives to our residential home heating oil customers, including a variable price (market based) option and a price-protected option, the latter of which either sets the maximum price or a fixed price that a customer will pay. Users choose the plan they feel best suits them which we believe increases customer satisfaction. Approximately 95% of our full service residential and commercial home heating oil customers automatically receive deliveries based on prevailing weather conditions. In addition, approximately 34% of our residential customers take advantage of our “smart pay” budget payment plan under which their estimated annual oil and propane deliveries and service billings are paid for in a series of equal monthly installments. We use derivative instruments as needed to mitigate our exposure to market risk associated with our price-protected offerings and the storing of our physical home heating oil inventory. Given our size, we are able to realize certain benefits of scale and provide consistent, strong customer service.

Currently, we have heating oil and/or propane customers in the following states: Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina,

Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia and the District of Columbia.

**Industry Characteristics**

Home heating oil is primarily used as a source of fuel to heat residences and businesses in the Northeast and Mid-Atlantic regions. According to the U.S. Department of Energy—Energy Information Administration, Residential Energy Consumption Survey (released May 2018), these regions account for 83% (4.8 million of 5.8 million) of the households in the United States where heating oil is the main space-heating fuel and 23% (4.7 million of 20.4 million) of the homes in these regions use home heating oil as their main space-heating fuel. Our experience has been that customers have a tendency to increase their conservation efforts as the price of home heating oil increases, thereby reducing their consumption.

The retail home heating oil industry is mature, with total market demand expected to decline in the foreseeable future due to conversions to natural gas, availability of other alternative energy sources and the installations of more fuel efficient heating systems. Therefore, our ability to maintain our business or grow within the industry is dependent on the acquisition of other retail distributors, the success of our marketing programs, and the growth of our other service offerings. Based on our records, our customer conversions to natural gas have ranged between 1.2% and 1.6% per year over the last five years. We believe this may continue or increase as natural gas has become less expensive than home heating oil on an equivalent BTU basis. Natural gas conversions reached a high of 2.4% in fiscal 2013. In addition, there are legislative and regulatory efforts underway in several states seeking to encourage homeowners to expand the use of natural gas as a heating fuel or to encourage or require all-electric new construction.

The retail home heating oil industry is highly fragmented, characterized by a large number of relatively small, independently owned and operated local distributors. Some dealers provide full service, as we do, and others offer delivery only on a cash-on-delivery basis, which we also do to a significantly lesser extent. In addition, the industry is complex and costly due to regulations, working capital requirements, and the costs and risks of hedging for price protected customers.

Propane is a by-product of natural gas processing and petroleum refining. Propane use falls into three broad categories: residential and commercial applications; industrial applications; and agricultural uses. In the residential and commercial markets, propane is used primarily for space heating, water heating, clothes drying and cooking. Industrial customers use propane generally as a motor fuel to power over-the-road vehicles, forklifts and stationary engines, to fire furnaces, as a cutting gas and in other process applications. In the agricultural market, propane is primarily used for tobacco curing, crop drying, poultry breeding and weed control.

The retail propane distribution industry is highly competitive and is generally serviced by large multi-state full-service distributors and small local independent distributors. Like the home heating oil industry, each retail propane distribution provider operates in its own competitive environment because propane distributors typically reside in close proximity to their customers. In most retail propane distribution markets, customers can choose from multiple distributors based on the quality of customer service, safety, reputation and price.

It is common practice in our business to price our liquid products to customers based on a per gallon margin over wholesale costs. As a result, we believe distributors such as ourselves generally seek to maintain their per gallon margins by passing wholesale price increases through to customers, thus insulating their margins from the volatility in wholesale prices. However, distributors may be unable or unwilling to pass the entire product cost increases through to customers. In these cases, significant decreases in per gallon margins may result. The timing of cost pass-throughs can also significantly affect margins. (See Customers and Pricing for a discussion on our offerings).

**Business Strategy**

Our business strategy is to increase Adjusted EBITDA (See Item 6. Selected Historical Financial and Operating Data for a definition and history) and cash flow by effectively managing operations while growing and retaining our customer base as a retail distributor of home heating oil and propane and provider of related products and services. The key elements of this strategy include the following:

***Pursue select acquisitions*** Our senior management team has developed expertise in identifying acquisition opportunities and integrating acquired customers into our operations. We focus on acquiring profitable companies within and outside our current footprint.

We actively pursue home heating oil only companies, propane companies, dual fuel (home heating oil and propane) companies and selectively target motor fuels acquisitions, especially where they are operating in the markets we currently serve. The focus for our acquisitions is both within our current footprint, as well as outside of such areas if the target company is of adequate size to sustain profitability as a stand-alone operation. We have used this strategy to expand into several states over the past five years.

***Deliver superior customer service*** We are dedicated to consistently providing our customers with superior service and a positive customer experience to improve retention and drive additional revenue. We have established programs and conduct surveys to effectively measure customer satisfaction at certain brands.

We have deployed a customer relationship management solution at most of our larger brands. This allows us to provide a more consistent customer experience as our employees will have a 360 degree-view of each customer with easy access to key customer information and customized dashboards to track individual employee performance.

We have resources dedicated to training employees to provide superior and consistent service and enhance the customer experience. This effort is supported, reinforced and monitored by our local management teams.

***Complimentary service offerings*** We are focused on expanding our service offerings. These offerings include, but are not limited to, the sales, service and installation of heating and air conditioning equipment, plumbing services, and standby home generators. In addition, we also repair and install natural gas heating systems.

**Seasonality**

Our fiscal year ends on September 30. All references to quarters and years respectively in this document are to fiscal quarters and years unless otherwise noted. The seasonal nature of our business results in the sale of approximately 30% of our volume of home heating oil and propane in the first fiscal quarter and 50% of our volume in the second fiscal quarter of each fiscal year, the peak heating season. Approximately 25% of our volume of motor fuel and other petroleum products is sold in each of the four fiscal quarters. We generally realize net income in our first and second fiscal quarters and net losses during our third and fourth fiscal quarters and we expect that the negative impact of seasonality on our third and fourth fiscal quarter operating results will continue. In addition, sales volume typically fluctuates from year to year in response to variations in weather, wholesale energy prices and other factors.

**Degree Day**

A “degree day” is an industry measurement of temperature designed to evaluate energy demand and consumption. Degree days are based on how far the average daily temperature departs from 65°F. Each degree of temperature above 65°F is counted as one cooling degree day, and each degree of temperature below 65°F is counted as one heating degree day. Degree days are accumulated each day over the course of a year and can be compared to a monthly or a multi-year average to see if a month or a year was warmer or cooler than usual. Degree days are officially observed by the National Weather Service.

Every ten years, the National Oceanic and Atmospheric Administration (“NOAA”) computes and publishes average meteorological quantities, including the average temperature for the last 30 years by geographical location, and the corresponding degree days. The latest and most widely used data covers the years from 1981 to 2010. Our calculations of normal weather are based on these published 30 year averages for heating degree days, weighted by volume for the locations where we have existing operations.

**Competition**

Most of our operating locations compete with numerous distributors, primarily on the basis of price, reliability of service and response to customer needs. Each such location operates in its own competitive environment.

We compete with distributors offering a broad range of services and prices, from full-service distributors, such as ourselves, to those offering delivery only. As do many companies in our business, we provide home heating and

propane equipment repair service on a 24-hour-a-day, seven-day-a-week, 52 weeks a year basis. We believe that this level of service tends to help build customer loyalty. In some instances homeowners have formed buying cooperatives that seek a lower price than individual customers are otherwise able to obtain. Our business competes for retail customers with suppliers of alternative energy products, principally natural gas, propane (in the case of our home heating oil operations) and electricity.

**Customer Attrition**

We measure net customer attrition for our full service residential and commercial home heating oil and propane customers. Net customer attrition is the difference between gross customer losses and customers added through marketing efforts. Customers added through acquisitions are not included in the calculation of gross customer gains. However, additional customers that are obtained through marketing efforts at newly acquired businesses are included in these calculations. Customer attrition percentage calculations include customers added through acquisitions in the denominators of the calculations on a weighted average basis. Gross customer losses are the result of a number of factors, including price competition, move outs, credit losses and conversions to natural gas. (See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations – Customer Attrition.)

**Customers and Pricing**

Home heating oil customers comprise 81.7% of our product customer base, with 13.2% devoted to propane and 5.1% devoted to motor fuel and other petroleum products. (During fiscal 2019 we sold 345.5 million gallons of home heating oil and propane and 167.4 million gallons of motor fuel and other petroleum products.)

Our full service home heating oil customer base is comprised of 97% residential customers and 3% commercial customers. Approximately 95% of our full service residential and commercial home heating oil customers have their deliveries scheduled automatically and 5% of our home heating oil customer base call from time to time to schedule a delivery. Automatic deliveries are scheduled based on each customer's historical consumption pattern and prevailing weather conditions. Our practice is to bill customers promptly after delivery. We offer a balanced payment plan to residential customers in which a customer's estimated annual oil purchases and service contract fees are paid for in a series of equal monthly payments. Approximately 34% of our residential home heating oil customers have selected this billing option.

We offer several pricing alternatives to our residential home heating oil customers. Our variable pricing program allows the price to float with the heating oil market and other factors. In addition, we offer price-protected programs, which establish either a ceiling or a fixed price per gallon that the customer pays over a defined period. The following chart depicts the percentage of the pricing plans selected by our residential home heating oil customers as of the end of the fiscal year.

| | September 30, | | | | |
|---|---|---|---|---|---|
| | 2019 | 2018 | 2017 | 2016 | 2015 |
| Variable | 53.9% | 55.2% | 52.6% | 53.2% | 51.4% |
| Ceiling | 39.1% | 36.9% | 37.1% | 40.8% | 43.9% |
| Fixed | 7.0% | 7.9% | 10.3% (a) | 6.0% | 4.7% |
| | 100.0% | 100.0% | 100.0% | 100.0% | 100.0% |

(a) Approximately 2% of the increase in the percentage of accounts under fixed contracts is attributable to fiscal 2017 acquisitions.

Sales to residential customers ordinarily generate higher per gallon margins than sales to commercial customers. Due to greater price sensitivity, our own internal marketing efforts, and hedging costs of residential price-protected customers, the per gallon margins realized from price-protected customers generally are less than from variable priced residential customers.

The propane customer base has a similar profile of heating oil residential and commercial customers. Pricing plans chosen by propane customers are almost exclusively variable in nature where selling prices will float with the propane market and other commercial factors.

The motor fuel and other petroleum products customer group includes commercial and industrial customers of unbranded gasoline, diesel, kerosene and related distillate products. We sell products to these customers through contracts of various terms or through a competitive bidding process.

**Derivatives**

We use derivative instruments in order to mitigate our exposure to market risk associated with the purchase of home heating oil for our price-protected customers, physical inventory on hand, inventory in transit, priced purchase commitments, and the variable interest rate on our term loan. Currently, the Company's derivative instruments are with the following counterparties: Bank of America, N.A., Bank of Montreal, Cargill, Inc., Citibank, N.A., JPMorgan Chase Bank, N.A., Key Bank, N.A., Regions Financial Corporation, Toronto-Dominion Bank and Wells Fargo Bank, N.A.

The Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 815-10-05, Derivatives and Hedging, requires that derivative instruments be recorded at fair value and included in the consolidated balance sheet as assets or liabilities. To the extent our interest rate derivative instruments designated as cash flow hedges are effective, as defined under this guidance, changes in fair value are recognized in other comprehensive income (loss) until the hedged item is recognized in earnings. We have elected not to designate our commodity derivative instruments as hedging instruments under this guidance, and as a result, the changes in fair value of the derivative instruments during the holding period are recognized in our statement of operations. Therefore, we experience volatility in earnings as outstanding derivative instruments are marked to market and non-cash gains and losses are recorded prior to the sale of the commodity to the customer. The volatility in any given period related to unrealized non-cash gains or losses on derivative instruments can be significant to our overall results. However, we ultimately expect those gains and losses to be offset by the cost of product when purchased. Depending on the risk being hedged, realized gains and losses are recorded in cost of product, cost of installations and services, or delivery and branch expenses.

**Suppliers and Supply Arrangements**

We purchase our product for delivery in either barge, pipeline or truckload quantities, and as of September 30, 2019, had contracts with approximately 119 third-party terminal sites for the right to temporarily store petroleum products at their facilities. Home heating oil and propane purchases are made under supply contracts or on the spot market. We have entered into market price based contracts for approximately 83% of our expected home heating oil and propane requirements for the fiscal 2020 heating season. We also have market price based contracts for approximately 27% of our expected diesel and gasoline requirements for fiscal 2020.

No single supplier provided more than 10% of our product supply during fiscal 2019. Supply contracts typically have terms of 6 to 12 months. All of the supply contracts provide for minimum quantities and in most cases do not establish in advance the price of home heating oil or propane. This price is based upon a published market index price at the time of delivery or pricing date plus an agreed upon differential. We believe that our policy of contracting for the majority of our anticipated supply needs with diverse and reliable sources will enable us to obtain sufficient product should unforeseen shortages develop in worldwide supplies.

**Liquid Product Price Volatility**

Volatility, which is reflected in the wholesale price of liquid products, including home heating oil, propane and motor fuels, has a larger impact on our business when prices rise. Home heating oil consumers are price sensitive to heating cost increases, and this often leads to increased gross customer losses. As a commodity, the price of home heating oil is generally impacted by many factors, including economic and geopolitical forces. The price of home heating oil is closely linked to the price of diesel fuel. The volatility in the wholesale cost of diesel fuel as measured by the New York Mercantile Exchange ("NYMEX"), for the fiscal years ending September 30, 2015, through 2019, on a quarterly basis, is illustrated in the following chart (price per gallon):

| | Fiscal 2019 (a) | | Fiscal 2018 | | Fiscal 2017 | | Fiscal 2016 | | Fiscal 2015 | |
|---|---|---|---|---|---|---|---|---|---|---|
| **Quarter Ended** | **Low** | **High** | **Low** | **High** | **Low** | **High** | **Low** | **High** | **Low** | **High** |
| December 31 | $ 1.66 | $ 2.44 | $ 1.74 | $ 2.08 | $ 1.39 | $ 1.70 | $ 1.08 | $ 1.61 | $ 1.85 | $ 2.66 |
| March 31 | 1.70 | 2.04 | 1.84 | 2.14 | 1.49 | 1.70 | 0.87 | 1.26 | 1.62 | 2.30 |
| June 30 | 1.78 | 2.12 | 1.96 | 2.29 | 1.37 | 1.65 | 1.08 | 1.57 | 1.68 | 2.02 |
| September 30 | 1.75 | 2.08 | 2.05 | 2.35 | 1.45 | 1.86 | 1.26 | 1.53 | 1.38 | 1.84 |

(a) On November 30, 2019, the NYMEX ultra low sulfur diesel contract closed at $1.88 per gallon or $0.09 per gallon lower than the average of $1.97 in Fiscal 2019.

**Acquisitions**

Part of our business strategy is to pursue select acquisitions.

During fiscal 2019, the Company acquired one of its subcontractors, a liquid product dealer and the assets of a propane dealer with a combined total of approximately 24,000 home heating oil and propane accounts for an aggregate purchase price of approximately $60.9 million in cash. The gross purchase price was allocated $44.7 million to intangible assets, $13.7 million to fixed assets and $2.5 million to working capital. Each acquired company's operating results are included in the Company's consolidated financial statements starting on its acquisition date. Customer lists, other intangibles and trade names are amortized on a straight-line basis over seven to twenty years.

During fiscal 2018, the Company acquired five home heating oil dealers and a motor fuel dealer with a total of 16,950 home heating oil and propane accounts for an aggregate purchase price of approximately $25.2 million; comprised of $23.7 million in cash and $1.5 million of deferred liabilities. The gross purchase price was allocated $15.3 million to intangible assets, $7.5 million to fixed assets and $2.4 million to working capital. Each acquired company's operating results are included in the Company's consolidated financial statements starting on its acquisition date. Customer lists, other intangibles and trade names are amortized on a straight-line basis over seven to twenty years.

During fiscal 2017, the Company acquired four home heating oil dealers, two propane dealers and a plumbing service provider with a total of 28,300 home heating oil and propane accounts for an aggregate purchase price of approximately $44.8 million; comprised of $43.3 million in cash and $1.5 million of deferred liabilities (including $0.6 million of contingent consideration). The gross purchase price was allocated $37.5 million to intangible assets, $10.2 million to fixed assets and reduced by $2.9 million in working capital credits. Each acquired company's operating results are included in the Company's consolidated financial statements starting on its acquisition date. Customer lists, other intangibles and trade names are amortized on a straight-line basis over seven to twenty years.

**Employees**

As of September 30, 2019, we had 3,446 employees, of whom 898 were office, clerical and customer service personnel; 978 were equipment technicians; 575 were fuel delivery drivers and mechanics; 633 were management and 362 were employed in sales. Of these employees 1,475 (43%) are represented by 59 different collective bargaining agreements with local chapters of labor unions. Due to the seasonal nature of our business and depending on the demands of the 2020 heating season, we anticipate that we will augment our current staffing levels during the heating season from among the 395 employees on temporary leave of absence as of September 30, 2019. There are 25 collective bargaining agreements up for renewal in fiscal 2020, covering approximately 791 employees (23%). We believe that our relations with both our union and non-union employees are generally satisfactory.

**Government Regulations**

We are subject to various federal, state and local environmental, health and safety laws and regulations. Generally, these laws impose limitations on the discharge or emission of pollutants and establish standards for the handling of solid and hazardous wastes. These laws include the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), the Clean Air Act, the Occupational Safety and Health Act, the Emergency Planning and Community Right to Know Act, the Clean Water Act, the Oil Pollution Act, and comparable state statutes. CERCLA, also known as the "Superfund" law, imposes joint and several liabilities without regard to fault or the legality of the original conduct on certain classes of persons that are considered to have contributed to the release or threatened release of a hazardous substance into the environment. Products stored and/or delivered by us and certain automotive waste products generated by our fleet are hazardous substances within the meaning of CERCLA or otherwise subject to investigation and cleanup under other environmental laws and regulations. While we are currently not involved with any material CERCLA claims, and we have implemented programs and policies designed to address potential liabilities and costs under applicable environmental laws and regulations, failure to comply with such laws and regulations could result in civil or criminal penalties or injunctive relief in cases of non-compliance or impose liability for remediation costs.

We have incurred and continue to incur costs to address soil and groundwater contamination at some of our locations, including legacy contamination at properties that we have acquired. A number of our properties are currently undergoing remediation, in some instances funded by prior owners or operators contractually obligated to do so. To date, no material issues have arisen with respect to such prior owners or operators addressing such remediation, although there is no assurance that this will continue to be the case. In addition, we have been subject to proceedings by regulatory authorities for alleged violations of environmental and safety laws and regulations. We do not expect any of these liabilities or proceedings of which we are aware to result in material costs to, or disruptions of, our business or operations.

Transportation of our products by truck are subject to regulations promulgated under the Federal Motor Carrier Safety Act. These regulations cover the transportation of hazardous materials and are administered by the United States Department of Transportation or similar state agencies. Several of our oil terminals are governed under the United States Coast Guard operations Oversite, Federal OPA 90 FRP programs and Federal Spill Prevention Control and Countermeasure programs. All of our propane bulk terminals are governed under Homeland Security Chemical Facility Anti-Terrorism Standards programs. We conduct ongoing training programs to help ensure that our operations are in compliance with applicable regulations. We maintain various permits that are necessary to operate some of our facilities, some of which may be material to our operations.

There is increasing attention in the United States and worldwide concerning the issue of climate change and the effect of emissions of greenhouse gases ("GHG"), in particular from the combustion of fossil fuels. Federal, regional and state regulatory authorities in many jurisdictions have begun taking steps to regulate GHG emissions.

## ITEM 1A. RISK FACTORS

*You should consider carefully the risk factors discussed below, as well as all other information, as an investment in the Company involves a high degree of risk. We are subject to certain risks and hazards due to the nature of the business activities we conduct. The risks discussed below, any of which could materially and adversely affect our business, financial condition, cash flows, and results of operations, could result in a partial or total loss of your investment, and are not the only risks we face. We may experience additional risks and uncertainties not currently known to us or, as a result of developments occurring in the future, conditions that we currently deem to be immaterial may also materially and adversely affect our business, financial condition, cash flows and results of operations.*

**Our operating results will be adversely affected if we continue to experience significant net customer attrition in our home heating oil and propane customer base.**

The following table depicts our gross customer gains, gross customer losses and net customer attrition from fiscal year 2015 to fiscal year 2019. Net customer attrition is the difference between gross customer losses and customers added through marketing efforts. Customers added through acquisitions are not included in the calculation of gross customer gains. However, additional customer gains that are obtained through marketing efforts and losses at newly acquired businesses are included in these calculations from the point of closing going forward.

Customer attrition percentage calculations include customers added through acquisitions in the denominators of the calculations on a weighted average basis from the closing date.

| | Fiscal Year Ended September 30, | | | | |
|---|---|---|---|---|---|
| | 2019 | 2018 | 2017 | 2016 | 2015 |
| Gross customer gains | 12.9% | 13.0% | 13.1% | 12.1% | 14.6% |
| Gross customer losses | 18.3% | 16.2% | 14.6% | 17.2% | 16.4% |
| Net attrition | (5.4%) | (3.2%) | (1.5%) | (5.1%) | (1.8%) |

The gain of a new customer does not fully compensate for the loss of an existing customer because of the expenses incurred during the first year to add a new customer. Typically, the per gallon margin realized from a new account added is less than the margin of a customer that switches to another provider. Customer losses are the result of various factors, including but not limited to:

- price competition;
- customer relocations and home sales/foreclosures;
- credit worthiness;
- service disruptions: and
- conversions to natural gas;

The continuing volatility in the energy markets can intensify price competition and add to our difficulty in reducing net customer attrition. Warmer than normal weather can also contribute to an increase in attrition as customers perceive less need for a full service provider like ourselves.

If we are not able to reduce the current level of net customer attrition or if such level should increase, attrition will have a material adverse effect on our business, operating results and cash available for distributions to unitholders. For additional information about customer attrition, see Item 7 “Management’s Discussion and Analysis of Financial Condition and Results of Operations – Customer Attrition.”

**Because of the highly competitive nature of our business, we may not be able to retain existing customers or acquire new customers, which would have an adverse impact on our business, operating results and financial condition.**

Our business is subject to substantial competition. Most of our operating locations compete with numerous distributors, primarily on the basis of price, reliability of service and responsiveness to customer service needs. Each operating location operates in its own competitive environment.

We compete with distributors offering a broad range of services and prices, from full-service distributors, such as ourselves, to those offering delivery only. As do many companies in our business, we provide home heating equipment repair service on a 24-hour-a-day, seven-day-a-week, 52 weeks a year basis. We believe that this tends to build customer loyalty. In some instances homeowners have formed buying cooperatives that seek to purchase home heating oil from distributors at a price lower than individual customers are otherwise able to obtain. We also compete for retail customers with suppliers of alternative energy products, principally natural gas, propane (in the case of our home heating oil operations) and electricity. If we are unable to compete effectively, we may lose existing customers and/or fail to acquire new customers, which would have a material adverse effect on our business, operating results and financial condition.

**Our operating results will be adversely affected if we experience significant net customer attrition from natural gas conversions**

Based on data in the 2010 United States Census, from 2000 to 2010 it appears that heating oil customer conversions to natural gas in the states where we do business averaged from under 1% to over 3% per year.

The following table depicts our estimated customer losses to natural gas conversions for the last five fiscal years. Losses to natural gas in our footprint for the home heating oil industry could be greater or less than our estimates. We believe conversions will continue as natural gas has become less expensive than home heating oil on an equivalent BTU basis. In addition, certain states encourage homeowners to expand the use of natural gas as a heating fuel through legislation and regulatory efforts.

| | Fiscal Year Ended September 30, | | | | |
|---|---|---|---|---|---|
| | 2019 | 2018 | 2017 | 2016 | 2015 |
| Customer losses to natural gas conversion | (1.4)% | (1.3)% | (1.2)% | (1.3)% | (1.6)% |

In addition to our direct customer losses to natural gas competition, any conversion to natural gas by a heating oil consumer in our geographic footprint reduces the pool of available customers from which we can gain new heating oil customers, and could have a material adverse effect on our business, operating results and financial condition.

**Energy efficiency and new technology may reduce the demand for our products and adversely affect our operating results.**

Increased conservation and technological advances, including installation of improved insulation and the development of more efficient furnaces and other heating devices, have adversely affected the demand for our products by retail customers. Future conservation measures or technological advances in heating, conservation, energy generation or other devices might reduce demand and adversely affect our operating results.

**If we do not make acquisitions on economically acceptable terms, our future growth will be limited.**

Generally, heating oil and propane are alternative energy sources to new housing construction, because natural gas is usually selected when natural gas infrastructure exists. In certain geographies, utilities are building out their natural gas infrastructure. As such, our industry is not a growth industry. Accordingly, future growth will depend on our ability to make acquisitions on economically acceptable terms. We cannot assure that we will be able to identify attractive acquisition candidates in our sector in the future or that we will be able to acquire businesses on economically acceptable terms. Adverse operating and financial results may limit our access to capital and adversely affect our ability to make acquisitions. Under the terms of our fifth amended and restated credit agreement (“Credit Agreement”), we are restricted from making any individual acquisition in excess of $25.0 million without the lenders’ approval. In addition, to make an acquisition, we are required to have Availability (as defined in our Credit Agreement) of at least $40.0 million, on a historical pro forma and forward-looking basis. Furthermore, as long as the bank term loan is outstanding, we must be in compliance with the senior secured leverage ratio (as defined in our Credit Agreement). These covenant restrictions may limit our ability to make acquisitions. Any acquisition may involve potential risks to us and ultimately to our unitholders, including:

- an increase in our indebtedness;
- an increase in our working capital requirements;
- an inability to integrate the operations of the acquired business;
- an inability to successfully expand our operations into new territories;
- the diversion of management’s attention from other business concerns;
- an excess of customer loss from the acquired business;
- loss of key employees from the acquired business; and
- the assumption of additional liabilities including environmental liabilities.

In addition, acquisitions may be dilutive to earnings and distributions to unitholders, and any additional debt incurred to finance acquisitions may, among other things, affect our ability to make distributions to our unitholders.

**Since weather conditions may adversely affect the demand for home heating oil and propane, our business, operating results and financial condition are vulnerable to warm winters.**

Weather conditions in regions in which we operate have a significant impact on the demand for home heating oil and propane because our customers depend on this product largely for space heating purposes. As a result, weather conditions may materially adversely impact our business, operating results and financial condition. During the peak-heating season of October through March, sales of home heating oil and propane historically have represented approximately 80% of our annual volume sold. Actual weather conditions can vary substantially from year to year or from month to month, significantly affecting our financial performance. Warmer than normal temperatures in one or more regions in which we operate can significantly decrease the total volume we sell and the gross profit realized and, consequently, our results of operations.

To partially mitigate the adverse effect of warm weather on cash flows, we have used weather hedge contracts for a number of years. In general, such weather hedge contracts provide that we are entitled to receive a specific payment per heating degree-day shortfall, when the total number of heating degree-days in the hedge period is less than the ten year average. The "payment thresholds," or strikes, are set at various levels. The hedge period runs from November 1, through March 31, of a fiscal year taken as a whole.

For fiscal years 2020 and 2021 we have weather hedge contracts with one provider. For each fiscal year the maximum that the Company can receive is $12.5 million and the maximum the Company may be obligated to pay is $5.0 million. However, there can be no assurance that such weather hedge contracts would fully or substantially offset the adverse effects of warmer weather on our business and operating results during such period or that colder weather will result in enough profit to offset a payment by the Company to its provider.

**High product prices can lead to customer conservation and attrition, resulting in reduced demand for our products.**

Prices for our products are subject to volatile fluctuations in response to changes in supply and other market conditions. During periods of high product costs our prices generally increase. High prices can lead to customer conservation and attrition, resulting in reduced demand for our products.

**Increases in wholesale product costs may have adverse effects on our business, financial condition, results of operations, or liquidity.**

Increases in wholesale product costs may have adverse effects on our business, financial condition and results of operations, including the following:

- customer conservation or attrition due to customers converting to lower cost heating products or suppliers;
- reduced liquidity as a result of higher receivables, and/or inventory balances as we must fund a portion of any increase in receivables, inventory and hedging costs from our own resources, thereby tying up funds that would otherwise be available for other purposes;
- higher bad debt expense and credit card processing costs as a result of higher selling prices;
- higher interest expense as a result of increased working capital borrowing to finance higher receivables and/or inventory balances; and
- higher vehicle fuel costs.

If increases in wholesale product costs cause our working capital requirements to exceed the amounts available under our revolving credit facility or should we fail to maintain the required availability or fixed charge coverage ratio, we would not have sufficient working capital to operate our business, which could have a material adverse effect on our financial condition and results of operations.

Our business requires a significant amount of working capital to finance inventory and accounts receivable generated during the heating season. Under our Credit Agreement, we may borrow up to $300 million, which increases to $450 million during the peak winter months from December through April of each fiscal year. We are

obligated to meet certain financial covenants under our Credit Agreement, including the requirement to maintain at all times either excess availability (borrowing base less amounts borrowed and letters of credit issued) of 12.5% of the revolving credit commitment then in effect or a fixed charge coverage ratio (as defined in our Credit Agreement) of not less than 1.1. In addition, as long as our term loan is outstanding, our senior secured leverage ratio cannot be more than 3.0 as calculated as of the quarters ending June 30 or September 30, and no more than 4.5 as calculated as of the quarters ending December 31 or March 31.

At December 31, 2019, we expect to have approximately 25 million gallons of priced purchase commitments and physical inventory hedged with a futures contract or swap. If the wholesale price of heating oil increased $1 per gallon, our near term liquidity in December would be reduced by $25 million.

At September 30, 2019, we had approximately 124,000 customers, or 34% of our residential customer base, on the balanced payment plan in which a customer's estimated annual oil purchases and service contract fees are paid for in a series of equal monthly payments. Increases in wholesale prices could reduce our liquidity if we failed to recalculate the balanced payments on a timely basis or if customers resist higher balanced payments. These customers could possibly owe us more in the future than we had budgeted. Generally, customer credit balances are at their low point after the end of the heating season and at their peak prior to the beginning of the heating season.

**Our hedging strategy may adversely affect our liquidity.**

We purchase derivatives and swaps from members of our lending group in order to mitigate exposure to market risk associated with the purchase of home heating oil for price-protected customers. These institutions have not required an initial cash margin deposit or any mark to market maintenance margin for these derivatives. However, we are required to pay for these options as they expire. Any mark to market exposure reduces our borrowing base and can thus reduce the amount available to us under our Credit Agreement. The highest mark to market reserve against our borrowing base for these derivative instruments with our lending group was $22.7 million, $0, and $7.8 million, during fiscal years 2019, 2018, and 2017 respectively.

We also purchase call options from members of our lending group to hedge the price of the products to be sold to our price-protected customers which usually require us to pay an upfront cash payment. This reduces our liquidity, as we must pay for the option before any sales are made to the customer. We further purchase futures contracts with members of our lending group in order to mitigate exposure to market risk associated with physical inventory. Our futures contracts require an initial cash deposit and maintenance margin for changes in the market value of the contracts.

**Sudden and sharp oil price increases that cannot be passed on to customers may adversely affect our operating results.**

Our industry is a "margin-based" business in which gross profit depends on the excess of sales prices per gallon over supply costs per gallon. Consequently, our profitability is sensitive to changes in the wholesale product cost caused by changes in supply or other market conditions. These factors are beyond our control and thus, when there are sudden and sharp increases in the wholesale cost of home heating oil, we may not be able to pass on these increases to customers through increased retail sales prices. In an effort to retain existing accounts and attract new customers we may offer discounts, which will impact the net per gallon gross margin realized.

**Significant declines in the wholesale price of home heating oil may cause price-protected customers to renegotiate or terminate their arrangements which may adversely impact our gross profit and operating results.**

When the wholesale price of home heating oil declines significantly after a customer enters into a price protection arrangement, some customers attempt to renegotiate their arrangement in order to enter into a lower cost pricing plan with us or terminate their arrangement and switch to a competitor. Under our current price-protected programs, approximately 39.1% and 7.0% of our residential customers are respectively categorized as being either ceiling or fixed as of September 30, 2019.

**A significant portion of our home heating oil volume is sold to price-protected customers (ceiling and fixed) and our gross margins could be adversely affected if we are not able to effectively hedge against fluctuations in the volume and cost of product sold to these customers.**

A significant portion of our home heating oil volume is sold to individual customers under an arrangement pre-establishing the ceiling sales price or a fixed price of home heating oil over a fixed period. When the customer makes a purchase commitment for the next period we currently purchase option contracts, swaps and futures contracts for a substantial majority of the heating oil that we expect to sell to these price-protected customers. The amount of home heating oil volume that we hedge per price-protected customer is based upon the estimated fuel consumption per average customer, per month. If the actual usage exceeds the amount of the hedged volume on a monthly basis, we could be required to obtain additional volume at unfavorable margins. In addition, should actual usage in any month be less than the hedged volume (including, for example, as a result of early terminations by fixed price customers), our hedging losses could be greater. Currently, we have elected not to designate our derivative instruments as hedging instruments under FASB ASC 815-10-05 Derivatives and Hedging, and the change in fair value of the derivative instruments is recognized in our statement of operations. Therefore, we experience volatility in earnings as these currently outstanding derivative contracts are marked to market and non-cash gains or losses are recorded in the statement of operations.

**Our risk management policies cannot eliminate all commodity risk, basis risk, or the impact of adverse market conditions which can adversely affect our financial condition, results of operations and cash available for distribution to our unitholders. In addition, any noncompliance with our risk management policies could result in significant financial losses.**

While our hedging policies are designed to minimize commodity risk, some degree of exposure to unforeseen fluctuations in market conditions remains. For example, we change our hedged position daily in response to movements in our inventory. Any difference between the estimated future sales from inventory and actual sales will create a mismatch between the amount of inventory and the hedges against that inventory, and thus change the commodity risk position that we are trying to maintain. Also, significant increases in the costs of the products we sell can materially increase our costs to carry inventory. We use our revolving credit facility as our primary source of financing to carry inventory and may be limited on the amounts we can borrow to carry inventory. Basis risk describes the inherent market price risk created when a commodity of certain grade or location is purchased, sold or exchanged as compared to a purchase, sale or exchange of a like commodity at a different time or place. Transportation costs and timing differentials are components of basis risk. For example, we use the NYMEX to hedge our commodity risk with respect to pricing of energy products traded on the NYMEX. Physical deliveries under NYMEX contracts are made in New York Harbor. To the extent we take deliveries in other ports, such as Boston Harbor, we may have basis risk. In a backward market (when prices for future deliveries are lower than current prices), basis risk is created with respect to timing. In these instances, physical inventory generally loses value as basis declines over time. Basis risk cannot be entirely eliminated, and basis exposure, particularly in backward or other adverse market conditions, can adversely affect our financial condition, results of operations and cash available for distribution to our unitholders.

We monitor processes and procedures to reduce the risk of unauthorized trading and to maintain substantial balance between purchases and sales or future delivery obligations. We can provide no assurance, however, that these steps will detect and/or prevent all violations of such risk management policies and procedures, particularly if deception or other intentional misconduct is involved.

**Our obligation to fund multi-employer pension plans to which we contribute may have an adverse impact on us.**

We participate in a number of multi-employer pension plans for current and former union employees covered under collective bargaining agreements. The risks of participating in multi-employer plans are different from single-employer plans in that assets contributed are pooled and may be used to provide benefits to current and former employees of other participating employers. Several factors could require us to make significantly higher future contributions to these plans, including the funding status of the plan, unfavorable investment performance, insolvency or withdrawal of participating employers, changes in demographics and increased benefits to

participants. Several of these multi-employer plans to which we contribute are underfunded, meaning that the value of such plans' assets are less than the actuarial value of the plans' benefit obligations.

We may be subject to additional liabilities imposed by law as a result of our participation in multi-employer defined benefit pension plans. Various Federal laws impose certain liabilities upon an employer who is a contributor to a multi-employer pension plan if the employer withdraws from the plan or the plan is terminated or experiences a mass withdrawal, potentially including an allocable share of the unfunded vested benefits in the plan for all plan participants, not just our retirees. Accordingly, we could be assessed our share of unfunded liabilities should we terminate participation in these plans, or should there be a mass withdrawal from these plans, or if the plans become insolvent or otherwise terminate.

While we currently have no intention of permanently terminating our participation in or otherwise withdrawing from any underfunded multi-employer pension plan, there can be no assurance that we will not be required to record material withdrawal liabilities or be required to make material cash contributions in the future to one or more underfunded plans, whether as a result of withdrawing from a plan, or of agreeing to any alternate funding option, or due to any of the other risks associated with being a participating employer in an underfunded plan. Any of these events could negatively impact our liquidity and financial results.

**We rely on the continued solvency of our derivatives, insurance and weather hedge counterparties.**

If counterparties to the derivative instruments that we use to hedge the cost of home heating oil sold to price-protected customers, physical inventory and our vehicle fuel costs were to fail, our liquidity, operating results and financial condition could be materially adversely impacted, as we would be obligated to fulfill our operational requirement of purchasing, storing and selling home heating oil and vehicle fuel, while losing the mitigating benefits of economic hedges with a failed counterparty. If one of our insurance carriers were to fail, our liquidity, results of operations and financial condition could be materially adversely impacted, as we would have to fund any catastrophic loss. If our weather hedge counterparty were to fail, we would lose the protection of our weather hedge contract. Currently, we have outstanding derivative instruments with the following counterparties: Bank of America, N.A., Bank of Montreal, Cargill, Inc., Citibank, N.A., JPMorgan Chase Bank, N.A., Key Bank, N.A., Regions Financial Corporation, Toronto-Dominion Bank and Wells Fargo Bank, N.A. Our primary insurance carriers are American International Group, Woodbury Insurance Co., Inc. (our captive insurance subsidiary), and a subsidiary of Sompo International which is our weather hedge counterparty.

**Our operating results are subject to seasonal fluctuations.**

Our operating results are subject to seasonal fluctuations since the demand for home heating oil and propane is greater during the first and second fiscal quarter of our fiscal year, which is the peak heating season. The seasonal nature of our business has resulted on average in the last five years in the sale of approximately 30% of our volume of home heating oil and propane in the first fiscal quarter and 50% of our volume in the second fiscal quarter of each fiscal year. As a result, we generally realize net income in our first and second fiscal quarters and net losses during our third and fourth fiscal quarters and we expect that the negative impact of seasonality on our third and fourth fiscal quarter operating results will continue. Thus any material reduction in the profitability of the first and second quarters for any reason, including warmer than normal weather, generally cannot be made up by any significant profitability improvements in the results of the third and fourth quarters.

**Economic conditions could adversely affect our results of operations and financial condition.**

Uncertainty about economic conditions poses a risk as our customers may reduce or postpone spending in response to tighter credit, negative financial news and/or declines in income or asset values, which could have a material negative effect on the demand for our equipment and services and could lead to increased conservation, as we have seen certain of our customers seek lower cost providers. Any increase in existing customers or potential new customers seeking lower cost providers and/or increase in our rejection rate of potential accounts because of credit considerations could increase our overall rate of net customer attrition. In addition, recessionary economic conditions could negatively impact the spending and financial viability of our customers; particularly our commercial motor fuel customers. As a result, we could experience an increase in bad debts from financially

distressed customers, which would have a negative effect on our liquidity, results of operations and financial condition.

**We are subject to operating and litigation risks that could adversely affect our operating results whether or not covered by insurance.**

Our operations are subject to all operating hazards and risks normally incidental to handling, storing, transporting and otherwise providing customers with our products such as natural disasters, adverse weather, accidents, fires, explosions, hazardous material releases, mechanical failures and other events beyond our control. If any of these events were to occur, we could incur substantial losses because of personal injury or loss of life, severe damage to and destruction of property and equipment, and pollution or other environmental damage resulting in curtailment or suspension of our related operations. As a result, we may be a defendant in legal proceedings and litigation arising in the ordinary course of business. The Company records a liability when it is probable that a loss has been incurred and the amount is reasonably estimable.

As we self-insure workers' compensation, automobile and general liability claims up to pre-established limits, we establish reserves based upon expectations as to what our ultimate liability will be for claims based on our historical factors. We evaluate on an annual basis the potential for changes in loss estimates with the support of qualified actuaries. As of September 30, 2019, we had approximately $74.7 million of net insurance reserves. Other than matters for which we self-insure, we maintain insurance policies with insurers in amounts and with coverage and deductibles that we believe are reasonable and prudent.

However, there can be no assurance that the ultimate settlement of these claims will not differ materially from the assumptions used to calculate the reserves or that the insurance we maintain will be adequate to protect us from all material expenses related to potential future claims for remediation costs and personal and property damage or that these levels of insurance will be available in the future at economical prices, either of which could have a material effect on our results of operations. Further, certain types of claims may be excluded from our insurance coverage, including the legal matter disclosed in Item 3 (Legal Proceedings – Litigation) of this Report. If we were to incur substantial liability and the damages are not covered by insurance or are in excess of policy limits, or if we incur liability at a time when we are not able to obtain liability insurance, then our business, results of operations and financial condition could be materially adversely affected.

**Our captive insurance company may not bring the benefits we expect.**

Beginning October 1, 2016, we have elected to insure through a wholly-owned captive insurance company, Woodbury Insurance Co., Inc., certain self-insured or deductible amounts. We also continue to maintain our normal, historical, insurance policies with third party insurers. In addition to certain business and operating benefits of having a captive insurance company, we expect to receive certain cash flow benefits related to the timing of the tax deduction related to these claims. Such expected cash tax timing benefits related to coverage provided by Woodbury Insurance Co., Inc. may not materialize, or any cash tax savings may not be as much as anticipated.

**Recent New York legislation has the potential to significantly negatively impact the Company's New York operations.**

On July 18, 2019, the State of New York passed the Climate Leadership and Community Protection Act ("CLCPA"). Among other things, the CLCPA sets out a series of emissions reduction, renewable energy, and energy storage goals to significantly reduce the use of carbon-based fossil fuels and eventually achieve net zero greenhouse gas ("GHG") emissions in the state. Within one year of the passage of the CLCPA (by July 2020), the New York Department of Environmental Conservation must establish a statewide GHG limit as a percentage of 1990 GHG emissions. These emission reduction goals as currently written propose a reduction to 60% of 1990 GHG emissions by 2030 and a reduction down to 15% of 1990 GHG emissions by 2050. Within two years after the effective date of the CLCPA (by July 2021), the New York State Climate Action Council must propose a scoping plan with recommendations for how the state can reduce carbon emissions, which could include proposed emission reductions from sources such as boilers or furnaces that burn heating oil or natural gas. Four years after the effective date of the CLCPA (by July 2023), the New York Department of Environmental Conservation must adopt regulations that, in part, include measures to reduce emissions from greenhouse gas emission sources that have a cumulatively

significant impact on statewide green-house gas emissions, such as internal combustion vehicles that burn gasoline or diesel fuel and boilers or furnaces that burn oil or natural gas. Certain measures, if adopted, could significantly negatively impact the Company's New York State operations, which constitute a material portion of the Company's business. However, whether and in what manner the CLCPA could impact the Company remains uncertain at this time.

**Our results of operations and financial condition may be adversely affected by governmental regulation and associated environmental and regulatory costs.**

Our business is subject to a wide range of federal, state and local laws and regulations related to environmental and other matters. Such laws and regulations have become increasingly stringent over time. Some state and local governments have enacted or are attempting to enact regulations and incentive programs encouraging the phase-out of the products that we sell in favor of other types of fuels, such as natural gas. We may experience increased costs due to stricter pollution control requirements or liabilities resulting from noncompliance with operating or other regulatory permits. New regulations, such as those relating to underground storage, transportation, and delivery of the products that we sell, might adversely impact operations or make them more costly. In addition, there are environmental risks inherently associated with home heating oil operations, such as the risks of accidental releases or spills. We have incurred and continue to incur costs to remediate soil and groundwater contamination at some of our locations. We cannot be sure that we have identified all such contamination, that we know the full extent of our obligations with respect to contamination of which we are aware, or that we will not become responsible for additional contamination not yet discovered. It is possible that material costs and liabilities will be incurred, including those relating to claims for damages to property and persons and the environment.

In addition, our financial condition, results of operations and ability to pay distributions to our unitholders may be negatively impacted by significant changes in federal and state tax law. For example, an increase in federal and state income tax rates will reduce the amount of cash to pay distributions.

There is increasing attention in the United States and worldwide concerning the issue of climate change and the effect of emissions of greenhouse gases ("GHG"), in particular from the combustion of fossil fuels. Federal, regional and state regulatory authorities in many jurisdictions have begun taking steps to regulate GHG emissions. For example, as discussed above under "Risk Factor – Recent New York legislation has the potential to significantly negatively impact the Company's New York operations," in July 2019, the State of New York passed the CLCPA. Additionally, in October 2015, the United States Environmental Protection Agency ("EPA") published the Clean Power Plan for regulation of GHG emissions associated with the energy sector. However, following litigation and subsequent EPA review of the Clean Power Plan, the EPA has since repealed the Clean Power Plan and issued the Affordable Clean Energy ("ACE") Rule to replace the Clean Power Plan. The ACE Rule establishes emissions guidelines with suggested technologies and operating and maintenance practices for meeting those guidelines pursuant to which states must develop plans to address GHG emissions from existing coal-fired electric generating units ("EGUs") rather than, as was proposed under the Clean Power Plan, EPA setting state-specific standards and requiring states to develop plans using certain "building blocks," such as "beyond-the-fence-line" conservation measures, to meet those state-specific standards. Under the ACE Rule, each state's plan for meeting the emissions guidelines by determining standards of performance on an EGU source-specific basis are due to EPA by July 8, 2022. At this time, state plans have yet to be developed and approved by EPA, litigation of the ACE Rule is pending in the U.S. Court of Appeals for the District of Columbia, and any impact on our business of the ACE Rule is uncertain. It is likely that any regulatory program that caps emissions or imposes a carbon tax will increase costs for us and our customers, which could lead to increased conservation or customers seeking lower cost alternatives. We cannot yet estimate the compliance costs or business impact of potential national, regional or state greenhouse gas emissions reduction legislation, regulations or initiatives, since many such programs and proposals are still in development.

**Our operations would be adversely affected if service at our third-party terminals or on the common carrier pipelines used is interrupted.**

The products that we sell are transported in either barge, pipeline or in truckload quantities to third-party terminals where we have contracts to temporarily store our products. Any significant interruption in the service of

these third-party terminals or on the common carrier pipelines used would adversely affect our ability to obtain product.

**The risk of global terrorism and political unrest may adversely affect the economy and the price and availability of the products that we sell and have a material adverse effect on our business, financial condition and results of operations.**

Terrorist attacks, political unrest and war may adversely impact the price and availability of the products that we sell, our results of operations, our ability to raise capital and our future growth. The impact that the foregoing may have on our industry in general, and on our business in particular, is not known at this time. An act of terror could result in disruptions of crude oil supplies, markets and facilities, and the source of the products that we sell could be direct or indirect targets. Terrorist activity may also hinder our ability to transport our products if our normal means of transportation become damaged as a result of an attack. Instability in the financial markets as a result of terrorism could also affect our ability to raise capital. Terrorist activity could likely lead to increased volatility in the prices of our products.

**The impact of hurricanes and other natural disasters could cause disruptions in supply and could also reduce the demand for the products that we sell, which would have a material adverse effect on our business, financial condition and results of operations.**

Hurricanes and other natural disasters may cause disruptions in the supply chains for the products that we sell. Disruptions in supply could have a material adverse effect on our business, financial condition and results of operations, causing an increase in wholesale prices and a decrease in supply. Hurricanes and other natural disasters could also cause disruptions in the power grid, which could prevent our customers from operating their home heating oil systems, thereby reducing our sales. For example, on October 29, 2012, storm Sandy made landfall in our service area, resulting in widespread power outages that affected a number of our customers. Deliveries of home heating oil and propane were less than expected for certain of our customers who were without power for several weeks subsequent to storm Sandy.

**We depend on the use of information technology systems that could fail or be the target of cyber-attacks.**

Our systems and networks are maintained internally and by third-party vendors, and their failure could significantly impede operations. In addition, our systems and networks, as well as those of our vendors, banks and counterparties, may receive and store personal/business information in connection with human resources operations, customer offerings, and other aspects of our business. A cyber-attack or material network breach in the security of these systems could include the theft of proprietary information or employee and customer information, as well as disrupt our operations or damage our facilities or those of third parties. This could have a material adverse effect on our revenues and increase our operating and capital costs, which could reduce the amount of cash otherwise available for distribution. To the extent that any disruption or security breach results in a loss or damage to the Company's data, or an inappropriate disclosure of confidential or customer or employee information, it could cause significant damage to the Company's reputation, affect relationships with its customers and employees, lead to claims against the Company, and ultimately harm our business. In addition, we may be required to incur additional costs to modify, remediate and protect against damage caused by these disruptions or security breaches in the future.

**If we fail to maintain an effective system of internal controls, then we may not be able to accurately report our financial results or prevent fraud. As a result, current and potential unitholders could lose confidence in our financial reporting, which would harm our business and the trading price of our common units.**

Effective internal controls are necessary for us to provide reliable financial reports, prevent fraud and operate successfully as a public company. We may experience difficulties in implementing effective internal controls as part of our integration of acquisitions from private companies, which are not subject to the internal control requirements imposed on public companies. If we are unable to maintain adequate controls over our financial processes and reporting in the future or if the businesses we acquire have ineffective internal controls, our operating results could be harmed or we may fail to meet our reporting obligations. Ineffective internal controls over financial reporting could cause our unitholders to lose confidence in our reported financial information, which would likely have a negative effect on the trading price of our common units.

**Conflicts of interest have arisen and could arise in the future.**

Conflicts of interest have arisen and could arise in the future as a result of relationships between the general partner and its affiliates, on the one hand, and us or any of our limited partners, on the other hand. As a result of these conflicts the general partner may favor its own interests and those of its affiliates over the interests of the unitholders. The nature of these conflicts is ongoing and includes the following considerations:

- The general partner's affiliates are not prohibited from engaging in other business or activities, including direct competition with us.
- The general partner determines the amount and timing of asset purchases and sales, capital expenditures, distributions to unitholders, unit repurchases, borrowings and reserves, each of which can impact the amount of cash, if any, available for distribution to unitholders, and available to pay principal and interest on debt and the amount of incentive distributions payable in respect of the general partner units.
- The general partner controls the enforcement of obligations owed to us by the general partner.
- The general partner decides whether to retain its counsel or engage separate counsel to perform services for us.
- In some instances the general partner may borrow funds in order to permit the payment of distributions to unitholders.
- The general partner may limit its liability and reduce its fiduciary duties, while also restricting the remedies available to unitholders for actions that might, without limitations, constitute breaches of fiduciary duty.
- Unitholders are deemed to have consented to some actions and conflicts of interest that might otherwise be deemed a breach of fiduciary or other duties under applicable state law.
- The general partner is allowed to take into account the interests of parties in addition to the Company in resolving conflicts of interest, thereby limiting its fiduciary duty to the unitholders.
- The general partner determines whether to issue additional units or other of our securities.
- The general partner determines which costs are reimbursable by us.
- The general partner is not restricted from causing us to pay the general partner or its affiliates for any services rendered on terms that are fair and reasonable to us or entering into additional contractual arrangements with any of these entities on our behalf.

**We could experience significant increases in operating costs and reduced profitability due to competition for drivers and equipment technicians' labor.**

We compete with other entities for drivers and equipment technicians' labor, including entities that operate in different market sectors than us. Costs to recruit, train and retain adequate personnel, the loss of certain personnel, our inability to attract and retain other qualified personnel or a labor shortage that reduces the pool of qualified candidates could adversely affect our results of operations.

**A substantial portion of our workforce is unionized, and we may face labor actions that could disrupt our operations or lead to higher labor costs and adversely affect our business.**

As of September 30, 2019, approximately 43% of our employees were covered under 59 different collective bargaining agreements. As a result, we are usually involved in union negotiations with several local bargaining units at any given time. There can be no assurance that we will be able to negotiate the terms of any expired or expiring agreement on terms satisfactory to us. Although we consider our relations with our employees to be generally satisfactory, we may experience strikes, work stoppages or slowdowns in the future. If our unionized workers were to engage in a strike, work stoppage or other slowdown, we could experience a significant disruption of our operations, which could have a material adverse effect on our business, results of operations and financial condition. Moreover, our non-union employees may become subject to labor organizing efforts. If any of our current non-union facilities were to unionize, we could incur increased risk of work stoppages and potentially higher labor costs.

**Cash distributions (if any) are not guaranteed and may fluctuate with performance and reserve requirements.**

Distributions of available cash by us to unitholders will depend on the amount of cash generated, and distributions may fluctuate based on our performance. The actual amount of cash that is available will depend upon numerous factors, including:

- profitability of operations,
- required principal and interest payments on debt or debt prepayments,
- debt covenants,
- margin account requirements,
- cost of acquisitions,
- issuance of debt and equity securities,
- fluctuations in working capital,
- capital expenditures,
- units repurchased,
- adjustments in reserves,
- prevailing economic conditions,
- financial, business and other factors,
- increased pension funding requirements
- results of potential adverse litigation, and
- the amount of cash taxes we have to pay in Federal, State and local corporate income and franchise taxes.

Our Credit Agreement imposes restrictions on our ability to pay distributions to unitholders, including the need to maintain certain covenants. (See the fifth amended and restated credit agreement and Note 13 of the Notes to the Consolidated Financial Statements—Long-Term Debt and Bank Facility Borrowings and Note 21 of the Notes to the Consolidated Financial Statements – Subsequent Events).

**Our substantial debt and other financial obligations could impair our financial condition and our ability to obtain additional financing and have a material adverse effect on us if we fail to meet our financial and other obligations.**

At September 30, 2019, we had outstanding under our fourth amended and restated revolving credit facility agreement a $92.5 million term loan. In addition, under the revolver portion of our fourth amended and restated revolving credit facility agreement, we had borrowings of $61.5 million, $4.6 million of letters of credit were issued, $7.7 million hedge positions were secured, and availability was $126.1 million. In December 2019, the Company refinanced its five-year term loan and the revolving credit facility with the execution of the fifth amended and restated revolving credit facility agreement, which had the effect of increasing the amount due under our term loan to $130 million, correspondingly reduced the borrowings under the revolver portion of the fourth amended and restated revolving credit facility agreement and extending the term of the facility to December 2024. (See the fifth amended and restated credit agreement and Note 13 of the Notes to the Consolidated Financial Statements—Long-Term Debt and Bank Facility Borrowings and Note 21 of the Notes to the Consolidated Financial Statements – Subsequent Events). Exclusive of the term loan, during the last three fiscal years we have utilized as much as $167.2 million of our Credit Agreement in borrowings, letters of credit and hedging reserve. Our substantial indebtedness and other financial obligations could:

- impair our ability to obtain additional financing in the future for working capital, capital expenditures, acquisitions, unit repurchases or general partnership purposes;

- have a material adverse effect on us if we fail to comply with financial and affirmative and restrictive covenants in our debt agreements and an event of default occurs that is not cured or waived;
- require us to dedicate a substantial portion of our cash flow for principal and interest payments on our indebtedness and other financial obligations, thereby reducing the availability of our cash flow to fund working capital and capital expenditures;
- expose us to interest rate risk because certain of our borrowings are at variable rates of interest;
- limit our flexibility in planning for, or reacting to, changes in our business and the industry in which we operate; and
- place us at a competitive disadvantage compared to our competitors that have proportionally less debt.

If we are unable to meet our debt service obligations and other financial obligations, we could be forced to restructure or refinance our indebtedness and other financial transactions, seek additional equity capital or sell our assets. We might then be unable to obtain such financing or capital or sell our assets on satisfactory terms, if at all.

**We are not required to accumulate cash for the purpose of meeting our future obligations to our lenders, which may limit the cash available to service the final payment due on the term loan outstanding under our Credit Agreement.**

Subject to the limitations on restricted payments that are contained in our Credit Agreement, we are not required to accumulate cash for the purpose of meeting our future obligations to our lenders. As a result, we may be required to refinance the final payment of our term loan. Our ability to refinance the term loan will depend upon our future results of operation and financial condition as well as developments in the capital markets. Our general partner will determine the future use of our cash resources and has broad discretion in determining such uses and in establishing reserves for such uses, which may include but are not limited to:

- complying with the terms of any of our agreements or obligations;
- providing for distributions of cash to our unitholders in accordance with the requirements of our Partnership Agreement;
- providing for future capital expenditures and other payments deemed by our general partner to be necessary or advisable, including to make acquisitions; and
- repurchasing common units.

Depending on the timing and amount of our use of cash, this could significantly reduce the cash available to us in subsequent periods to make payments on borrowings under our Credit Agreement.

**Restrictive covenants in our Credit Agreement may reduce our operating flexibility.**

Our Credit Agreement contains various covenants that limit our ability and the ability of our subsidiaries to, among other things:

- incur indebtedness;
- make distributions to our unitholders;
- purchase or redeem our outstanding equity interests or subordinated indebtedness;
- make investments;
- create liens;
- sell assets;
- engage in transactions with affiliates;
- restrict the ability of our subsidiaries to make payments, loans, guarantees and transfers of assets or interests in assets;

- engage in sale-leaseback transactions;
- effect a merger or consolidation with or into other companies, or a sale of all or substantially all of our properties or assets; and
- engage in other lines of business.

These restrictions could limit our ability to obtain future financings, make capital expenditures, withstand a future downturn in our business or the economy in general, conduct operations or otherwise take advantage of business opportunities that may arise. Our Credit Agreement also requires us to maintain specified financial ratios and satisfy other financial conditions. Our ability to meet those financial ratios and conditions can be affected by events beyond their control, such as weather conditions and general economic conditions. Accordingly, we may be unable to meet those ratios and conditions.

Any breach of any of these covenants, failure to meet any of these ratios or conditions, or occurrence of a change of control would result in a default under the terms of the relevant indebtedness or other financial obligations to become immediately due and payable. If we were unable to repay those amounts, the lenders could initiate a bankruptcy proceeding or liquidation proceeding or proceed against the collateral, if any. If the lenders of our indebtedness or other financial obligations accelerate the repayment of borrowings or other amounts owed, we may not have sufficient assets to repay our indebtedness or other financial obligations, including the notes.

**Under our Credit Agreement, the occurrence of a "change of control" is considered a default. We may be unable to repay borrowings under our Credit Agreement if the indebtedness outstanding thereunder is accelerated following a change of control.**

In the event of a change in control, we may not have the financial resources to repay borrowings under our Credit Agreement and may be unable to satisfy our obligations unless we are able to refinance or obtain waivers under our other indebtedness.

## ITEM 1B. UNRESOLVED STAFF COMMENTS

*Not applicable.*

## ITEM 2. PROPERTIES

We provide services to our customers in the United States in eighteen states and the District of Columbia, ranging from Maine to Georgia from 42 principal operating locations and 97 depots, 56 of which are owned and 83 of which are leased. As of September 30, 2019, we had a fleet of 1,260 truck and transport vehicles, the majority of which were owned, 1,323 service and 401 support vehicles, the majority of which were leased. Our obligations under our Credit Agreement are secured by liens and mortgages on substantially all of the Company's and subsidiaries' real and personal property.

## ITEM 3. LEGAL PROCEEDINGS—LITIGATION

On April 18, 2017, a civil action was filed in the United States District Court for the Eastern District of New York, entitled M. Norman Donnenfeld v. Petro, Inc., Civil Action Number 2:17-cv-2310-JFB-SIL, against Petro, Inc. By amended complaint filed on August 15, 2017, the Plaintiff alleges he did not receive expected contractual benefits under his protected price plan contract when oil prices fell and asserts various claims for relief including breach of contract, violation of the New York General Business Law and fraudulent inducement. The Plaintiff also seeks to have a class certified of similarly situated Petro customers who entered into protected price plan contracts and were denied the same contractual benefits. No class has yet been certified in this action. The Plaintiff seeks compensatory, punitive and other damages in unspecified amounts. On September 15, 2017, Petro filed a motion to dismiss the amended complaint as time-barred and for failure to state a cause of action. On September 12, 2018, the district court granted in part and denied in part Petro's motion to dismiss. The district court dismissed the Plaintiff's claims for breach of the covenant of good faith and fair dealing and fraudulent inducement, but declined to dismiss the Plaintiff's remaining claims. The district court granted the Plaintiff leave to amend to attempt to replead his

fraudulent inducement claim. On October 10, 2018, the Plaintiff filed a second amended complaint. The second amended complaint attempts to replead a fraudulent inducement claim and is otherwise substantially similar or identical to the prior complaint. On November 13, 2018, Petro moved to dismiss the fraudulent inducement and unjust enrichment claims in the second amended complaint. On January 31, 2019, the court granted the motion and dismissed the fraudulent inducement and unjust enrichment claims with prejudice. On February 22, 2019, counsel for Petro and the Plaintiff participated in a mediation which, after arms-length negotiations, resulted in a memorandum of understanding to settle the litigation, subject to the completion of confirmatory discovery, negotiation of a final settlement agreement and court approval. In an order dated March 27, 2019, the district court stayed all discovery deadlines in light of the pending settlement. On May 6, 2019, the Plaintiff filed an Unopposed Motion for Preliminary Approval of Class Action Settlement which remains pending before the court. On October 4, 2019, upon consent of all parties, Judge Roslynn R. Mauskopf assigned the action to Magistrate Judge Steve I. Locke for final disposition. On December 4, 2019, the court granted preliminary approval of the class action settlement. The anticipated settlement is not an admission of liability or breach to any customers by Petro and the Company continues to believe the allegations lack merit. If the settlement is not approved or finalized for any reason, the Company will continue to vigorously defend the action; in that case, we cannot assess the potential outcome or materiality of this matter. At this time we cannot assess the potential outcome or materiality of this matter.

**ITEM 4. MINE SAFETY DISCLOSURES**

*Not applicable.*

## ITEM 5. MARKET FOR REGISTRANT'S UNITS AND RELATED MATTERS

The common units, representing limited partner interests in Star, are listed and traded on the New York Stock Exchange, Inc. ("NYSE") under the symbol "SGU."

The following tables set forth the range of the daily high and low sales prices per common unit and the cash distributions declared on each unit for the periods indicated.

| | SGU – Common Unit Price Range | | | | Distributions Declared per Unit | |
|---|---|---|---|---|---|---|
| | High | | Low | | | |
| Quarter Ended | Fiscal Year 2019 | Fiscal Year 2018 | Fiscal Year 2019 | Fiscal Year 2018 | Fiscal Year 2019 | Fiscal Year 2018 |
| December 31, | $ 10.00 | $ 11.35 | $ 8.87 | $ 10.07 | $ 0.1175 | $ 0.1100 |
| March 31, | $ 9.90 | $ 11.10 | $ 9.00 | $ 8.74 | $ 0.1175 | $ 0.1100 |
| June 30, | $ 10.25 | $ 10.09 | $ 9.31 | $ 9.14 | $ 0.1250 | $ 0.1175 |
| September 30, | $ 10.14 | $ 10.10 | $ 8.99 | $ 9.21 | $ 0.1250 | $ 0.1175 |

As of November 30, 2019, there were approximately 227 holders of record of common units.

There is no established public trading market for the Company's 0.3 million general partner units.

**Distribution Provisions**

We are required to make distributions in an amount equal to our Available Cash, as defined in our Partnership Agreement, no more than 45 days after the end of each fiscal quarter, to holders of record on the applicable record dates. Available Cash, as defined in our Partnership Agreement, generally means all cash on hand at the end of the relevant fiscal quarter less the amount of cash reserves established by the Board of Directors of our general partner in its reasonable discretion for future cash requirements. These reserves are established for the proper conduct of our business (including reserves for future capital expenditures) for minimum quarterly distributions during the next four quarters and to comply with applicable laws and the terms of any debt agreements or other agreement to which we are subject. The Board of Directors of our general partner reviews the level of Available Cash each quarter based upon information provided by management.

According to the terms of our Partnership Agreement, minimum quarterly distributions on the common units accrue at the rate of $0.0675 per quarter ($0.27 on an annual basis). The information concerning restrictions on distributions required by Item 5 of this Report is incorporated by reference to Note 4. Quarterly Distribution of Available Cash, of the Company's consolidated financial statements. The Credit Agreement imposes certain restrictions on our ability to pay distributions to unitholders. In order to pay any distributions to unitholders or repurchase Common Units, the Company must maintain Availability (as defined in the Credit Agreement) of $45 million, 15.0% of the facility size of $300 million (assuming the non-seasonal aggregate commitment is in effect), on a historical pro forma and forward-looking basis, and a fixed charge coverage ratio of not less than 1.15 measured as of the date of repurchase. (See Note 13 of the Notes to the Consolidated Financial Statements—Long-Term Debt and Bank Facility Borrowings and Note 21 of the Notes to the Consolidated Financial Statements – Subsequent Events).

On October 17, 2019, we declared a quarterly distribution of $0.1250 per unit, or $0.50 per unit on an annualized basis, on all Common Units with respect to the fourth quarter of fiscal 2019, paid on November 5, 2019, to holders of record on October 28, 2019. The amount of distributions in excess of the minimum quarterly distribution of $0.0675, were distributed in accordance with our Partnership Agreement, subject to management incentive compensation plan. As a result, $5.9 million was paid to the Common Unit holders, $0.2 million to the general partner unit holders (including $0.2 million of incentive distribution as provided in our Partnership Agreement) and $0.2 million to management pursuant to the management incentive compensation plan which provides for certain members of management to receive incentive distributions that would otherwise be payable to the General Partner.

**Common Unit Repurchase Plans and Retirement**

Note 5 to the Consolidated Financial Statements concerning the Company's repurchase of Common Units during the fiscal year ended September 30, 2019 is incorporated into this Item 5 by reference.

## ITEM 6. SELECTED HISTORICAL FINANCIAL AND OPERATING DATA

The selected financial data as of September 30, 2019 and 2018, and for the years ended September 30, 2019, 2018 and 2017 is derived from the financial statements of Star included elsewhere in this Report. The selected financial data as of September 30, 2017, 2016 and 2015 and for the years ended September 30, 2016 and 2015 is derived from the financial statements of Star not included in this Report. See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

| | Fiscal Years Ending September 30, | | | | |
|---|---|---|---|---|---|
| **(in thousands, except per unit data)** | **2019 (*)** | **2018** | **2017** | **2016** | **2015** |
| Statement of Operations Data: | | | | | |
| Sales | $ 1,753,872 | $ 1,677,837 | $ 1,323,555 | $ 1,161,338 | $ 1,674,291 |
| Costs and expenses: | | | | | |
| Cost of sales | 1,266,166 | 1,214,495 | 915,056 | 768,841 | 1,203,588 |
| (Increase) decrease in the fair value of derivative instruments | 25,113 | (11,408) | (2,193) | (18,217) | 4,187 |
| Delivery and branch expenses | 369,033 | 357,580 | 306,534 | 276,493 | 309,025 |
| Depreciation and amortization expenses | 32,901 | 31,575 | 27,882 | 26,530 | 24,930 |
| General and administrative expenses | 28,414 | 24,227 | 24,998 | 23,366 | 25,908 |
| Multiemployer pension plan withdrawal charge | — | — | — | — | 17,796 |
| Finance charge income | (5,105) | (4,700) | (4,054) | (3,079) | (4,756) |
| Operating income | 37,350 | 66,068 | 55,332 | 87,404 | 93,613 |
| Interest expense, net | 11,164 | 8,716 | 6,775 | 7,485 | 14,059 |
| Amortization of debt issuance costs | 1,032 | 1,288 | 1,281 | 1,247 | 1,818 |
| Loss on redemption of debt | — | — | — | — | 7,345 |
| Other income, net | — | (7,043) | — | — | — |
| Income before income taxes | 25,154 | 63,107 | 47,276 | 78,672 | 70,391 |
| Income tax expense | 7,517 | 7,602 | 20,376 | 33,738 | 32,835 |
| Net income | $ 17,637 | $ 55,505 | $ 26,900 | $ 44,934 | $ 37,556 |
| Weighted average number of limited partner units: | | | | | |
| Basic and diluted | 50,814 | 54,764 | 55,888 | 57,022 | 57,285 |

(*) Only fiscal 2019 reflects the adoption of ASU No. 2014-09, Revenue from Contracts with Customers.

| (in thousands, except per unit data) | Fiscal Years Ended September 30, 2019 (*) | 2018 | 2017 | 2016 | 2015 |
|---|---|---|---|---|---|
| **Per Unit Data:** | | | | | |
| Basic and diluted net income per unit (a) | $ 0.35 | $ 0.89 | $ 0.46 | $ 0.70 | $ 0.59 |
| Cash distribution declared per common unit | $ 0.485 | $ 0.455 | $ 0.425 | $ 0.395 | $ 0.365 |
| **Balance Sheet Data (end of period):** | | | | | |
| Current assets | $ 226,830 | $ 256,737 | $ 241,241 | $ 294,858 | $ 271,479 |
| Total assets | $ 752,706 | $ 729,971 | $ 673,917 | $ 692,111 | $ 685,508 |
| Long-term debt | $ 120,447 | $ 91,780 | $ 65,717 | $ 75,441 | $ 90,000 |
| Partners' Capital | $ 260,840 | $ 309,785 | $ 306,068 | $ 301,493 | $ 289,886 |
| **Summary Cash Flow Data:** | | | | | |
| Net cash provided by operating activities | $ 97,382 | $ 57,460 | $ 21,058 | $ 101,957 | $ 136,853 |
| Net cash used in investing activities | $ (82,166) | $ (65,252) | $ (66,381) | $ (19,631) | $ (30,385) |
| Net cash used in financing activities | $ (24,848) | $ (30,135) | $ (41,157) | $ (43,646) | $ (54,959) |
| **Other Data:** | | | | | |
| Earnings from continuing operations before net interest expense, income taxes, depreciation and amortization (EBITDA) (b) | $ 70,251 | $ 104,686 | $ 83,214 | $ 113,934 | $ 111,198 |
| Adjusted EBITDA (b) | $ 95,364 | $ 86,235 | $ 81,021 | $ 95,717 | $ 140,526 |
| Retail home heating oil and propane gallons sold | 345,480 | 357,187 | 316,892 | 302,517 | 382,834 |
| Motor fuel and other petroleum products gallons sold | 167,350 | 138,298 | 112,114 | 109,526 | 101,375 |
| Temperatures (warmer) colder than normal (c) | (3.9)% | (4.7)% | (12.4)% | (17.8)% | 5.0% |

(a) Net income per unit is computed in accordance with FASB ASC 260-10-45-60 Earnings per Share, Master Limited Partnerships (EITF 03-06). See Note 19. Earnings Per Limited Partner Units, of the consolidated financial statements.

(b) EBITDA (Earnings from continuing operations before net interest expense, income taxes, depreciation and amortization) and Adjusted EBITDA (Earnings from continuing operations before net interest expense, income taxes, depreciation and amortization, (increase) decrease in the fair value of derivatives, net other income, multiemployer pension plan withdrawal charge, gain or loss on debt redemption, goodwill impairment, and other non-cash and non-operating charges) are non-GAAP financial measures that are used as supplemental financial measures by management and external users of our financial statements, such as investors, commercial banks and research analysts, to assess:

- our compliance with certain financial covenants included in our debt agreements;
- our financial performance without regard to financing methods, capital structure, income taxes or historical cost basis;
- our operating performance and return on invested capital as compared to those of other companies in the retail distribution of refined petroleum products business, without regard to financing methods and capital structure;
- our ability to generate cash sufficient to pay interest on our indebtedness and to make distributions to our partners; and
- the viability of acquisitions and capital expenditure projects and the overall rates of return of alternative investment opportunities.

The method of calculating Adjusted EBITDA may not be consistent with that of other companies, and EBITDA and Adjusted EBITDA both have limitations as an analytical tool and so should not be viewed in isolation and should be viewed in conjunction with measurements that are computed in accordance with GAAP. Some of the limitations of EBITDA and Adjusted EBITDA are:

- EBITDA and Adjusted EBITDA do not reflect our cash used for capital expenditures;

- although depreciation and amortization are non-cash charges, the assets being depreciated or amortized often will have to be replaced and EBITDA and Adjusted EBITDA do not reflect the cash requirements for such replacements;
- EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital requirements;
- EBITDA and Adjusted EBITDA do not reflect the cash necessary to make payments of interest or principal on our indebtedness; and
- EBITDA and Adjusted EBITDA do not reflect the cash required to pay taxes.

EBITDA and Adjusted EBITDA are calculated for the fiscal years ended September 30 as follows:

| (in thousands) | 2019 (*) | 2018 | 2017 | 2016 | 2015 |
|---|---|---|---|---|---|
| Net income | $ 17,637 | $ 55,505 | $ 26,900 | $ 44,934 | $ 37,556 |
| Plus: | | | | | |
| Income tax expense | 7,517 | 7,602 | 20,376 | 33,738 | 32,835 |
| Amortization of debt issuance cost | 1,032 | 1,288 | 1,281 | 1,247 | 1,818 |
| Interest expense, net | 11,164 | 8,716 | 6,775 | 7,485 | 14,059 |
| Depreciation and amortization | 32,901 | 31,575 | 27,882 | 26,530 | 24,930 |
| EBITDA from continuing operations | 70,251 | 104,686 | 83,214 | 113,934 | 111,198 |
| (Increase)/decrease in the fair value of derivative instruments | 25,113 | (11,408) | (2,193) | (18,217) | 4,187 |
| Multiemployer pension plan withdrawal charge | — | — | — | — | 17,796 |
| Loss on redemption of debt | — | — | — | — | 7,345 |
| Other income, net (d) | — | (7,043) | — | — | — |
| Adjusted EBITDA | 95,364 | 86,235 | 81,021 | 95,717 | 140,526 |
| Add/(subtract) | | | | | |
| Income tax expense | (7,517) | (7,602) | (20,376) | (33,738) | (32,835) |
| Interest expense, net | (11,164) | (8,716) | (6,775) | (7,485) | (14,059) |
| Multiemployer pension plan withdrawal charge | — | — | — | — | (17,796) |
| Provision for losses on accounts receivable | 9,541 | 6,283 | 1,639 | (639) | 3,738 |
| Decrease (increase) in receivables | 10,137 | (37,149) | (19,844) | 10,965 | 30,141 |
| (Increase) decrease in inventories | (6,306) | 4,177 | (10,598) | 9,979 | 4,326 |
| Increase (decrease) in customer credit balances | 3,615 | (6,563) | (23,085) | 6,490 | 3,992 |
| Change in deferred taxes | (5,126) | 14,685 | 10,134 | 9,670 | (4,101) |
| Change in other operating assets and liabilities | 8,838 | 6,110 | 8,942 | 10,998 | 22,921 |
| Net cash provided by operating activities | $ 97,382 | $ 57,460 | $ 21,058 | $ 101,957 | $ 136,853 |
| Net cash used in investing activities | $ (82,166) | $ (65,252) | $ (66,381) | $ (19,631) | $ (30,385) |
| Net cash used in financing activities | $ (24,848) | $ (30,135) | $ (41,157) | $ (43,646) | $ (54,959) |

(c) Temperatures (warmer) colder than normal are for those locations where we had existing operations, which we sometimes refer to as the “base business” (i.e. excluding acquisitions), temperatures (measured on a degree day basis) as reported by the National Oceanic and Atmospheric Administration (“NOAA”).

(d) During fiscal 2018, we sold our security business to a national dealer and recorded a gain of $7.0 million.

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

### Statement Regarding Forward-Looking Disclosure

This Annual Report on Form 10-K (this "Report") includes "forward-looking statements" which represent our expectations or beliefs concerning future events that involve risks and uncertainties, including those associated with the effect of weather conditions on our financial performance, the price and supply of the products that we sell, the consumption patterns of our customers, our ability to obtain satisfactory gross profit margins, our ability to obtain new customers and retain existing customers, our ability to make strategic acquisitions, the impact of litigation, our ability to contract for our current and future supply needs, natural gas conversions, future union relations and the outcome of current and future union negotiations, the impact of current and future governmental regulations, including climate change, environmental, health, and safety regulations, the ability to attract and retain employees, customer credit worthiness, counterparty credit worthiness, marketing plans, potential cyber-attacks, general economic conditions and new technology. All statements other than statements of historical facts included in this Report including, without limitation, the statements under "Management's Discussion and Analysis of Financial Condition and Results of Operations" and elsewhere herein, are forward-looking statements. Without limiting the foregoing, the words "believe," "anticipate," "plan," "expect," "seek," "estimate," and similar expressions are intended to identify forward-looking statements. Although we believe that the expectations reflected in such forward-looking statements are reasonable, we can give no assurance that such expectations will prove to be correct and actual results may differ materially from those projected as a result of certain risks and uncertainties. These risks and uncertainties include, but are not limited to, those set forth in this Report under the heading "Risk Factors" and "Business Strategy." Important factors that could cause actual results to differ materially from our expectations ("Cautionary Statements") are disclosed in this Report. All subsequent written and oral forward-looking statements attributable to the Company or persons acting on its behalf are expressly qualified in their entirety by the Cautionary Statements. Unless otherwise required by law, we undertake no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this Report.

### Impact on Liquidity of Increases in Wholesale Product Cost

Our liquidity is adversely impacted in times of increasing wholesale product costs, as we must use more cash to fund our hedging requirements as well as the increased levels of accounts receivable and inventory. This may result in higher interest expense as a result of increased working capital borrowing to finance higher receivables and/or inventory balances. We may also incur higher bad debt expense and credit card processing costs as a result of higher selling prices as well as higher vehicle fuel costs due to the increase in energy costs. Our liquidity can also be adversely impacted by sudden and sharp decreases in wholesale product costs, due to the increased margin requirements for futures contracts and collateral requirements for options and swaps that we use to manage market risks.

### Liquid Product Price Volatility

Volatility, which is reflected in the wholesale price of liquid products, including home heating oil, propane and motor fuels, has a larger impact on our business when prices rise. Home heating oil consumers are price sensitive to heating cost increases, and this often leads to increased gross customer losses. As a commodity, the price of home heating oil is generally impacted by many factors, including economic and geopolitical forces. The price of home heating oil is closely linked to the price of diesel fuel. The volatility in the wholesale cost of diesel fuel as measured by the New York Mercantile Exchange ("NYMEX"), for the fiscal years ending September 30, 2015, through 2019, on a quarterly basis, is illustrated in the following chart (price per gallon):

| Quarter Ended | Fiscal 2019 (a) | | Fiscal 2018 | | Fiscal 2017 | | Fiscal 2016 | | Fiscal 2015 | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Low | High | Low | High | Low | High | Low | High | Low | High |
| December 31 | $ 1.66 | $ 2.44 | $ 1.74 | $ 2.08 | $ 1.39 | $ 1.70 | $ 1.08 | $ 1.61 | $ 1.85 | $ 2.66 |
| March 31 | 1.70 | 2.04 | 1.84 | 2.14 | 1.49 | 1.70 | 0.87 | 1.26 | 1.62 | 2.30 |
| June 30 | 1.78 | 2.12 | 1.96 | 2.29 | 1.37 | 1.65 | 1.08 | 1.57 | 1.68 | 2.02 |
| September 30 | 1.75 | 2.08 | 2.05 | 2.35 | 1.45 | 1.86 | 1.26 | 1.53 | 1.38 | 1.84 |

a) On November 30, 2019, the NYMEX ultra low sulfur diesel contract closed at $1.88 per gallon or $0.09 per gallon lower than the average of $1.97 in Fiscal 2019.

**Execution of Fifth Amended and Restated Revolving Asset-based Credit Agreement**

On December 4, 2019, the Company refinanced its credit facility agreement and entered into a new fifth amended and restated revolving credit facility agreement with a bank syndicate of eleven participants that enables us to borrow up to $300 million ($450 million during the heating season of December through April of each year) on a revolving line of credit for working capital purposes (subject to certain borrowing base limitations and coverage ratios), provides for a $130 million five-year senior secured term loan, allows for the issuance of up to $25 million in letters of credit, and extends the maturity date of the previous agreement to December 4, 2024. Proceeds from the new term loan were used to repay the $90.0 million outstanding balance of the term loan and $40.0 million of the revolving credit facility borrowings under the old credit facility. Availability as a result of the new credit agreement increased $40.0 million.

Consistent with the fourth amended and restated revolving credit facility, under the Company's fifth amended and restated credit agreement, in order to repurchase Common Units we must maintain availability of $45 million, 15.0% of the facility size of $300 million (assuming the non-seasonal aggregate commitment is outstanding) on a historical pro forma and forward-looking basis, and a fixed charge coverage ratio of not less than 1.15 measured as of the date of repurchase.

**Income Taxes**

*New Federal Income Tax Legislation*

On December 22, 2017, the Tax Cuts and Jobs Act (the "Tax Reform Act") was enacted into law. The Tax Reform Act contains several key tax provisions that have impacted the Company, including the reduction of the corporate Federal income tax rate to 21% from 35% effective January 1, 2018. In addition, between September 28, 2017 and December 31, 2022, the Tax Reform Act allows for the full depreciation, in the year acquired, for certain fixed assets purchased in that year (also known as 100% bonus depreciation).

During fiscal 2018, the Company recorded an $11.1 million discrete income tax benefit for the re-measurement of deferred tax assets and liabilities due to the change in the Federal corporate income tax rate on which the deferred taxes are based. The discrete income tax benefit drove a 12.0% effective income tax rate for the year ended September 30, 2018. Excluding the $11.1 million benefit recorded to income tax expense, the Company's combined federal, state, and local effective income tax rate was 29.6% for the year ended September 30, 2018 as compared to 29.9% for the year ended September 30, 2019.

*Book versus Tax Deductions*

The amount of cash flow generated in any given year depends upon a variety of factors including the amount of cash income taxes required, which will increase as depreciation and amortization decreases. The amount of depreciation and amortization that we deduct for book (i.e., financial reporting) purposes will differ from the amount that the Company can deduct for Federal tax purposes. The table below compares the estimated depreciation and amortization for book purposes to the amount that we expect to deduct for Federal tax purposes, based on currently owned assets. While we file our tax returns based on a calendar year, the amounts below are based on our

September 30 fiscal year, and the tax amounts include any 100% bonus depreciation available for fixed asset purchases. However, this table does not include any forecast of future annual capital purchases.

*Estimated Depreciation and Amortization Expense*

| (in thousands) Fiscal Year | Book | Tax |
|---|---|---|
| **2019** | $ 33,927 | $ 42,347 |
| **2020** | 31,475 | 27,153 |
| **2021** | 26,172 | 21,213 |
| **2022** | 22,638 | 19,452 |
| **2023** | 19,368 | 17,698 |
| **2024** | 15,613 | 16,675 |

**Weather Hedge Contracts**

Weather conditions have a significant impact on the demand for home heating oil and propane because certain customers depend on these products principally for space heating purposes. Actual weather conditions may vary substantially from year to year, significantly affecting the Company's financial performance. To partially mitigate the adverse effect of warm weather on cash flow, we have used weather hedging contracts for a number of years with several providers.

Under these contracts, we are entitled to a payment if the total number of degree days within the hedge period is less than the ten year average. The "Payment Thresholds," or strikes, are set at various levels. Conversely, we are obligated to make a payment capped at $5.0 million if degree days exceed the ten year average. The hedge period runs from November 1 through March 31, taken as a whole, for each respective fiscal year. For fiscal 2019 and 2018, we recorded a charge of $2.1 million and $1.9 million, respectively, for amounts paid under our weather hedge contracts, reflecting colder weather than the ten year average. For fiscal 2020 and 2021, the maximum that the Company can receive annually is $12.5 million and the maximum that it would be obligated to pay annually is $5.0 million.

**Per Gallon Gross Profit Margins**

We believe home heating oil and propane margins should be evaluated on a cents per gallon basis (before the effects of increases or decreases in the fair value of derivative instruments), as we believe that such per gallon margins are best at showing profit trends in the underlying business, without the impact of non-cash changes in the market value of hedges before the settlement of the underlying transaction.

A significant portion of our home heating oil volume is sold to individual customers under an arrangement pre-establishing a ceiling price or fixed price for home heating oil over a set period of time, generally twelve to twenty-four months ("price-protected" customers). When these price-protected customers agree to purchase home heating oil from us for the next heating season, we purchase option contracts, swaps and futures contracts for a substantial majority of the heating oil that we expect to sell to these customers. The amount of home heating oil volume that we hedge per price-protected customer is based upon the estimated fuel consumption per average customer per month. In the event that the actual usage exceeds the amount of the hedged volume on a monthly basis, we may be required to obtain additional volume at unfavorable costs. In addition, should actual usage in any month be less than the hedged volume, our hedging costs and losses could be greater, thus reducing expected margins.

**Derivatives**

FASB ASC 815-10-05 Derivatives and Hedging requires that derivative instruments be recorded at fair value and included in the consolidated balance sheet as assets or liabilities. To the extent our interest rate derivative instruments designated as cash flow hedges are effective, as defined under this guidance, changes in fair value are recognized in other comprehensive income until the forecasted hedged item is recognized in earnings. We have elected not to designate our commodity derivative instruments as hedging instruments under this guidance and, as a result, the changes in fair value of the derivative instruments are recognized in our statement of operations.

Therefore, we experience volatility in earnings as outstanding derivative instruments are marked to market and non-cash gains and losses are recorded prior to the sale of the commodity to the customer. The volatility in any given period related to unrealized non-cash gains or losses on derivative instruments can be significant to our overall results. However, we ultimately expect those gains and losses to be offset by the cost of product when purchased.

**Revenue Recognition**

Effective October 1, 2018, we adopted the requirements of Accounting Standards Update (ASU) 2014-09, Revenue from Contracts with Customers (Topic 606) ("ASU No. 2014-09"). In accordance with the new revenue standard requirements, our Consolidated Statement of Operations and the Consolidated Balance Sheets were impacted due to (a) a portion of our sales being accounted for as service revenue that was previously accounted for as product revenue; (b) a decrease in revenue as a result of the deferment of certain customer credits that were previously accounted for as delivery and branch expenses and expensed as incurred; and (c) a decrease in delivery and branch expenses for the deferment of commissions provided to Company employees that were previously expensed as incurred. Refer to Note 3 (Revenue Recognition to the Consolidated Financial Statements) for the impact of the adoption of the revenue recognition accounting standard on our Consolidated Statement of Operations and our Consolidated Balance Sheets, as of and for the twelve months ended September 30, 2019.

**Customer Attrition**

We measure net customer attrition on an ongoing basis for our full service residential and commercial home heating oil and propane customers. Net customer attrition is the difference between gross customer losses and customers added through marketing efforts. Customers added through acquisitions are not included in the calculation of gross customer gains. However, additional customers that are obtained through marketing efforts or lost at newly acquired businesses are included in these calculations. Customer attrition percentage calculations include customers added through acquisitions in the denominators of the calculations on a weighted average basis. Gross customer losses are the result of a number of factors, including price competition, move-outs, credit losses, conversions to natural gas and service disruptions. When a customer moves out of an existing home, we count the "move out" as a loss, and if we are successful in signing up the new homeowner, the "move in" is treated as a gain.

**Customer gains and losses of home heating oil and propane customers**

| | Fiscal Year Ended | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2019 | | | 2018 | | | 2017 | | |
| | Gross Customer | | Net Gains / (Attrition) | Gross Customer | | Net Gains / (Attrition) | Gross Customer | | Net Gains / (Attrition) |
| | Gains | Losses | | Gains | Losses | | Gains | Losses | |
| **First Quarter** | 26,200 | 25,400 | 800 | 24,700 | 19,900 | 4,800 | 24,300 | 19,100 | 5,200 |
| **Second Quarter** | 12,600 | 22,300 | (9,700) | 14,100 | 18,900 | (4,800) | 13,200 | 16,400 | (3,200) |
| **Third Quarter** | 7,100 | 15,900 | (8,800) | 7,900 | 16,200 | (8,300) | 8,000 | 12,700 | (4,700) |
| **Fourth Quarter** | 13,200 | 20,600 | (7,400) | 13,100 | 19,400 | (6,300) | 12,400 | 16,500 | (4,100) |
| **Total** | 59,100 | 84,200 | (25,100) | 59,800 | 74,400 | (14,600) | 57,900 | 64,700 | (6,800) |

| | Fiscal Year Ended | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | 2019 | | | 2018 | | | 2017 | | |
| | Gross Customer | | Net Gains / (Attrition) | Gross Customer | | Net Gains / (Attrition) | Gross Customer | | Net Gains / (Attrition) |
| | Gains | Losses | | Gains | Losses | | Gains | Losses | |
| **First Quarter** | 5.8% | 5.6% | 0.2% | 5.4% | 4.3% | 1.1% | 5.6% | 4.4% | 1.2% |
| **Second Quarter** | 2.8% | 5.0% | (2.2)% | 3.0% | 4.1% | (1.1)% | 3.0% | 3.7% | (0.7)% |
| **Third Quarter** | 1.6% | 3.5% | (1.9)% | 1.7% | 3.5% | (1.8)% | 1.8% | 2.9% | (1.1)% |
| **Fourth Quarter** | 2.7% | 4.2% | (1.5)% | 2.9% | 4.3% | (1.4)% | 2.7% | 3.6% | (0.9)% |
| **Total** | 12.9% | 18.3% | (5.4)% | 13.0% | 16.2% | (3.2)% | 13.1% | 14.6% | (1.5)% |

For fiscal 2019, the Company lost 25,100 accounts (net), or 5.4%, of its home heating oil and propane customer base, compared to 14,600 accounts lost (net), or 3.2%, of its home heating oil and propane customer base, during fiscal 2018. Gross customer gains were 700 less than the prior year's comparable period, and gross customer losses were 9,800 accounts higher. Gross customer losses exceeded the prior year primarily due to the Company's decision not to renew certain low margin accounts, along with increased losses due to credit and the price of home heating oil and propane.

For fiscal 2018, the Company lost 14,600 accounts (net), or 3.2%, of our home heating oil and propane customer base, compared to 6,800 accounts lost (net), or 1.5%, of our home heating oil and propane customer base, during the twelve months ended September 30, 2017. Our net customer attrition was worse by 7,800 accounts. While our gross customer gains were 1,900 accounts higher than the prior year's comparable period, our gross customer losses were 9,700 accounts higher. Gross customer losses exceeded the prior year primarily due to the price of home heating oil and propane, credit issues, and service disruptions.

During fiscal 2019, we estimate that we lost (1.4%) of our home heating oil and propane accounts to natural gas conversions versus (1.3%) for fiscal 2018 and (1.2%) for fiscal 2017. Losses to natural gas in our footprint for the heating oil and propane industry could be greater or less than the Company's estimates. Conversions to natural gas may continue as it remains less expensive than home heating oil on an equivalent BTU basis.

**Acquisitions**

The timing of acquisitions and the type of products sold by the acquired companies will impact year-over-year comparisons. During fiscal 2019, the Company acquired a liquid product dealer and the assets of a propane dealer and, in January 2019, purchased one of its subcontractors. The subcontractor acquisition had revenue of approximately $11 million during the 12 month period prior to date of acquisition, and Star accounted for approximately 60% of its revenue (any such revenue will be eliminated in consolidation, but the Company will benefit from lower costs related to such revenue). During fiscal 2018 the Company completed six acquisitions. The following tables detail the Company's acquisition activity and the volumes sold by each acquired company during the 12-month period prior to the date of acquisition.

(in thousands of gallons)

| | | Fiscal 2019 Acquisitions | | |
|---|---|---|---|---|
| Acquisition Number | Month of Acquisition | Home Heating Oil and Propane | Motor Fuel and Other Petroleum Products | Total |
| 1 | November | 130 | — | 130 |
| 2 | January (a) | — | — | — |
| 3 | May | 13,200 | 6,772 | 19,972 |
| | | 13,330 | 6,772 | 20,102 |

(a) The business acquired in January did not sell any petroleum products.

(in thousands of gallons)

| | | Fiscal 2018 Acquisitions | | |
|---|---|---|---|---|
| Acquisition Number | Month of Acquisition | Home Heating Oil and Propane | Motor Fuel and Other Petroleum Products | Total |
| 1 | November | 53 | 75 | 128 |
| 2 | November | 164 | 6 | 170 |
| 3 | April | 7,775 | 6,567 | 14,342 |
| 4 | May | 1,573 | 35,617 | 37,190 |
| 5 | August | 1,136 | 135 | 1,271 |
| 6 | September | 1,730 | 180 | 1,910 |
| | | 12,431 | 42,580 | 55,011 |

**Seasonality**

The following matters should be considered in analyzing our financial results. The Company's fiscal year ends on September 30. All references to quarters and years, respectively, in this document are to the fiscal quarters and fiscal years unless otherwise noted. The seasonal nature of our business has resulted, on average, during the last five years, in the sale of approximately 30% of the volume of home heating oil and propane in the first fiscal quarter and 50% of the volume in the second fiscal quarter, the peak heating season. Approximately 25% of the volume of motor fuel and other petroleum products is sold in each of the four fiscal quarters. We generally realize net income during the quarters ending December and March and net losses during the quarters ending June and September. In addition, sales volume typically fluctuates from year to year in response to variations in weather, wholesale energy prices and other factors.

**Degree Day**

A "degree day" is an industry measurement of temperature designed to evaluate energy demand and consumption. Degree days are based on how far the average daily temperature departs from 65°F. Each degree of temperature above 65°F is counted as one cooling degree day, and each degree of temperature below 65°F is counted as one heating degree day. Degree days are accumulated each day over the course of a year and can be compared to a monthly or a long-term (multi-year) average to see if a month or a year was warmer or cooler than usual. Degree days are officially observed by the National Weather Service.

Every ten years, the National Oceanic and Atmospheric Administration ("NOAA") computes and publishes average meteorological quantities, including the average temperature for the last 30 years by geographical location, and the corresponding degree days. The latest and most widely used data covers the years from 1981 to 2010. Our calculations of "normal" weather are based on these published 30-year averages for heating degree days, weighted by volume for the locations where we have existing operations.

**Consolidated Results of Operations**

The following is a discussion of the consolidated results of operations of the Company and its subsidiaries and should be read in conjunction with the historical financial and operating data and Notes thereto included elsewhere in this Annual Report.

**Fiscal Year Ended September 30, 2019**
**Compared to Fiscal Year Ended September 30, 2018**

**Volume**

For fiscal 2019, the retail volume of home heating oil and propane sold decreased by 11.7 million gallons, or 3.3%, to 345.5 million gallons, compared to 357.2 million gallons for fiscal 2018. For those locations where we had existing operations during both periods, which we sometimes refer to as the "base business" (i.e., excluding acquisitions), temperatures (measured on a heating degree day basis) for fiscal 2019 were 0.8% colder than fiscal 2018 but 3.9% warmer than normal, as reported by NOAA. For fiscal 2019, net customer attrition for the base business was 5.4%. The impact of fuel conservation, along with any period-to-period differences in delivery scheduling, the timing of accounts added or lost during the fiscal years, equipment efficiency, and other volume variances not otherwise described, are included in the chart below under the heading "Other." An analysis of the change in the retail volume of home heating oil and propane, which is based on management's estimates, sampling, and other mathematical calculations and certain assumptions, is found below:

| (in millions of gallons) | Heating Oil and Propane |
|---|---|
| Volume - Fiscal 2018 | 357.2 |
| Acquisitions | 10.9 |
| Impact of colder temperatures | 2.2 |
| Net customer attrition | (24.2) |
| Other | (0.6) |
| Change | (11.7) |
| Volume - Fiscal 2019 | 345.5 |

The following chart sets forth the percentage by volume of total home heating oil sold to residential variable-price customers, residential price-protected customers, and commercial/industrial/other customers for fiscal 2019 compared to fiscal 2018:

| | Twelve Months Ended | |
|---|---|---|
| Customers | September 30, 2019 | September 30, 2018 |
| Residential Variable | 40.6% | 42.3% |
| Residential Price-Protected (Ceiling and Fixed Price) | 46.7% | 45.3% |
| Commercial/Industrial/Other | 12.7% | 12.4% |
| Total | 100.0% | 100.0% |

Volume of motor fuel and other petroleum products sold increased by 29.1 million gallons, or 21.0%, to 167.4 million gallons for fiscal 2019, compared to 138.3 million gallons for fiscal 2018, largely due to acquisitions.

**Product Sales**

For fiscal 2019, product sales increased $61.7 million, or 4.4%, to $1.5 billion, compared to $1.4 billion in fiscal 2018, due to an increase in the volume of motor fuel and other petroleum products sold and, to a lesser extent, the impact of higher selling prices of heating oil and propane, albeit at a lower volume. The adoption of ASU No. 2014-09 lowered home heating oil and propane product sales by $11.4 million and reduced home heating oil and propane average selling prices by $0.0331 per gallon due to (a) the new accounting for certain upfront credits given to customers, which reduced revenue by $4.4 million; and (b) the accounting for a portion of sales that are now accounted for as service revenue ($7.0 million).

**Installations and Services Sales**

For fiscal 2019, installation and service sales increased $14.3 million, or 5.3%, to $287.8 million, compared to $273.5 million for fiscal 2018, as increases relating to acquisitions ($10.9 million), and the adoption of ASU No. 2014-09 ($6.6 million), and a small increase in the base business ($0.3 million) were partially offset by a $3.5 million reduction in revenue due to the sale of the Company’s security business in September 2018.

**Cost of Product**

For fiscal 2019, cost of product increased $40.7 million, or 4.3%, to $998.6 million, compared to $957.9 million for fiscal 2018, due to an increase in total volume of 3.5% and a $0.0141 per gallon, or 0.7%, increase in wholesale product cost.

**Gross Profit—Product**

The table below calculates our per gallon margins and reconciles product gross profit for home heating oil and propane and motor fuel and other petroleum products. We believe the change in home heating oil and propane margins should be evaluated before the effects of increases or decreases in the fair value of derivative instruments,

as we believe such per gallon margins are best at showing profit trends in the underlying business, without the impact of non-cash changes in the market value of hedges before the settlement of the underlying transaction. On that basis, home heating oil and propane margins for fiscal 2019 increased by $0.0804 per gallon, or 7.0%, to $1.2301 per gallon, from $1.1497 per gallon during fiscal 2018. The home heating oil and propane margin in fiscal 2019 was reduced by $0.0331 cents per gallon from the adoption of ASU No. 2014-09. Going forward, we cannot assume that the per gallon margins realized during fiscal 2019 are sustainable. Product sales and cost of product include home heating oil, propane, motor fuel, other petroleum products and liquidated damages billings.

| | Twelve Months Ended | | | |
|---|---|---|---|---|
| | September 30, 2019 | | September 30, 2018 | |
| **Home Heating Oil and Propane** | **Amount (in millions)** | **Per Gallon** | **Amount (in millions)** | **Per Gallon** |
| Volume | 345.5 | | 357.2 | |
| Sales | $ 1,100.0 | $ 3.1836 | $ 1,084.8 | $ 3.0372 |
| Cost | $ 675.0 | $ 1.9535 | $ 674.2 | $ 1.8875 |
| Gross Profit | $ 425.0 | $ 1.2301 | $ 410.6 | $ 1.1497 |

| **Motor Fuel and Other Petroleum Products** | **Amount (in millions)** | **Per Gallon** | **Amount (in millions)** | **Per Gallon** |
|---|---|---|---|---|
| Volume | 167.4 | | 138.3 | |
| Sales | $ 366.1 | $ 2.1881 | $ 319.6 | $ 2.3105 |
| Cost | $ 323.6 | $ 1.9340 | $ 283.7 | $ 2.0511 |
| Gross Profit | $ 42.5 | $ 0.2541 | $ 35.9 | $ 0.2594 |

| **Total Product** | **Amount (in millions)** | **Amount (in millions)** |
|---|---|---|
| Sales | $ 1,466.1 | $ 1,404.4 |
| Cost | $ 998.6 | $ 957.9 |
| Gross Profit | $ 467.5 | $ 446.5 |

For fiscal 2019, total product gross profit increased by $21.0 million, or 4.7%, to $467.5 million, as the impact from higher home heating oil and propane margins ($27.8 million) and an increase in gross profit from motor fuel and other petroleum products ($6.6 million) was partially offset by a decrease in home heating oil and propane volume ($13.4 million). The increase in product gross profit from motor fuel and other petroleum products was largely due to acquisitions.

**Cost of Installations and Services**

Total installation costs for fiscal 2019 increased by $1.7 million, or 2.2%, to $84.2 million, compared to $82.5 million for fiscal 2018, largely due to acquisitions. Installation costs as a percentage of installation sales for fiscal 2019 and fiscal 2018, were 82.8% and 84.1%, respectively.

Service expense increased by $9.2 million, or 5.3%, to $183.4 million for fiscal 2019, representing 98.5% of service sales, versus $174.2 million, or 99.3% of service sales, for fiscal 2018. This increase was due to acquisition-related service expenses of $6.6 million and a $5.6 million, or 3.2%, increase in the base business due to a greater focus on performing customer heating system checks. This was partially offset by $3.0 million of reduced service expenses related to the sale of the Company's security business in September 2018. We realized a combined gross profit from service and installations of $20.2 million for fiscal 2019 compared to a combined gross profit of $16.8 million for fiscal 2018. The improvement in service and installation gross profit was in part due to the adoption of ASU No. 2014-09, which increased service revenue by $6.6 million. Management views the service and installation department on a combined basis because many overhead functions cannot be separated or precisely allocated to either service or installation billings.

**(Increase) Decrease in the Fair Value of Derivative Instruments**

During fiscal 2019, the change in the fair value of derivative instruments resulted in a $25.1 million charge due to a decrease in the market value for unexpired hedges ($10.6 million) and a $14.5 million charge due to the expiration of certain hedged positions.

During fiscal 2018, the change in the fair value of derivative instruments resulted in an $11.4 million credit as an increase in the market value for unexpired hedges (a $14.9 million credit) was partially offset by a $3.5 million charge due to the expiration of certain hedged positions.

**Delivery and Branch Expenses**

For fiscal 2019, delivery and branch expenses increased $11.4 million, or 3.2%, to $369.0 million, compared to $357.6 million for fiscal 2018, due to additional costs from acquisitions of $15.5 million that were partially offset by a decrease in the base business of $4.1 million, or 1.1%, driven by the impact of adopting ASU No. 2014-09, which lowered operating expenses by $3.3 million, a $2.1 million decrease in insurance claims expense due in part to the acquisition of one of our subcontractors, and a $1.8 million reduction of other expenses. These decreases in the base business were partially offset by a $2.8 million increase in bad debt expense due to an increase in customer delinquencies, which also drove an increase in net customer attrition. Further, in fiscal 2019, the Company spent $4.3 million to support the concierge service program, or $0.3 million higher than in fiscal 2018. This program was greatly curtailed in January 2019.

**Depreciation and Amortization Expenses**

For fiscal 2019, depreciation and amortization expense increased $1.3 million, or 4.2%, to $32.9 million, compared to $31.6 million for fiscal 2018, largely due to acquisitions.

**General and Administrative Expenses**

For fiscal 2019, general and administrative expenses increased by $4.2 million or 17.3%, to $28.4 million, from $24.2 million for fiscal 2018, as higher legal and professional expenses of $3.0 million and a $1.5 million charge related to the discontinued use of a tank monitoring system were partially offset by other expense reductions totaling $0.3 million.

**Finance Charge Income**

For fiscal 2019, finance charge income increased by $0.4 million, or 8.6%, to $5.1 million compared to $4.7 million for fiscal 2018, primarily due to income from increased late customer payment charges.

**Interest Expense, Net**

For fiscal 2019, net interest expense increased by $2.5 million, or 28.1%, to $11.2 million compared to $8.7 million for fiscal 2018. Interest expense rose by $3.1 million primarily due to an increase in average borrowings of $40.9 million, from $134.9 million during fiscal 2018 to $175.8 million during fiscal 2019, and an increase in the weighted average interest rate from 4.6% during fiscal 2018 to 5.3% during fiscal 2019. The increase in average borrowings of $40.9 million was largely due to funding a portion of the Company's recent acquisitions and unit repurchases. To hedge against rising interest rates, the Company entered into an interest rate swap in August 2018 to fix the interest rate for $50.0 million, or 50%, of Star's long term debt. Interest income increased by $0.7 million primarily due to higher cash deposited into our captive insurance company.

**Amortization of Debt Issuance Costs**

For fiscal 2019, amortization of debt issuance costs decreased by $0.3 million, or 19.9%, to $1.0 million compared to $1.3 million for fiscal 2018 due to lower debt issuance costs associated with the fourth amended and restated credit agreement as compared to the third amended and restated credit agreement.

**Other Income, Net**

During fiscal 2018, the Company sold its security business to a national dealer and recorded a gain of $7.0 million. Revenue and gross profit from the security business averaged $3.4 million and $0.1 million, respectively, per year for the three years prior to sale.

**Income Tax Expense**

For fiscal 2019, the Company's income tax expense decreased by $0.1 million to $7.5 million, from $7.6 million for fiscal 2018. The lower income versus the prior year was offset by an $11.1 million discrete income tax benefit recorded in fiscal 2018 to reflect the impact of the Tax Reform Act signed into law in December 2017 (which did not recur in fiscal 2019). The tax reform reduced the Federal statutory income tax rate for corporations from 35% to 21% effective January 1, 2018 and, therefore, the Company's net deferred tax liability would be realized at a lower statutory tax rate than originally recorded, resulting in a tax benefit to the Company. The Company's combined Federal, state, and local effective tax rate increased from 12.0% for fiscal 2018 to 29.9% for fiscal 2019. Excluding the impact of the discrete tax benefit, Star's combined Federal, state, and local effective income tax rate increased to 29.9% for fiscal 2019 from 29.6% for fiscal 2018.

**Net Income**

For fiscal 2019, net income decreased $37.9 million, or 68.2%, to $17.6 million due primarily to an unfavorable change in the fair value of derivative instruments of $36.5 million, an increase in net interest expense of $2.5 million and a $7.0 million net gain from the sale of our security business in fiscal 2018 that did not recur in fiscal 2019, which were partially offset by an increase in Adjusted EBITDA of $9.1 million, described below.

**Adjusted EBITDA**

For fiscal 2019, Adjusted EBITDA increased by $9.1 million, or 10.6%, to $95.4 million. Acquisitions provided $5.4 million of Adjusted EBITDA while, in the base business, Adjusted EBITDA rose by $3.7 million. In the base business, the impact of higher home heating oil and propane margins more than offset a decline in home heating oil and propane volume and an increase in total operating expenses. In fiscal 2019, Adjusted EBITDA was reduced by $10.0 million due to the following items: i) $1.6 million due to the implementation of the ASU No. 2014-09 revenue recognition accounting standard; ii) $3.0 million of legal and professional expenses; iii) a charge of $1.5 million related to the discontinued use of a tank monitoring system; and iv) an Adjusted EBITDA loss of $3.9 million associated with the Company's concierge program, which was greatly curtailed in January 2019.

EBITDA and Adjusted EBITDA should not be considered as an alternative to net income (as an indicator of operating performance) or as an alternative to cash flow (as a measure of liquidity or ability to service debt obligations), but provide additional information for evaluating the Company's ability to make the Minimum Quarterly Distribution.

EBITDA and Adjusted EBITDA are calculated as follows:

| (in thousands) | Twelve Months Ended September 30, 2019 | 2018 |
|---|---|---|
| Net income | $ 17,637 | $ 55,505 |
| Plus: | | |
| Income tax expense | 7,517 | 7,602 |
| Amortization of debt issuance cost | 1,032 | 1,288 |
| Interest expense, net | 11,164 | 8,716 |
| Depreciation and amortization | 32,901 | 31,575 |
| EBITDA (a) | 70,251 | 104,686 |
| (Increase) / decrease in the fair value of derivative instruments | 25,113 | (11,408) |
| Other income, net | — | (7,043) |
| Adjusted EBITDA (a) | 95,364 | 86,235 |
| | | |
| **Add / (subtract)** | | |
| Income tax expense | (7,517) | (7,602) |
| Interest expense, net | (11,164) | (8,716) |
| Provision for losses on accounts receivable | 9,541 | 6,283 |
| Decrease (increase) in receivables | 10,137 | (37,149) |
| (Increase) decrease in inventories | (6,306) | 4,177 |
| Increase (decrease) in customer credit balances | 3,615 | (6,563) |
| Change in deferred taxes | (5,126) | 14,685 |
| Change in other operating assets and liabilities | 8,838 | 6,110 |
| Net cash provided by operating activities | $ 97,382 | $ 57,460 |
| Net cash used in investing activities | $ (82,166) | $ (65,252) |
| Net cash used in financing activities | $ (24,848) | $ (30,135) |

(a) EBITDA (Earnings from continuing operations before net interest expense, income taxes, depreciation and amortization) and Adjusted EBITDA (Earnings from continuing operations before net interest expense, income taxes, depreciation and amortization, (increase) decrease in the fair value of derivatives, net other income, multiemployer pension plan withdrawal charge, gain or loss on debt redemption, goodwill impairment, and other non-cash and non-operating charges) are non-GAAP financial measures that are used as supplemental financial measures by management and external users of our financial statements, such as investors, commercial banks and research analysts, to assess:

- our compliance with certain financial covenants included in our debt agreements;
- our financial performance without regard to financing methods, capital structure, income taxes or historical cost basis;
- our operating performance and return on invested capital compared to those of other companies in the retail distribution of refined petroleum products, without regard to financing methods and capital structure;
- our ability to generate cash sufficient to pay interest on our indebtedness and to make distributions to our partners; and
- the viability of acquisitions and capital expenditure projects and the overall rates of return of alternative investment opportunities.

The method of calculating Adjusted EBITDA may not be consistent with that of other companies, and EBITDA and Adjusted EBITDA both have limitations as analytical tools and so should not be viewed in isolation and should be viewed in conjunction with measurements that are computed in accordance with GAAP. Some of the limitations of EBITDA and Adjusted EBITDA are:

- EBITDA and Adjusted EBITDA do not reflect our cash used for capital expenditures;

- Although depreciation and amortization are non-cash charges, the assets being depreciated or amortized often will have to be replaced and EBITDA and Adjusted EBITDA do not reflect the cash requirements for such replacements;
- EBITDA and Adjusted EBITDA do not reflect changes in, or cash requirements for, our working capital requirements;
- EBITDA and Adjusted EBITDA do not reflect the cash necessary to make payments of interest or principal on our indebtedness; and
- EBITDA and Adjusted EBITDA do not reflect the cash required to pay taxes.

**Fiscal Year Ended September 30, 2018**
**Compared to Fiscal Year Ended September 30, 2017**

See Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations within the Form 10-K for the fiscal year ended September 30, 2018 for the fiscal 2017 to fiscal 2018 comparative discussion.

**DISCUSSION OF CASH FLOWS**

We use the indirect method to prepare our Consolidated Statements of Cash Flows. Under this method, we reconcile net income to cash flows provided by operating activities by adjusting net income for those items that impact net income but do not result in actual cash receipts or payment during the period.

**Operating Activities**

Due to the seasonal nature of our business, cash is generally used in operations during the winter (our first and second fiscal quarters) as we require additional working capital to support the high volume of sales during this period, and cash is generally provided by operating activities during the spring and summer (our third and fourth quarters) when customer payments exceed the cost of deliveries.

During fiscal 2019, cash provided by operating activities increased $39.9 million to $97.4 million, compared to $57.5 million during fiscal 2018. This reflects a $9.8 million decrease in cash generated from operations primarily due to the non-recurrence in fiscal 2019 of the impact in fiscal 2018 of certain tax planning initiatives and the Tax Reform Act on current income taxes; $57.5 million higher collections of accounts receivables (net of customer credit balances); $22.0 million of decreases in other current and long term assets, the majority related to a reduction in 2019 of a current income receivable established in 2018. These were partially offset by a $12.6 million unfavorable change in accounts payable due primarily to the timing of inventory purchases, a $10.5 million unfavorable change in inventory (mostly due to a build in product inventory to a level similar to that as of September 30, 2017), and a $6.7 million unfavorable change in current and long term liabilities due in part to a smaller increase in general insurance liabilities in fiscal 2019 compared to the increase in fiscal 2018, and a $1.8 million increase in escheat payments to state authorities.

During fiscal 2018, cash provided by operating activities increased by $36.4 million to $57.5 million, compared to $21.1 million of cash provided by operating activities during fiscal 2017. The $25.2 million increase in cash generated from operations was largely due to the impact of certain tax planning initiatives and the Tax Reform Act on current income taxes and to, a lesser extent, the increase in Adjusted EBITDA. Cash was used to finance an increase in accounts receivable of $17.3 million due to an increase in selling prices driven by higher product costs and an increase in day's sales outstanding over a comparative two year period. On a comparative basis, the decline of $16.5 million in cash used due to the change in customer credit balances was largely due to the weather conditions in 2016. Fiscal 2016 was 17.8% warmer than normal and as a result, customers on a budget payment plan built up a credit balance as payments exceeded actual deliveries. Customers used this balance at the end of 2016 to pay for sales in fiscal 2017. To a lesser extent, the same pattern occurred in fiscal 2018 when compared to fiscal 2017 as fiscal 2018 was 4.7% warmer than normal and fiscal 2017 was 12.4% warmer than normal. At the end of fiscal 2017, the Company increased its liquid product inventory to take advantage of market conditions. At

September 30, 2018 inventory levels were reduced to approximately the same quantity of liquid product inventory as of September 30, 2016. As a result of these changes in quantities on hand as well as increases in per gallon product costs, a $14.8 million positive change in cash was provided. In addition, the Company recorded an income tax receivable of $5.8 million at September which was the driver of the increase in other assets.

**Investing Activities**

Our capital expenditures for fiscal 2019 totaled $11.3 million, as we invested in computer hardware and software ($4.4 million), refurbished certain physical plants ($1.8 million), expanded our propane operations ($2.4 million) and made additions to our fleet and other equipment ($2.7 million).

During fiscal 2019, we deposited $9.5 million into an irrevocable trust to secure certain liabilities for our captive insurance company and another $1.6 million of earnings were reinvested into the irrevocable trust. The cash deposited into the trust is shown on our balance sheet as captive insurance collateral and, correspondingly, reduced cash on our balance sheet. We believe that investments into the irrevocable trust will lower our letter of credit fees, increase interest income on invested cash balances, and provide us with certain tax advantages attributable to a captive insurance company.

During fiscal 2019, the Company acquired one of its subcontractors, a liquid product dealer and the assets of a propane dealer for an aggregate purchase price of approximately $60.9 million. The gross purchase price was allocated $44.7 million to intangible assets and $13.7 million to fixed assets, leaving $2.5 million for working capital.

Our capital expenditures for fiscal 2018 totaled $13.6 million, as we invested in computer hardware and software ($3.7 million), refurbished certain physical plants ($2.2 million), expanded our propane operations ($2.5 million) and made additions to our fleet and other equipment ($5.2 million). We also received $6.8 million of cash proceeds from the sale of our security business to a national dealer and completed six acquisitions for an aggregate purchase price of approximately $25.2 million; $23.7 million in cash and $1.5 million of deferred liabilities. The gross purchase price was allocated $15.3 million to intangible assets, $7.5 million to fixed assets and $2.4 million to working capital.

In October 2017, we deposited $34.2 million of cash into an irrevocable trust to secure certain liabilities for our captive insurance company and, as a result, $36.6 million of letters of credit were cancelled that previously had secured these liabilities. Subsequently, $1.0 million of earnings have been reinvested into the irrevocable trust. The cash deposited into the trust is shown on our balance sheet as Investments and, correspondingly, reduced cash on our balance sheet. We believe that the investment into the irrevocable trust will lower our letter of credit fees, increase interest income on invested cash balances, and provide us with certain tax advantages attributable to a captive insurance company.

**Financing Activities**

During fiscal 2019, we paid distributions of $24.8 million to our Common Unit holders and $0.8 million to our General Partner Unit holders (including $0.7 million of incentive distributions as provided in our Partnership Agreement). We borrowed $139.3 million under our revolving credit facility and subsequently repaid $79.3 million. We also repaid $7.5 million of our term loan and repurchased 5.4 million common units for $51.4 million in connection with our unit repurchase plan.

During fiscal 2018, we paid distributions of $24.9 million to our Common Unit holders, $0.7 million to our general partner (including $0.6 million of incentive distributions as provided in our Partnership Agreement). We also repurchased 2.8 million Common Units for $26.7 million in connection with our unit repurchase plan. In addition, we amended and extended our bank credit facility which resulted in a $23.7 million increase in bank term debt from $76.3 million to $100 million at September 30, 2018. Our borrowings under the revolving line of credit for working capital purposes increased by $1.5 million, as we borrowed $161.6 million during the year and subsequently repaid $160.1 million.

**FINANCING AND SOURCES OF LIQUIDITY**

**Liquidity and Capital Resources Comparatives**

Our primary uses of liquidity are to provide funds for our working capital, capital expenditures, distributions on our units, acquisitions and unit repurchases. Our ability to provide funds for such uses depends on our future performance, which will be subject to prevailing economic, financial, business and weather conditions, the ability to pass on the full impact of high product costs to customers, the effects of high net customer attrition, conservation and other factors. Capital requirements, at least in the near term, are expected to be provided by cash flows from operating activities, cash on hand as of September 30, 2019 ($4.9 million) or a combination thereof. To the extent future capital requirements exceed cash on hand plus cash flows from operating activities, we anticipate that working capital will be financed by our revolving credit facility, as discussed below, and reduced from subsequent seasonal reductions in inventory and accounts receivable. As of September 30, 2019, we had $61.5 million in borrowings under our revolving credit facility, $92.5 million under our term loan, and $4.6 million in letters of credit outstanding.

Under the terms of the fourth and fifth amended and restated credit agreements, we must maintain at all times Availability (borrowing base less amounts borrowed and letters of credit issued) of 15% of the maximum facility size and a fixed charge coverage ratio of not less than 1.15. We must also maintain a senior secured leverage ratio that cannot be more than 3.0 as of June 30th or September 30th, and no more than 4.5 as of December 31st or March 31st. As of September 30, 2019, Availability, as defined in the fourth amended and restated revolving credit facility agreement, was $126.1 million and we were in compliance with the fixed charge coverage ratio and senior secured leverage ratio.

Maintenance capital expenditures for fiscal 2020 are estimated to be approximately $11.1 million, excluding the capital requirements for leased fleet which we currently estimate to be $13.8 million. In addition, we plan to invest approximately $1.7 million in our propane operations. Distributions for fiscal 2020, at the current quarterly level of $0.1250 per unit, would result in aggregate payments of approximately $23.6 million to Common Unit holders, $0.9 million to our General Partner (including $0.8 million of incentive distribution as provided for in our Partnership Agreement) and $0.8 million to management pursuant to the management incentive compensation plan which provides for certain members of management to receive incentive distributions that would otherwise be payable to the General Partner. Under the terms of our credit facility, our term loan is repayable in quarterly payments of $2.5 million, and, depending on our fiscal 2020 results, we may be required to make an additional payment (see Note 13 - Long-Term Debt and Bank Facility Borrowings). In addition, we intend to continue to repurchase Common Units pursuant to our unit repurchase plan, as amended from time to time, and seek attractive acquisition opportunities within the Availability constraints of our revolving credit facility and funding resources.

**Contractual Obligations and Off-Balance Sheet Arrangements**

We have no special purpose entities or off balance sheet debt, other than operating leases entered into in the ordinary course of business.

Long-term contractual obligations, except for our long-term debt and New England Teamsters and Trucking Industry Pension Fund withdrawal obligations, are not recorded in our consolidated balance sheet. Non-cancelable purchase obligations are obligations we incur during the normal course of business, based on projected needs. The Company had no capital lease obligations as of September 30, 2019.

The table below summarizes the payment schedule of our contractual obligations at September 30, 2019 (in thousands):

| | Payments Due by Fiscal Year | | | | |
|---|---|---|---|---|---|
| | Total | 2020 | 2021 and 2022 | 2023 and 2024 | Thereafter |
| Debt obligations (a) | $ 154,000 | $ 9,000 | $ 26,000 | $ 26,000 | $ 93,000 |
| Operating lease obligations (b) | 129,608 | 24,082 | 37,562 | 24,458 | 43,506 |
| Purchase obligations and other (c) | 62,940 | 14,538 | 7,492 | 5,509 | 35,401 |
| Interest obligations (d) | 22,186 | 11,733 | 8,019 | 2,434 | — |
| Long-term liabilities reflected on the balance sheet | 1,196 | 350 | 700 | 146 | — |
| | $ 369,930 | $ 59,703 | $ 79,773 | $ 58,547 | $ 171,907 |

(a) Reflects payments due of debt existing as of September 30, 2019, considering the terms of our fifth amended and restated credit agreement. Excludes potential prepayments resulting from Excess Cash Flow as defined in the aforementioned agreement.

(b) Represents various operating leases for office space, trucks, vans and other equipment with third parties.

(c) Represents non-cancelable commitments as of September 30, 2019 for operations such as weather hedge premiums, customer related invoice and statement processing, voice and data phone/computer services, real estate taxes on leased property and our undiscounted future payment obligations to the New England Teamsters and Trucking Industry Pension Fund.

(d) Reflects interest obligations on our term loan due July 2023 and the unused commitment fee on the revolving credit facility.

**Recent Accounting Pronouncements**

Refer to Note 2 – Summary of Significant Accounting Policies for discussion regarding the impact of accounting standards that were recently issued but not yet effective, on our consolidated financial statements.

**Critical Accounting Estimates**

The preparation of financial statements in conformity with Generally Accepted Accounting Principles requires management to establish accounting policies and make estimates and assumptions that affect reported amounts of assets and liabilities at the date of the Consolidated Financial Statements. The Company evaluates its policies and estimates on an on-going basis. A change in any of these critical accounting estimates could have a material effect on the results of operations. The Company's Consolidated Financial Statements may differ based upon different estimates and assumptions. The Company's critical accounting estimates have been reviewed with the Audit Committee of the Board of Directors.

Our significant accounting policies are discussed in Note 2 of the Notes to the Consolidated Financial Statements. We believe the following are our critical accounting policies and estimates:

**Goodwill and Other Intangible Assets**

We calculate amortization using the straight-line method over periods ranging from five to twenty years for intangible assets with finite useful lives based on historical statistics. We use amortization methods and determine asset values based on our best estimates using reasonable and supportable assumptions and projections. Key assumptions used to determine the value of these intangibles include projections of future customer attrition or growth rates, product margin increases, operating expenses, our cost of capital, and corporate income tax rates. For significant acquisitions we may engage a third party valuation firm to assist in the valuation of intangible assets of that acquisition. We assess the useful lives of intangible assets based on the estimated period over which we will receive benefit from such intangible assets such as historical evidence regarding customer churn rate. In some cases, the estimated useful lives are based on contractual terms. At September 30, 2019, we had $107.7 million of net intangible assets subject to amortization. If lives were shortened by one year, we estimate that amortization for these assets for fiscal 2019 would have increased by approximately $4.5 million.

FASB ASC 350-10-05, Intangibles-Goodwill and Other, requires goodwill to be assessed at least annually for impairment. The Company has one reporting unit and performs its annual assessment at the end of August. As provided for by the standard, we performed qualitative assessments (commonly referred to as Step 0) to evaluate whether it is more-likely-than-not (a likelihood that is more than 50%) that goodwill has been impaired, as a basis to determine whether it is necessary to perform the two-step quantitative impairment test. The Company's qualitative assessment included a review of factors such as our reporting unit's market value compared to its carrying value, our short-term and long-term unit price performance, our planned overall business strategy compared to recent financial results, as well as macroeconomic conditions, industry and market considerations, cost factors, and other relevant Company-specific events. In considering the totality of the qualitative factors assessed, based on the weight of evidence it was determined that it was not more-likely-than-not that goodwill was impaired as of August 31, 2019, and as such it was determined that further goodwill testing was not necessary.

Intangible assets with finite lives must be assessed for impairment whenever changes in circumstances indicate that the assets may be impaired. The assessment for impairment requires estimates of future cash flows related to the intangible asset. To the extent the carrying value of the assets exceeds its future undiscounted cash flows, an impairment loss is recorded based on the fair value of the asset.

**Fair Values of Derivatives**

FASB ASC 815-10-05, Derivatives and Hedging, requires that derivative instruments be recorded at fair value and included in the consolidated balance sheet as assets or liabilities. The Company has elected not to designate its derivative instruments as hedging instruments under this guidance, and therefore the change in fair value of the derivative instruments are recognized in our statement of operations.

We have established the fair value of our derivative instruments using estimates determined by our counterparties and subsequently evaluated them internally using established index prices and other sources. These values are based upon, among other things, future prices, volatility, time-to-maturity value and credit risk. The estimate of fair value we report in our financial statements changes as these estimates are revised to reflect actual results, changes in market conditions, or other factors, many of which are beyond our control.

**Insurance Reserves**

We currently self-insure a portion of workers' compensation, auto, general liability and medical claims. We establish reserves based upon expectations as to what our ultimate liability may be for outstanding claims using developmental factors based upon historical claim experience, supplemented by a third-party actuary. We periodically evaluate the potential for changes in loss estimates with the support of qualified actuaries. As of September 30, 2019, we had approximately $74.7 million of net insurance reserves. The ultimate resolution of these claims could differ materially from the assumptions used to calculate the reserves, which could have a material adverse effect on results of operations.

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

We are exposed to interest rate risk primarily through our bank credit facilities. We utilize these borrowings to meet our working capital needs.

At September 30, 2019, we had outstanding borrowings totaling $154.0 million, which are subject to variable interest rates under our credit agreement. In the event that interest rates associated with this facility were to increase 100 basis points, the after tax impact on annual future cash flows would be a decrease of $1.1 million.

We regularly use derivative financial instruments to manage our exposure to market risk related to changes in the current and future market price of home heating oil. The value of market sensitive derivative instruments is subject to change as a result of movements in market prices. Sensitivity analysis is a technique used to evaluate the impact of hypothetical market value changes. Based on a hypothetical ten percent increase in the cost of product at September 30, 2019, the potential impact on our hedging activity would be to increase the fair market value of these outstanding derivatives by $8.3 million to a negative fair market value of ($0.2) million; and conversely a hypothetical ten percent decrease in the cost of product would decrease the fair market value of these outstanding derivatives by $5.0 million to a negative fair market value of ($13.5) million.

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

The financial statements and financial statement schedules referred to in the index contained on page F-1 of this Report are incorporated herein by reference.

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

None.

**ITEM 9A. CONTROLS AND PROCEDURES**

(a) Evaluation of disclosure controls and procedures.

Our general partner's chief executive officer and our chief financial officer evaluated the effectiveness of the Company's disclosure controls and procedures (as that term is defined in Rule 13a-15(e) of the Securities Exchange Act of 1934, as amended) as of September 30, 2019. Based on that evaluation, such chief executive officer and chief financial officer concluded that the Company's disclosure controls and procedures were effective as of September 30, 2019 at the reasonable level of assurance. For purposes of Rule 13a-15(e), the term disclosure controls and procedures means controls and other procedures of an issuer that are designed to ensure that information required to be disclosed by the issuer in the reports that it files or submits under the Act (15 U.S.C. 78a et seq.) is recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by an issuer in the reports that it files or submits under the Act is accumulated and communicated to the issuer's management, including our chief executive officer and chief financial officer, or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

(b) Management's Report on Internal Control over Financial Reporting.

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Exchange Act Rules 13a-15(f) under the Securities Exchange Act of 1934, as amended. Under the supervision of management and with the participation of our management, including our chief executive officer and chief financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). Based on our evaluation of internal control over financial reporting, our management concluded that our internal control over financial reporting was effective as of September 30, 2019.

During fiscal 2019, the Company acquired one of its subcontractors and a liquid product dealer for an aggregate purchase price of $60.6 million (collectively the "acquisitions"), which aggregated to total revenues of $25.2 million and total assets of $64.2 million. In reliance on interpretive guidance issued by the SEC staff, management has chosen to exclude the acquisitions from our assessment of the effectiveness of internal control over financial reporting as of September 30, 2019. The acquisitions constituted approximately 1.4% of our total assets and 8.5% of our total revenues, included in the consolidated financial statements as of and for the year ended September 30, 2019. The Company will include our assessment of internal control over financial reporting for the acquisitions in our Annual Report on Form 10-K for our fiscal year ending September 30, 2020.

The effectiveness of our internal control over financial reporting as of September 30, 2019 has been audited by our independent registered public accounting firm, as stated in their report which is included herein.

(c) Change in Internal Control over Financial Reporting.

There were no changes in our internal control over financial reporting during the Company's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

(d) Other

Our general partner and the Company believe that a controls system, no matter how well designed and operated, cannot provide absolute assurance that the objectives of the controls system are met, and no evaluation of controls can provide absolute assurance that all control issues and instances of fraud, if any, within the Company have been detected. Therefore, 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. Our disclosure controls and procedures are designed to provide such reasonable assurances of achieving our desired control objectives, and the chief executive officer and chief financial officer of our general partner have concluded, as of September 30, 2019, that our disclosure controls and procedures were effective in achieving that level of reasonable assurance.

**ITEM 9B. OTHER INFORMATION**

Not applicable.

## PART III

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

### Partnership Management

Our general partner is Kestrel Heat. The Board of Directors of Kestrel Heat is appointed by its sole member, Kestrel, which is a private equity investment partnership formed by Yorktown Energy Partners VI, L.P., Paul A. Vermylen Jr. and other investors.

Kestrel Heat, as our general partner, oversees our activities. Unitholders do not directly or indirectly participate in our management or operation or elect the directors of the general partner. The Board of Directors (sometimes referred to as the "Board") of Kestrel Heat has adopted a set of Partnership Governance Guidelines in accordance with the requirements of the New York Stock Exchange. A copy of these Guidelines is available on our website at www.stargrouplp.com or a copy may be obtained without charge by contacting Richard F. Ambury, (203) 328-7310.

As of November 30, 2019, Kestrel Heat and its affiliates owned an aggregate of 500,000 common units, representing 1% of the issued and outstanding common units, and Kestrel Heat owned 325,729 general partner units.

The general partner owes a fiduciary duty to the unitholders. However, our Partnership Agreement contains provisions that allow the general partner to take into account the interests of parties other than the limited partners in resolving conflict of interest, thereby limiting such fiduciary duty. Notwithstanding any limitation on obligations or duties, the general partner will be liable, as our general partner, for all our debts (to the extent not paid by us), except to the extent that indebtedness or other obligations incurred by us are made specifically non-recourse to the general partner.

The general partner does not directly employ any of the persons responsible for managing or operating Star.

### Directors and Executive Officers of the General Partner

Directors are appointed for an indefinite term, subject to the discretion of Kestrel. The following table shows certain information for directors and executive officers of the general partner as of November 30, 2019:

| Name | Age | Position |
|---|---|---|
| Paul A. Vermylen, Jr. | 72 | Chairman, Director |
| Jeffrey M. Woosnam | 51 | President, Chief Executive Officer and Director |
| Richard F. Ambury | 62 | Chief Financial Officer, Executive Vice President, Treasurer and Secretary |
| Jeffrey S. Hammond | 57 | Chief Operating Officer |
| Joseph R. McDonald | 50 | Chief Customer Officer |
| Henry D. Babcock(1) | 79 | Director |
| C. Scott Baxter(1) | 58 | Director |
| David M. Bauer(1) | 50 | Director |
| Daniel P. Donovan | 73 | Director |
| Bryan H. Lawrence | 77 | Director |
| William P. Nicoletti (1) | 74 | Director |

(1) Audit Committee member

***Paul A. Vermylen, Jr.*** Mr. Vermylen has been the Chairman and a director of Kestrel Heat since April 28, 2006. Mr. Vermylen is a founder of Kestrel and has served as its President and as a manager since July 2005. Mr. Vermylen had been employed since 1971, serving in various capacities, including as a Vice President of Citibank N.A. and Vice President-Finance of Commonwealth Oil Refining Co. Inc. Mr. Vermylen served as Chief Financial Officer of Meenan Oil Co., L.P. ("Meenan") from 1982 until 1992 and as President of Meenan until 2001, when we acquired Meenan. Since 2001, Mr. Vermylen has pursued private investment opportunities.

Mr. Vermylen serves as a director of certain non-public companies in the energy industry in which Kestrel holds equity interests including Downeast LNG, Inc. Mr. Vermylen is a graduate of Georgetown University and has an M.B.A. from Columbia University.

Mr. Vermylen's substantial experience in the home heating oil industry and his leadership skills and experience as an executive officer of Meenan, among other factors, led the Board to conclude that he should serve as the Chairman and a director of Kestrel Heat.

***Jeffrey M. Woosnam.*** Mr. Woosnam has been President, Chief Executive Officer and a director of Kestrel Heat since March 18, 2019. From May 2014 to March 2019, Mr. Woosnam served as Senior Vice President, Southern Operations. From April 2007 to May 2014, Mr. Woosnam served as Vice President, Southern Operations. From 2006 to 2007, he served as the Director of Operations for Petroleum Heat and Power Company, a subsidiary of the Company. From 1994 to 2006, he held several General Management positions for Petro, Inc. with increasing levels of responsibility.
Mr. Woosnam's in-depth knowledge of the Company's business and his substantial experience in the home heating oil industry, among other factors, led the Board to conclude that he should serve as a director of Kestrel Heat.

***Richard F. Ambury.*** Mr. Ambury has been Executive Vice President of Kestrel Heat since May 1, 2010 and has been Chief Financial Officer, Treasurer and Secretary of Kestrel Heat since April 28, 2006. Mr. Ambury was Chief Financial Officer, Treasurer and Secretary of Star Group from May 2005 until April 28, 2006. From November 2001 to May 2005, Mr. Ambury was Vice President and Treasurer of Star Group. From March 1999 to November 2001, Mr. Ambury was Vice President of Star Gas Propane, L.P. From February 1996 to March 1999, Mr. Ambury served as Vice President—Finance of Star Gas Corporation, a predecessor general partner. Mr. Ambury was employed by Petroleum Heat and Power Co., Inc. from June 1983 through February 1996, where he served in various accounting/finance capacities. From 1979 to 1983, Mr. Ambury was employed by a predecessor firm of KPMG, a public accounting firm. Mr. Ambury has been a Certified Public Accountant since 1981.

***Jeffrey S. Hammond.*** Mr. Hammond has been Chief Operating Officer of Kestrel Heat since March 18, 2019. From October 2013 to March 2019, he served as Senior Vice President, Northern Operations. From April 2007 to October 2013, Mr. Hammond served as Vice President, Northern Operations. From 2006 to 2007, he served as the Director of Operations for Petro Holdings, Inc., a subsidiary of the Company. From 2004 to 2006, Mr. Hammond served as Director of Planning and Logistics for Petro Holdings, Inc. From 2003 to 2004, he held a General Manager position for Petro Holdings, Inc. Prior to joining the Company in January 2003, Mr. Hammond worked for United Parcel Service for 19 years. While at UPS, he held various management positions in Operations and Industrial Engineering.

***Joseph R. McDonald.*** Mr. McDonald has been Chief Customer Officer of Kestrel Heat since March 18, 2019. From May 2014 to March 2019, he served as Senior Vice President of Sales, Marketing & Retention. From May 2005 to May 2014, Mr. McDonald served as Vice President, Sales and Marketing. From October 2004 to May 2005, he served as the Director of Sales for Petro Holdings, Inc., a subsidiary of the Company. From January 2003 to October 2004, was a Regional Sales Manager for Petro Holdings, Inc

***Henry D. Babcock.*** Mr. Babcock has been a director of Kestrel Heat since April 28, 2006. He is also a director and the former President of The Caumsett Foundation, Inc., a non-profit that supports Caumsett Historic State Park Preserve. Until his retirement in 2010, Mr. Babcock had worked with Train, Babcock Advisors LLC, a private registered investment advisor, since 1976, becoming a Member in 1980. Prior to this, he ran an affiliated

venture capital company active in the U.S. and abroad. Mr. Babcock received a BA from Yale University and an MBA from Columbia. He served in the U.S. Army for three years.

Mr. Babcock's significant experience in capital markets, corporate finance and venture capital, among other factors, led the Board to conclude that he should serve as a director of Kestrel Heat.

***C. Scott Baxter.*** Mr. Baxter has been a director of Kestrel Heat since April 28, 2006. Mr. Baxter is currently Managing Partner of Green River Energy Partners, a boutique energy investment banking firm headquartered in New York City. Mr. Baxter has over 25 years of energy investment banking experience and has been a primary advisor in sourcing and executing over $150 billion in corporate M&A, restructuring and equity financing transactions in the energy industry. Mr. Baxter also has significant experience advising independent committees of boards including rendering over 30 independent fairness opinions spanning the upstream, downstream and midstream energy sectors including for many MLPs.

Mr. Baxter's previous energy investment banking experience includes opening and running the Houston office for Petrie Partners, serving as Head of the Americas for J.P. Morgan's global energy group, Managing Director in the global energy group at Citigroup (Salomon Brothers), and serving as head of the energy group for Houlihan Lokey.

Mr. Baxter holds a B.S. degree in Economics from Weber State University where he graduated cum laude, and received an MBA degree from the University of Chicago Graduate School of Business. Mr. Baxter also served as an adjunct professor of finance at Columbia University's Graduate School of Business from 2002 to 2006 and has been on the President's National Advisory Council for Weber State University since 1996.

Mr. Baxter's significant experience in finance, accounting, as an investor and as a senior investment banker focused in the energy industry, among other factors, led the Board to conclude that he should serve as a director of Kestrel Heat.

***David M. Bauer.*** Mr. Bauer has served as the Chief Investment Officer of Lubar & Co. since 2005. Mr. Bauer's work experience includes five years with Facilitator Capital Fund, a Wisconsin-based Small Business Investment Company, and 10 years with the accounting firm of Arthur Andersen, where he led the Wisconsin transaction advisory team assisting private equity funds and large corporations with their acquisitions and divestitures. He currently serves on the board of several private companies.

Mr. Bauer earned a Master of Business Administration degree from Marquette University in 2005 and a Bachelor of Science degree in Accounting from Marquette University in 1991. He is a Certified Public Accountant and a member of the Wisconsin Institute of CPAs and the American Institute of CPAs.

***Daniel P. Donovan.*** Mr. Donovan has been a director of Kestrel Heat since April 28, 2006. Mr Donovan served as President and Chief Executive Officer on an interim basis from December 23, 2018 to March 18, 2019, served as consultant from March 18, 2019 to April 30, 2019, and served as Chief Executive Officer of Kestrel Heat from May 31, 2007 to September 30, 2013 and had been President from April 28, 2006 to September 30, 2013. From April 28, 2006 to May 30, 2007 Mr. Donovan was also the Chief Operating Officer of Kestrel Heat. Mr. Donovan was the President and Chief Operating Officer of a predecessor general partner, Star Gas LLC ("Star Gas"), from March 2005 until April 28, 2006. From May 2004 to March 2005 he was President and Chief Operating Officer of the Company's heating oil segment. Mr. Donovan held various management positions with Meenan Oil Co. LP, from January 1980 to May 2004, including Vice President and General Manager from 1998 to 2004. Mr. Donovan worked for Mobil Oil Corp. from 1971 to 1980. His last position with Mobil was President and General Manager of its heating oil subsidiary in New York City and Long Island. Mr. Donovan is a graduate of St. Francis College in Brooklyn, New York and received an M.B.A. from Iona College.

Mr. Donovan's in-depth knowledge of the Company's business, having been its president and chief executive officer, and his substantial experience in the home heating oil industry, among other factors, led the Board to conclude that he should serve as a director of Kestrel Heat.

***Bryan H. Lawrence.*** Mr. Lawrence has been a director of Kestrel Heat since April 28, 2006 and a manager of Kestrel since July 2005. Mr. Lawrence is a founder and senior manager of Yorktown Partners LLC, the manager of the Yorktown group of investment partnerships, which make investments in companies engaged in the energy industry. The Yorktown partnerships were formerly affiliated with the investment firm of Dillon, Read & Co. Inc., where Mr. Lawrence was employed beginning in 1966, serving as a Managing Director until the merger of Dillon Read with SBC Warburg in September 1997. Mr. Lawrence also serves as a director of Carbon Natural Resources, Hallador Petroleum Company, Ramaco Resources, Inc. (each a United States publicly traded company), and certain non-public companies in the energy industry in which Yorktown partnerships hold equity interests. Mr. Lawrence is a graduate of Hamilton College and received an M.B.A. from Columbia University.

Mr. Lawrence's significant financial and investment experience, and experience as a founder of Yorktown Energy Partners LLC, among other factors, led the Board to conclude that he should serve as a director of Kestrel Heat.

***William P. Nicoletti.*** Mr. Nicoletti has been a director of Kestrel Heat since April 28, 2006. Mr. Nicoletti was the non-executive chairman of the board of Star Gas from March 2005 until April 28, 2006. Mr. Nicoletti was a director of Star Gas from March 1999 until April 28, 2006 and was a director of Star Gas Corporation from November 1995 until March 1999. Since February 1, 2009, he has been a Managing Director of Parkman Whaling LLC, a Houston, Texas based energy investment banking firm. Previously, he was Managing Director of Nicoletti & Company, Inc., a private investment banking firm. Mr. Nicoletti was formerly a senior officer and head of Energy Investment Banking for E. F. Hutton & Company, Inc., PaineWebber Incorporated and McDonald Investments, Inc. Mr. Nicoletti is a graduate of Seton Hall University and received an M.B.A. from Columbia University.

Mr. Nicoletti's current and prior leadership experience in the energy investment banking industry and his significant experience in finance, accounting and corporate governance matters, among other factors, led the Board to conclude that he should serve as a director of Kestrel Heat.

**Director Independence**

Section 303A of the New York Stock Exchange listed company manual provides that limited partnerships are not required to have a majority of independent directors. It is the policy of the Board of Directors that the Board shall at all times have at least three independent directors or such higher number as may be necessary to comply with the applicable federal securities law requirements. For the purposes of this policy, "independent director" has the meaning set forth in Section 10A(m) of the Securities Exchange Act of 1934, as amended, any applicable stock exchange rules and the rules and regulations promulgated in the Partnership governance guidelines available on its website www.stargrouplp.com. The Board of Directors has determined that Messrs. Nicoletti, Babcock, Bauer and Baxter are independent directors.

**Meetings of Directors**

During fiscal 2019, the Board of Directors of Kestrel Heat met nine times. All directors attended each meeting.

**Committees of the Board of Directors**

Kestrel Heat's Board of Directors has one standing committee, the Audit Committee. Its members are appointed by the Board of Directors for a one-year term and until their respective successors are elected. The NYSE corporate governance standards do not require limited partnerships to have a Nominating or Compensation Committee.

**Audit Committee**

William P. Nicoletti, Henry D. Babcock, David M. Bauer and C. Scott Baxter have been appointed to serve on the Audit Committee, which has adopted an Audit Committee Charter. Mr. Nicoletti serves as chairman of the Audit Committee. A copy of this charter is available on the Company's website at www.stargrouplp.com or a copy may be

obtained without charge by contacting Richard F. Ambury at (203) 328-7310. The Audit Committee reviews the external financial reporting of the Company, selects and engages the Company's independent registered public accountants and approves all non-audit engagements of the independent registered public accountants.

Members of the Audit Committee may not be employees of Kestrel Heat or its affiliated companies and must otherwise meet the New York Stock Exchange and SEC independence requirements for service on the Audit Committee. The Board of Directors has determined that Messrs. Nicoletti, Babcock, Bauer and Baxter are independent directors in that they do not have any material relationships with the Company (either directly, or as a partner, shareholder or officer of an organization that has a relationship with the Company) and they otherwise meet the independence requirements of the NYSE and the SEC. The Company's Board of Directors has also determined that at least one member of the Audit Committee, Mr. Nicoletti, meets the SEC criteria of an "audit committee financial expert." Please see Mr. Nicoletti's biography under "Directors and Officers of the General Partner" for his relevant experience regarding his qualifications as an "audit committee financial expert."

During fiscal 2019, the Audit Committee of Kestrel Heat, LLC met six times. All directors attended each meeting.

**Reimbursement of Expenses of the General Partner**

The general partner does not receive any management fee or other compensation for its management of the Company. The general partner is reimbursed for all expenses incurred on behalf of the Company, including the cost of compensation that are properly allocable to the Company. The Partnership Agreement provides that the general partner shall determine the expenses that are allocable to the Company in any reasonable manner determined by the general partner in its sole discretion. In addition, the general partner and its affiliates may provide services to the Company for which a reasonable fee would be charged as determined by the general partner. There were no reimbursements of the General Partner in fiscal year 2019.

**Adoption of Code of Business Conduct and Ethics**

We have adopted a written Code of Business Conduct and Ethics that applies to our officers and employees and our directors. A copy of the Code of Business Conduct and Ethics is available on our website at www.stargrouplp.com or a copy may be obtained without charge, by contacting Investor Relations, (203) 328-7310.

We intend to post amendments to or waivers of our Code of Business Conduct and Ethics (to the extent applicable to any executive officer or director) on our website.

**Section 16(a) Beneficial Ownership Reporting Compliance**

Based on copies of reports furnished to us, we believe that during fiscal year 2019, all reporting persons complied with the Section 16(a) filing requirements applicable to them.

**Non-Management Directors and Interested Party Communications**

The non-management directors on the Board of Directors of the general partner are Messrs. Babcock, Bauer, Baxter, Donovan, Lawrence, Nicoletti and Vermylen. The non-management directors have selected Mr. Vermylen, the Chairman of the Board, to serve as lead director to chair executive sessions of the non-management directors. Interested parties who wish to contact the non-management directors as a group may do so by contacting Paul A. Vermylen, Jr. c/o Star Group, L.P., 9 West Broad Street, Suite 310, Stamford, CT 06902.

## ITEM 11. EXECUTIVE COMPENSATION

**Compensation Discussion and Analysis**

Our Third Amended and Restated Agreement of Limited Partnership, provides that our general partner, Kestrel Heat, shall conduct, direct and manage all activities of the Company. The limited liability company agreement of the general partner provides that the business of the general partner shall be managed by a Board of

Directors. The responsibility of the Board is to supervise and direct the management of the Company in the interest and for the benefit of our unitholders. Among the Board's responsibilities is to regularly evaluate the performance and to approve the compensation of the Chief Executive Officer and, with the advice of the Chief Executive Officer, regularly evaluate the performance and approve the compensation of key executives.

As a limited partnership that is listed on the New York Stock Exchange, we are not required to have a Compensation Committee. Since the Chairman of the general partner and the majority of the Board are not employees, the Board determined that it has adequate independence to act in the capacity of a Compensation Committee to establish and review the compensation our executive officers and directors. The Board is comprised of Paul A. Vermylen Jr. (Chairman), Jeffrey M. Woosnam (President and Chief Executive Officer), Daniel P. Donovan, Henry D. Babcock, David M. Bauer, C. Scott Baxter, Bryan H. Lawrence, and William P. Nicoletti.

Throughout this Report, each person who served as chief executive officer ("CEO") during fiscal 2019, each person who served as chief financial officer ("CFO") during fiscal 2019 and the two other most highly compensated executive officers serving at September 30, 2019 (there being no other executive officers) are referred to as the "named executive officers" and are included in the Executive Compensation Table.

In this Compensation Discussion and Analysis, we address the compensation paid or awarded to Messrs. Woosnam, Goldman, Donovan, Ambury, Hammond and McDonald. We refer to these executive officers as our "named executive officers."

Compensation decisions for the above named executive officers were made by the Board of Directors of the Company.

**Compensation Philosophy and Policies**

The primary objectives of our compensation program, including compensation of the named executive officers, are to attract and retain highly qualified officers, employees and directors and to reward individual contributions to our success. The Board of Directors considers the following policies in determining the compensation of the named executive officers:

- compensation should be related to the performance of the individual executive and the performance measured against both financial and non-financial achievements;
- compensation levels should be competitive to ensure that we will be able to attract, motivate and retain highly qualified executive officers; and
- compensation should be related to improving unitholder value over time.

**Compensation Methodology**

The elements of our compensation program for named executive officers are intended to provide a total incentive package designed to drive performance and reward contributions in support of business strategies at the Company. Subject to the terms of employment agreements that have been entered into with the named executive officers, all compensation determinations are discretionary and subject to the decision-making authority of the Board of Directors. We do not use benchmarking as a fixed criterion to determine compensation. Rather, after subjectively setting compensation based on the policies discussed above under “Compensation Philosophy and Policies”, we reviewed the compensation paid to officers holding similar positions at our peer group companies and certain information for privately held companies to obtain a general understanding of the reasonableness of base salaries and other compensation payable to our named executive officers. Our peer group of public companies was comprised of the following companies: Atmos Energy Corporation, Global Partners, L.P., New Jersey Resources Corporation, Sprague Resources, L.P. and Suburban Propane Partners, L.P. We chose these companies because they are engaged in the distribution of energy products like us.

**Elements of Executive Compensation**

For the fiscal year ended September 30, 2019, the principal components of compensation for the named executive officers were:

- base salary;
- annual discretionary profit sharing allocation;
- management incentive compensation plan; and
- retirement and health benefits.

Under our compensation structure, the mix of base salary, discretionary profit sharing allocation and long-term compensation provided to each executive officer varies depending on their position. The base salary for each executive officer is the only fixed component of compensation. All other compensation, including annual discretionary profit sharing allocation and long-term incentive compensation, is variable in nature.

The majority of the Company’s compensation allocation is weighted towards base salary and annual discretionary profit sharing allocation. In addition, during fiscal 2019, an aggregate of $397,430 was paid to the named executive officers under the terms of the management incentive compensation plan and represented a small portion of the executive compensation that was paid to these officers. If we are successful in increasing the overall level of distributions payable to unitholders, the amounts payable to the named executive officers under the management incentive compensation plan should increase.

We believe that together all of our compensation components provide a balanced mix of fixed compensation and compensation that is contingent upon each executive officer’s individual performance and our overall performance. A goal of the compensation program is to provide executive officers with a reasonable level of security through base salary and benefits, while rewarding them through incentive compensation to achieve business objectives and create unitholder value over time. We believe that each of our compensation components is important in achieving this goal. Base salaries provide executives with a base level of monthly income and security. Annual discretionary profit sharing allocations and long-term incentive awards provide an incentive to our executives to achieve business objectives that increase our financial performance, which creates unitholder value through continuity of, and increases in, distributions and increases in the market value of the units. In addition, we want to ensure that our compensation programs are appropriately designed to encourage executive officer retention, which is accomplished through all of our compensation elements.

**Base Salary**

The Board of Directors establishes base salaries for the named executive officers based on a number of factors, including:

- the historical salaries for services rendered to the Company and responsibilities of the named executive officer;
- the salaries of equivalent executive officers at our peer group companies and other data for our industry; and
- the prevailing levels of compensation and cost of living in the location in which the named executive officer works.

In determining the initial base compensation payable to individual named executive officers when they are first hired by Star, our starting point is the historical compensation levels that we have paid to officers performing similar functions over the past few years. We also consider the level of experience and accomplishments of individual candidates and general labor market conditions, including the availability of candidates to fill a particular position. When we make adjustments to the base salaries of existing named executive officers, we review the individual's performance, the value each named executive officer brings to us and general labor market conditions.

Elements of individual performance considered, among others, without any specific weight given to each element, include business-related accomplishments during the year, difficulty and scope of responsibilities, effective leadership, experience, expected future contributions to the Company and difficulty of replacement. While base salary provides a base level of compensation intended to be competitive with the external market, the base salary for each named executive officer is determined on a subjective basis after consideration of these factors and is not based on target percentiles or other formal criteria. Although we believe that base salaries for our named executive officers are generally competitive with the external market, we do not use benchmarking as a fixed criterion to determine base compensation. Rather, after subjectively setting base salaries based on the above factors, we review the compensation paid to officers holding similar positions at our peer group companies to obtain a general understanding of the reasonableness of base salaries and other compensation payable to our named executive officers. We also take into account geographic differences for similar positions in the New York Metropolitan area. While cost of living is considered in determining annual increases, we do not typically provide full cost of living adjustments as salary increases are constrained by budgetary restrictions and the ability to fund the Company's current cash needs such as interest expense, maintenance capital, income taxes and distributions.

*Profit Sharing Allocations*

We maintain a profit sharing pool for certain employees, including named executive officers, which is equal to approximately 6% of our earnings before income taxes, depreciation and amortization, excluding items affecting comparability ("adjusted EBITDA") for the given fiscal year. The annual discretionary profit sharing allocations paid to the named executive officers are payable from this pool. The size of the pool fluctuates based upon upward or downwards changes in adjusted EBITDA and the size of an individual award to a named executive officer fluctuates based on the size of the profit sharing pool and the number of participants in the plan. Depending upon the size of the profit sharing pool, and the number of participants in the plan, the amount paid to the named executive officers could be more or less.

There are no set formulas for determining the amount payable to our named executive officers from the profit sharing plan. Factors considered by our CEO and the Board in determining the level of profit sharing allocations generally include, without assigning a particular weight to any factor:

- whether or not we achieved certain budgeted goals for the year and any material shortfalls or superior performances relative to expectations. Under the plan, no profit sharing was payable with respect to fiscal 2019 unless we achieved actual adjusted EBITDA for fiscal 2019 of at least 70% of the amount of budgeted adjusted EBITDA for fiscal 2019;
- the level of difficulty associated with achieving such objectives based on the opportunities and challenges encountered during the year; and
- significant transactions or accomplishments for the period not included in the goals for the year.

Our CEO takes these factors into consideration as well as the relative contributions of each of the named executive officers to the year's performance in developing his recommendations for profit sharing amounts. Based on such assessment, our CEO submits recommendations to the Board of Directors for the annual profit sharing amounts to be paid to our named executive officers (other than the CEO), for the Board's review and approval. Similarly, the Chairman assesses the CEO's contribution toward meeting the Company's goals based upon the above factors, and recommends to the Board of Directors a profit sharing allocation for the CEO it believes to be commensurate with such contribution.

The Board of Directors retains the ultimate discretion to determine whether the named executive officers will receive annual profit sharing allocations based upon the factors discussed above.

*Management Incentive Compensation Plan*

In fiscal 2007, following our recapitalization, the Board of Directors adopted the Management Incentive Compensation Plan (the "Plan") for certain named employees. Under the Plan, employees who participate shall be entitled to receive a pro rata share (as determined in the manner described below) of an amount in cash equal to:

- 50% of the distributions ("Incentive Distributions") of Available Cash in excess of the minimum quarterly distribution of $0.0675 per unit otherwise distributable to Kestrel Heat pursuant to the Partnership Agreement on account of its general partner units; and
- 50% of the cash proceeds (the "Gains Interest") which Kestrel Heat shall receive from any sale of its general partner units (as defined in the Partnership Agreement), less expenses and applicable taxes.

We believe that the Plan provides a long-term incentive to its participants because it encourages Star's management to increase available cash for distributions in order to trigger the incentive distributions that are only payable if distributions from available cash exceed certain target distribution levels, with higher amounts of incentive distributions triggered by higher levels of distributions. Such increases are not sustainable on a consistent basis without long-term improvements in our operations. In addition, under certain Plan amendments that were adopted in 2012, the participation points of existing plan participants will vest and become irrevocable over a four year period, provided that the participants continue to be employed by us during the vesting period. We believe that this will help ensure that the Plan participants, which include our named executive officers, will have a continuing personal interest in the success of Star.

The pro rata share payable to each participant under the Plan is based on the number of participation points as described under "Fiscal 2019 Compensation Decisions—Management Incentive Compensation Plan." The amount paid in Incentive Distributions is governed by the Partnership Agreement and Available Cash (as defined in our Partnership Agreement) is distributed to the holders of our common units and general partner units in the following manner:

First, 100% to all common units, pro rata, until there has been distributed to each common unit an amount equal to the minimum quarterly distribution of $0.0675 for that quarter;

Second, 100% to all common units, pro rata, until there has been distributed to each common unit an amount equal to any arrearages in the payment of the minimum quarterly distribution for prior quarters;

Third, 100% to all general partner units, pro rata, until there has been distributed to each general partner unit an amount equal to the minimum quarterly distribution;

Fourth, 90% to all common units, pro rata, and 10% to all general partner units, pro rata, until each common unit has received the first target distribution of $0.1125; and

Finally, 80% to all common units, pro rata, and 20% to all general partner units, pro rata.

Available Cash, as defined in our Partnership Agreement, generally means all cash on hand at the end of the relevant fiscal quarter less the amount of cash reserves established by the Board of Directors of our general partner in its reasonable discretion for future cash requirements. These reserves are established for the proper conduct of our business, including acquisitions, the payment of debt principal and interest and for distributions during the next four quarters and to comply with applicable law and the terms of any debt agreements or other agreements to which we are subject. The Board of Directors of our general partner reviews the level of Available Cash each quarter based upon information provided by management.

To fund the benefits under the Plan, Kestrel Heat has agreed to permanently and irrevocably forego receipt of the amount of Incentive Distributions that are payable to plan participants. For accounting purposes, amounts payable to management under this Plan will be treated as compensation and will reduce both EBITDA and net income but not adjusted EBITDA. Kestrel Heat has also agreed to contribute to the Company, as a contribution to capital, an amount equal to the Gains Interest payable to participants in the Plan by the Company. The Company is not required to reimburse Kestrel Heat for amounts payable pursuant to the Plan.

The Plan is administered by our Chief Financial Officer under the direction of the Board or by such other officer as the Board may from time to time direct. In general, no payments will be made under the Plan if we are not distributing cash under the Incentive Distributions described above.

Effective as of July 19, 2012, the Board of Directors adopted certain amendments (the “Plan Amendments”) to the Plan. Under the Plan Amendments, the number and identity of the Plan participants and their participation interests in the Plan have been frozen at the current levels. In addition, under the Plan Amendments, the plan benefits (to the extent vested) may be transferred upon the death of a participant to his or her heirs. A participant’s vested percentage of his or her plan benefits will be 100% during the time a participant is an employee or consultant of the Company. Following the termination of such positions, a participant’s vested percentage shall be equal to 20% for each full or partial year of employment or consultation with us starting with the fiscal year ended September 30, 2012 (33 1/3% in the case of the Company’s chief executive officer at that time).

We distributed $732,239 in Incentive Distributions under the Plan during fiscal 2019, including payments to the named executive officers of approximately $397,430. With regard to the Gains Interest, Kestrel Heat has not given any indication that it will sell its general partner units within the next 12 months. Thus the Plan’s value attributable to the Gains Interest currently cannot be determined.

*Retirement and Health Benefits*

We offer a health and welfare and retirement program to all eligible employees. The named executive officers are generally eligible for the same programs on the same basis as other employees of Star. We maintain a tax-qualified 401(k) retirement plan that provides eligible employees with an opportunity to save for retirement on a tax advantaged basis. Under the 401(k) plan, subject to IRS limitations, each participant can contribute from 0% to 60% of compensation.

We make a 4% (or a maximum of 5.5% for participants who had 10 or more years of service at the time our defined benefit plans were frozen and who have reached the age 55) core contribution of a participant’s compensation and generally can match 2/3 (up to 3.0%) of a participant’s contributions, subject to IRS limitations.

In addition, we have two frozen defined benefit pension plans that were maintained for all eligible employees, including certain executive officers. The present value of accumulated benefits under these frozen defined benefit pension plans for certain executive officers is provided in the table labeled “Pension Plans Pursuant to Which Named Executive Officers Have an Accumulated Benefit But Are Not Currently Accruing Benefits.”

**Fiscal 2019 Compensation Decisions**

For fiscal 2019, the foregoing elements of compensation were applied as follows

*Base Salary*

The following table sets forth for each named executive officer who served in such capacity as of October 1, 2019, such officer's base salary and the percentage increase in base salary over October 1, 2018. Messrs. Woosnam, Hammond, and McDonald became executive officers in March 2019 and the percentage increase reflect their promotions and related increase in responsibilities. The current base salaries for our named executive officers were determined based upon the factors discussed under the caption "Base Salary." The average percentage increase in base salary for executives in our peer group was approximately 3.8%.

| Name | Salary | Percentage Change From Prior Year |
|---|---|---|
| Jeffrey M. Woosnam | $380,000 | 38.0% |
| Richard F. Ambury | $423,526 | 3.0% |
| Jeffrey S. Hammond | $307,756 | 12.2% |
| Joseph R. McDonald | $307,756 | 10.0% |

*Annual Discretionary Profit Sharing Allocation*

Based on the annual performance reviews for our CEO and named executive officers, the Board approved annual profit sharing allocations as reflected in the "Summary Compensation Table" and notes thereto. For fiscal 2019, the profit sharing amounts reflected in the Summary Compensation Table are 128.2%, 0.1%, 69.4% and 107.9% higher than fiscal 2018 for Messrs. Woosnam, Ambury, Hammond and McDonald, respectively. The increases for Messrs. Woosnam, Hammond and McDonald reflect their promotions to executive officers during the fiscal year and related increase in responsibilities. One of our primary performance measures for profit sharing purpose is Adjusted EBITDA. Adjusted EBITDA increased by $9.1 million, or 10.6%, to $95.4 million for fiscal 2019. For our peer group, the average percentage increase in Adjusted EBITDA was 6.3%, but the average total compensation decreased by 0.4%. Another performance measure is acquisitions, and in fiscal 2019, we completed three acquisitions with an aggregate purchase price of approximately $60.9 million and added approximately 24,000 customers. Messrs. Woosnam, Ambury, Hammond and McDonald were instrumental in the successful integration of these transactions, as well as in managing the Company during the transition period following the death of our former Chief Executive Officer in the first quarter of fiscal 2019.

*Management Incentive Compensation Plan*

In 2012, under the Plan Amendments adopted by the Board, the number and identity of the Plan participants and their participation points were frozen at the current levels in order to more closely align the interests of Plan participants and unitholders and to give Plan participants a continuing personal interest in our success. The number of participation points that were previously awarded to the named executive officers was based on the length of service and level of responsibility of the named executive and our desire to retain the named executive.

In fiscal 2019, $397,430 was paid to the named executive officers under the Plan as indicated in the following chart:

| Name | Points | Percentage | Management Incentive Payments |
|---|---|---|---|
| Jeffrey M. Woosnam | 60 | 5.5% | 39,940 |
| Richard F. Ambury | 235 | 21.4% | 156,433 |
| Jeffrey S. Hammond | 50 | 4.5% | 33,284 |
| Joseph R. McDonald | 120 | 10.9% | 79,881 |
| Other Plan Participants (a) | 635 | 57.7% | 422,701 |
| Total | 1,100 | 100% | $ 732,239 |

(a) Includes 300 points (27.3%) that were awarded to Mr. Donovan prior to his retirement as the Company's President and Chief Executive Officer effective September 30, 2013. Includes payments to Dan Donovan and Steve Goldman and his estate.

*Retirement and Health Benefits*

The named executive officers participate in our retirement and health benefit plans.

**Employment Contracts and Severance Agreements**

*Agreement with Richard F. Ambury*

We entered into an employment agreement with Mr. Ambury effective as of April 28, 2008. Mr. Ambury will serve as Chief Financial Officer and Treasurer on an at-will basis. The employment agreement provides for one year's salary as severance if Mr. Ambury's employment is terminated without cause or by Mr. Ambury for good reason.

*Agreement with Jeffrey M. Woosnam*

We entered into an employment agreement with Mr. Woosnam effective as of June 19, 2019. Mr. Woosnam will serve as President and Chief Executive Officer of Kestrel Heat on an at-will basis. The employment agreement provides for one year's salary as severance if Mr. Woosnam's employment is terminated without cause or by Mr. Woosnam for good reason.

**Change in Control Agreements**

Change in control arrangements are included in the employment agreement for Mr. Woosnam, Chief Executive Officer and we have entered into a Change in Control Agreement with Mr. Ambury, Chief Financial Officer. Under the terms of each agreement, if either of these executive officers is terminated within 180 days following a change in control (as defined in the agreement), he will be entitled to a payment equal to two times his base annual salary in the year of such termination plus two times the average amount paid as a bonus and/or as profit sharing during the three years preceding the year of such termination. The term change in control means the present equity owners of Kestrel Heat and their affiliates collectively cease to beneficially own equity interests having the voting power to elect at least a majority of the members of the Board of Directors or other governing board of the general partner or any successor entity. If a change in control were to have occurred and their employment was terminated as of the date of this Report, Mr. Woosnam would have received a payment of $1,248,700 and Mr. Ambury would have received a payment of $1,692,043.

**Pay Ratio Disclosure**

As required by Section 953(b) of the Dodd-Frank Wall Street Reform and Consumer Protection Act and Item 402(u) of Regulation S-K, we are providing the following information about the ratio of the annual total compensation, calculated in accordance with the requirements of Item 402(c)(2)(x) of Regulation S-K of our CEO, Jeffrey M. Woosnam and the annual total compensation of our median employee. For fiscal 2019, our last completed fiscal year, our CEO's total compensation was $773,189, versus our median employee compensation of $59,767. This reflects a CEO pay ratio of 13:1. We identified our median compensation employee by examining total compensation paid for fiscal year 2019 to all individuals, excluding Mr. Woosnam, who were employed by us on September 30, 2019, the last day of our fiscal year based on payroll records. No assumptions, adjustments or estimates were made in respect of total compensation, except that we annualized the compensation of any employee that was not employed with us for all of fiscal year 2019, excluding seasonal and temporary employees.

**Indemnification Agreements**

We have entered into an indemnification agreement with each of our directors and senior executives. These agreements provide for us to, among other things, indemnify such persons against certain liabilities that may arise by reason of their status or service as directors or officers, to advance their expenses incurred as a result of a proceeding as to which they may be indemnified and to cover such person under any directors' and officers' liability insurance policy we choose, in our discretion, to maintain. These indemnification agreements are intended to provide indemnification rights to the fullest extent permitted under applicable indemnification rights statutes in the State of

Delaware and are in addition to any other rights such person may have under our Partnership Agreement and the limited liability company agreement of our general partner, and applicable law. We believe these indemnification agreements enhance our ability to attract and retain knowledgeable and experienced executives and independent, non-management directors.

**Board of Directors Report**

The Board of Directors of the general partner of the Company does not have a separate compensation committee. Executive compensation is determined by the Board of Directors.

The Board of Directors reviewed and discussed with the Company's management the Compensation Discussion and Analysis contained in this annual report on Form 10-K. Based on that review and discussion, the Board of Directors recommends that the Compensation Discussion and Analysis be included in the Company's annual report on Form 10-K for the year ended September 30, 2019.

Paul A. Vermylen, Jr.
Jeffrey M. Woosnam
Henry D. Babcock
David M. Bauer
C. Scott Baxter
Daniel P. Donovan
Bryan H. Lawrence
William P. Nicoletti

**Executive Compensation Table**

The following table sets forth the annual salary compensation, bonus and all other compensation awards earned and accrued by the named executive officers in the fiscal year.

| | Summary Compensation Table | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Name and Principal Position | Fiscal Year | Salary | Bonus | Unit Awards | Option Awards | Non-Equity Incentive Plan Comp.(1) | Change in Pension Value and Nonqualified Deferred Comp. Earnings (2) | All Other Comp.(8) | Total |
| **Steven J. Goldman** | 2019 | $ 181,298 | — | — | — | $ — | $ — | $ 42,784 | $ 224,082 |
| Former President and Chief | 2018 | $ 465,000 | — | — | — | $ 482,937 | $ — | $ 162,574 | $ 1,110,511 |
| Executive Officer (3) | 2017 | $ 450,000 | — | — | — | $ 536,060 | $ — | $ 135,834 | $ 1,121,894 |
| **Daniel P. Donovan** | 2019 | $ 203,884 | — | — | — | $ — | $ — | $ 71,852 | $ 275,736 |
| Former Interim President and Chief | | | | | | | | | |
| Executive Officer (4) | | | | | | | | | |
| **Jeffrey M. Woosnam** | 2019 | $ 297,769 | — | — | — | $ 388,000 | $ — | $ 87,420 | $ 773,189 |
| President and Chief | | | | | | | | | |
| Executive Officer (5) | | | | | | | | | |
| **Richard F. Ambury** | 2019 | $ 417,872 | — | — | — | $ 411,317 | $ 58,858 | $ 206,786 | $ 1,094,833 |
| Chief Financial Officer, | 2018 | $ 401,400 | — | — | — | $ 410,850 | $ — | $ 176,222 | $ 988,472 |
| Treasurer and Executive | 2017 | $ 384,079 | — | — | — | $ 445,320 | $ — | $ 147,254 | $ 976,653 |
| Vice President | | | | | | | | | |
| **Jeffrey S. Hammond** | 2019 | $ 292,384 | — | — | — | $ 288,000 | $ — | $ 80,727 | $ 661,111 |
| Chief Operating | | | | | | | | | |
| Officer (6) | | | | | | | | | |
| **Joseph R. McDonald** | 2019 | $ 294,933 | — | — | — | $ 288,000 | $ — | $ 126,747 | $ 709,680 |
| Chief Customer | | | | | | | | | |
| Officer (7) | | | | | | | | | |

(1) Payable pursuant to the Company's profit sharing pool, which is described under "Compensation Discussion and Analysis. – Profit Sharing Allocation."

(2) We have two frozen defined benefit pension plans that we sometimes refer to in this Report as the Petro defined benefit pension plan and the Meenan defined benefit pension plan, where participants are not accruing additional benefits. Mr. Ambury also participated in a tax-qualified supplemental employee retirement plan which, prior to being frozen in 1997, represented contributions to an employee plan to compensate for a reduction in certain benefits prior to 1997. Included in Mr. Ambury's amounts for the Change in Pension Value and Nonqualified Deferred Comp. Earnings are $9,455, $0, and $0 for fiscal years 2019, 2018, and 2017 respectively, for the actuarial changes in the value of his frozen supplemental employee retirement plan. The change in all the named executive's pension values (including the supplemental employee retirement plan) are non-cash, and reflect normal adjustments resulting from changes in discount rates and government mandated mortality tables.

(3) Mr. Goldman served as President and Chief Executive Officer from 2013 through his death on December 22, 2018.

(4) On December 23, 2018, Mr. Donovan was appointed to serve as President and Chief Executive Officer on an interim basis. Mr. Donovan resigned from this position effective March 18, 2019 and served as consultant through April 30, 2019. Mr. Donovan currently serves as a member of the Board.

(5) Mr. Woosnam was appointed President and Chief Executive Officer on March 18, 2019.

(6) Mr. Hammond was appointed Chief Operating Officer on March 18, 2019.

(7) Mr. McDonald was appointed Chief Customer Officer on March 18, 2019.
(8) All other compensation is subdivided as follows:

| Name | Management Incentive Compensation Plan | Company Match and Core Contribution to 401(K) Plan | Car Allowance or Monetary Value for Personal Use of Company Owned Vehicle | Total |
|---|---|---|---|---|
| Steven J. Goldman | $ 32,361 | $ — | $ 10,423 | $ 42,784 |
| Daniel P. Donovan | $ 55,532 | $ 16,320 | $ — | $ 71,852 |
| Jeffrey M. Woosnam | $ 39,940 | $ 17,243 | $ 30,237 | $ 87,420 |
| Richard F. Ambury | $ 156,433 | $ 21,553 | $ 28,800 | $ 206,786 |
| Jeffrey S. Hammond | $ 33,284 | $ 17,063 | $ 30,380 | $ 80,727 |
| Joseph R. McDonald | $ 79,881 | $ 17,194 | $ 29,672 | $ 126,747 |

**Grants of Plan-Based Awards**

| Name | Grant Date (1) | Estimated Future Payouts Equity Incentive Plan Awards (1) Threshold ($) | Target ($) (2) | Maximum ($) | Estimated Future Payouts Under Equity Incentive Plan Threshold (#) | Target (#) | Maximum (#) | All Other Stocks Awards: Number of Shares of Stock or Units (#) | All Other Option Awards: Number of Securities Underlying Options (#) | Exercise or Base Price of Option Awards ($/Sh) | Grant Date Fair Value of Stock and Option Awards |
|---|---|---|---|---|---|---|---|---|---|---|---|
| Jeffrey M. Woosnam | 7/21/09 | — | $ 388,000 | — | — | — | — | — | — | — | — |
| Richard F. Ambury | 7/21/09 | — | $ 411,317 | — | — | — | — | — | — | — | — |
| Jeffrey S. Hammond | 7/21/09 | — | $ 288,000 | — | — | — | — | — | — | — | — |
| Joseph R. McDonald | 7/21/09 | — | $ 288,000 | — | — | — | — | — | — | — | — |

(1) On July 21, 2009, the Board of Directors authorized the continuance of the annual profit sharing plan, subject to its power to terminate the plan at any time. Profit sharing allocations are described under “Compensation Philosophy and Policies—Profit Sharing Allocations.”
(2) The annual profit sharing plan does not provide for thresholds or maximums; the amounts listed represent the actual awards to the named executive officers for fiscal 2019.

**Outstanding Equity Awards at Fiscal Year-End**

None.

**Option Exercises and Stock Vested**

None.

**Pension Plans Pursuant to Which Named Executive Officers Have an Accumulated Benefit But Are Not Currently Accruing Benefits**

| Name | Plan Name | Number of Years Credited Service | Present Value of Accumulated Benefit | Payments During Last Fiscal Year |
|---|---|---|---|---|
| Richard F. Ambury (1) | Retirement Plan | 13 | $ 302,749 | $ — |
| | Supplemental Employee Retirement Plan | — | $ 57,940 | $ — |

(1) The named executive officer has accumulated benefits in the tax-qualified Petro defined benefit pension plan that was frozen in 1997. Mr. Ambury also participated in a tax-qualified supplemental employee retirement plan which, prior to being frozen in 1997, represented contributions to an employee plan to compensate for a reduction in certain benefits prior to 1997. No other named executives were participants in any of these plans. Each year, the named executive officer's accumulated benefits are actuarially calculated generally based on the credited years of service and each employee's compensation at the time the plan was frozen. The present value of these amounts are the present value of a single life annuity generally payable at later or normal retirement age, adjusted for changes in discount rates and government mandated mortality tables. See Note 14—Employee Benefit Plans, to Star's Consolidated Financial Statements, for the material assumptions applied in quantifying the present value of the accumulated benefits of these frozen plans.

**Nonqualified Defined Contribution and Other Nonqualified Deferred Compensation Plans**

None.

**Potential Payments Upon Termination**

If Mr. Woosnam's employment is terminated for reasons other than for cause or if Mr. Woosnam terminates his employment for good reason, he will be entitled to receive one-year's salary as severance, except in the case of a termination following a change in control which is discussed above under "Change in Control Agreements." For 12 months following the termination of his employment, Mr. Woosnam is prohibited from competing with the Company or from becoming involved either as an employee, as a consultant or in any other capacity, in the sale of heating oil or propane on a retail basis.

If Mr. Ambury's employment is terminated for reasons other than cause or if Mr. Ambury terminates his employment for a good reason, he will be entitled to receive a severance payment of one year's salary except in the case of a termination following a change in control which is discussed above under "Change in Control Agreements." For 12 months following the termination of his employment, Mr. Ambury is prohibited from competing with the Company or from becoming involved either as an employee, as a consultant or in any other capacity, in the sale of heating oil or propane on a retail basis.

The amounts shown in the table below assume that the triggering event for each named executive officer's termination or change in control payment was effective as of the date of this Report based upon their historical compensation arrangements as of such date. The actual amounts to be paid out can only be determined at the time of such named executive officer's termination of employment or Star's change of control.

The employment agreements of the foregoing officers also require that they not reveal confidential information of the Company within 12 months following the termination of their employment.

| Name | Potential Payments Upon Termination | Potential Payments Following a Change of Control |
|---|---|---|
| Jeffrey M. Woosnam | $ 380,000 | $ 1,248,700 |
| Richard F. Ambury | $ 423,526 | $ 1,692,043 |

**Compensation of Directors**

**Director Compensation Table**

| Name | Fees Earned or Paid in Cash | Unit Awards | Option Awards | Non-Equity Incentive Plan Compensation | Change in Pension Value and Nonqualified Deferred Compensation Earnings (2) | All Other Compensation (3) | Total |
|---|---|---|---|---|---|---|---|
| Paul A. Vermylen, Jr. (1) | $ 133,500 | — | — | — | $ 70,939 | $ 69,527 | $ 273,966 |
| Daniel P. Donovan (4) | $ 43,583 | — | — | — | $ 75,856 | $ 207,281 | $ 326,720 |
| Henry D. Babcock (5) | $ 89,600 | — | — | — | $ — | $ — | $ 89,600 |
| David M. Bauer (5) | $ 81,333 | — | — | — | $ — | $ — | $ 81,333 |
| C. Scott Baxter (5) | $ 91,100 | — | — | — | $ — | $ — | $ 91,100 |
| Bryan H. Lawrence (6) | $ — | — | — | — | $ — | $ — | $ — |
| William P. Nicoletti (7) | $ 102,783 | — | — | — | $ — | $ — | $ 102,783 |

(1) Mr. Vermylen is non-executive Chairman of the Board.

(2) Mr. Vermylen and Mr. Donovan participate in one of our frozen defined benefit pension plans. Participants are currently not accruing additional benefits under the frozen plan. The change in the pension value reflects normal non-cash adjustments resulting from changes in discount rates and government mandated mortality tables.

(3) Mr. Vermylen and Mr. Donovan reached the frozen defined benefit pension plan full retirement age in fiscal year 2012 and 2011, respectively, and started receiving pension payments.

(4) The amount included for Mr. Donovan in all other compensation represents $144,170 for amounts paid to him under the management incentive compensation plan, and $63,111 for pension payments. Excludes amounts reported for Mr. Donovan in the Executive Compensation Table.

(5) Mr. Babcock, Mr. Bauer and Mr. Baxter are Audit Committee members.

(6) Mr. Lawrence has chosen not to receive any fees as a director of the general partner of Star.

(7) Mr. Nicoletti is Chairman of the Audit Committee.

Each non-management director receives an annual fee of $59,000 plus $1,500 for each regular and telephonic meeting attended. The Chairman of the Audit Committee receives an annual fee of $23,600 while other Audit Committee members receive an annual fee of $11,800. Each member of the Audit Committee receives $1,500 for every regular and telephonic meeting attended. The non-executive Chairman of the Board receives an annual fee of $120,000.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table shows the beneficial ownership as of November 30, 2019 of common units and general partner units by:

(1) Kestrel and certain beneficial owners;

(2) each of the named executive officers and directors of Kestrel Heat;

(3) all directors and executive officers of Kestrel Heat as a group; and

(4) each person the Company knows to hold 5% or more of the Company’s units.

Except as indicated, the address of each person is c/o Star Group, L.P. at 9 West Broad, Street, Suite 310, Stamford, Connecticut 06902.

| | Common Units | | General Partner Units | |
|---|---|---|---|---|
| Name | Number | Percentage | Number | Percentage |
| Kestrel (a) | 500,000 | * | 325,729 | 100.00% |
| Paul A. Vermylen, Jr. (b) | 1,274,512 | 2.70% | | |
| Henry D. Babcock (c) | 104,121 | * | | |
| William P. Nicoletti | 35,506 | * | | |
| Bryan H. Lawrence (d) | 1,101,848 | 2.33% | | |
| C. Scott Baxter | — | — | | |
| David M. Bauer (e) | 1,254,662 | 2.66% | | |
| Daniel P. Donovan | 15,900 | * | | |
| Richard F. Ambury | 32,890 | * | | |
| Joseph R. McDonald | 4,500 | * | | |
| Jeffrey M. Woosnam | — | — | | |
| Jeffrey S. Hammond | — | — | | |
| All officers and directors and Kestrel Heat, LLC as a group (12 persons) | 4,323,939 | 9.16% | 325,729 | 100.00% |
| FMR, LLC (f) | 3,505,473 | 7.43% | | |
| Bandera Partners, LLC (g) | 2,936,276 | 6.22% | | |

(a) Includes 500,000 Common Units and 325,729 general partner units owned by Kestrel Heat.

(b) Includes 210,281 Common Units held by The Robin C. Vermylen 2016 Irrevocable Trust, with respect to which Mr. Vermylen is a trustee of the trust and Mr. Vermylen's spouse is a beneficiary of the trust; and 210,281 Common Units held by The Paul A. Vermylen, Jr. 2015 Irrevocable Trust, with respect to which Mr. Vermylen is a beneficiary of the trust and is the settlor of the trust.

(c) Includes 15,000 Common Units owned by White Hill Trust, with respect to which Mr. Babcock's sister-in-law and stepson are the trustees and Mr. Babcock's wife is the primary beneficiary.

(d) Does not include 427,734 Common Units owned by Yorktown Energy Partners VI, L.P. ("Yorktown VI"). Mr. Lawrence is a member and manager of Yorktown VI Associates LLC. The general partner of Yorktown VI Company LP, the general partner of Yorktown VI. Mr. Lawrence does not have sole or shared voting or investment power within the meaning of Rule 13d-3 of the Securities Exchange Act of 1934 with respect to the Common Units held by Yorktown VI and disclaims beneficial ownership of such securities except to the extent of his pecuniary interest therein.

(e) All Common Units are owned by Lubar Equity Fund, LLC. Mr. Bauer owns a minority interest in Lubar Equity Fund, LLC and is Chief Investment Officer of Lubar & Co. Incorporated, the sole manager of Lubar Equity Fund, LLC. While Mr. Bauer serves on the investment committee of Lubar & Co., Inc., he does not have sole or shared voting or investment power within the meaning of Rule 13d-3 of the Securities and Exchange Act of 1934 with respect to the Common Units held by Lubar Equity Fund, LLC and disclaims beneficial ownership of such securities except to the extent of his pecuniary interest therein.

(f) According to a Form 13F filed by FMR, LLC with the SEC on November 13, 2019.

(g) According to a Form 13F filed by Bandera Partners, LLC with the SEC on November 13, 2019.

* Amount represents less than 1%.

**ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

Star has a written conflict of interest policy and procedure that requires all officers, directors and employees to report to senior corporate management or the board of directors, all personal, financial or family interest in transactions that involve the individual and the Star. In addition, our Governance Guidelines provide that any monetary arrangement between a director and his or her affiliates (including any member of a director's immediate family) and the Company or any of its affiliates for goods or services shall be subject to approval by the full Board of Directors.

The general partner does not receive any management fee or other compensation for its management of Star. The general partner is reimbursed for all expenses incurred on behalf of the Star, including the cost of compensation, that are properly allocable to Star. Our Partnership Agreement provides that the general partner shall determine the expenses that are allocable to Star in any reasonable manner determined by the general partner in its sole discretion. In addition, the general partner and its affiliates may provide services to the Star for which a reasonable fee would be charged as determined by the general partner.

Kestrel has the ability to elect the Board of Directors of Kestrel Heat, including Messrs. Vermylen, Bauer and Lawrence. Messrs. Vermylen, Bauer and Lawrence are also members of the board of managers of Kestrel and, either directly or through affiliated entities, own equity interests in Kestrel. Kestrel owns all of the issued and outstanding membership interests of Kestrel Heat.

**Policies Regarding Transactions with Related Persons**

Our Code of Business Conduct and Ethics, Partnership Governance Guidelines and Partnership Agreement set forth policies and procedures with respect to transactions with persons affiliated with the Company and the resolution of conflicts of interest, which taken together provide the Company with a framework for the review and approval of “transactions” with “related persons” as such terms are defined in Item 404 of Regulation S-K.

For the years ended September 30, 2019, 2018, and 2017, Star had no related party transactions or agreements pursuant to Item 404 of Regulation S-K.

Our Code of Business Conduct and Ethics applies to our directors, officers, employees and their affiliates. It deals with conflicts of interest (e.g., transactions with the Company), confidential information, use of Star assets, business dealings, and other similar topics. The Code requires officers, directors and employees to avoid even the appearance of a conflict of interest and to report potential conflicts of interest to the Company’s Controller or Director of Internal Audit.

Our Partnership Governance Guidelines provide that any monetary arrangement between a director and his or her affiliates (including any member of a director’s immediate family) and the Company or any of its affiliates for goods or services shall be subject to approval by the full Board of Directors. Although the Partnership Governance Guidelines by their terms only apply to directors the Board intends to apply this requirement to officers and employees and their affiliates.

To the extent that the Board determines that it would be in the best interests of the Company to enter into a transaction with a related person, the Board intends to utilize the procedures set forth in the Partnership Agreement for the review and approval of potential conflicts of interest. Our Partnership Agreement provides that whenever a potential conflict of interest exists or arises between the general partner or any of its Affiliates (including its directors, executive officers and controlling members), on the one hand, and the Company or any partner, on the other hand, any resolution or course of action in respect of such conflict of interest shall be permitted and deemed approved by all partners, and shall not constitute a breach of the Partnership Agreement, of any agreement contemplated therein, or of any duty stated or implied by law or equity, if the resolution or course of action is, or by operation of the Partnership Agreement is deemed to be, fair and reasonable to the Company.

Any conflict of interest and any resolution of such conflict of interest shall be conclusively deemed fair and reasonable to the Company if such conflict of interest or resolution is (i) approved by a committee of independent directors (the “Conflicts Committee”), (ii) on terms no less favorable to the Company than those generally being provided to or available from unrelated third parties or (iii) fair to the Company, taking into account the totality of the relationships between the parties involved (including other transactions that may be particularly favorable or advantageous to the Company).

The general partner (including the Conflicts Committee) is authorized in connection with its determination of what is “fair and reasonable” to the Company and in connection with its resolution of any conflict of interest to consider:

(A) the relative interests of any party to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interest;

(B) any customary or accepted industry practices and any customary or historical dealings with a particular person;

(C) any applicable generally accepted accounting practices or principles; and

(D) such additional factors as the general partner (including the Conflicts Committee) determines in its sole discretion to be relevant, reasonable or appropriate under the circumstances.

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

The following table represents the aggregate fees for professional audit services rendered by KPMG LLP including fees for the audit of our annual financial statements for the fiscal years 2019 and 2018, and for fees billed and accrued for other services rendered by KPMG LLP (in thousands).

| | 2019 | 2018 |
|---|---|---|
| Audit Fees (1) | $ 2,123 | $ 2,064 |
| Audit Related | 80 | — |
| Tax Fees (2) | 292 | 538 |
| Total Fees | $ 2,495 | $ 2,602 |

(1) Audit fees were for professional services rendered in connection with audits and quarterly reviews of the consolidated financial statements of the Company.

(2) Tax fees related to services for tax consulting and tax compliance.

*Audit Committee: Pre-Approval Policies and Procedures.* At its regularly scheduled and special meetings, the Audit Committee of the Board of Directors considers and pre-approves any audit and non-audit services to be performed by the Company's independent accountants. The Audit Committee has delegated to its chairman, an independent member of the Company's Board of Directors, the authority to grant pre-approvals of non-audit services provided that the service(s) shall be reported to the Audit Committee at its next regularly scheduled meeting. On June 18, 2003, the Audit Committee adopted its pre-approval policies and procedures. Since that date, there have been no audit or non-audit services rendered by the Company's principal accountants that were not pre-approved.

## PART IV

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

1. Financial Statements—See “Index to Consolidated Financial Statements and Financial Statement Schedule” set forth on page F-1.

2. Financial Statement Schedule—See “Index to Consolidated Financial Statements and Financial Statement Schedule” set forth on page F-1.

3. Exhibits—See “Index to Exhibits” set forth on the following page.

**INDEX TO EXHIBITS**

| Exhibit Number | Description |
|---|---|
| 3.1 | Amended and Restated Certificate of Limited Partnership (Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 9, 2006.) |
| 3.2 | Certificate of Amendment to Amended and Restated Certificate of Limited Partnership (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K with the Commission on October 27, 2017.) |
| 3.3 | Third Amended and Restated Agreement of Limited Partnership (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K with the Commission on November 6, 2017.) |
| 10.1 | Letter Agreement and general release dated March 7, 2005 between Star Gas Partners L.P. and Irik P. Sevin† (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K filed with the Commission on March 8, 2005.) |
| 10.2 | Management Incentive Compensation Plan† (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K with the Commission on July 21, 2006.) |
| 10.3 | Amended and Restated Management Incentive Compensation Plan† (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K with the Commission on July 20, 2012.) |
| 10.4 | Form of Indemnification Agreement for Officers and Directors (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K with the Commission on July 21, 2006.) |
| 10.5 | Form of Amendment No. 1 to Indemnification Agreement (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K with the Commission on October 23, 2006.) |
| 10.6 | Modification of Profit Sharing Plan† (Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on December 10, 2014.) |
| 10.7 | Change in Control Agreement dated December 4, 2007 between Star Gas Partners, L.P. and Daniel P. Donovan† (Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on December 7, 2007.) |
| 10.8 | Change in Control Agreement dated December 4, 2007 between Star Gas Partners, L.P. and Richard F. Ambury† (Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on December 7, 2007.) |
| 10.9 | Employment Agreement dated April 28, 2008 between Star Gas Partners, L.P. and Richard Ambury† (Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on December 10, 2008.) |
| 10.10 | Agreement dated November 2, 2009 between Star Gas Partners, L.P. and Richard G. Oakley† (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K dated November 3, 2009.) |
| 10.11 | Letter Agreement, dated as of July 22, 2013, between the Partnership and Steven Goldman regarding Change of Control† (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K dated July 23, 2013.) |

| Exhibit Number | Description |
|---|---|
| 10.12 | First Amendment to Letter Agreement, dated as of September 30, 2015, between the Partnership and Dan Donovan (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K dated October 2, 2015.) |
| 10.13 | Unit Purchase Agreement, dated as of August 4, 2016, between the Partnership and Bandera Partners, LLC (Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on December 7, 2016.) |
| 10.14 | Letter Agreement, dated as of December 6, 2016, between the Partnership and Steven Goldman regarding employment† (Incorporated by reference to an exhibit to the Registrant's Annual Report on Form 10-K filed with the Commission on December 7, 2016.) |
| 10.15 | Fourth Amended and Restated Credit Agreement, dated as of July 2, 2018 (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K dated July 2, 2018.) |
| 10.16 | Fourth Amended and Restated Pledge and Security Agreement, dated as of July 2, 2018 (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K dated July 2, 2018.) |
| 10.17 | Amended and Restated First Amendment and Waiver to the Fourth Amended and Restated Credit Agreement, dated as of March 12, 2019 (Incorporated by reference to an exhibit to Registrant's Current Report on Form 8-K dated March 15, 2019.) |
| 10.18 | Unit Purchase Agreement, dated as of February 15, 2019, between the Company and Cat Rock Capital Management, L.P. (Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q dated May 1, 2019.) |
| 10.19 | Letter Agreement, dated as of June 19, 2019, between the Company and Jeffrey M. Woosnam regarding employment (Incorporated by reference to an exhibit to Registrant's Current Report on Form 8-K dated June 21, 2019.) |
| 10.20 | Second Amendment to the Fourth Amended and Restated Credit Agreement, dated as of June 17, 2019 (Incorporated by reference to an exhibit to the Registrant's Quarterly Report on Form 10-Q dated July 31, 2019.) |
| 10.21* | Unit Purchase Agreement, dated as of September 12, 2019, between the Company and Cat Rock Capital Management, L.P. (Filed herewith.) |
| 10.22* | Fifth Amended and Restated Credit Agreement, dated as of December 4, 2019 (Filed herewith.) |
| 10.23* | Fifth Amended and Restated Pledge and Security Agreement, dated as of December 4, 2019 (Filed herewith.) |
| 14 | Code of Business Conduct and Ethics (Incorporated by reference to an exhibit to the Registrant's Current Report on Form 8-K dated November 14, 2014.) |
| 21* | Subsidiaries of the Registrant (Filed herewith.) |
| 31.1* | Certification of Chief Executive Officer, Star Group, L.P., pursuant to Rule 13a-14(a)/15d-14(a) |
| 31.2* | Certification of Chief Financial Officer, Star Group, L.P., pursuant to Rule 13a-14(a)/15d-14(a) |
| 32.1* | Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |
| 32.2* | Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 |

| Exhibit Number | Description |
|---|---|
| 101.INS* | XBRL Instance Document |
| 101.SCH* | XBRL Taxonomy Extension Schema Document |
| 101.CAL* | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.LAB* | XBRL Taxonomy Extension Label Linkbase Document |
| 101.PRE* | XBRL Taxonomy Extension Presentation Linkbase Document |
| 101.DEF* | XBRL Taxonomy Extension Definition Linkbase Document |

* Filed Herewith

† Employee compensation plan.

**SIGNATURE**

Pursuant to the requirements of the Securities Exchange Act of 1934, the general partner has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized this 5th day of December, 2019:

STAR GROUP, L.P.

By: KESTREL HEAT, LLC (General Partner)
By: /s/ Jeffrey M. Woosnam

**Jeffrey M. Woosnam**
**President and Chief Executive Officer**

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed by the following persons in the capacities and on the date indicated:

| Signature | Title | Date |
|---|---|---|
| /s/ Jeffrey M. Woosnam<br>**Jeffrey M. Woosnam** | President and Chief Executive Officer and Director Kestrel Heat, LLC | December 5, 2019 |
| /s/ Richard F. Ambury<br>**Richard F. Ambury** | Chief Financial Officer, Executive Vice President, Treasurer and Secretary (Principal Financial Officer) Kestrel Heat, LLC | December 5, 2019 |
| /s/ Cory A. Czekanski<br>**Cory A. Czekanski** | Vice President—Controller (Principal Accounting Officer) Kestrel Heat, LLC | December 5, 2019 |
| /s/ Paul A. Vermylen, Jr.<br>**Paul A. Vermylen, Jr.** | Non-Executive Chairman of the Board and Director Kestrel Heat, LLC | December 5, 2019 |
| /s/ Henry D. Babcock<br>**Henry D. Babcock** | Director Kestrel Heat, LLC | December 5, 2019 |
| /s/ C. Scott Baxter<br>**C. Scott Baxter** | Director Kestrel Heat, LLC | December 5, 2019 |
| /s/ David M. Bauer<br>**David M. Bauer** | Director Kestrel Heat, LLC | December 5, 2019 |
| /s/ Daniel P. Donovan<br>**Daniel P. Donovan** | Director Kestrel Heat, LLC | December 5, 2019 |
| /s/ Bryan H. Lawrence<br>**Bryan H. Lawrence** | Director Kestrel Heat, LLC | December 5, 2019 |
| /s/ William P. Nicoletti<br>**William P. Nicoletti** | Director Kestrel Heat, LLC | December 5, 2019 |

**STAR GROUP, L.P. AND SUBSIDIARIES**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS**
**AND FINANCIAL STATEMENT SCHEDULE**



All other schedules are omitted because they are not applicable or the required information is shown in the consolidated financial statements or the notes therein.

**Report of Independent Registered Public Accounting Firm**

To the Board of Directors of Kestrel Heat, LLC and the Unitholders of Star Group, L.P.:

*Opinions on the Consolidated Financial Statements and Internal Control Over Financial Reporting*

We have audited the accompanying consolidated balance sheets of Star Group, L.P. and Subsidiaries (the Partnership) as of September 30, 2019 and 2018, the related consolidated statements of operations, comprehensive income, partners' capital, and cash flows for each of the years in the three-year period ended September 30, 2019, and the related notes and financial statement schedules I and II (collectively, the consolidated financial statements). We also have audited the Partnership's internal control over financial reporting as of September 30, 2019, based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Partnership as of September 30, 2019 and 2018, and the results of its operations and its cash flows for each of the years in the three-year period ended September 30, 2019, in conformity with U.S. generally accepted accounting principles. Also in our opinion, the Partnership maintained, in all material respects, effective internal control over financial reporting as of September 30, 2019 based on criteria established in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

The Partnership acquired one of its subcontractors and a liquid product dealer during fiscal 2019, and management excluded from its assessment of the effectiveness of the Partnership's internal control over financial reporting as of September 30, 2019 internal control over financial reporting associated with total assets of $64.2 million and total revenues of $25.2 million included in the consolidated financial statements of the Partnership as of and for the year ended September 30, 2019. The acquisitions constituted approximately 1.4% of total assets and 8.5% of total revenues included in the consolidated financial statements as of and for the year ended September 30, 2019. Our audit of internal control over financial reporting of the Partnership also excluded an evaluation of the internal control over financial reporting of these acquisitions.

*Basis for Opinions*

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our

audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

*Definition and Limitations of Internal Control Over Financial Reporting*

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

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

/s/ KPMG LLP
We have served as the Partnership's auditor since 1995.

Stamford, Connecticut
December 5, 2019

**STAR GROUP, L.P. AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**

| (in thousands) | September 30, 2019 | September 30, 2018 |
|---|---|---|
| **ASSETS** | | |
| **Current assets** | | |
| Cash and cash equivalents | $ 4,899 | $ 14,531 |
| Receivables, net of allowance of $8,378 and $8,002, respectively | 120,245 | 132,668 |
| Inventories | 64,788 | 56,377 |
| Fair asset value of derivative instruments | — | 17,710 |
| Prepaid expenses and other current assets | 36,898 | 35,451 |
| Total current assets | 226,830 | 256,737 |
| Property and equipment, net | 98,239 | 87,618 |
| Goodwill | 244,574 | 228,436 |
| Intangibles, net | 107,688 | 98,444 |
| Restricted cash | 250 | 250 |
| Captive insurance collateral (1) | 58,490 | 45,419 |
| Deferred charges and other assets, net | 16,635 | 13,067 |
| Total assets | $ 752,706 | $ 729,971 |
| **LIABILITIES AND PARTNERS' CAPITAL** | | |
| **Current liabilities** | | |
| Accounts payable | $ 33,973 | $ 35,796 |
| Revolving credit facility borrowings | 24,000 | 1,500 |
| Fair liability value of derivative instruments | 8,262 | - |
| Current maturities of long-term debt | 9,000 | 7,500 |
| Accrued expenses and other current liabilities | 120,839 | 116,436 |
| Unearned service contract revenue | 61,213 | 60,700 |
| Customer credit balances | 68,270 | 61,256 |
| Total current liabilities | 325,557 | 283,188 |
| Long-term debt (2) | 120,447 | 91,780 |
| Deferred tax liabilities, net | 20,116 | 21,206 |
| Other long-term liabilities | 25,746 | 24,012 |
| **Partners' capital** | | |
| Common unitholders | 279,709 | 329,129 |
| General partner | (1,968) | (1,303) |
| Accumulated other comprehensive loss, net of taxes | (16,901) | (18,041) |
| Total partners' capital | 260,840 | 309,785 |
| Total liabilities and partners' capital | $ 752,706 | $ 729,971 |

(1) See Note 2 – Summary of Significant Accounting Policies - Captive Insurance Collateral.
(2) See Note 21 – Subsequent Events.

See accompanying notes to consolidated financial statements.

**STAR GROUP, L.P. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF OPERATIONS**

| (in thousands, except per unit data) | Years Ended September 30, 2019 | 2018 | 2017 |
|---|---|---|---|
| Sales: | | | |
| Product | $ 1,466,045 | $ 1,404,370 | $ 1,065,076 |
| Installations and services | 287,827 | 273,467 | 258,479 |
| Total sales | 1,753,872 | 1,677,837 | 1,323,555 |
| Cost and expenses: | | | |
| Cost of product | 998,559 | 957,843 | 675,386 |
| Cost of installations and services | 267,607 | 256,652 | 239,670 |
| (Increase) decrease in the fair value of derivative instruments | 25,113 | (11,408) | (2,193) |
| Delivery and branch expenses | 369,033 | 357,580 | 306,534 |
| Depreciation and amortization expenses | 32,901 | 31,575 | 27,882 |
| General and administrative expenses | 28,414 | 24,227 | 24,998 |
| Finance charge income | (5,105) | (4,700) | (4,054) |
| Operating income | 37,350 | 66,068 | 55,332 |
| Interest expense, net | (11,164) | (8,716) | (6,775) |
| Amortization of debt issuance costs | (1,032) | (1,288) | (1,281) |
| Other income, net (1) | — | 7,043 | — |
| Income before income taxes | 25,154 | 63,107 | 47,276 |
| Income tax expense | 7,517 | 7,602 | 20,376 |
| Net income | $ 17,637 | $ 55,505 | $ 26,900 |
| General Partner's interest in net income | 95 | 314 | 156 |
| Limited Partners' interest in net income | $ 17,542 | $ 55,191 | $ 26,744 |
| Basic and diluted income per Limited Partner Unit (2): | $ 0.35 | $ 0.89 | $ 0.46 |
| Weighted average number of Limited Partner units outstanding: | | | |
| Basic and Diluted | 50,814 | 54,764 | 55,888 |

(1) See Note 2 – Summary of Significant Accounting Policies - Other Income, Net.
(2) See Note 19 - Earnings Per Limited Partner Units.

See accompanying notes to consolidated financial statements.

**STAR GROUP, L.P. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**

| (in thousands) | Years Ended September 30, 2019 | 2018 | 2017 |
|---|---|---|---|
| Net income | $ 17,637 | $ 55,505 | $ 26,900 |
| Other comprehensive income: | | | |
| Unrealized gain on pension plan obligation (1) | 1,170 | 2,075 | 3,356 |
| Tax effect of unrealized gain on pension plan obligation | (320) | (625) | (1,359) |
| Unrealized gain (loss) on captive insurance collateral | 2,231 | (1,204) | — |
| Tax effect of unrealized gain (loss) on captive insurance collateral | (473) | 254 | — |
| Unrealized gain (loss) on interest rate hedge | (1,993) | 39 | — |
| Tax effect of unrealized gain (loss) on interest rate hedge | 525 | (10) | — |
| Total other comprehensive income | 1,140 | 529 | 1,997 |
| Total comprehensive income | $ 18,777 | $ 56,034 | $ 28,897 |

(1) These items are included in the computation of net periodic pension cost. See Note 14 - Employee Benefit Plans.

See accompanying notes to consolidated financial statements.

**STAR GROUP, L.P. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF PARTNERS' CAPITAL**

**Years Ended September 30, 2019, 2018 and 2017**

| (in thousands) | Number of Units | | | | | |
|---|---|---|---|---|---|---|
| | Common | General Partner | Common | General Partner | Accum. Other Comprehensive Income (Loss) | Total Partners' Capital |
| **Balance as of September 30, 2016** | **55,888** | **326** | **$ 322,771** | **$ (516)** | **$ (20,762)** | **$ 301,493** |
| Net income | | | 26,744 | 156 | — | 26,900 |
| Unrealized gain on pension plan obligation (1) | | | — | — | 3,356 | 3,356 |
| Tax effect of unrealized gain on pension plan obligation | | | — | — | (1,359) | (1,359) |
| Distributions (2) | | | (23,753) | (569) | — | (24,322) |
| Retirement of units (3) | | | — | — | — | — |
| **Balance as of September 30, 2017** | **55,888** | **326** | **$ 325,762** | **$ (929)** | **$ (18,765)** | **$ 306,068** |
| Reclassification of stranded tax effects resulting from tax reform | | | (195) | — | 195 | — |
| Net income | | | 55,191 | 314 | — | 55,505 |
| Unrealized gain on pension plan obligation (1) | | | — | — | 2,075 | 2,075 |
| Tax effect of unrealized gain on pension plan obligation | | | — | — | (625) | (625) |
| Unrealized loss on captive insurance collateral | | | — | — | (1,204) | (1,204) |
| Tax effect of unrealized loss on captive insurance collateral | | | — | — | 254 | 254 |
| Unrealized gain on interest rate hedge | | | — | — | 39 | 39 |
| Tax effect of unrealized gain on interest rate hedge | | | — | — | (10) | (10) |
| Distributions (2) | | | (24,915) | (688) | — | (25,603) |
| Retirement of units (3) | (2,800) | | (26,714) | — | — | (26,714) |
| **Balance as of September 30, 2018** | **53,088** | **326** | **$ 329,129** | **$ (1,303)** | **$ (18,041)** | **$ 309,785** |
| Impact of adoption of ASU No. 2014-09 | | | 9,164 | 60 | — | 9,224 |
| Net income | | | 17,542 | 95 | — | 17,637 |
| Unrealized gain on pension plan obligation (1) | | | — | — | 1,170 | 1,170 |
| Tax effect of unrealized gain on pension plan obligation | | | — | — | (320) | (320) |
| Unrealized gain (loss) on captive insurance collateral | | | — | — | 2,231 | 2,231 |
| Tax effect of unrealized gain (loss) on captive insurance collateral | | | — | — | (473) | (473) |
| Unrealized gain (loss) on interest rate hedge | | | — | — | (1,993) | (1,993) |
| Tax effect of unrealized gain (loss) on interest rate hedge | | | — | — | 525 | 525 |
| Distributions (2) | | | (24,773) | (820) | — | (25,593) |
| Retirement of units (3) | (5,403) | | (51,353) | — | — | (51,353) |
| **Balance as of September 30, 2019** | **47,685** | **326** | **$ 279,709** | **$ (1,968)** | **$ (16,901)** | **$ 260,840** |

(1) These items are included in the computation of net periodic pension cost. See Note 14 - Employee Benefit Plans.
(2) See Note 4 - Quarterly Distributions of Available Cash.
(3) See Note 5 - Common Unit Repurchase Plans and Retirement.

See accompanying notes to consolidated financial statements.

**STAR GROUP, L.P. AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

| (in thousands) | Years Ended September 30, 2019 | 2018 | 2017 |
|---|---|---|---|
| **Cash flows provided by (used in) operating activities:** | | | |
| Net income | $ 17,637 | $ 55,505 | $ 26,900 |
| Adjustments to reconcile net income to net cash provided by (used in) operating activities: | | | |
| (Increase) decrease in fair value of derivative instruments | 25,113 | (11,408) | (2,193) |
| Depreciation and amortization | 33,933 | 32,863 | 29,163 |
| Provision (recovery) for losses on accounts receivable | 9,541 | 6,283 | 1,639 |
| Change in deferred taxes | (5,126) | 14,685 | 10,134 |
| Gain on sale of security business (1) | — | (7,043) | — |
| Changes in operating assets and liabilities net of amounts related to acquisitions: | | | |
| Decrease (increase) in receivables | 10,137 | (37,149) | (19,844) |
| (Increase) decrease in inventories | (6,306) | 4,177 | (10,598) |
| Decrease (increase) in other assets | 10,146 | (11,924) | (140) |
| (Decrease) increase in accounts payable | (2,918) | 9,703 | 2,169 |
| Increase (decrease) in customer credit balances | 3,615 | (6,563) | (23,085) |
| Increase in other current and long-term liabilities | 1,610 | 8,331 | 6,913 |
| Net cash provided by operating activities | 97,382 | 57,460 | 21,058 |
| **Cash flows provided by (used in) investing activities:** | | | |
| Capital expenditures | (11,301) | (13,590) | (12,164) |
| Proceeds from sales of fixed assets | 1,097 | 503 | 734 |
| Proceeds from sale of security business (1) | — | 6,824 | — |
| Purchase of investments (2) | (11,058) | (35,242) | (11,647) |
| Acquisitions | (60,904) | (23,747) | (43,304) |
| Net cash used in investing activities | (82,166) | (65,252) | (66,381) |
| **Cash flows provided by (used in) financing activities:** | | | |
| Revolving credit facility borrowings | 139,331 | 161,604 | — |
| Revolving credit facility repayments | (79,331) | (160,104) | — |
| Proceeds from term loan | — | 100,000 | — |
| Loan repayments | (7,500) | (76,300) | (16,200) |
| Distributions | (25,593) | (25,603) | (24,322) |
| Unit repurchases | (51,353) | (26,714) | - |
| Customer retainage payments | (357) | (918) | (575) |
| Payments of debt issuance costs | (45) | (2,100) | (60) |
| Net cash used in financing activities | (24,848) | (30,135) | (41,157) |
| Net (decrease) increase in cash, cash equivalents and restricted cash | (9,632) | (37,927) | (86,480) |
| Cash, cash equivalents and restricted cash at beginning of period | 14,781 | 52,708 | 139,188 |
| Cash, cash equivalents and restricted cash at end of period | $ 5,149 | $ 14,781 | $ 52,708 |

(1) See Note 2 – Summary of Significant Accounting Policies - Other income, net.
(2) See Note 2 – Summary of Significant Accounting Policies – Captive Insurance Collateral.

See accompanying notes to consolidated financial statements.

**1) Organization**

Star Group, L.P. (“Star” the “Company,” “we,” “us,” or “our”) is a full service provider specializing in the sale of home heating and air conditioning products and services to residential and commercial home heating oil and propane customers. The Company has one reportable segment for accounting purposes. We also sell diesel, gasoline and home heating oil on a delivery only basis, and in certain of our marketing areas, we provide plumbing services primarily to our home heating oil and propane customer base. We believe we are the nation’s largest retail distributor of home heating oil based upon sales volume. Including our propane locations, we serve customers in the more northern and eastern states within the Northeast, Central and Southeast U.S. regions.

The Company is organized as follows:

- Star is a limited partnership, which at September 30, 2019, had outstanding 47.7 million Common Units (NYSE: “SGU”), representing a 99.3% limited partner interest in Star, and 0.3 million general partner units, representing a 0.7% general partner interest in Star. Our general partner is Kestrel Heat, LLC, a Delaware limited liability company (“Kestrel Heat” or the “general partner”). The Board of Directors of Kestrel Heat (the “Board”) is appointed by its sole member, Kestrel Energy Partners, LLC, a Delaware limited liability company (“Kestrel”).
- Star owns 100% of Star Acquisitions, Inc. (“SA”), a Minnesota corporation, that owns 100% of Petro Holdings, Inc. (“Petro”). SA and its subsidiaries are subject to Federal and state corporate income taxes. Star’s operations are conducted through Petro and its subsidiaries. Petro is primarily a Northeast, Central and Southeast U.S. region retail distributor of home heating oil and propane that at September 30, 2019 served approximately 453,000 full service residential and commercial home heating oil and propane customers and 56,000 customers on a delivery only basis. We also sell gasoline and diesel fuel to approximately 27,000 customers. We install, maintain, and repair heating and air conditioning equipment and to a lesser extent provide these services outside our heating oil and propane customer base including approximately 17,000 service contracts for natural gas and other heating systems.
- Petroleum Heat and Power Co., Inc. (“PH&P”) is a wholly owned subsidiary of Star. PH&P is the borrower and Star is the guarantor of the fourth amended and restated credit agreement’s $100 million five-year senior secured term loan and the $300 million ($450 million during the heating season of December through April of each year) revolving credit facility, both due July 2, 2023. (See Note 13—Long-Term Debt and Bank Facility Borrowings). In December 2019, the Company refinanced its five-year term loan and the revolving credit facility with the execution of the fifth amended and restated revolving credit facility agreement. (See Note 13—Long-Term Debt and Bank Facility Borrowings and Note 21—Subsequent Events).

**2) Summary of Significant Accounting Policies**

*Basis of Presentation*

The Consolidated Financial Statements include the accounts of Star Group, L.P. and its subsidiaries. All material intercompany items and transactions have been eliminated in consolidation.

*Comprehensive Income*

Comprehensive income is comprised of Net income and Other comprehensive income. Other comprehensive income consists of the unrealized gain amortization on the Company’s pension plan obligation for its two frozen defined benefit pension plans, unrealized gain (loss) on available-for-sale investments, unrealized gain (loss) on interest rate hedge and the corresponding tax effects.

*Use of Estimates*

The preparation of financial statements in accordance with U.S. generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the reporting period. Actual results could differ from those estimates.

*Revenue Recognition*

Refer to Note 3 – Revenue Recognition for revenue recognition accounting policies. Sales of petroleum products are recognized at the time of delivery to the customer and sales of heating and air conditioning equipment are recognized upon completion of installation. Revenue from repairs, maintenance and other services are recognized upon completion of the service. Payments received from customers for equipment service contracts are deferred and amortized into income over the terms of the respective service contracts, on a straight-line basis, which generally do not exceed one year. To the extent that the Company anticipates that future costs for fulfilling its contractual obligations under its service maintenance contracts will exceed the amount of deferred revenue currently attributable to these contracts, the Company recognizes a loss in current period earnings equal to the amount that anticipated future costs exceed related deferred revenues.

*Cost of Product*

Cost of product includes the cost of home heating oil, diesel, propane, kerosene, gasoline, throughput costs, barging costs, option costs, and realized gains/losses on closed derivative positions for product sales.

*Cost of Installations and Services*

Cost of installations and services includes equipment and material costs, wages and benefits for equipment technicians, dispatchers and other support personnel, subcontractor expenses, commissions and vehicle related costs.

*Delivery and Branch Expenses*

Delivery and branch expenses include wages and benefits and department related costs for drivers, dispatchers, garage mechanics, customer service, sales and marketing, compliance, credit and branch accounting, information technology, vehicle and property rental costs, insurance, weather hedge contract costs and recoveries, and operational management and support.

*General and Administrative Expenses*

General and administrative expenses include property costs, wages and benefits and department related costs for human resources, finance and corporate accounting, internal audit, administrative support and supply.

*Allocation of Net Income*

Net income for partners' capital and statement of operations is allocated to the general partner and the limited partners in accordance with their respective ownership percentages, after giving effect to cash distributions paid to the general partner in excess of its ownership interest, if any.

*Net Income per Limited Partner Unit*

Income per limited partner unit is computed in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 260-10-05 Earnings Per Share, Master Limited Partnerships (EITF 03-06), by dividing the limited partners' interest in net income by the weighted average number of limited partner units outstanding. The pro forma nature of the allocation required by this standard provides that in any accounting period where the Company's aggregate net income exceeds its aggregate distribution for such period, the Company is required to present net income per limited partner unit as if all of the earnings for the periods were distributed, regardless of whether those earnings would actually be distributed during a particular period from an

economic or practical perspective. This allocation does not impact the Company's overall net income or other financial results. However, for periods in which the Company's aggregate net income exceeds its aggregate distributions for such period, it will have the impact of reducing the earnings per limited partner unit, as the calculation according to this standard results in a theoretical increased allocation of undistributed earnings to the general partner. In accounting periods where aggregate net income does not exceed aggregate distributions for such period, this standard does not have any impact on the Company's net income per limited partner unit calculation. A separate and independent calculation for each quarter and year-to-date period is performed, in which the Company's contractual participation rights are taken into account.

*Cash Equivalents, Receivables, Revolving Credit Facility Borrowings, and Accounts Payable*

The carrying amount of cash equivalents, receivables, revolving credit facility borrowings, and accounts payable approximates fair value because of the short maturity of these instruments.

*Cash, Cash Equivalents, and Restricted Cash*

The Company considers all highly liquid investments with an original maturity of three months or less, when purchased, to be cash equivalents. At September 30, 2019, the $5.1 million of cash, cash equivalents, and restricted cash on the consolidated statement of cash flows is comprised of $4.9 million of cash and cash equivalents and $0.3 million of restricted cash. At September 30, 2018, the $14.8 million of cash, cash equivalents, and restricted cash on the consolidated statement of cash flows is comprised of $14.5 million of cash and cash equivalents and $0.3 million of restricted cash. Restricted cash represents deposits held by our captive insurance company that are required by state insurance regulations to remain in the captive insurance company as cash.

*Receivables and Allowance for Doubtful Accounts*

Accounts receivables from customers are recorded at the invoiced amounts. Finance charges may be applied to trade receivables that are more than 30 days past due, and are recorded as finance charge income.

The allowance for doubtful accounts is the Company's estimate of the amount of trade receivables that may not be collectible. The allowance is determined at an aggregate level by grouping accounts based on certain account criteria and its receivable aging. The allowance is based on both quantitative and qualitative factors, including historical loss experience, historical collection patterns, overdue status, aging trends, and current economic conditions. The Company has an established process to periodically review current and past due trade receivable balances to determine the adequacy of the allowance. No single statistic or measurement determines the adequacy of the allowance. The total allowance reflects management's estimate of losses inherent in its trade receivables at the balance sheet date. Different assumptions or changes in economic conditions could result in material changes to the allowance for doubtful accounts.

*Inventories*

Liquid product inventories are stated at the lower of cost and net realizable value computed on the weighted average cost method. All other inventories, representing parts and equipment are stated at the lower of cost or net realizable value using the FIFO method.

*Property and Equipment*

Property and equipment are stated at cost. Depreciation is computed over the estimated useful lives of the depreciable assets using the straight-line method over three to thirty years.

*Captive Insurance Collateral*

The captive insurance collateral is held by our captive insurance company in an irrevocable trust as collateral for certain workers' compensation and automobile liability claims incurred and expected to be incurred from fiscal 2004 to fiscal 2019. The collateral is required by a third party insurance carrier that insures per claim amounts

above a set deductible. Due to the expected timing of claim payments, the nature of the collateral agreement with the carrier, and our captive insurance company's source of other operating cash, the collateral is not expected to be used to pay obligations within the next twelve months.

At September 30, 2019, captive insurance collateral is comprised of $58.0 million of Level 1 debt securities measured at fair value and $0.5 million of mutual funds measured at net asset value. At September 30, 2018, the balance was comprised of $44.8 million of Level 1 debt securities measured at fair value and $0.6 million of mutual funds measured at net asset value. Unrealized gains and losses, net of related income taxes, are reported as accumulated other comprehensive income (loss), except for losses from impairments which are determined to be other-than-temporary. Realized gains and losses, and declines in value judged to be other-than-temporary on available-for-sale securities are included in the determination of net income and are included in Interest expense, net, at which time the average cost basis of these securities are adjusted to fair value.

*Goodwill and Intangible Assets*

Goodwill and intangible assets include goodwill, customer lists, trade names and covenants not to compete.

Goodwill is the excess of cost over the fair value of net assets in the acquisition of a company. In accordance with FASB ASC 350-10-05 Intangibles-Goodwill and Other, goodwill and intangible assets with indefinite useful lives are not amortized, but instead are annually tested for impairment. Also in accordance with this standard, intangible assets with finite useful lives are amortized over their respective estimated useful lives to their estimated residual values, and reviewed for impairment. The Company performs its annual impairment review during its fiscal fourth quarter or more frequently if events or circumstances indicate that the value of goodwill might be impaired.

Customer lists are the names and addresses of an acquired company's customers. Based on historical retention experience, these lists are amortized on a straight-line basis over seven to ten years.

Trade names are the names of acquired companies. Based on the economic benefit expected and historical retention experience of customers, trade names are amortized on a straight-line basis over three to twenty years.

*Business Combinations*

We use the acquisition method of accounting in accordance with FASB ASC 805 Business Combinations. The acquisition method of accounting requires us to use significant estimates and assumptions, including fair value estimates, as of the business combination date, and to refine those estimates as necessary during the measurement period (defined as the period, not to exceed one year, in which the amounts recognized for a business combination may be adjusted). Each acquired company's operating results are included in our consolidated financial statements starting on the date of acquisition. The purchase price is equivalent to the fair value of consideration transferred. Tangible and identifiable intangible assets acquired and liabilities assumed as of the date of acquisition are recorded at the acquisition date fair value. The separately identifiable intangible assets generally are comprised of customer lists, trade names and covenants not to compete. Goodwill is recognized for the excess of the purchase price over the net fair value of assets acquired and liabilities assumed.

Costs that are incurred to complete the business combination such as legal and other professional fees are not considered part of consideration transferred, and are charged to general and administrative expense as they are incurred. For any given acquisition, certain contingent consideration may be identified. Estimates of the fair value of liability or asset classified contingent consideration are included under the acquisition method as part of the assets acquired or liabilities assumed. At each reporting date, these estimates are remeasured to fair value, with changes recognized in earnings.

*Impairment of Long-lived Assets*

The Company reviews intangible assets and other long-lived assets in accordance with FASB ASC 360-10-05-4 Property Plant and Equipment, Impairment or Disposal of Long-Lived Assets subsection, for impairment whenever events or changes in circumstances indicate that the carrying amount of such assets may not be recoverable. The Company determines whether the carrying values of such assets are recoverable over their remaining estimated lives through undiscounted future cash flow analysis. If such a review should indicate that the carrying amount of the assets is not recoverable, the Company will reduce the carrying amount of such assets to fair value.

*Finance Charge Income*

Finance charge income represents late customer payment charges and financing income from extended payment plans associated with installations.

*Other Income, Net*

Other income, net represents the $7.0 million gain on the sale of the Company's security customer account base, which occurred in fiscal 2018. The gain is comprised of $6.8 million of cash proceeds and $0.4 million from the recognition of unamortized deferred service liabilities, partially offset by $0.2 million of other expenses.

*Deferred Charges*

Deferred charges represent the costs associated with the issuance of the term loan and revolving credit facility and are amortized over the life of the facility.

*Advertising*

Advertising costs are expensed as they are incurred. Advertising expenses were $14.3 million, $15.1 million, and $15.1 million, in 2019, 2018, and 2017, respectively and are recorded in delivery and branch expenses.

*Customer Credit Balances*

Customer credit balances represent payments received in advance from customers pursuant to a balanced payment plan (whereby customers pay on a fixed monthly basis) and the payments made have exceeded the charges for liquid product and other services.

*Environmental Costs*

Costs associated with managing hazardous substances and pollution are expensed on a current basis. Accruals are made for costs associated with the remediation of environmental pollution when it becomes probable that a liability has been incurred and the amount can be reasonably estimated. Liabilities are recorded in accrued expenses and other current liabilities.

*Insurance Reserves*

The Company uses a combination of insurance, self-insured retention and self-insurance for a number of risks, including workers' compensation, general liability, vehicle liability, medical liability and property. Reserves are established and periodically evaluated, based upon expectations as to what our ultimate liability may be for outstanding claims using developmental factors based upon historical claim experience, including frequency, severity, demographic factors and other actuarial assumptions, supplemented with support from qualified actuaries. Liabilities are recorded in accrued expenses and other current liabilities.

*Income Taxes*

At a special meeting held October 25, 2017, unitholders voted in favor of proposals to have the Company be treated as a corporation effective November 1, 2017, instead of a partnership, for federal income tax purposes (commonly referred to as a "check-the-box" election) along with amendments to our Partnership Agreement to effect such changes in income tax classification. For corporate subsidiaries of the Company, a consolidated Federal income tax return is filed.

The accompanying financial statements are reported on a fiscal year, however, the Company and its Corporate subsidiaries file Federal and State income tax returns on a calendar year.

As most of the Company's income is derived from its corporate subsidiaries, these financial statements reflect significant Federal and State income taxes. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amount of assets and liabilities and their respective tax bases and operating loss carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. A valuation allowance is recognized if, based on the weight of available evidence including historical tax losses, it is more likely than not that some or all of deferred tax assets will not be realized.

*Sales, Use and Value Added Taxes*

Taxes are assessed by various governmental authorities on many different types of transactions. Sales reported for product, installations and services exclude taxes.

*Derivatives and Hedging*

FASB ASC 815-10-05 Derivatives and Hedging, requires that derivative instruments be recorded at fair value and included in the consolidated balance sheet as assets or liabilities. The Company has elected not to designate its commodity derivative instruments as hedging instruments under this guidance, and the changes in fair value of the derivative instruments are recognized in our statement of operations. The Company has designated its interest rate swap agreements as hedging derivatives, and the changes in fair value are reported in accumulated other comprehensive income (loss).

*Weather Hedge Contract*

To partially mitigate the effect of weather on cash flows, the Company has used weather hedge contracts for a number of years. Weather hedge contracts are recorded in accordance with the intrinsic value method defined by the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") 815-45-15 Derivatives and Hedging, Weather Derivatives (EITF 99-2). The premium paid is included in the caption prepaid expenses and other current assets in the accompanying balance sheets and amortized over the life of the contract, with the intrinsic value method applied at each interim period.

As of September 30, 2019 the Company has weather hedge contracts for fiscal years 2020 and 2021. Under these contracts, we are entitled to receive a payment if the total number of degree days within the hedge period is less than the prior ten year average. The "Payment Thresholds," or strikes, are set at various levels. In addition, we will be obligated to make a payment capped at $5.0 million if degree days exceed the prior ten year average. The hedge period runs from November 1 through March 31, taken as a whole, for each respective fiscal year. For fiscal 2020 and 2021 the maximum that the Company can receive annually is $12.5 million and the maximum that the Company would be obligated to pay annually is $5.0 million. In fiscal years 2019 and 2018, the Company recorded a charge of $2.1 million and $1.9 million, respectively, under weather hedge contracts that increased delivery and branch expenses. The amounts were paid in April 2019 and 2018, respectively.

*Recently Adopted Accounting Pronouncements*

In May 2014, the FASB issued ASU No. 2014-09, Revenue from Contracts with Customers, which requires an entity to recognize the amount of revenue to which it expects to be entitled for the transfer of promised goods or services to customers. The FASB has also issued several updates to ASU No. 2014-09. The Company adopted ASU

No. 2014-09 effective October 1, 2018 by using the modified retrospective method and recognized the cumulative effect of initially applying ASU No. 2014-09 as an adjustment to the opening balance of Partners' Capital at October 1, 2018. The historical periods have not been adjusted and continue to be reported under ASC No. 605, Revenue Recognition. We have applied the guidance in ASU No. 2014-09 retrospectively to all contracts and have elected not to account for significant financing components if the period between revenue recognition and when the customer pays for product, service, or equipment installation will be one year or less. See further detail on the impact of the adoption on our consolidated balance sheet and statement of operations as of and for the twelve months ended September 30, 2019 at Note 3 – Revenue Recognition.

In August 2016, the FASB issued ASU No. 2016-15, Statement of Cash Flow (Topic 230): Classification of Certain Cash Receipts and Cash Payments. The update addresses the issues of debt prepayment or debt extinguishment costs, settlement of zero-coupon debt instruments or other debt instruments with coupon interest rates that are insignificant in relation to the effective interest rate of the borrowing, contingent consideration payments made after a business combination, proceeds from the settlement of insurance claims, proceeds from the settlement of corporate owned life insurance policies, distributions received from equity method investees, beneficial interests in securitization transactions, and separately identifiable cash flows and application of the predominance principle. The Company adopted ASU No. 2016-15 effective October 1, 2018. The adoption of ASU No. 2016-15 did not have an impact on the Company's consolidated financial statements and related disclosures.

In January 2017, the FASB issued ASU No. 2017-01, Business Combinations (Topic 805): Clarifying the Definition of a Business. The update clarifies the definition of a business with the objective of adding guidance to assist entities with evaluating whether transactions should be accounted for as acquisitions (or disposals) of assets or businesses. The Company adopted ASU No. 2017-01 effective October 1, 2018. The adoption of ASU No. 2017-01 did not have an impact on the Company's consolidated financial statements and related disclosures.

*Recently Issued Accounting Pronouncements*

In February 2016, the FASB issued ASU No. 2016-02, Leases. The update requires all leases with a term greater than twelve months to be recognized on the balance sheet by calculating the discounted present value of such leases and accounting for them through a right-of-use asset and an offsetting lease liability, and the disclosure of key information pertaining to leasing arrangements. This new guidance is effective for our annual reporting period beginning in the first quarter of fiscal 2020. The Company is continuing to evaluate the effect that ASU No. 2016-02 could have on its consolidated financial statements and related disclosures and plans to adopt using the modified retrospective transition approach for leases that exist in the period of adoption and recognize the cumulative effect of initially applying ASU No. 2016-02 as an adjustment to the opening balance of Partners' Capital at October 1, 2019. As of the date of adoption, the Company expects to elect the package of practical expedients that permit the Company to forego reassessing the Company's prior conclusions about (i) lease identification, (ii) lease classification, and (iii) initial direct costs. The Company also plans to elect a practical expedient to not separate non-lease components from the lease components. The new guidance will materially change how we account for operating leases for office space, trucks and other equipment. Upon adoption, we expect to recognize discounted right-of-use assets and lease liabilities between $100 million and $120 million. We do not expect a material adjustment to the opening balance of Partners' Capital at October 1, 2019. These assets and liabilities will be amortized as the respective leases amortize.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments – Credit Losses. The update broadens the information that an entity should consider in developing expected credit loss estimates, eliminates the probable initial recognition threshold, and allows for the immediate recognition of the full amount of expected credit losses. This new guidance is effective for our annual reporting period beginning in the first quarter of fiscal 2021, with early adoption permitted in the first quarter of fiscal 2020. The Company is evaluating the effect that ASU No. 2016-13 will have on its consolidated financial statements and related disclosures, but has not yet determined the timing of adoption.

In January 2017, the FASB issued ASU No. 2017-04, Intangibles – Goodwill and Other (Topic 230): Simplifying the Test for Goodwill Impairment. The update simplifies how an entity is required to test goodwill for impairment. An entity should recognize an impairment charge for the amount by which the carrying amount exceeds

the reporting unit's fair value, but not exceed the total amount of goodwill allocated to the reporting unit. This new guidance is effective for our annual reporting period beginning in the first quarter of fiscal 2021, with early adoption permitted. The Company has not determined the timing of adoption, but does not expect ASU 2017-04 to have a material impact on its consolidated financial statements and related disclosures.

In August 2018, the FASB issued ASU No. 2018-14, Compensation - Retirement Benefits - Defined Benefit Plans - General: Changes to the Disclosure Requirements for Defined Benefit Plans, which modifies the disclosure requirements for employers that sponsor defined benefit pension or other postretirement plans by removing and adding certain disclosures for these plans. The new guidance is effective for our annual reporting period beginning in the first quarter of fiscal 2021, with early adoption permitted. The Company is evaluating the effect that ASU No. 2018-14 will have on its consolidated financial statements and related disclosures, but has not determined the timing of adoption.

In August 2018, the FASB issued ASU No. 2018-15, Intangibles—Goodwill and Other—Internal-Use Software: Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement that is a Service Contract, which will align the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. The new guidance is effective for our annual reporting period beginning in the first quarter of fiscal 2022, with early adoption permitted. The Company is evaluating the effect that ASU No. 2018-15 will have on its consolidated financial statements and related disclosures, but has not determined the timing of adoption.

**3) Revenue Recognition**

Effective October 1, 2018 we adopted the requirements of ASU No. 2014-09, Revenue from Contracts with Customers (Topic 606). The adoption was not material to the financial statements presented. In accordance with the new revenue standard requirements, our Consolidated Statement of Operations and the Consolidated Balance Sheet were impacted due to: i) the deferment of commissions provided to Company employees that were previously expensed as incurred, ii) the deferment of certain upfront credits provided to customers upon entering into a new annual product or service contract as contra-revenue that were previously expensed as incurred and recorded as delivery and branch expense, and iii) the allocation of transaction price of the combination of certain contracts that were previously accounted for as separate contracts that impacts the classification of revenue and timing of revenue recognition. The impact of adoption on our Consolidated Balance Sheet and Consolidated Statement of Operations, as of and for the year ended September 30, 2019 was as follows (in thousands):

| | For the Year Ended September 30, 2019 | | |
|---|---|---|---|
| **Statement of Operations** | **As Reported** | **Balances without Adoption of ASC 606** | **Effect of Change Higher/(Lower)** |
| Sales: | | | |
| Product | $ 1,466,045 | $ 1,477,488 | $ (11,443) |
| Installations and services | 287,827 | 281,249 | 6,578 |
| Total Sales | 1,753,872 | 1,758,737 | (4,865) |
| Cost and Expenses: | | | |
| Delivery and branch expenses | 369,033 | 372,290 | (3,257) |
| Operating income (loss) | 37,350 | 38,958 | (1,608) |
| Income (loss) before income taxes | 25,154 | 26,762 | (1,608) |
| Income tax expense (benefit) | 7,517 | 7,998 | (481) |
| Net income (loss) | $ 17,637 | $ 18,764 | $ (1,127) |
| General Partner's interest in net income (loss) | 95 | 101 | (6) |
| Limited Partner's interest in net income (loss) | $ 17,542 | $ 18,663 | $ (1,121) |
| | | | |
| Basic and diluted income (loss) per Limited Partner Unit | $ 0.35 | $ 0.37 | $ (0.02) |

| Balance Sheet | September 30, 2019 | | |
|---|---|---|---|
| | As Reported | Balances without Adoption of ASC 606 | Effect of Change Higher/(Lower) |
| **Assets** | | | |
| Prepaid expenses and other current assets | $ 36,898 | $ 31,442 | $ 5,456 |
| Deferred charges and other assets, net | $ 16,635 | $ 10,707 | $ 5,928 |
| **Liabilities** | | | |
| Accrued expenses and other current liabilities | $ 120,839 | $ 120,818 | $ 21 |
| Deferred tax liabilities, net | $ 20,116 | $ 16,850 | $ 3,266 |
| **Partners' capital** | | | |
| Common unitholders | $ 279,709 | $ 271,666 | $ 8,043 |
| General partner | $ (1,968) | $ (2,022) | $ 54 |

The following disaggregates our revenue by major sources for the year ended September 30, 2019 and September 30, 2018:

| (in thousands) | Years Ended September 30, 2019 | 2018 | 2017 |
|---|---|---|---|
| **Petroleum Products:** | | | |
| Home heating oil and propane | $ 1,099,874 | $ 1,084,827 | $ 854,067 |
| Motor fuel and other petroleum products | 366,172 | 319,543 | 211,009 |
| Total petroleum products | 1,466,045 | 1,404,370 | 1,065,076 |
| **Installations and Services:** | | | |
| Equipment installations | 101,709 | 98,064 | 94,961 |
| Equipment maintenance service contracts | 120,138 | 111,361 | 105,565 |
| Billable call services | 65,980 | 64,042 | 57,953 |
| Total installations and services | 287,827 | 273,467 | 258,479 |
| Total Sales | $ 1,753,872 | $ 1,677,837 | $ 1,323,555 |

*Performance Obligations*

Petroleum product revenues consist of home heating oil and propane as well as diesel fuel and gasoline. Revenues from petroleum products are recognized at the time of delivery to the customer when control is passed from the Company to the customer. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring control of the petroleum products. Approximately 95% of our full service residential and commercial home heating oil customers automatically receive deliveries based on prevailing weather conditions. We offer several pricing alternatives to our residential home heating oil customers, including a variable price (market based) option and a price-protected option, the latter of which either sets the maximum price or a fixed price that a customer will pay.

Equipment maintenance service contracts primarily cover heating, air conditioning, and natural gas equipment. We generally do not sell equipment maintenance service contracts to heating oil customers that do not take delivery of product from us. The service contract period of our equipment maintenance service contracts is generally one year or less. Revenues from equipment maintenance service contracts are recognized into income over the terms of the respective service contracts, on a straight-line basis. Our obligation to perform service is consistent through the duration of the contracts, and the straight-line basis of recognition is a faithful depiction of the transfer of our services. To the extent that the Company anticipates that future costs for fulfilling its contractual obligations under its equipment service contracts will exceed the amount of deferred revenue currently attributable

to these contracts, the Company recognizes a loss in current period earnings equal to the amount that anticipated future costs exceed related deferred revenues.

Revenue from billable call services (repairs, maintenance and other services including plumbing) and equipment installations (heating, air conditioning, and natural gas equipment) are recognized at the time that the work is performed.

Our standard payment terms are generally 30 days. Sales reported for product, installations and services exclude taxes assessed by various governmental authorities.

*Contract Costs*

We have elected to recognize incremental costs of obtaining a contract, other than new residential product and equipment maintenance service contracts, as an expense when incurred when the amortization period of the asset that we otherwise would have recognized is one year or less. We recognize an asset for incremental commission expenses paid to sales personnel in conjunction with obtaining new residential customer product and equipment maintenance service contracts. We defer these costs only when we have determined the commissions are, in fact, incremental and would not have been incurred absent the customer contract. Costs to obtain a contract are amortized and recorded ratably as delivery and branch expenses over the period representing the transfer of goods or services to which the assets relate. Costs to obtain new residential product and equipment maintenance service contracts are amortized as expense over the estimated customer relationship period of approximately five years. Deferred contract costs are classified as current or non-current within "Prepaid expenses and other current assets" and "Deferred charges and other assets, net," respectively. At September 30, 2019 the amount of deferred contract costs included in "Prepaid expenses and other current assets" and "Deferred charges and other assets, net" was $3.4 million and $5.9 million, respectively. For the year ended September 30, 2019 we recognized expense of $4.0 million associated with the amortization of deferred contract costs within delivery and branch expense in the Consolidated Statement of Operations. We recognize an impairment charge to the extent the carrying amount of a deferred cost exceeds the remaining amount of consideration we expect to receive in exchange for the petroleum products and services related to the cost, less the expected costs related directly to providing those petroleum products and services that have not yet been recognized as expenses. There have been no impairment charges recognized for the twelve months ended September 30, 2019.

*Significant Judgments – Allocation of Transaction Price to Separate Performance Obligations*

Our contracts with customers often include distinct performance obligations to transfer products and perform equipment maintenance services to a customer that are accounted for separately. Judgment is required to determine the stand-alone selling price for each distinct performance obligation for the purpose of allocating the transaction price to separate performance obligations. We determine the stand-alone selling price using information that may include market conditions and other observable inputs and typically have more than one stand-alone selling price for petroleum products and equipment maintenance services due to the stratification of those products and services by geography and customer characteristics.

*Contract Liability Balances*

The Company has contract liabilities for advanced payments received from customers for future oil deliveries (primarily amounts received from customers on "smart pay" budget payment plans in advance of oil deliveries) and obligations to service customers with equipment maintenance service contracts. Approximately 34% of our residential customers take advantage of our "smart pay" budget payment plan under which their estimated annual oil and propane deliveries and service contract billings are paid for in a series of equal monthly installments. Our "smart pay" budget payment plans are annual and generally begin outside of the heating season. We generally have received advanced amounts from customers on "smart pay" budget payment plans prior to the heating season, which are reduced as oil deliveries are made. For customers that are not on "smart pay" budget payment plans, we generally receive the full contract amount for equipment service contracts with customers at the outset of the contracts. Contract liabilities are recognized straight-line over the service contract period, generally one-year or less. As of September 30, 2019 and September 30, 2018 the Company had contract liabilities of $127.0 million and

$118.6 million, respectively. During the year ended September 30, 2019 the Company recognized $111.0 million of revenue that was included in the September 30, 2018 contract liability balance.

**4) Quarterly Distribution of Available Cash**

The Company agreement provides that beginning October 1, 2008, the minimum quarterly distributions on the common units will start accruing at the rate of $0.0675 per quarter ($0.27 on an annual basis) in accordance with the Partnership Agreement. In general, the Company intends to distribute to its partners on a quarterly basis, all of its available cash, if any, in the manner described below. "Available cash" generally means, for any of its fiscal quarters, all cash on hand at the end of that quarter, less the amount of cash reserves that are necessary or appropriate in the reasonable discretion of the general partners to:

- provide for the proper conduct of the Company's business including acquisitions and debt payments;
- comply with applicable law, any of its debt instruments or other agreements; or
- provide funds for distributions to the common unitholders during the next four quarters, in some circumstances.

Available cash will generally be distributed as follows:

- first, 100% to the common units, pro rata, until the Company distributes to each common unit the minimum quarterly distribution of $0.0675;
- second, 100% to the common units, pro rata, until the Company distributes to each common unit any arrearages in payment of the minimum quarterly distribution on the common units for prior quarters;
- third, 100% to the general partner units, pro rata, until the Company distributes to each general partner unit the minimum quarterly distribution of $0.0675;
- fourth, 90% to the common units, pro rata, and 10% to the general partner units, pro rata (subject to the Management Incentive Plan), until the Company distributes to each common unit the first target distribution of $0.1125; and
- thereafter, 80% to the common units, pro rata, and 20% to the general partner units, pro rata.

The Company is obligated to meet certain financial covenants under the fourth amended and restated credit agreement. The Company must maintain excess availability of at least 15.0% of the revolving commitment then in effect and a fixed charge coverage ratio of 1.15 in order to make any distributions to unitholders. The obligation is unchanged under the fifth amended and restated credit agreement. (See Note 13—Long-Term Debt and Bank Facility Borrowings and Note 21—Subsequent Events)

For fiscal 2019, 2018, and 2017, cash distributions declared per common unit were $0.485, $0.455, and $0.425, respectively.

For fiscal 2019, 2018, and 2017, $0.7 million, $0.6 million, and $0.5 million, respectively, of incentive distributions were paid to the general partner, exclusive of amounts paid subject to the Management Incentive Plan.

**5) Common Unit Repurchase Plans and Retirement**

In July 2012, the Board adopted a plan to repurchase certain of the Company's Common Units (the "Repurchase Plan"). Through August 2019, the Company had repurchased approximately 9.5 million Common Units under the Repurchase Plan. In August 2019, the Board authorized an increase of the number of Common Units that remained available for the Company to repurchase from 1.3 million to a total of 2.3 million, of which, 1.0 million were available for repurchase in open market transactions and 1.3 million were available for repurchase in privately-negotiated transactions. The Company repurchased approximately 5.4 million Common Units in fiscal year 2019, and 1.0 million total Common Units remain available for repurchase at the end of the fiscal year 2019. There is no guarantee of the exact number of units that will be purchased under the program and the Company may discontinue purchases at any time. The program does not have a time limit. The Board may also

approve additional purchases of units from time to time in private transactions. The Company's repurchase activities take into account SEC safe harbor rules and guidance for issuer repurchases. All of the Common Units purchased in the repurchase program will be retired.

Under the Credit Agreement dated July 2, 2018, in order to repurchase Common Units we must maintain Availability (as defined in the amended and restated credit agreement) of $45 million, 15.0% of the facility size of $300 million (assuming the non-seasonal aggregate commitment is outstanding) on a historical pro forma and forward-looking basis, and a fixed charge coverage ratio of not less than 1.15 measured as of the date of repurchase. This restriction is unchanged in the fifth amended and restated credit agreement effective December 4, 2019. (See Note 13—Long-Term Debt and Bank Facility Borrowings and Note 21—Subsequent Events). The following table shows repurchases under the Repurchase Plan.

(in thousands, except per unit amounts)

| Period | Total Number of Units Purchased | Average Price Paid per Unit (a) | Total Number of Units Purchased as Part of Publicly Announced Plans or Programs | Maximum Number of Units that May Yet Be Purchased | |
|---|---|---|---|---|---|
| Fiscal year 2012 to 2018 total | 7,937 | $ 7.11 | 5,493 | 5,359 | |
| First quarter fiscal year 2019 total | 599 | $ 9.57 | 599 | 4,760 | |
| Second quarter fiscal year 2019 total | 2,187 | $ 9.44 | 2,187 | 2,573 | (b) |
| Third quarter fiscal year 2019 total | 885 | $ 9.68 | 885 | 1,688 | |
| July 2019 | 147 | $ 9.76 | 147 | 1,541 | |
| August 2019 | 223 | $ 9.67 | 223 | 2,318 | (c) |
| September 2019 | 1,362 | $ 9.41 | 1,362 | 956 | (d) |
| Fourth quarter fiscal year 2019 total | 1,732 | $ 9.47 | 1,732 | 956 | |
| Fiscal year 2019 total | 5,403 | $ 9.50 | 5,403 | 956 | |
| October 2019 | 223 | $ 9.44 | 223 | 733 | |
| November 2019 | 261 | $ 9.39 | 261 | 472 | (e) |

(a) Amounts include repurchase costs.
(b) Second quarter of fiscal year 2019 common units repurchased include 1.2 million common units acquired in a private transaction.
(c) In August 2019, the Board authorized an increase in the number of Common Units available for repurchase from 1.3 million to 2.3 million.
(d) September 2019 common units repurchased include 1.2 million common units acquired in a private transaction.
(e) Of the total available for repurchase, approximately 0.4 million are available for repurchase in open market transactions and 0.1 million are available for repurchase in privately-negotiated transactions.

**6) Captive Insurance Collateral**

The Company considers all of its captive insurance collateral to be available-for-sale investments. Investments at September 30, 2019 consist of the following (in thousands):

| | Amortized Cost | Gross Unrealized Gain | Gross Unrealized (Loss) | Fair Value |
|---|---|---|---|---|
| Cash and Receivables | $ 509 | $ — | $ — | $ 509 |
| U.S. Government Sponsored Agencies | 29,055 | 198 | (3) | 29,250 |
| Corporate Debt Securities | 23,831 | 773 | — | 24,604 |
| Foreign Bonds and Notes | 4,066 | 61 | — | 4,127 |
| Total | $ 57,461 | $ 1,032 | $ (3) | $ 58,490 |

Investments at September 30, 2018 consist of the following (in thousands):

| | Amortized Cost | Gross Unrealized Gain | Gross Unrealized (Loss) | Fair Value |
|---|---|---|---|---|
| Cash and Receivables | $ 350 | $ — | $ — | $ 350 |
| U.S. Government Sponsored Agencies | 10,735 | — | (192) | 10,543 |
| Corporate Debt Securities | 30,427 | — | (928) | 29,499 |
| Foreign Bonds and Notes | 5,111 | — | (84) | 5,027 |
| Total | $ 46,623 | $ — | $ (1,204) | $ 45,419 |

Maturities of investments were as follows at September 30, 2019 (in thousands):

| | Net Carrying Amount |
|---|---|
| Due within one year | $ 9,958 |
| Due after one year through five years | 35,114 |
| Due after five years through ten years | 13,418 |
| Total | $ 58,490 |

**7) Derivatives and Hedging—Disclosures and Fair Value Measurements**

The Company uses derivative instruments such as futures, options and swap agreements in order to mitigate exposure to market risk associated with the purchase of home heating oil for price-protected customers, physical inventory on hand, inventory in transit, priced purchase commitments and internal fuel usage. FASB ASC 815-10-05 Derivatives and Hedging, established accounting and reporting standards requiring that derivative instruments be recorded at fair value and included in the consolidated balance sheet as assets or liabilities, along with qualitative disclosures regarding the derivative activity. The Company has elected not to designate its commodity derivative instruments as hedging derivatives, but rather as economic hedges whose change in fair value is recognized in its statement of operations in the line item (Increase) decrease in the fair value of derivative instruments. Depending on the risk being economically hedged, realized gains and losses are recorded in cost of product, cost of installations and services, or delivery and branch expenses.

As of September 30, 2019, to hedge a substantial majority of the purchase price associated with heating oil gallons anticipated to be sold to its price-protected customers, the Company held the following derivative instruments that settle in future months to match anticipated sales: 15.5 million gallons of swap contracts with a notional value of $29.7 million and a fair value of $(1.0) million, 6.1 million gallons of call options with a notional value of $15.6 million and a fair value of $0.1 million, 5.9 million gallons of put options with a notional value of $7.7 million and a fair value of $28 thousand, and 81.0 million net gallons of synthetic call options with an average notional value of $165.4 million and a fair value of $(7.2) million. To hedge the inter-month differentials for its price-protected customers, its physical inventory on hand and inventory in transit, the Company, as of September 30, 2019, had 1.3 million gallons of purchased swap contracts with a notional value of $2.4 million and a fair value of $(0.1) million, 45.2 million gallons of purchased future contracts that settle daily with a notional value of $83.2 million and a fair value of $(0.9) million, and 67.5 million gallons of sold future contracts that settle daily with a notional value of $124.9 million and a fair value of $0.2 million. To hedge its internal fuel usage and other related activities for fiscal 2020, the Company, as of September 30, 2019, had 4.2 million gallons of swap contracts with a notional value of $7.4 million and a fair value of $(0.3) million that settle in future months.

As of September 30, 2018, to hedge a substantial majority of the purchase price associated with heating oil gallons anticipated to be sold to its price-protected customers, the Company held the following derivative instruments that settle in future months to match anticipated sales: 11.7 million gallons of swap contracts with a notional value of $24.6 million and a fair value of $2.9 million, 3.2 million gallons of call options with a notional value of $8.2 million and a fair value of $0.2 million, 5.6 million gallons of put options with a notional value of $8.5 million and a fair value of $2 thousand, and 85.4 million net gallons of synthetic call options with an average notional value of $182.9 million and a fair value of $14.0 million. To hedge the inter-month differentials for its price-protected customers, its physical inventory on hand and inventory in transit, the Company, as of September 30, 2018, had 1.2 million gallons of purchased swap contracts with a notional value of $2.6 million and a fair value of $0.2 million, 53.1 million gallons of purchased future contracts that settle daily with a notional value $114.3 million and a fair value of $9.7 million and 68.9 million gallons of sold future contracts that settle daily with a notional value of $148.8 million and a fair value of $(12.6) million. To hedge its internal fuel usage and other related activities for fiscal 2019, the Company, as of September 30, 2018, had 6.5 million gallons of swap contracts with a notional value of $13.7 million and a fair value of $1.0 million that settle in future months and 0.5 million net gallons of synthetic call options with a notional value of $1.0 million and a fair value of $0.1 million.

In August 2018, the Company entered into interest rate swap agreements in order to mitigate exposure to market risk associated with variable rate interest on the $50.0 million, or 50%, of our long term debt. The Company has designated its interest rate swap agreements as cash flow hedging derivatives. To the extent these derivative instruments are effective and the standard's documentation requirements have been met, changes in fair value are recognized in other comprehensive income until the underlying hedged item is recognized in earnings. As of September 30, 2019, the notional value of the swap contracts was $42.5 million and the fair value of the swap contracts was $(2.0) million. As of September 30, 2018, the fair value of the swap contracts was $39 thousand. We utilized Level 2 inputs in the fair value hierarchy of valuation techniques to determine the fair value of the swap contracts.

The Company's derivative instruments are with the following counterparties: Bank of America, N.A., Bank of Montreal, Cargill, Inc., Citibank, N.A., JPMorgan Chase Bank, N.A., Key Bank, N.A., Regions Financial Corporation, Toronto-Dominion Bank and Wells Fargo Bank, N.A. The Company assesses counterparty credit risk and considers it to be low. We maintain master netting arrangements that allow for the non-conditional offsetting of amounts receivable and payable with counterparties to help manage our risks and record derivative positions on a net basis. The Company generally does not receive cash collateral from its counterparties and does not restrict the use of cash collateral it maintains at counterparties. At September 30, 2019, the aggregate cash posted as collateral in the normal course of business at counterparties was $3.5 million. Positions with counterparties who are also parties to our credit agreement are collateralized under that facility. As of September 30, 2019, $7.7 million hedge positions and payable amounts were secured under the credit facility.

FASB ASC 820-10 Fair Value Measurements and Disclosures, established a three-tier fair value hierarchy, which classified the inputs used in measuring fair value. These tiers include: Level 1, defined as observable inputs such as quoted prices for identical instruments in active markets; Level 2, defined as inputs other than quoted prices in active markets that are either directly or indirectly observable; and Level 3, defined as unobservable inputs in which little or no market data exists, therefore requiring an entity to develop its own assumptions. The Company's Level 1 derivative assets and liabilities represent the fair value of commodity contracts used in its hedging activities that are identical and traded in active markets. The Company's Level 2 derivative assets and liabilities represent the fair value of commodity and interest rate contracts used in its hedging activities that are valued using either directly or indirectly observable inputs, whose nature, risk and class are similar. No significant transfers of assets or liabilities have been made into and out of the Level 1 or Level 2 tiers. All derivative instruments were non-trading positions and were either a Level 1 or Level 2 instrument. The Company had no Level 3 derivative instruments. The fair market value of our Level 1 and Level 2 derivative assets and liabilities are calculated by our counter-parties and are independently validated by the Company. The Company's calculations are, for Level 1 derivative assets and liabilities, based on the published New York Mercantile Exchange ("NYMEX") market prices for the commodity contracts open at the end of the period. For Level 2 derivative assets and liabilities the calculations performed by the Company are based on a combination of the NYMEX published market prices and other inputs, including such factors as present value, volatility and duration.

The Company had no assets or liabilities that are measured at fair value on a nonrecurring basis subsequent to their initial recognition. The Company's financial assets and liabilities measured at fair value on a recurring basis are listed on the following table.

| (In thousands) | | | Fair Value Measurements at Reporting Date Using: | |
|---|---|---|---|---|
| **Derivatives Not Designated as Hedging Instruments Under FASB ASC 815-10** | **Balance Sheet Location** | **Total** | **Quoted Prices in Active Markets for Identical Assets Level 1** | **Significant Other Observable Inputs Level 2** |
| | **Asset Derivatives at September 30, 2019** | | | |
| Commodity contracts | Fair liability value of derivative instruments | $ 13,824 | $ — | $ 13,824 |
| Commodity contracts | Long-term derivative assets included in the deferred charges and other assets, net balance | 1,466 | — | 1,466 |
| **Commodity contract assets at September 30, 2019** | | **$ 15,290** | **$ —** | **$ 15,290** |
| | **Liability Derivatives at September 30, 2019** | | | |
| Commodity contracts | Fair liability value of derivative instruments | $ (22,086) | $ — | $ (22,086) |
| Commodity contracts | Cash collateral | — | — | — |
| Commodity contracts | Long-term derivative liabilities included in the deferred charges and other assets, net balance and other long term liabilities, net | (1,719) | — | (1,719) |
| **Commodity contract liabilities at September 30, 2019** | | **$ (23,805)** | **$ —** | **$ (23,805)** |
| | **Asset Derivatives at September 30, 2018** | | | |
| Commodity contracts | Fair asset value of derivative instruments | $ 17,710 | $ — | $ 17,710 |
| Commodity contracts | Long-term derivative assets included in the deferred charges and other assets, net balance | 906 | — | 906 |
| **Commodity contract assets at September 30, 2018** | | **$ 18,616** | **$ —** | **$ 18,616** |
| | **Liability Derivatives at September 30, 2018** | | | |
| Commodity contracts | Fair liability and fair asset value of derivative instruments | $ — | $ — | $ — |
| Commodity contracts | Cash collateral | — | — | — |
| Commodity contracts | Long-term derivative liabilities included in the deferred charges and other assets, net balance | (103) | — | (103) |
| **Commodity contract liabilities at September 30, 2018** | | **$ (103)** | **$ —** | **$ (103)** |

The Company's derivative assets (liabilities) offset by counterparty and subject to an enforceable master netting arrangement are listed on the following table.

(In thousands)

| Offsetting of Financial Assets (Liabilities) and Derivative Assets (Liabilities) | Gross Assets Recognized | Gross Liabilities Offset in the Statement of Financial Position | Net Assets (Liabilities) Presented in the Statement of Financial Position | Gross Amounts Not Offset in the Statement of Financial Position | | |
|---|---|---|---|---|---|---|
| | | | | Financial Instruments | Cash Collateral Received | Net Amount |
| Fair asset value of derivative instruments | $ — | $ — | $ — | $ — | $ — | $ — |
| Long-term derivative assets included in other long-term assets, net | 16 | (16) | — | — | — | — |
| Fair liability value of derivative instruments | 13,824 | (22,086) | (8,262) | — | — | (8,262) |
| Long-term derivative liabilities included in other long-term liabilities, net | 1,450 | (1,703) | (253) | — | — | (253) |
| Total at September 30, 2019 | $ 15,290 | $ (23,805) | $ (8,515) | $ — | $ — | $ (8,515) |
| Fair asset value of derivative instruments | $ 17,710 | $ - | $ 17,710 | $ — | $ — | $ 17,710 |
| Long-term derivative assets included in other long-term assets, net | 906 | (103) | 803 | — | — | 803 |
| Fair liability value of derivative instruments | — | — | — | — | — | — |
| Long-term derivative liabilities included in other long-term liabilities, net | — | — | — | — | — | — |
| Total at September 30, 2018 | $ 18,616 | $ (103) | $ 18,513 | $ — | $ — | $ 18,513 |

(In thousands)

| Derivatives Not Designated as Hedging Instruments Under FASB ASC 815-10 | Location of (Gain) or Loss Recognized in Income on Derivative | The Effect of Derivative Instruments on the Statement of Operations Amount of (Gain) or Loss Recognized Years Ended September 30, | | |
|---|---|---|---|---|
| | | 2019 | 2018 | 2017 |
| Commodity contracts | Cost of product (a) | $ 9,266 | $ 10,379 | $ 6,386 |
| Commodity contracts | Cost of installations and service (a) | $ 836 | $ (726) | $ (526) |
| Commodity contracts | Delivery and branch expenses (a) | $ 596 | $ (1,403) | $ (422) |
| Commodity contracts | (Increase) / decrease in the fair value of derivative instruments (b) | $ 25,113 | $ (11,408) | $ (2,193) |

(a) Represents realized closed positions and includes the cost of options as they expire.
(b) Represents the change in value of unrealized open positions and expired options.

**8) Inventories**

The Company's product inventories are stated at the lower of cost and net realizable value computed on the weighted average cost method. All other inventories, representing parts and equipment are stated at the lower of cost and net realizable value using the FIFO method. The components of inventory were as follows (in thousands):

| | September 30, | |
|---|---|---|
| | 2019 | 2018 |
| Product | $ 43,536 | $ 34,618 |
| Parts and equipment | 21,252 | 21,759 |
| Total inventory | $ 64,788 | $ 56,377 |

Product inventories were comprised of 22.8 million gallons and 16.3 million gallons on September 30, 2019 and September 30, 2018, respectively. The Company has market price based product supply contracts for approximately 271.6 million gallons of home heating oil and propane, and 44.4 million gallons of diesel and gasoline, which it expects to fully utilize to meet its requirements over the next twelve months.

No single supplier provided more than 10% of our product supply during fiscal 2019 and 2018.

**9) Property and Equipment**

The components of property and equipment were as follows (in thousands):

| | September 30, | |
|---|---|---|
| | 2019 | 2018 |
| Land and land improvements | $ 20,872 | $ 19,230 |
| Buildings and leasehold improvements | 37,443 | 34,557 |
| Fleet and other equipment | 73,440 | 66,734 |
| Tanks and equipment | 50,353 | 45,860 |
| Furniture, fixtures and office equipment | 48,582 | 44,200 |
| Total | 230,690 | 210,581 |
| Less accumulated depreciation and amortization | 132,451 | 122,963 |
| Property and equipment, net | $ 98,239 | $ 87,618 |

Depreciation and amortization expense was $13.5 million, $12.0 million, and $11.1 million, for the fiscal years ended September 30, 2019, 2018 and 2017 respectively.

**10) Business Combinations**

During fiscal 2019, the Company acquired one of its subcontractors, a liquid product dealer and the assets of a propane dealer for an aggregate purchase price of approximately $60.9 million. As of September 30, 2019 the intangibles and goodwill have been provisionally determined. The Company will record any material adjustments to the initial estimates based on new information obtained that would have existed as of the date of the acquisition. Any adjustment that arises from information obtained that did not exist as of the date of the acquisition will be recorded in the period the adjustment arises. The following table summarizes the preliminary fair values and purchase price allocations in aggregate of the assets acquired and liabilities assumed related to the fiscal 2019 acquisitions as of the respective acquisition dates.

| (in thousands) | As of Acquisition Date |
|---|---|
| Receivables | $ 6,887 |
| Inventories | 2,105 |
| Prepaid expenses and other current assets | 89 |
| Property and equipment, net | 13,676 |
| Intangibles | 28,599 |
| Accrued expenses and other current liabilities | (366) |
| Unearned service contract revenue | (2,800) |
| Customer credit balances | (3,399) |
| Other long-term liabilities | (25) |
| Total net identifiable assets acquired | $ 44,766 |
| | |
| Total consideration | $ 60,904 |
| Less: Total net identifiable assets acquired | 44,766 |
| Goodwill | $ 16,138 |

The total acquisition expenses of $1.2 million related to these acquisitions are included in the Consolidated Statement of Operations under “General and administrative expenses” for the twelve months ended September 30, 2019. The goodwill was primarily attributable to increased synergies that were expected to be achieved from the integration of the acquired businesses into our operations. All of the $16.1 million of goodwill relating to the acquisitions is expected to be deductible for income tax purposes.

The acquired companies’ operating results are included in the Company’s consolidated financial statements starting on the respective acquisition dates. Customer lists, other intangibles and trade names are amortized on a straight-line basis over ten to twenty years.

Included in our Consolidated Statement of Operations from the respective acquisition dates through September 30, 2019, are sales and net loss before income taxes of $25.2 million and $1.7 million, respectively.

The following table provides unaudited pro forma results of operations as if the fiscal 2019 acquisitions had occurred on October 1, 2017, the beginning of fiscal year 2018. The unaudited pro forma results were prepared using current and prior year financial information, reflecting certain adjustments related to the acquisition, such as the elimination of directly attributable acquisition expenses and changes to depreciation and amortization expenses. These pro forma adjustments do not include any potential synergies related to combining the businesses. Accordingly, such pro forma operating results were prepared for comparative purposes only and do not purport to be indicative of what would have occurred had the acquisitions been made as of October 1, 2017 or of results that may occur in the future.

| | For the Twelve Months Ended September 30, | |
|---|---|---|
| (in thousands) | 2019 | 2018 |
| Total sales | $ 1,821,522 | $ 1,765,165 |
| Net income | $ 22,486 | $ 57,112 |

During fiscal 2018, the Company acquired five heating oil dealers and one motor fuel dealer for an aggregate purchase price of approximately $25.2 million; $23.7 million in cash and $1.5 million of deferred liabilities. The gross purchase price was allocated $15.3 million to intangible assets, $7.5 million to fixed assets and $2.4 million to working capital. The acquired companies’ operating results are included in the Company’s consolidated financial statements starting on their respective acquisition date, and are not material to the Company’s financial condition, results of operations, or cash flows.

During fiscal 2017, the Company acquired four heating oil dealers, two propane dealers and a plumbing service provider for an aggregate purchase price of approximately $44.8 million; $43.3 million in cash and $1.5 million of deferred liabilities (including $0.6 million of contingent consideration). The gross purchase price was allocated $37.5 million to intangible assets, $10.2 million to fixed assets and reduced by $2.9 million in working capital credits. The acquired companies’ operating results are included in the Company’s consolidated financial statements starting on their respective acquisition date, and are not material to the Company’s financial condition, results of operations, or cash flows.

**11) Goodwill and Other Intangible Assets**

*Goodwill*

The Company performs a qualitative, and when necessary quantitative, impairment test on its goodwill annually on August 31st. This qualitative assessment includes reviewing factors such as macroeconomic conditions, industry and market considerations, cost factors, overall financial performance and other relevant entity-specific events. Under FASB ASC 350-10-05 Intangibles-Goodwill and Other, goodwill impairment if any, needs to be determined if the net book value of a reporting unit exceeds its estimated fair value. If goodwill of a reporting unit is determined to be impaired, the amount of impairment is measured based on the excess of the net book value of the goodwill over the implied fair value of the goodwill.

The Company performed its annual goodwill impairment valuation in each of the periods ending August 31, 2019, 2018, and 2017, and it was determined based on each year's analysis that there was no goodwill impairment.

A summary of changes in the Company's goodwill during the fiscal years ended September 30, 2019 and 2018 are as follows (in thousands):

| | |
|---|---|
| Balance as of September 30, 2017 | $ 225,915 |
| Fiscal year 2018 business combinations | 2,521 |
| Balance as of September 30, 2018 | 228,436 |
| Fiscal year 2019 business combinations | 16,138 |
| Balance as of September 30, 2019 | $ 244,574 |

*Intangibles, net*

Intangible assets subject to amortization consist of the following (in thousands):

| | September 30, | | | | | |
|---|---|---|---|---|---|---|
| | 2019 | | | 2018 | | |
| | Gross Carrying Amount | Accum. Amortization | Net | Gross Carrying Amount | Accum. Amortization | Net |
| Customer lists | $ 382,373 | $ 297,221 | $ 85,152 | $ 358,776 | $ 279,990 | $ 78,786 |
| Trade names and other intangibles | 37,739 | 15,203 | 22,536 | 32,739 | 13,081 | 19,658 |
| Total | $ 420,112 | $ 312,424 | $ 107,688 | $ 391,515 | $ 293,071 | $ 98,444 |

Amortization expense for intangible assets was $19.4 million, $19.6 million, and $16.7 million, for the fiscal years ended September 30, 2019, 2018, and 2017, respectively. Total estimated annual amortization expense related to intangible assets subject to amortization, for the year ended September 30, 2020 and the four succeeding fiscal years ended September 30, is as follows (in thousands):

| | Amount |
|---|---|
| 2020 | $ 19,451 |
| 2021 | $ 16,944 |
| 2022 | $ 14,885 |
| 2023 | $ 13,272 |
| 2024 | $ 10,919 |

**12) Accrued Expenses and Other Current Liabilities**

The components of accrued expenses and other current liabilities were as follows (in thousands):

| | September 30, | |
|---|---|---|
| | 2019 | 2018 |
| Accrued wages and benefits | $ 26,747 | $ 25,712 |
| Accrued insurance | 81,443 | 77,890 |
| Other accrued expenses and other current liabilities | 12,649 | 12,834 |
| Total accrued expenses and other current liabilities | $ 120,839 | $ 116,436 |

**13) Long-Term Debt and Bank Facility Borrowings**

| The Company's debt is as follows (in thousands): | September 30, | | | |
|---|---|---|---|---|
| | 2019 | | 2018 | |
| | Carrying Amount | Fair Value (a) | Carrying Amount | Fair Value |
| Revolving Credit Facility Borrowings | $ 61,500 | $ 61,500 | $ 1,500 | $ 1,500 |
| Senior Secured Term Loan (b) | 91,947 | 92,500 | 99,280 | 100,000 |
| Total debt | $ 153,447 | $ 154,000 | $ 100,780 | $ 101,500 |
| Total short-term portion of debt (c) | $ 33,000 | $ 33,000 | $ 9,000 | $ 9,000 |
| Total long-term portion of debt (c) | $ 120,447 | $ 121,000 | $ 91,780 | $ 92,500 |

(a) The face amount of the Company's variable rate long-term debt approximates fair value.
(b) Carrying amounts are net of unamortized debt issuance costs of $0.6 million as of September 30, 2019 and $0.7 million as of September 30, 2018.
(c) On December 4, 2019, the Company refinanced its five-year term loan and the revolving credit facility with the execution of the fifth amended and restated revolving credit facility agreement. (See Note 21—Subsequent Events). As of September 30, 2019, the Company has classified $37.5 million of its revolving credit facility borrowings as long term debt and repaid it on December 4, 2019 using proceeds provided by the fifth amended and restated revolving credit facility agreement

On July 2, 2018, the Company refinanced its five-year term loan and the revolving credit facility with the execution of the fourth credit agreement with a bank syndicate comprised of eleven participants, which enables the Company to borrow up to $300 million ($450 million during the heating season of December through April of each year) on a revolving credit facility for working capital purposes (subject to certain borrowing base limitations and coverage ratios), provides for a $100 million five-year senior secured term loan ("Term Loan"), allows for the issuance of up to $25 million in letters of credit, and has a maturity date of July 2, 2023. The new credit agreement, executed on December 4, 2019, increased the Term Loan to $130 million and extended the maturity date to December 4, 2024.

The Company can increase the revolving credit facility size by $200 million without the consent of the bank group. However, the bank group is not obligated to fund the $200 million increase. If the bank group elects not to fund the increase, the Company can add additional lenders to the group, with the consent of the Agent, which shall not be unreasonably withheld. Obligations under the fourth and fifth amended and restated credit facilities are guaranteed by the Company and its subsidiaries and are secured by liens on substantially all of the Company's assets including accounts receivable, inventory, general intangibles, real property, fixtures and equipment.

All amounts outstanding under the fourth amended and restated revolving credit facility become due and payable on the facility termination date of July 2, 2023 (extended to December 4, 2024 under the new credit agreement). The Term Loan is repayable in quarterly payments of $2.5 million (increased to $3.25 million under the new credit agreement beginning March 31, 2020) plus an annual payment equal to 25% of the annual Excess Cash Flow as defined in the agreement (an amount not to exceed $15 million annually), less certain voluntary prepayments made during the year, with final payment at maturity. The Company does not expect to make additional term loan repayments due to Excess Cash Flow for the fiscal year ended September 30, 2019.

The interest rate on the revolving credit facility and the term loan is based on a margin over LIBOR or a base rate. At September 30, 2019, the effective interest rate on the term loan and revolving credit facility borrowings was approximately 5.9% and 4.6%, respectively. At September 30, 2018, the effective interest rate on the term loan and revolving credit facility borrowings was approximately 5.2% and 3.8%, respectively.

The Commitment Fee on the unused portion of the revolving credit facility is 0.30% from December through April, and 0.20% from May through November.

The fourth and fifth credit agreements require the Company to meet certain financial covenants, including a fixed charge coverage ratio (as defined in the credit agreement) of not less than 1.1 as long as the Term Loan is outstanding or revolving credit facility availability is less than 12.5% of the facility size. In addition, as long as the Term Loan is outstanding, a senior secured leverage ratio cannot be more than 3.0 as calculated as of the quarters ending June or September, and no more than 4.5 as calculated as of the quarters ending December or March.

Certain restrictions are also imposed by the fourth and fifth credit agreements, including restrictions on the Company's ability to incur additional indebtedness, to pay distributions to unitholders, to pay certain inter-company dividends or distributions, make investments, grant liens, sell assets, make acquisitions and engage in certain other activities.

At September 30, 2019, $92.5 million of the term loan was outstanding, $61.5 million was outstanding under the fourth amended and restated revolving credit facility, $7.7 million hedge positions were secured under the fourth credit agreement, and $4.6 million of letters of credit were issued and outstanding. At September 30, 2018, $100.0 million of the term loan was outstanding, $1.5 million amount was outstanding under the respective revolving credit facility, no hedge positions were secured under the fourth credit agreement and $7.1 million of letters of credit were issued and outstanding.

At September 30, 2019, availability was $126.1 million, the Company was in compliance with the fixed charge coverage ratio and the senior secured leverage ratio, and the restricted net assets totaled approximately $250.9 million. Restricted net assets are assets in the Company's subsidiaries, the distribution or transfer of which to Star Group, L.P. are subject to limitations under its fourth and fifth credit agreements. At September 30, 2018, availability was $189.0 million, the Company was in compliance with the fixed charge coverage ratio and the senior secured leverage ratio, and the restricted net assets totaled approximately $299.8 million.

As of September 30, 2019, the maturities (including working capital borrowings and expected repayments due to Excess Cash Flow) during fiscal years ending September 30, considering the terms of our fifth amended and restated credit agreement, are set forth in the following table (in thousands):

| | | |
|---|---|---|
| 2020 | $ | 9,000 |
| 2021 | $ | 13,000 |
| 2022 | $ | 13,000 |
| 2023 | $ | 13,000 |
| 2024 | $ | 13,000 |
| Thereafter | $ | 93,000 |

**14) Employee Benefit Plans**

Defined Contribution Plans

The Company has several 401(k) and other defined contribution plans that cover eligible non-union and union employees, and makes employer contributions to these plans, subject to IRS limitations. These plans provide for each participant to contribute from 0% to 60% of compensation, subject to IRS limitations. The Company's aggregate contributions to the 401(k) plans during fiscal 2019, 2018, and 2017, were $7.6 million, $6.7 million, and $6.3 million, respectively. The Company's aggregate contribution to the other defined contribution plans for fiscal years 2019, 2018, and 2017, were $0.6 million, $0.6 million, and $0.7 million respectively.

Management Incentive Compensation Plan

The Company has a Management Incentive Compensation Plan ("the Plan"). The long-term compensation structure is intended to align the employee's performance with the long-term performance of our unitholders. Under the Plan, certain named employees who participate shall be entitled to receive a pro rata share of an amount in cash equal to:

- 50% of the distributions ("Incentive Distributions") of Available Cash in excess of the minimum quarterly distribution of $0.0675 per unit otherwise distributable to Kestrel Heat pursuant to the Company Agreement on account of its general partner units; and
- 50% of the cash proceeds (the "Gains Interest") which Kestrel Heat shall receive from the sale of its general partner units (as defined in the Partnership Agreement), less expenses and applicable taxes.

The pro rata share payable to each participant under the Plan is based on the number of participation points as described under "Fiscal 2019 Compensation Decisions—Management Incentive Compensation Plan." The amount paid in Incentive Distributions is governed by the Partnership Agreement and the calculation of Available Cash.

To fund the benefits under the Plan, Kestrel Heat has agreed to forego receipt of the amount of Incentive Distributions that are payable to plan participants. For accounting purposes, amounts payable to management under this Plan will be treated as compensation and will reduce net income. Kestrel Heat has also agreed to contribute to the Company, as a contribution to capital, an amount equal to the Gains Interest payable to participants in the Plan by the Company. The Company is not required to reimburse Kestrel Heat for amounts payable pursuant to the Plan.

The Plan is administered by the Company's Chief Financial Officer under the direction of the Board or by such other officer as the Board may from time to time direct. In general, no payments will be made under the Plan if the Company is not distributing cash under the Incentive Distributions described above.

In fiscal 2012, the Board of Directors adopted certain amendments (the "Plan Amendments") to the Plan. Under the Plan Amendments, the number and identity of the Plan participants and their participation interests in the Plan have been frozen at the current levels. In addition, under the Plan Amendments, the plan benefits (to the extent vested) may be transferred upon the death of a participant to his or her heirs. A participant's vested percentage of his or her plan benefits will be 100% during the time a participant is an employee or consultant of the Company. Following the termination of such positions, a participant's vested percentage is equal to 20% for each full or partial year of employment or consultation with the Company starting with the fiscal year ended September 30, 2012 (33 1/3% in the case of the Company's chief executive officer at that time).

The Company distributed to management and the general partner Incentive Distributions of approximately $1,464,000 during fiscal 2019, $1,199,000 during fiscal 2018, and $963,000 during fiscal 2017. Included in these amounts for fiscal 2019, 2018, and 2017, were distributions under the management incentive compensation plan of $732,000, $600,000, and $481,000, respectively, of which named executive officers received approximately $397,430 during fiscal 2019, $267,082 during fiscal 2018, and $214,378 during fiscal 2017. With regard to the Gains Interest, Kestrel Heat has not given any indication that it will sell its general partner units within the next twelve months. Thus the Plan's value attributable to the Gains Interest currently cannot be determined.

Multiemployer Pension Plans

At September 30, 2019, approximately 43% of our employees were covered by collective bargaining agreements and approximately 23% of our employees are in collective bargaining agreements that are up for renewal within the next fiscal year. We contribute to various multiemployer union administered pension plans under the terms of collective bargaining agreements that provide for such plans for covered union-represented employees. The risks of participating in these multiemployer plans are different from single-employer plans in that assets contributed are pooled and may be used to provide benefits to employees of other participating employers. If a participating employer stops contributing to the plan, the remaining participating employers may be required to bear the unfunded obligations of the plan. If we choose to stop participating in a multiemployer plan, we may be required to pay a withdrawal liability in part based on the underfunded status of the plan.

The following table outlines our participation and contributions to multiemployer pension plans for the periods ended September 30, 2019, 2018, and 2017. The EIN/Pension Plan Number column provides the Employer Identification Number ("EIN") and the three-digit plan number. The most recent Pension Protection Act Zone Status for 2019 and 2018 relates to the plans' two most recent fiscal year-ends, based on information received from the plans as reported on their Form 5500 Schedule MB. Among other factors, plans in the red zone are generally less than 65 percent funded and are designated as critical or critical and declining, plans in the yellow zone are less than 80 percent funded and are designated as endangered, and plans in the green zone are at least 80 percent funded. The FIP/RP Status Pending/Implemented column indicates plans for which a financial improvement plan ("FIP") or a rehabilitation plan ("RP") is either pending or has been implemented. Certain plans have been aggregated in the All Other Multiemployer Pension Plans line of the following table, as our participation in each of these individual plans is not significant.

For the Westchester Teamsters Pension Fund, Local 553 Pension Fund and Local 463 Pension Fund, we provided more than 5 percent of the total plan contributions from all employers for 2019, 2018 and 2017, as disclosed in the respective plan's Form 5500. The collective bargaining agreements of these plans require contributions based on the hours worked and there are no minimum contributions required.

| | | Pension Protection Act Zone Status | | FIP / RP Status | Partnership Contributions (in thousands) | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Pension Fund | EIN / Pension Plan Number | 2019 | 2018 | Pending / Implemented | 2019 | 2018 | 2017 | Surcharge Imposed | Expiration Date of Collective-Bargaining Agreements |
| **New England Teamsters and Trucking Industry Pension Fund** | **04-6372430 / 001** | Red | Red | Yes / Implemented | $ 2,468 | $ 2,455 | $ 2,621 | No | 3/31/20 to 4/30/23 |
| **Westchester Teamsters Pension Fund** | **13-6123973 / 001** | Green | Green | N/A | 1,039 | 846 | 924 | No | 12/31/19 to 1/31/24 |
| **Local 553 Pension Fund** | **13-6637826 / 001** | Green | Green | N/A | 3,114 | 2,888 | 2,780 | No | 12/15/19 to 1/15/20 |
| **Local 463 Pension Fund** | **11-1800729 / 001** | Green | Green | N/A | 144 | 145 | 150 | No | 2/28/20 to 6/30/22 |
| **All Other Multiemployer Pension Plans** | | | | | 2,833 | 2,807 | 2,465 | | |
| | | | | Total Contributions | $ 9,598 | $ 9,141 | $ 8,940 | | |

Agreement with the New England Teamsters and Trucking Industry Pension Fund

In fiscal 2015, the Teamsters ratified an agreement among certain subsidiaries of the Company and the New England Teamsters and Trucking Industry Pension Fund ("the NETTI Fund"), a multiemployer pension plan in which such subsidiaries participate, providing for the Company's participating subsidiaries to withdraw from the NETTI Fund's original employer pool and enter the NETTI Fund's new employer pool. The withdrawal from the original employer pool triggered an undiscounted withdrawal obligation of $48.0 million that is to be paid in equal monthly installments over 30 years, or $1.6 million per year.

The NETTI Fund includes over two hundred of our current employees and has been classified as carrying "red zone" status, meaning that the value of NETTI Fund's assets are less than 65% of the actuarial value of the NETTI Fund's benefit obligations.

As of September 30, 2019, we had $0.2 million and $16.9 million balances included in the captions accrued expenses and other current liabilities and other long-term liabilities, respectively, on our consolidated balance sheet representing the remaining balance of the NETTI withdrawal liability. Based on the borrowing rates currently

available to the Company for long-term financing of a similar maturity, the fair value of the NETTI withdrawal liability as of September 30, 2019 was $21.1 million. We utilized Level 2 inputs in the fair value hierarchy of valuation techniques to determine the fair value of this liability.

Our status in the newly-established pool of the NETTI Fund is accounted for as participation in a new multiemployer pension plan, and therefore we recognize expense based on the contractually-required contribution for each period, and we recognize a liability for any contributions due and unpaid at the end of a reporting period.

Defined Benefit Plans

The Company accounts for its two frozen defined benefit pension plans ("the Plan") in accordance with FASB ASC 715-10-05 Compensation-Retirement Benefits. The Company has no post-retirement benefit plans.

Effective September 30, 2019, the Company adopted the Society of Actuaries 2019 Mortality Tables Report and Improvement Scale, which updated the mortality assumptions that private defined benefit retirement plans in the United States use in the actuarial valuations that determine a plan sponsor's pension obligations. The updated mortality data reflects decreased mortality improvement than assumed in the Society of Actuaries 2018 Mortality Table Report and Improvement Scale, and affected plans generally expect the value of the actuarial obligations to decrease, depending on the specific demographic characteristics of the plan participants and the types of benefits.

The following table provides the net periodic benefit cost for the period, a reconciliation of the changes in the Plan assets, projected benefit obligations, and the amounts recognized in other comprehensive income and accumulated other comprehensive income at the dates indicated using a measurement date of September 30 (in thousands):

| Debit / (Credit) | Net Periodic Pension Cost in Income Statement | Cash | Fair Value of Pension Plan Assets | Projected Benefit Obligation | Other Comprehensive (Income) / Loss | Gross Pension Related Accumulated Other Comprehensive Income |
|---|---|---|---|---|---|---|
| **Fiscal Year 2017** | | | | | | |
| Beginning balance | | | $ 68,276 | $ (70,679) | | $ 21,704 |
| Interest cost | 2,251 | | | (2,251) | | |
| Actual return on plan assets | (1,473) | | 1,473 | | | |
| Employer contributions | | (505) | 505 | | | |
| Benefit payments | | | (4,578) | 4,578 | | |
| Investment and other expenses | (455) | | | 455 | | |
| Difference between actual and expected return on plan assets | (1,232) | | | | 1,232 | |
| Anticipated expenses | 341 | | | (341) | | |
| Actuarial loss | | | | 2,457 | (2,457) | |
| Amortization of unrecognized net actuarial loss | 2,131 | | | | (2,131) | |
| Annual cost/change | $ 1,563 | $ (505) | (2,600) | 4,898 | $ (3,356) | (3,356) |
| Ending balance | | | $ 65,676 | $ (65,781) | | $ 18,348 |
| Funded status at the end of the year | | | | $ (105) | | |
| **Fiscal Year 2018** | | | | | | |
| Interest cost | 2,279 | | | (2,279) | | |
| Actual return on plan assets | 942 | | (942) | | | |
| Employer contributions | | (1,653) | 1,653 | | | |
| Benefit payments | | | (4,463) | 4,463 | | |
| Investment and other expenses | (394) | | | 394 | | |
| Difference between actual and expected return on plan assets | (3,705) | | | | 3,705 | |
| Anticipated expenses | 328 | | | (328) | | |
| Actuarial loss | | | | 3,989 | (3,989) | |
| Amortization of unrecognized net actuarial loss | 1,791 | | | | (1,791) | |
| Annual cost/change | $ 1,241 | $ (1,653) | (3,752) | 6,239 | $ (2,075) | (2,075) |
| Ending balance | | | $ 61,924 | $ (59,542) | | $ 16,273 |
| Funded status at the end of the year | | | | $ 2,382 | | |
| **Fiscal Year 2019** | | | | | | |
| Interest cost | 2,366 | | | (2,366) | | |
| Actual return on plan assets | (9,380) | | 9,380 | | | |
| Employer contributions | | | | | | |
| Benefit payments | | | (4,466) | 4,466 | | |
| Investment and other expenses | (483) | | | 483 | | |
| Difference between actual and expected return on plan assets | 7,086 | | | | (7,086) | |
| Anticipated expenses | 310 | | | (310) | | |
| Actuarial loss | | | | (7,738) | 7,738 | |
| Amortization of unrecognized net actuarial loss | 1,821 | | | | (1,821) | |
| Annual cost/change | $ 1,720 | $ — | 4,914 | (5,465) | $ (1,169) | (1,169) |
| Ending balance | | | $ 66,838 | $ (65,007) | | $ 15,104 |
| Funded status at the end of the year | | | | $ 1,831 | | |

At September 30, 2019 the amounts included on the balance sheet in deferred charges and other assets were $1.8 million, and at September 30, 2018 the amounts included on the balance sheet in deferred charges and other assets were $2.4 million.

The $15.1 million net actuarial loss balance at September 30, 2019 for the two frozen defined benefit pension plans in accumulated other comprehensive income will be recognized and amortized into net periodic pension costs as an actuarial loss in future years. The estimated amount that will be amortized from accumulated other comprehensive income into net periodic pension cost over the next fiscal year is $1.8 million.

| | September 30, | | |
|---|---|---|---|
| **Weighted-Average Assumptions Used in the Measurement of the Partnership's Benefit Obligation** | **2019** | **2018** | **2017** |
| Discount rate at year end date | 3.00% | 4.15% | 3.60% |
| Expected return on plan assets for the year ended | 4.67% | 4.86% | 4.80% |
| Rate of compensation increase | N/A | N/A | N/A |

The expected return on plan assets is determined based on the expected long-term rate of return on plan assets and the market-related value of plan assets determined using fair value.

The Company's expected long-term rate of return on plan assets is updated at least annually, taking into consideration our asset allocation, historical returns on the types of assets held, and the current economic environment. For fiscal year 2020, the Company's assumption for return on plan assets will be 4.4% per annum.

The discount rate used to determine net periodic pension expense for fiscal year 2019, 2018, and 2017 was 3.00%, 4.15%, and 3.60%, respectively. The discount rate used by the Company in determining pension expense and pension obligations reflects the yield of high quality (AA or better rating by a recognized rating agency) corporate bonds whose cash flows are expected to match the timing and amounts of projected future benefit payments.

The Plan's objectives are to have the ability to pay benefit and expense obligations when due, to maintain the funded ratio of the Plan, to maximize return within reasonable and prudent levels of risk in order to minimize contributions and charges to the profit and loss statement, and to control costs of administering the Plan and managing the investments of the Plan. The target asset allocation of the Plan (currently 90% domestic fixed income, 7% domestic equities and 2% international equities and 1% cash and cash equivalents) is based on a long-term perspective, and as the Plan gets closer to being fully funded, the allocations have been adjusted to lower volatility from equity holdings.

The Company had no Level 2 or Level 3 pension plan assets during the two years ended September 30, 2019. The fair values and percentage of the Company's pension plan assets by asset category are as follows (in thousands):

| | September 30, | | | |
|---|---|---|---|---|
| | 2019 | | 2018 | |
| **Asset Category** | **Level 1** | **Concentration Percentage** | **Level 1** | **Concentration Percentage** |
| Corporate and U.S. government bond fund (1) | $ 60,720 | 90% | $ 55,908 | 90% |
| U.S. large-cap equity (1) | 4,632 | 7% | 4,566 | 7% |
| International equity (1) | 1,119 | 2% | 1,129 | 2% |
| Cash | 367 | 1% | 321 | 1% |
| Total | $ 66,838 | 100% | $ 61,924 | 100% |

(1) Represent investments in Vanguard funds that seek to replicate the asset category description.

The Company is not obligated to make a minimum required contribution in fiscal year 2020, and currently does not expect to make an optional pension contribution.

Expected benefit payments over each of the next five years will total approximately $4.4 million per year. Expected benefit payments for the five years thereafter will aggregate approximately $18.9 million.

**15) Income Taxes**

On December 22, 2017, the Tax Cuts and Jobs Act (the "Tax Reform Act") was enacted into law. The Tax Reform Act is a complicated piece of legislation that, among other provisions, contains several key provisions which impact the Company, especially the reduction of the Federal corporate income tax rate from 35% to 21% effective January 1, 2018. In addition, between September 28, 2017 and December 31, 2022, the Tax Reform Act allows for the full depreciation, in the year acquired, for certain fixed assets purchased in that year (also known as 100% bonus depreciation). The re-measurement of the deferred tax assets and liabilities for the enacted Tax Reform Act resulted in an $11.1 million discrete tax benefit recorded as of September 30, 2018.

Income tax expense is comprised of the following for the indicated periods (in thousands):

| | Years Ended September 30, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Current: | | | |
| Federal | $ 7,921 | $ (6,067) | $ 7,578 |
| State | 4,722 | (1,016) | 2,664 |
| Deferred | | | |
| Federal | (3,168) | 11,052 | 8,775 |
| State | (1,958) | 3,633 | 1,359 |
| | $ 7,517 | $ 7,602 | $ 20,376 |

The provision for income taxes differs from income taxes computed at the Federal statutory rate as a result of the following (in thousands):

| | Years Ended September 30, | | |
|---|---|---|---|
| | 2019 | 2018 | 2017 |
| Income from continuing operations before taxes | $ 25,154 | $ 63,107 | $ 47,276 |
| Provision for income taxes: | | | |
| Tax at Federal statutory rate | $ 5,282 | $ 17,266 | $ 16,546 |
| Effect of the tax reform on deferred taxes | — | (11,101) | — |
| Impact of Partnership loss not subject to federal income taxes | — | 53 | 741 |
| State taxes net of federal benefit | 1,626 | 1,864 | 3,170 |
| Permanent differences | 345 | 99 | 89 |
| Change in valuation allowance net of effect of the tax reform | 23 | 107 | 115 |
| Other | 241 | (686) | (285) |
| | $ 7,517 | $ 7,602 | $ 20,376 |

The Tax at Federal statutory rate is determined based on income from continuing operations before tax and the enacted Federal statutory rate. For fiscal 2017, and first quarter of fiscal 2018 the Federal statutory rate was 35%. For the remainder of fiscal 2018 and fiscal 2019 the Federal statutory rate was 21%. In fiscal 2018, income from continuing operations before tax was $28.7 million in the first quarter, and $34.4 million for the remainder of the fiscal year.

The components of the net deferred taxes for the years ended September 30, 2019 and September 30, 2018 using current tax rates are as follows (in thousands):

| | September 30, | |
|---|---|---|
| | 2019 | 2018 |
| Deferred tax assets: | | |
| Net operating loss carryforwards | $ 6,292 | $ 6,647 |
| Vacation accrual | 2,774 | 2,658 |
| Pension accrual | 4,504 | 4,425 |
| Allowance for bad debts | 2,235 | 2,226 |
| Insurance accrual | 2,419 | 2,425 |
| Inventory capitalization | 247 | 350 |
| Fair value of derivative instruments | 2,794 | — |
| Other, net | — | 1,382 |
| Total deferred tax assets | 21,265 | 20,113 |
| Valuation allowance | (4,003) | (3,980) |
| Net deferred tax assets | $ 17,262 | $ 16,133 |
| Deferred tax liabilities: | | |
| Property and equipment | $ 13,485 | $ 9,783 |
| Fair value of derivative instruments | — | 4,673 |
| Intangibles | 21,883 | 22,883 |
| Other, net | 2,010 | — |
| Total deferred tax liabilities | $ 37,378 | $ 37,339 |
| Net deferred taxes | $ (20,116) | $ (21,206) |

In order to fully realize the net deferred tax assets, the Company's corporate subsidiaries will need to generate future taxable income. A valuation allowance is recognized if, based on the weight of available evidence including historical tax losses, it is more likely than not that some or all of deferred tax assets will not be realized. The net change in the total valuation allowance for the fiscal year ended September 30, 2019 was less than $0.1 million. The net change in the total valuation allowance for the fiscal year ended September 30, 2018 was an increase of $0.8 million. Based upon a review of a number of factors and all available evidence, including recent historical operating performance, the expectation of sustainable earnings, and the confidence that sufficient positive taxable income will continue in all tax jurisdictions for the foreseeable future, management concludes for the year ended September 30, 2019, it is more likely than not that the Company will realize the full benefit of its deferred tax assets, net of existing valuation allowance at September 30, 2019.

As of January 1, 2019, the Company had State tax effected net operating loss carry forwards ("NOLs") of approximately $2.5 million after consideration of valuation allowances. The State NOLs, which will expire between 2023 and 2037, are generally available to offset any future taxable income in certain states

FASB ASC 740-10-05-6 Income Taxes, Uncertain Tax Position, provides financial statement accounting guidance for uncertainty in income taxes and tax positions taken or expected to be taken in a tax return. At September 30, 2019, we did not have unrecognized income tax benefits.

Our continuing practice is to recognize interest and penalties related to income tax matters as a component of income tax expense. We file U.S. Federal income tax returns and various state and local returns. A number of years may elapse before an uncertain tax position is audited and finally resolved. For our Federal income tax returns we have four tax years subject to examination. In our major state tax jurisdictions of New York, Connecticut, and Pennsylvania we have four years that are subject to examination. In the state tax jurisdiction of New Jersey we have five tax years that are subject to examination. While it is often difficult to predict the final outcome or the timing of resolution of any particular uncertain tax position, based on our assessment of many factors including past experience and interpretation of tax law, we believe that our provision for income taxes reflect the most probable outcome. This assessment relies on estimates and assumptions and may involve a series of complex judgments about future events.

**16) Lease Commitments**

The Company has entered into certain operating leases for office space, trucks and other equipment. The future minimum rental commitments at September 30, 2019 under operating leases having an initial or remaining non-cancelable term of one year or more are as follows (in thousands):

| | |
|---|---|
| 2020 | $ 24,082 |
| 2021 | 20,875 |
| 2022 | 16,687 |
| 2023 | 13,344 |
| 2024 | 11,114 |
| Thereafter | 43,506 |
| Total future minimum lease payments | $ 129,608 |

Rent expense for the fiscal years ended September 30, 2019, 2018, and 2017, was $26.2 million, $23.3 million, and $21.4 million, respectively.

**17) Supplemental Disclosure of Cash Flow Information**

| | Years Ended September 30, | | |
|---|---|---|---|
| (in thousands) | 2019 | 2018 | 2017 |
| Cash paid during the period for: | | | |
| Income taxes, net | $ 5,133 | $ 2,569 | $ 4,434 |
| Interest | $ 12,601 | $ 8,925 | $ 7,814 |

**18) Commitments and Contingencies**

On April 18, 2017, a civil action was filed in the United States District Court for the Eastern District of New York, entitled M. Norman Donnenfeld v. Petro, Inc., Civil Action Number 2:17-cv-2310-JFB-SIL, against Petro, Inc. By amended complaint filed on August 15, 2017, the Plaintiff alleges he did not receive expected contractual benefits under his protected price plan contract when oil prices fell and asserts various claims for relief including breach of contract, violation of the New York General Business Law and fraudulent inducement. The Plaintiff also seeks to have a class certified of similarly situated Petro customers who entered into protected price plan contracts and were denied the same contractual benefits. No class has yet been certified in this action. The Plaintiff seeks compensatory, punitive and other damages in unspecified amounts. On September 15, 2017, Petro filed a motion to dismiss the amended complaint as time-barred and for failure to state a cause of action. On September 12, 2018, the district court granted in part and denied in part Petro's motion to dismiss. The district court dismissed the Plaintiff's claims for breach of the covenant of good faith and fair dealing and fraudulent inducement, but declined to dismiss the Plaintiff's remaining claims. The district court granted the Plaintiff leave to amend to attempt to replead his fraudulent inducement claim. On October 10, 2018, the Plaintiff filed a second amended complaint. The second amended complaint attempts to replead a fraudulent inducement claim and is otherwise substantially similar or identical to the prior complaint. On November 13, 2018, Petro moved to dismiss the fraudulent inducement and unjust enrichment claims in the second amended complaint. On January 31, 2019, the court granted the motion and dismissed the fraudulent inducement and unjust enrichment claims with prejudice. On February 22, 2019, counsel for Petro and the Plaintiff participated in a mediation which, after arms-length negotiations, resulted in a memorandum of understanding to settle the litigation, subject to the completion of confirmatory discovery, negotiation of a final settlement agreement and court approval. In an order dated March 27, 2019, the district court stayed all discovery deadlines in light of the pending settlement. On May 6, 2019, the Plaintiff filed an Unopposed Motion for Preliminary Approval of Class Action Settlement which remains pending before the court. On October 4, 2019, upon consent of all parties, Judge Roslynn R. Mauskopf assigned the action to Magistrate Judge Steve I. Locke for final disposition. On December 4, 2019, the court granted preliminary approval of the class action settlement. The anticipated settlement is not an admission of liability or breach to any customers by Petro and the Company continues to believe the allegations lack merit. If the settlement is not approved or finalized for any reason, the Company will continue to vigorously defend the action; in that case, we cannot assess the potential

outcome or materiality of this matter. At this time we cannot assess the potential outcome or materiality of this matter.

The Company's operations are subject to the operating hazards and risks normally incidental to handling, storing and transporting and otherwise providing for use by consumers hazardous liquids such as home heating oil and propane. In the ordinary course of business, the Company is a defendant in various legal proceedings and litigation. The Company records a liability when it is probable that a loss has been incurred and the amount is reasonably estimable. We do not believe these matters, when considered individually or in the aggregate, could reasonably be expected to have a material adverse effect on the Company's results of operations, financial position or liquidity.

The Company maintains insurance policies with insurers in amounts and with coverages and deductibles we believe are reasonable and prudent. However, the Company cannot assure that this insurance will be adequate to protect it from all material expenses related to current and potential future claims, legal proceedings and litigation, including the above mentioned action, as certain types of claims may be excluded from our insurance coverage. If we incur substantial liability and the damages are not covered by insurance, or are in excess of policy limits, or if we incur liability at a time when we are not able to obtain liability insurance, then our business, results of operations and financial condition could be materially adversely affected.

**19) Earnings per Limited Partner Units**

The following table presents the net income allocation and per unit data in accordance with FASB ASC 260-10-45-60 Earnings per Share, Master Limited Partnerships (EITF 03-06):

| **Basic and Diluted Earnings Per Limited Partner:** | **Years Ended September 30,** | | |
|---|---|---|---|
| **(in thousands, except per unit data)** | **2019** | **2018** | **2017** |
| Net income | $ 17,637 | $ 55,505 | $ 26,900 |
| Less General Partners' interest in net income | 95 | 314 | 156 |
| Net income available to limited partners | 17,542 | 55,191 | 26,744 |
| Less dilutive impact of theoretical distribution of earnings under FASB ASC 260-10-45-60 * | — | 6,340 | 914 |
| Limited Partner's interest in net income under FASB ASC 260-10-45-60 | $ 17,542 | $ 48,851 | $ 25,830 |
| Per unit data: | | | |
| Basic and diluted net income available to limited partners | $ 0.35 | $ 1.01 | $ 0.48 |
| Less dilutive impact of theoretical distribution of earnings under FASB ASC 260-10-45-60 * | — | 0.12 | 0.02 |
| Limited Partner's interest in net income under FASB ASC 260-10-45-60 | $ 0.35 | $ 0.89 | $ 0.46 |
| Weighted average number of Limited Partner units outstanding | 50,814 | 54,764 | 55,888 |

* In any accounting period where the Company's aggregate net income exceeds its aggregate distribution for such period, the Company is required as per FASB ASC 260-10-45-60 to present net income per limited partner unit as if all of the earnings for the period were distributed, based on the terms of the Partnership agreement, regardless of whether those earnings would actually be distributed during a particular period from an economic or practical perspective. This allocation does not impact the Company's overall net income or other financial results.

**20) Selected Quarterly Financial Data (unaudited)**

| (in thousands - except per unit data) | Three Months Ended Dec. 31, 2018 | Mar. 31, 2019 | Jun. 30, 2019 | Sep. 30, 2019 | Total |
|---|---|---|---|---|---|
| Sales | $ 535,027 | $ 699,582 | $ 283,376 | $ 235,887 | $ 1,753,872 |
| Gross profit for product, installation and service | 154,484 | 218,549 | 66,191 | 48,482 | 487,706 |
| Operating income (loss) | 6,063 | 105,002 | (29,933) | (43,782) | 37,350 |
| Income (loss) before income taxes | 3,288 | 101,564 | (33,153) | (46,545) | 25,154 |
| Net income (loss) | 2,315 | 72,325 | (23,098) | (33,905) | 17,637 |
| Limited Partner interest in net income (loss) | 2,300 | 71,871 | (22,948) | (33,681) | 17,542 |
| Net income (loss) per Limited Partner unit: | | | | | |
| Basic and diluted (a) | $ 0.04 | $ 1.15 | $ (0.46) | (0.69) | $ 0.35 |

| (in thousands - except per unit data) | Three Months Ended Dec. 31, 2017 | Mar. 31, 2018 | Jun. 30, 2018 | Sep. 30, 2018 | Total |
|---|---|---|---|---|---|
| Sales | $ 436,834 | $ 684,031 | $ 327,354 | $ 229,618 | $ 1,677,837 |
| Gross profit for product, installation and service | 124,499 | 216,079 | 79,377 | 43,387 | 463,342 |
| Operating income (loss) | 31,066 | 85,473 | (8,817) | (41,654) | 66,068 |
| Income (loss) before income taxes | 28,670 | 82,783 | (11,421) | (36,925) | 63,107 |
| Net income (loss) | 30,182 | 54,778 | (8,005) | (21,450) | 55,505 |
| Limited Partner interest in net income (loss) | 30,007 | 54,459 | (7,956) | (21,319) | 55,191 |
| Net income (loss) per Limited Partner unit: | | | | | |
| Basic and diluted (a) | $ 0.45 | $ 0.81 | $ (0.15) | $ (0.40) | $ 0.89 |

(a) The sum of the quarters do not add-up to the total due to the weighting of Limited Partner Units outstanding, rounding or the theoretical effects of FASB ASC 260-10-45-60 to Master Limited Partners earnings per unit.

**21) Subsequent Events**

*Acquisition*

In October 2019, the Company purchased for cash the customer list and the assets of a motor fuel dealer for an aggregate purchase price of approximately $0.5 million.

*Quarterly Distribution Declared*

In October 2019, we declared a quarterly distribution of $0.1250 per unit, or $0.50 per unit on an annualized basis, on all Common Units with respect to the fourth quarter of fiscal 2019, paid on November 5, 2019, to holders of record on October 28, 2019. The amount of distributions in excess of the minimum quarterly distribution of $0.0675, were distributed in accordance with our Partnership Agreement, subject to management incentive compensation plan. As a result, $5.9 million was paid to the Common Unit holders, $0.2 million to the General Partner unit holders (including $0.2 million of incentive distribution as provided in our Partnership Agreement) and $0.2 million to management pursuant to the management incentive compensation plan which provides for certain members of management to receive incentive distributions that would otherwise be payable to the General Partner.

*Fifth Amended and Restated Revolving Credit Facility Agreement*

On December 4, 2019, the Company entered into a fifth amended and restated revolving credit facility agreement with a bank syndicate of eleven participants that enables us to borrow up to $300 million ($450 million during the heating season of December through April of each year) on a revolving line of credit for working capital purposes (subject to certain borrowing base limitations and coverage ratios), provides for a $130 million five-year senior secured term loan, allows for the issuance of up to $25 million in letters of credit, and extends the maturity date of the previous agreement to December 4, 2024. Proceeds from the new term loan were used to repay the outstanding balance of the existing term loan ($90.0 million) and $40.0 million of the revolving credit facility borrowings.

Consistent with the fourth amended and restated revolving credit facility, under the Company's fifth amended and restated credit agreement, in order to repurchase Common Units we must maintain Availability of $45 million, 15.0% of the facility size of $300 million (assuming the non-seasonal aggregate commitment is outstanding) on a historical pro forma and forward-looking basis, and a fixed charge coverage ratio of not less than 1.15 measured as of the date of repurchase.

**STAR GROUP, L.P. (PARENT COMPANY)**

**CONDENSED FINANCIAL INFORMATION OF REGISTRANT**

| (in thousands) | September 30, 2019 | 2018 |
|---|---|---|
| **Balance Sheets** | | |
| **ASSETS** | | |
| **Current assets** | | |
| Cash and cash equivalents | $ 50 | $ 54 |
| Prepaid expenses and other current assets | 232 | 217 |
| Total current assets | 282 | 271 |
| Investment in subsidiaries (a) | 260,601 | 309,541 |
| Total Assets | $ 260,883 | $ 309,812 |
| **LIABILITIES AND PARTNERS' CAPITAL** | | |
| **Current liabilities** | | |
| Accrued expenses | $ 43 | $ 27 |
| Total current liabilities | 43 | 27 |
| Partners' capital | 260,840 | 309,785 |
| Total Liabilities and Partners' Capital | $ 260,883 | $ 309,812 |

(a) Investments in Star Acquisitions, Inc. and subsidiaries are recorded in accordance with the equity method of accounting.

**STAR GROUP, L.P. (PARENT COMPANY)**

**CONDENSED FINANCIAL INFORMATION OF REGISTRANT**

| (in thousands) | Years Ended September 30, 2019 | 2018 | 2017 |
|---|---|---|---|
| **Statements of Operations** | | | |
| Revenues | $ — | $ — | $ — |
| General and administrative expenses | 1,377 | 1,647 | 2,116 |
| Operating loss | (1,377) | (1,647) | (2,116) |
| Net loss before equity income | (1,377) | (1,647) | (2,116) |
| Equity income of Star Acquisitions Inc. and subs | 19,014 | 57,152 | 29,016 |
| Net income | $ 17,637 | $ 55,505 | $ 26,900 |

**STAR GROUP, L.P. (PARENT COMPANY)**

**CONDENSED FINANCIAL INFORMATION OF REGISTRANT**

| (in thousands) | Years Ended September 30, 2019 | 2018 | 2017 |
|---|---|---|---|
| **Statements of Cash Flows** | | | |
| **Cash flows provided by operating activities:** | | | |
| Net cash provided by operating activities (a) | $ 76,942 | $ 52,317 | $ 24,052 |
| **Cash flows provided by investing activities:** | | | |
| Net cash provided by investing activities | — | — | — |
| **Cash flows used in financing activities:** | | | |
| Distributions | (25,593) | (25,603) | (24,322) |
| Unit repurchase | (51,353) | (26,714) | — |
| Net cash used in financing activities | (76,946) | (52,317) | (24,322) |
| Net decrease in cash | (4) | — | (270) |
| Cash and cash equivalents at beginning of period | 54 | 54 | 324 |
| Cash and cash equivalents at end of period | $ 50 | $ 54 | $ 54 |
| (a) Includes distributions from subsidiaries | $ 76,942 | $ 52,317 | $ 24,052 |

**Schedule II**

**VALUATION AND QUALIFYING ACCOUNTS**
**Years Ended September 30, 2019, 2018, 2017**
**(in thousands)**

| Year | Description | Balance at Beginning of Year | Charged to Costs & Expenses | Other Changes Add (Deduct) | Balance at End of Year |
|---|---|---|---|---|---|
| 2019 | Allowance for doubtful accounts | $ 8,002 | $ 9,541 | $ (9,165) (a) | $ 8,378 |
| 2018 | Allowance for doubtful accounts | $ 5,540 | $ 6,283 | $ (3,821) (a) | $ 8,002 |
| 2017 | Allowance for doubtful accounts | $ 4,419 | $ 1,639 | $ (518) (a) | $ 5,540 |

(a) Bad debts written off (net of recoveries).

**UNIT PURCHASE AGREEMENT**

THIS AGREEMENT dated as of the 12th day of September, 2019, by and between Star Group, L.P., a Delaware limited partnership (hereinafter referred to as "Purchaser"), and Cat Rock Capital Management LP, a Delaware limited partnership (hereinafter referred to as "Seller").

**Statement of Facts:**

A. Seller is the beneficial owner of common units of limited partnership interest of Purchaser (the "Common Units").

B. Purchaser desires to purchase 1,200,000 Common Units (the "Units) from Seller and Seller desires to sell the Units to Purchaser under the terms and conditions set forth herein below.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree and stipulate as follows:

1. **Purchase and Sale**. Purchaser shall purchase (the "Purchase") the Units from Seller and Seller shall sell the Units to Purchaser for the price and upon the other terms set forth herein.

2. **Purchase Price**. Purchaser shall pay Seller $9.40 per Unit for a total purchase price for the Units of $11,280,000 (the "Purchase Price").

3. **Closing**. Closing shall occur on the 12th day of September 2019 (the "Closing Date"), at the offices of Star Group, L.P., (9 West Broad Street Street-Suite 310, Stamford, CT 06902.

4. **Delivery and Payment for Units**. On the Closing Date, Purchaser shall wire the Purchase Price to Seller in accordance with written wire transfer instructions provided to Purchaser by Seller on or before the Closing Date. Upon receipt of the Purchase Price, Seller shall deliver the Units to Purchaser electronically through DTC in accordance with written instructions provided by Purchaser to Seller on or before the Closing Date.

5. **Representations and Warranties of Seller**. Seller hereby represents and warrants to Purchaser as follows: (i) upon receipt of the Purchase Price as provided in this Agreement, Seller will deliver good and valid title to the Units, free and clear from all liens, claims and encumbrances of any nature whatsoever, other than any liens, claims and encumbrances created by Purchaser, (ii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of Seller and this Agreement has been duly executed and delivered on behalf of Seller, and (iii) Seller has the power and authority to execute, deliver and perform this Agreement.

6. **Representations and Warranties of Purchaser**. Purchaser hereby represents and warrants to Seller as follows:

(a) Power; Due Authorization; Binding Agreement. Purchaser is a limited partnership duly organized, validly existing and in good standing under the laws of its

jurisdiction of organization. The execution, delivery and performance of this Agreement has been duly authorized by all necessary action on the part of Purchaser and Purchaser has the full power and authority to execute and deliver this Agreement, to perform its obligations under this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered on behalf of Purchaser and constitutes a valid and binding agreement of Purchaser.

(b) No Conflicts. The execution and delivery of this Agreement by Purchaser does not, and the performance of the terms of this Agreement by Purchaser will not, (i) contravene or conflict with any certificate of limited partnership, limited partnership agreement or any other similar organizational documents of Purchaser, (ii) require Purchaser to obtain the consent or approval of, or make any filing with or notification to, any governmental body, agency or official of any country or political subdivision of any country, including any federal, national, supranational, state, provincial, local or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body ("Governmental Authority"), other than any required filing under U.S. federal securities laws, (iii) require the consent or approval of any other person pursuant to any agreement, obligation or instrument binding on Purchaser or its properties and assets, (iv) conflict with or violate any law, rule, regulation, order, judgment or decree applicable to Purchaser or pursuant to which any of its assets are bound or (v) violate any other agreement to which Purchaser is a party.

(c) Material Non-Public Information. To its knowledge, Purchaser has not provided any material non-public information regarding Purchaser to Seller that has not been disclosed to the public prior to the date hereof.

(d) Accredited Investor. Purchaser is an "accredited investor" as that term is defined under Securities and Exchange Commission Regulation D.

(e) Acquisition of the Units for Own Account. Purchaser is acquiring the Units for its own account and not with a view to, or for resale in connection with, any distribution or public offering thereof within the meaning of the Securities Act of 1933, as amended.

(f) Private, Negotiated Transaction. Purchaser is aware and hereby acknowledges that the purchase and sale of the Units and the transactions contemplated by this Agreement are being made in a private, negotiated transaction between the parties.

(g) No Reliance. Purchaser hereby acknowledges and agrees that Seller has not made any representation or warranty, express or implied, regarding any aspect of the transactions contemplated by this Agreement except as explicitly set forth in this Agreement, and Seller is not relying on any representation or warranty not contained in this Agreement.

7. **Securities Law Representations, Warranties, Covenants, and Releases**. In connection with the Purchase, Seller hereby represents, warrants and agrees as follows:

(a) Purchaser has informed Seller that Purchaser possesses non-public information (the "Non-Public Information") concerning Purchaser, including, without limitation, with respect to Purchaser's results of operations and financial condition as of and for its fourth

fiscal quarter ending September 30, 2019, and Purchaser is precluded from disclosing such information to Seller (the "Non-Disclosure");

(b) the Non-Public Information may be indicative of a value of the Units that is higher than the purchase price reflected in the Purchase;

(c) Seller is an experienced and sophisticated investor that would qualify as an "accredited investor" as defined in Rule 501 of Regulation D and Seller is knowledgeable in trading equity securities and understands the disadvantage to which Seller is subject on account of the disparity of information as between Purchaser and Seller;

(d) Seller is not relying on any representations, warranties or disclosure from Purchaser or any person acting on Purchaser's behalf in connection with the Purchase;

(e) Seller acknowledges that Purchaser is relying on this Agreement in purchasing the Units and would not purchase the Units in the absence of this Agreement; and

(f) Seller hereby waives, releases and forever discharges Purchaser from and against any and all claims, demands, causes of action and liabilities whatsoever, whether known or unknown, both at law and at equity, that it may have against Purchaser on account of the Non-Disclosure, including, without limitation, under Federal and state securities laws, including Section 10(b) or Rule 10b-5 of the Securities Exchange Act of 1934, as amended.

8. **Further Assurances**. Purchaser and Seller shall execute and deliver any further documents of whatsoever nature which may be reasonably necessary to effectuate and consummate the transaction set forth in this Agreement.

9. **Survival**. The representations and warranties contained in this Agreement shall survive indefinitely.

10. **Applicable Law**. This Agreement shall be subject to and governed by the laws of the State of New York without regard to conflicts of law principles other than Section 5-1401 of the New York General Obligations Law.

11. **Binding Effect**. This Agreement shall bind the parties hereto, their legal representatives, their successors and assigns.

12. **Counterparts and Facsimiles**. This Agreement may be executed by facsimile and/or electronic signature and/or in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

13. **Entire Agreement**. This Agreement constitutes the entire Agreement among the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements or representations and understandings.

14. **Severability**. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall

not affect any other provision hereof and all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the essential economic or legal substance of the transactions contemplated hereby is not affected. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

15. **Modification**. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties.

16. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on the day and year first above written.

PURCHASER:

STAR GROUP, L.P.
By Kestrel Heat, LLC, general partner

By: /s/ Richard G. Oakley
Name: Richard G. Oakley
Title: Senior Vice President - Accounting

SELLER:
CAT ROCK CAPITAL MANAGEMENT, LP

By: /s/ Andrew Flinn
Name: Andrew Flinn
Title: Chief Financial Officer

**Exhibit 10.22**
**Execution Version**

J.P.Morgan

FIFTH AMENDED AND RESTATED CREDIT AGREEMENT

dated as of December 4, 2019

among

PETROLEUM HEAT AND POWER CO., INC.,

as Borrower

THE OTHER LOAN PARTIES PARTY HERETO,

The Lenders from Time to Time Party Hereto,

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent and an LC Issuer

BANK OF AMERICA, N.A.,

as Co-Syndication Agent and an LC Issuer
and

CITIZENS BANK, N.A.,
as Co-Syndication Agent
and

KEYBANK NATIONAL ASSOCIATION,
TD BANK, N.A.,
and
BMO HARRIS BANK, N.A.

as Co-Documentation Agents

and

JPMORGAN CHASE BANK, N.A.,
BANK OF AMERICA, N.A.
and

CITIZENS BANK, N.A.,
as Joint Lead Arrangers and Joint Book Runners

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**FIFTH AMENDED AND RESTATED CREDIT AGREEMENT**

This Fifth Amended and Restated Credit Agreement, dated as of December 4, 2019, is among Petroleum Heat and Power Co., Inc., a Minnesota corporation ("Petro" or the "Borrower"), the other Loan Parties, the Lenders from time to time party hereto, JPMorgan Chase Bank, N.A., a national banking association, as an LC Issuer and as the Agent, Bank of America, N.A., as co-syndication agent and as an LC Issuer ("Bank of America"), Citizens Bank, N.A., as co-syndication agent (together with Bank of America, the "Co-Syndication Agents") and KeyBank National Association, TD Bank, N.A. and BMO Harris Bank, N.A., as co-documentation agents (each, a "Co-Documentation Agent" and collectively, the "Co-Documentation Agents").

**RECITALS**

WHEREAS, pursuant to that certain Fourth Amended and Restated Credit Agreement, dated as of July 2, 2018 (as amended prior to the date hereof, the "Existing Credit Agreement"), among Petro, the lenders party thereto (the "Existing Lenders"), the other Loan Parties, JPMorgan Chase Bank, N.A., a national banking association, as an issuer of certain letters of credit and as the administrative agent, Bank of America, N.A. as an issuer of certain letters of credit and co-syndication agent, Citizens Bank, N.A., as co-syndication agent and KeyBank National Association, Regions Bank and TD Bank, N.A. as co-documentation agents, the Existing Lenders made available to the Borrower (i) revolving loans and other extensions of credit in an aggregate principal amount not to exceed $450,000,000 and (ii) a term loan in an aggregate principal amount of $100,000,000;

WHEREAS, the Borrower has requested that the Existing Credit Agreement be amended and restated in order to provide for, among other things, (i) a new 5-year term loan facility in an aggregate amount not to exceed $130,000,000 (a portion of which, for the avoidance of doubt, will be deemed to have been applied to a "cashless" prepayment of the aggregate principal amount of Existing Term Loans outstanding on the Effective Date with the proceeds of a borrowing of new Term Loans hereunder in an equal amount, in each case, deemed to occur as of the Effective Date), which extensions of credit will be used by the Borrower for the purposes set forth in Section 6.2 and (ii) extension of the Facility Termination Date with respect to the Revolving Loans outstanding under the Existing Credit Agreement;

WHEREAS, the Obligations of the Borrower under the Loan Documents to the Agent and the Lenders will continue to be guaranteed by the Guarantors as set forth in the Guaranty; and

WHEREAS, the Borrower and the other Loan Parties will continue to secure all of their Obligations under the Loan Documents pursuant to the security interests in and liens upon the Collateral as set forth in the Collateral Documents;

NOW THEREFORE, in consideration of these premises and the terms and conditions set forth in this Agreement, and for other good and valuable consideration, the receipt of which is

hereby acknowledged, the parties hereto hereby agree that the Existing Credit Agreement is hereby amended and restated as of the Effective Date to read in its entirety as follows:

**ARTICLE I**

**DEFINITIONS**

1.1. Defined Terms

. As used in this Agreement, the following terms have the meanings specified below:

"Account" shall have the meaning given to such term in the Security Agreement.

"Account Debtor" means any Person obligated on an Account.

"Acquisition" means any transaction, or any series of related transactions, consummated after the Effective Date, by which any Loan Party (a) acquires any going business or all or substantially all of the assets of any Person, 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 Capital Stock of a Person which has ordinary voting power for the election of directors or other similar management personnel of a Person (other than Capital Stock having such power only by reason of the happening of a contingency) or a majority of the outstanding Capital Stock of a Person.

"Advance" means a borrowing hereunder, (a) made by some or all of the Lenders on the same Borrowing Date, or (b) converted or continued by the Lenders on the same date of conversion or continuation, and consisting, in either case, of the aggregate amount of the several Loans of the same Type and, in the case of Eurodollar Loans, for the same Interest Period. The term Advance shall include Revolving Loans, Term Loans, Non-Ratable Loans, Swingline Loans, Overadvances and Protective Advances unless otherwise expressly provided.

"Affected Lender" is defined in Section 3.7.

"Affiliate" of any Person means any other Person directly or indirectly controlling, controlled by or under common control with such Person. A Person shall be deemed to control another Person if the controlling Person owns 10% or more of any class of the voting Capital Stock of the controlled Person or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled Person, whether through ownership of Capital Stock, by contract or otherwise.

"Agent" means Chase in its capacity as contractual representative of the Lenders pursuant to Article X, and not in its individual capacity as a Lender, and any successor Agent appointed pursuant to Article X.

"Aggregate Commitment" means, at any time, the aggregate of the Revolving Commitment and Term Commitment (or, if the Term Commitment has been terminated, the Term Credit Exposure) of all the Lenders.

"Aggregate Credit Exposure" means, at any time, the aggregate of the Revolving Credit Exposure and Term Credit Exposure of all the Lenders.

"Aggregate Revolving Commitment" means the aggregate of the Revolving Commitments of all of the Lenders, as reduced from time to time pursuant to the terms hereof, which Aggregate Revolving Commitment shall be in the amount of $450,000,000; provided that, for all purposes of this Agreement (other than the definition of Available Revolving Commitment) (i) the Aggregate Revolving Commitment shall be deemed to be the Non-Seasonal Availability Amount for each day other than any day during a Seasonal Availability Period and (ii) during a Seasonal Availability Period the Aggregate Revolving Commitment shall be equal to $300,000,000 *plus* the aggregate amount of increases in the Aggregate Revolving Commitment requested by the Borrower during such Seasonal Availability Period subject to the limitations on such requests described in the proviso of the definition of "Seasonal Availability Notice" (it being understood that the Aggregate Revolving Commitment shall not exceed $450,000,000 (or if the Aggregate Revolving Commitment is increased pursuant to Section 2.17 hereof, $650,000,000) at any time).

"Aggregate Revolving Credit Exposure" means, at any time, the aggregate of the Revolving Credit Exposure.

"Aggregate Term Commitment" means the aggregate of the Term Commitments of all of the Lenders, as reduced from time to time pursuant to the terms hereof, which Aggregate Term Commitment shall be in the amount of $130,000,000.

"Aggregate Term Credit Exposure" means, at any time, the aggregate of the Term Credit Exposure.

"Agreement" means this Fifth Amended and Restated Credit Agreement, as it may be amended or modified and in effect from time to time.

"Alternate Base Rate" or "ABR" means, for any day, a rate of interest per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day plus 0.50% and (c) the Eurodollar Rate (excluding the Applicable Margin) for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that for the purpose of this definition, the Eurodollar Rate for any day shall be based on the Screen Rate (or if the Screen Rate is not available for such one month Interest Period, the Interpolated Rate) at approximately 11:00 a.m. London time on such day. Any change in the Alternate Base Rate due to a change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the Eurodollar Rate, respectively. If the Alternate Base Rate is being used as an alternate rate of interest pursuant to Section 2.12 (for the avoidance of doubt, only until any amendment has become effective pursuant to Section 2.12(b)), then the Alternate Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above. For the avoidance of doubt, if the Alternate Base Rate as so determined would be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to any Loan Party or any of their Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Fee Rate" means 0.30% per annum; provided that the Applicable Fee Rate on the amount by which the Aggregate Revolving Commitment exceeds the Non-Seasonal Availability Amount shall be, solely with respect to each day other than any day during a Seasonal Availability Period, 0.20% per annum.

"Applicable Laws" is defined in Section 5.15.

"Applicable Margin" means, (A) with respect to Revolving Loans, (i) with respect to Floating Rate Advances, 0.50% per annum and (ii) with respect to Eurodollar Advances, 1.50% per annum and (B) with respect to Term Loans, (i) with respect to Floating Rate Advances, 2.00% per annum and (ii) with respect to Eurodollar Advances, 3.00% per annum; provided that from and after the date of delivery by the Borrower of the financial statements described in Section 6.1(b) for the Fiscal Quarter ending as of December 31, 2019 and thereafter, the Applicable Margin will be determined as of the end of each Fiscal Quarter of the Borrower based upon the Applicable Margin Availability for such Fiscal Quarter as set forth in the pricing grid below:

| Applicable Margin Availability | Revolving Loan Eurodollar Advances | Revolving Loan Floating Rate Advances | Term Loan Eurodollar Advances | Term Loan Floating Rate Advances |
|---|---|---|---|---|
| > $225,000,000 | 1.25% | 0.25% | 2.75% | 1.75% |
| > $150,000,000 but ≤ $225,000,000 | 1.50% | 0.50% | 3.00% | 2.00% |
| > $75,000,000 but ≤ $150,000,000 | 1.75% | 0.75% | 3.25% | 2.25% |
| ≤ $75,000,000 | 2.00% | 1.00% | 3.50% | 2.50% |

Changes in the Applicable Margin resulting from changes in Applicable Margin Availability shall become effective on the first day of the next succeeding quarter and shall remain in effect until the next change to be effected pursuant to this paragraph. In the event that the Borrower shall fail to deliver the Borrowing Base Certificate with respect to any Fiscal Quarter, the Applicable Margin shall, from the date such Borrowing Base Certificate was required to be delivered until the date on which it is delivered, be determined by reference to the lowest Applicable Margin Availability in the foregoing grid.

"Applicable Margin Availability" means, at any date, (a) the sum of the Availability (which shall be deemed to include Suppressed Availability for the purpose of calculating

Availability pursuant to this definition) on the last day of each of the twelve preceding Fiscal Months ending on such date divided by (b) twelve.

"Applicable Mortgages" means any Mortgage with respect to which mortgage recording taxes, documentary stamp taxes, intangible taxes and other similar taxes are payable in connection with each Credit Extension (assuming that no Credit Extensions were then outstanding).

"Applicable Mortgage Minimum Amount" means, at any time, the sum of the limits on the maximum amount of the Obligations secured under all Applicable Mortgages at such time.

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

"Arrangers" means (i) JPMorgan Chase Bank, N.A. and its successors; provided that the Borrower agrees that JPMorgan Chase Bank, N.A. may perform its responsibilities hereunder through its affiliate, J.P. Morgan Securities LLC, (ii) Bank of America, N.A. and its successors and (iii) Citizens Bank, N.A., each in their capacity as Joint Lead Arrangers and Joint Book Runners.

"Article" means an article of this Agreement unless another document is specifically referenced.

"Assignment Agreement" is defined in Section 12.3(a).

"Authorized Officer" means any of the chief executive officer, chief financial officer, vice president, controller or treasurer of a Loan Party, acting singly.

"Availability" means, at any time, an amount equal to (x) the lesser of (a) the Aggregate Revolving Commitment and (b) the Borrowing Base *minus* (y) the Aggregate Revolving Credit Exposure.

"Available Revolving Commitment" means, at any time, the Aggregate Revolving Commitment then in effect *minus* the Aggregate Revolving Credit Exposure at such time.

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

"Bail-In Legislation" means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

"Banking Services" means each and any of the following bank services provided to any Loan Party by any Lender or any of its Affiliates: (a) commercial credit cards, (b) stored value cards and (c) treasury management services (including, without limitation, controlled

disbursement, automated clearinghouse transactions, return items, overdrafts and interstate depository network services).

"Bankruptcy Code" means Title 11 of the U.S. Code (11 U.S.C. § 101 et seq.) as amended, reformed, or otherwise modified from time to time, and any rule or regulation issued thereunder.

"Benchmark Replacement" means the sum of: (a) the alternate benchmark rate (which may be a SOFR-Based Rate) that has been selected by the Agent and the Borrower giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to the Eurodollar Base Rate for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement; provided further that any such Benchmark Replacement shall be administratively feasible as determined by the Agent in its sole discretion.

"Benchmark Replacement Adjustment" means the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Agent and the Borrower giving due consideration to (i) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Eurodollar Base Rate with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and/or (ii) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of the Eurodollar Base Rate with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time (for the avoidance of doubt, such Benchmark Replacement Adjustment shall not be in the form of a reduction to the Applicable Margin).

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Agent decides in its reasonable discretion may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Agent in a manner substantially consistent with market practice (or, if the Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Agent decides is reasonably necessary in connection with the administration of this Agreement).

"Benchmark Replacement Date" means the earlier to occur of the following events with respect to the Eurodollar Base Rate:

(1) in the case of clause (1) or (2) of the definition of "Benchmark Transition Event," the later of (a) the date of the public statement or publication of information referenced therein and

(b) the date on which the administrator of the Screen Rate permanently or indefinitely ceases to provide the Screen Rate; or

(2) in the case of clause (3) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to the Eurodollar Base Rate:

(1) a public statement or publication of information by or on behalf of the administrator of the Screen Rate announcing that such administrator has ceased or will cease to provide the Screen Rate, permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Screen Rate;

(2) a public statement or publication of information by the regulatory supervisor for the administrator of the Screen Rate, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for the Screen Rate, a resolution authority with jurisdiction over the administrator for the Screen Rate or a court or an entity with similar insolvency or resolution authority over the administrator for the Screen Rate, in each case which states that the administrator of the Screen Rate has ceased or will cease to provide the Screen Rate permanently or indefinitely, provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide the Screen Rate; and/or

(3) a public statement or publication of information by the regulatory supervisor for the administrator of the Screen Rate announcing that the Screen Rate is no longer representative.

"Benchmark Transition Start Date" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Agent or the Required Lenders, as applicable, by notice to the Borrower, the Agent (in the case of such notice by the Required Lenders) and the Lenders.

"Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to the Eurodollar Base Rate and solely to the extent that the Eurodollar Base Rate has not been replaced with a Benchmark Replacement, the period (x) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the Eurodollar Base Rate for all purposes hereunder in accordance with Section 2.12 and (y) ending at the time that a Benchmark Replacement has replaced the Eurodollar Base Rate for all purposes hereunder pursuant to Section 2.12.

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

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

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

"BHC Act Affiliate" of a party means an "affiliate' (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

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

"Borrower" has the meaning specified in the preamble hereto.

"Borrower Representative" means PHI, in its capacity as contractual representative of the Borrower pursuant to Article XVII.

"Borrowing Base" means, at any time, the sum, without duplication, of:

(a) (i) for the months of May through November in each Fiscal Year, 85% of Eligible Accounts Receivable or (ii) for the months of December through April in each Fiscal Year subject to trailing dilution of not more than 3%, 90% of Eligible Accounts Receivable, *plus*

(b) (i) for the months of May through November in each Fiscal Year, 80% of Eligible Heating Oil and Other Fuel Inventory or (ii) for the months of December through April in each Fiscal Year, 85% of Eligible Heating Oil and Other Fuel Inventory, *plus*

(c) the lesser of (i) $7,500,000 and (ii) 40% of Eligible Other Inventory, *plus*

(d) the lesser of

(i) $100,000,000 and

(ii) the sum of

(A) 75% of the Net Orderly Liquidation Value of Eligible Vehicles,

(B) 75% of the Net Orderly Liquidation Value of Eligible Machinery and Equipment, and

(C) (i) 60% of the aggregate of the Customer Lists Value less (ii) the aggregate principal amount of outstanding Term Loans; provided that this clause (D) shall not be less than zero,

*plus*

(e) 100% of cash and Cash Equivalent Investments held in deposit accounts located at, and subject to control agreements in favor of, the Agent, *minus*

(f) Reserves;

provided that (I) the amount described in clause (d)(i) above shall be automatically reduced on a dollar-for-dollar basis by the Borrowing Base Reduction Amount, (II) Customer Lists shall be reappraised on an annual basis in accordance with Section 6.11 and (III) except for (x) Inventory and (y) Accounts, any assets acquired in connection with any Permitted Acquisition shall not be included in the determination of the Borrowing Base. The Borrowing Base shall be determined based on the most recent Borrowing Base Certificate delivered by the Borrower.

"Borrowing Base Certificate" means a certificate, signed by an Authorized Officer of the Borrower Representative, in the form of Exhibit H or another form which is acceptable to the Agent in its Permitted Discretion. Each Borrowing Base Certificate shall set forth, among other things, a calculation of the Borrowing Base.

"Borrowing Base Reduction Amount" means an amount equal to the sum of (a) all Net Cash Proceeds of asset dispositions received by any Loan Party *plus* (b) all insurance or condemnation proceeds received by any Loan Party; provided that (x) such Net Cash Proceeds or insurance or condemnation proceeds shall be disregarded in determining the Borrowing Base Reduction Amount to the extent they are deposited in a deposit account located at, and subject to control agreements in favor of, the Agent pursuant to Section 2.16(b) or (d), as applicable, (y) such Net Cash Proceeds or insurance or condemnation proceeds shall be disregarded in determining the Borrowing Base Reduction Amount to the extent that within twelve months of the receipt thereof they are reinvested pursuant to Section 2.16(b) or (d), as applicable, in replacement assets of like value (as determined in a manner satisfactory to the Agent in its Permitted Discretion), and (z) in determining the Borrowing Base Reduction Amount, the amount allocated to any asset that is disposed of or that is the subject of any insurance or condemnation proceeds so received shall be equal to the amount originally allocated to such asset for purposes of determining the Borrowing Base (as determined by the Agent in its Permitted Discretion).

"Borrowing Date" means a date on which an Advance or a Loan is made hereunder.

"Borrowing Notice" is defined in Section 2.1.1(b).

"Business Day" means (a) with respect to any borrowing, payment or rate selection of Eurodollar Advances, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago and New York City for the conduct of substantially all of their commercial lending activities, interbank wire transfers can be made on the Fedwire system and dealings in U.S. dollars are carried on in the London interbank market and (b) for all other purposes, a day (other than a Saturday or Sunday) on which banks generally are open in Chicago for the conduct of substantially all of their commercial lending activities and interbank wire transfers can be made on the Fedwire system.

"Capital Expenditures" means, for any period, without duplication, any expenditure or commitment to expend money for any purchase or other acquisition of any asset (other than

pursuant to an Acquisition) which would be classified as a fixed or capital asset on a consolidated balance sheet of the Parent and its Subsidiaries prepared in accordance with GAAP.

"Capital Stock" means any and all corporate stock, units, shares, partnership interests, membership interests, equity interests, rights, securities, or other equivalent evidences of ownership (howsoever designated) issued by any Person.

"Capitalized Lease" of a Person means any lease of Property by such Person as lessee which would be capitalized on a balance sheet of such Person prepared in accordance with GAAP.

"Capitalized Lease Obligations" of a Person means the aggregate amount of the obligations of such Person under Capitalized Leases which would be shown as a liability on a balance sheet of such Person prepared in accordance with GAAP.

"CaptiveCo" means the collective reference to (i) Woodbury Insurance Co., Inc., a Connecticut corporation, and (ii) each other Subsidiary of Parent or the Borrower which is a captive insurance company.

"CaptiveCo Loans" has the meaning specified in Section 6.34.

"Carry Over Amount" is defined in Section 6.27.

"Cash Equivalent Investments" means (a) short-term obligations of, or fully guaranteed by, the U.S., (b) commercial paper rated A-1 or better by S&P or P-1 or better by Moody's, (c) demand deposit accounts maintained in the ordinary course of business with any domestic office of any commercial bank organized under the laws of the U.S. or any State thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000, and (d) certificates of deposit issued by and time deposits with any domestic office of any commercial bank organized under the laws of the U.S. or any State thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000; provided that, in each case, the same provides for payment of both principal and interest (and not principal alone or interest alone) and is not subject to any contingency regarding the payment of principal or interest.

"Change" is defined in Section 3.2.

"Change in Control" means the occurrence of any of the following events: (i) the partners or shareholders, as the case may be, of the Borrower shall approve any plan or proposal for the liquidation or dissolution of the Borrower; (ii) the General Partner shall cease for any reason to be the sole general partner of the Parent; (iii) the Parent ceases for any reason to beneficially own, directly or indirectly, 100% of all classes of Capital Stock of the Borrower; or (iv) the Kestrel Group collectively shall cease for any reason to beneficially own Capital Stock having the voting power to elect all of the directors or other governing board of the General Partner.

"Chase" means JPMorgan Chase Bank, N.A., a national banking association, in its individual capacity, and its successors.

"Co-Syndication Agents" has the meaning specified in the recitals hereto.

"Code" means the Internal Revenue Code of 1986, as amended, reformed or otherwise modified from time to time, and any rule or regulation issued thereunder.

"Collateral" means any and all Property covered by the Collateral Documents and any and all other Property of any Loan Party, now existing or hereafter acquired, that may at any time be or become subject to a security interest or Lien in favor of the Agent, on behalf of itself and the Lenders, to secure the Secured Obligations.

"Collateral Access Agreement" means any landlord waiver or other agreement, in form and substance reasonably satisfactory to the Agent, between the Agent and any third party (including any bailee, consignee, customs broker, or other similar Person) in possession of any Collateral or any landlord of any Loan Party for any real Property where any Collateral is located, as such landlord waiver or other agreement may be amended, restated, or otherwise modified from time to time.

"Collateral Documents" means, collectively, the Security Agreement, the Mortgages and any other documents granting a Lien upon the Collateral as security for payment of the Secured Obligations.

"Collateral Shortfall Amount" is defined in Section 2.1.2(l).

"Commitment" means, for each Lender, its Revolving Commitment and its Term Commitment.

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

"Commodity Hedging Agreement" means any agreement or arrangement designed solely to protect any Loan Party against fluctuations in the price of petroleum derivative products with respect to quantities of such products that such Loan Party reasonably expects to purchase from suppliers, sell to their customers or need for their inventory during the period covered by such agreement or arrangement.

"Commodities Inventory" means all inventory consisting of petroleum derivative products of, and held for sale by, the Loan Parties.

"Compliance Certificate" is defined in Section 6.1(e).

"Compounded SOFR" means the compounded average of SOFRs for the applicable Corresponding Tenor, with the rate, or methodology for this rate, and conventions for this rate (which may include compounding in arrears with a lookback and/or suspension period as a mechanism to determine the interest amount payable prior to the end of each Interest Period) being established by the Administrative Agent in accordance with:

(1) the rate, or methodology for this rate, and conventions for this rate selected or recommended by the Relevant Governmental Body for determining compounded SOFR; provided that:

(2) if, and to the extent that, the Agent determines that Compounded SOFR cannot be determined in accordance with clause (1) above, then the rate, or methodology for this rate, and conventions for this rate that the Agent determines in its reasonable discretion are substantially consistent with any evolving or then-prevailing market convention for determining compounded SOFR for U.S. dollar-denominated syndicated credit facilities at such time;

provided, further, that if the Agent decides that any such rate, methodology or convention determined in accordance with clause (1) or clause (2) is not administratively feasible for the Agent, then Compounded SOFR will be deemed unable to be determined for purposes of the definition of "Benchmark Replacement."

"Consolidated Capital Expenditures" means, with reference to any period, the Capital Expenditures of the Parent and its Subsidiaries calculated on a consolidated basis for such period.

"Consolidated EBITDA" means Consolidated Net Income *plus*, to the extent deducted from revenues in determining Consolidated Net Income, (a) Consolidated Interest Expense, (b) expense for taxes paid or accrued, (c) depreciation, (d) amortization and other non-cash charges (including any non-cash impact of Financial Accounting Standards Board Accounting Standards Codifications 715 and 815), (e) cash contributions to any Plan and (f) extraordinary non-cash losses (as determined in accordance with GAAP) incurred other than in the ordinary course of business, *minus*, to the extent included in Consolidated Net Income, extraordinary gains (as determined in accordance with GAAP) realized other than in the ordinary course of business, all calculated for the Parent and its Subsidiaries on a consolidated basis. For the purposes of calculating Consolidated EBITDA for any period (each, a "Reference Period"), (i) if at any time during such Reference Period, the Parent or any Subsidiaries shall have made any Material Disposition, Consolidated EBITDA for such Reference Period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the property that is the subject of such Material Disposition for such Reference Period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such Reference Period and (ii) if during such Reference Period, the Parent or any Subsidiaries shall have made a Material Acquisition, Consolidated EBITDA for such Reference Period shall be calculated after giving pro forma effect thereto as if such Material Acquisition occurred on the first day of such Reference Period. As used in this definition: "Material Acquisition" means any Permitted Acquisition that involves the payment of consideration by the Parent and its Subsidiaries in excess of $500,000; "Material Disposition" means any sale, transfer or other disposition of property or series of related sales, transfers or other dispositions of property that yields gross proceeds to the Parent and the Subsidiaries in excess of $500,000.

"Consolidated Fixed Charges" means, with reference to any period, without duplication, cash Consolidated Interest Expense, *plus* scheduled principal payments on Indebtedness made during such period, *plus* dividends or distributions paid or made during such Period by the Parent, *plus* Capitalized Lease payments, *plus* cash contributions to any Plan, all calculated for the Parent and its Subsidiaries on a consolidated basis. For the purposes of calculating Consolidated Fixed Charges for any Reference Period, (i) if at any time during such Reference Period, the Parent or any Subsidiaries shall have made any Material Disposition, Consolidated

Fixed Charges for such Reference Period shall be calculated after giving pro forma effect thereto as if such Material Disposition occurred on the first day of such Reference Period and (ii) if during such Reference Period, the Parent or any Subsidiaries shall have made a Material Acquisition, Consolidated Fixed Charges for such Reference Period shall be calculated after giving pro forma effect thereto as if such Material Acquisition occurred on the first day of such Reference Period. As used in this definition: "Material Acquisition" means any Permitted Acquisition that involves the payment of consideration by the Parent and its Subsidiaries in excess of $500,000; and "Material Disposition" means any sale, transfer or other disposition of property or series of related sales, transfers or other dispositions of property that yields gross proceeds to the Parent and the Subsidiaries in excess of $500,000.

"Consolidated Interest Expense" means, with reference to any period, the interest expense of the Parent and its Subsidiaries calculated on a consolidated basis for such period.

"Consolidated Net Income" means, with reference to any period, the net income (or loss) of the Parent and its Subsidiaries calculated on a consolidated basis for such period.

"Consolidated Senior Secured Debt" means, at any date, the Funded Debt of the Parent and its Subsidiaries that is then secured by a Lien on any asset of the Parent or its Subsidiaries and that is not subordinated in right of payment to the Obligations.

"Contingent Obligation" of a Person means any agreement, undertaking or arrangement by which such Person assumes, guarantees, endorses, contingently agrees to purchase or provide funds for the payment of, or otherwise becomes or is contingently liable upon, the obligation or liability of any other Person, or agrees to maintain the net worth or working capital or other financial condition of any other Person, or otherwise assures any creditor of such other Person against loss, including, without limitation, any comfort letter, operating agreement, take-or-pay contract or the obligations of any such Person as general partner of a partnership with respect to the liabilities of the partnership.

"Controlled Group" means all members of a controlled group of corporations or other business entities and all trades or businesses (whether or not incorporated) under common control which, together with the Parent or any of its Subsidiaries, are treated as a single employer under Section 414 of the Code or Section 4001(14) of ERISA.

"Conversion/Continuation Notice" is defined in Section 2.7.

"Copyrights" shall have the meaning given to such term in the Security Agreement.

"Corresponding Tenor" with respect to a Benchmark Replacement means a tenor (including overnight) having approximately the same length (disregarding business day adjustment) as the applicable tenor for the applicable Interest Period with respect to the Eurodollar Base Rate.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning assigned to it in Section 9.16.

"Credit Exposure" means, as to any Lender at any time, the sum of (a) its Revolving Credit Exposure, *plus* (b) its Term Credit Exposure.

"Credit Extension" means the making of an Advance or the issuance of a Facility LC hereunder.

"Credit Extension Date" means the Borrowing Date for an Advance or the issuance date for a Facility LC.

"Customer Lists" means a list of the customers of the Borrower, PHI and their respective Subsidiaries which are Loan Parties, specifying each customer's name, mailing address and phone number.

"Customer Lists Value" means, at the election of the Agent exercising its Permitted Discretion, either (a) the value of the Customer Lists as determined in a manner acceptable to the Agent (in its Permitted Discretion) by an appraiser reasonably acceptable to the Agent or (b) the value of (i) the distressed net orderly enterprise valuation (as determined by the Agent in its Permitted Discretion) of the non-working capital assets of the Loan Parties less (ii) the Orderly Liquidation Value of Eligible Vehicles less (iii) the Orderly Liquidation Value of Eligible Machinery and Equipment.

"Default" means an event described in Article VII.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" means any Lender that has (a) failed to fund any portion of its Loans or participations in Letters of Credit within three Business Days of the date required to be funded by it hereunder, unless such funding obligations are subject to a good faith dispute between the Borrower and such Lender, (b) notified the Borrower, the Agent, the LC Issuer or any Lender in writing that it does not intend to comply with any of its funding obligations under this Agreement or has made a public statement to the effect that it does not intend to comply with its funding obligations under this Agreement or under other agreements in which it commits to extend credit (it being understood that a Lender shall not be deemed a Defaulting Lender hereunder if its stated intention not to fund is based upon another party's failure to fulfill its obligations under the applicable agreement), in each case unless such funding obligations are subject to a good faith dispute between the Borrower and such Lender, (c) failed, within three Business Days after request by the Agent, to confirm that it will comply with the terms of this Agreement relating to its obligations to fund prospective Loans and participations in then outstanding Letters of Credit, unless such funding obligations are subject to a good faith dispute

between the Borrower and such Lender, (d) otherwise failed to pay over to the Agent or any other Lender any other amount required to be paid by it hereunder within three Business Days of the date when due, unless the subject of a good faith dispute, or (e) (i) become or is insolvent or has a parent company that has become or is insolvent, (ii) become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or (iii) become the subject of a Bail-In Action.

"Demand Note" means each promissory note issued by Parent, the Borrower or any of their respective Subsidiaries (other than CaptiveCo) in favor of CaptiveCo evidencing the cumulative amount of all CaptiveCo Loans to be made from time to time under Section 6.34, pursuant to which CaptiveCo may request, upon demand, repayment of all amounts outstanding under such CaptiveCo Loans from time to time.

"Deposit Account Control Agreement" means an agreement, in form and substance satisfactory to the Agent (in its Permitted Discretion), among any Loan Party, a banking institution holding such Loan Party's funds, and the Agent with respect to collection and control of all deposits and balances held in a deposit account maintained by any Loan Party with such banking institution, as amended, supplemented or otherwise modified from time to time in accordance with the terms thereof.

"Document" shall have the meaning given to such term in the Security Agreement.

"Domestic Subsidiary" means any Subsidiary which is organized under the laws of the U.S. or any state of the U.S.

"Early Opt-in Election" means the occurrence of:

(1) (i) a determination by the Agent or (ii) a notification by the Required Lenders to the Agent (with a copy to the Borrower) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.12 are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace the Eurodollar Base Rate, and

(2) (i) the election by the Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Agent of written notice of such election to the Borrower and the Lenders or by the Required Lenders of written notice of such election to the Agent.

"EEA Financial Institution" means (a) any institution established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any institution established in an EEA Member Country which is a

subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" means any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Effective Date" means the date that the conditions precedent set forth in Article IV are satisfied.

"Eligibility Definition" means any of the following terms, as defined herein: "Eligible Accounts Receivable", "Eligible Heating Oil and Other Fuel Inventory", "Eligible Machinery and Equipment", "Eligible Other Inventory" and "Eligible Vehicles".

"Eligible Accounts Receivable" means, at any time, the Accounts of a Loan Party which the Agent determines in its Permitted Discretion are eligible as the basis for Credit Extensions hereunder. Without limiting the Agent's discretion provided herein, Eligible Accounts Receivable shall not include any Account:

(a) which is not subject to a first priority perfected security interest in favor of the Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Agent and (ii) a Permitted Lien which does not have priority over the Lien in favor of the Agent;

(c) with respect to which more than 90 days have elapsed since the date of the original invoice therefor or which is more than 60 days past the due date for payment; provided that (i) notwithstanding the foregoing, from May 1st through August 31st of each year, Accounts with respect to which more than 90 days but no more than 120 days have elapsed since the original invoice date shall nevertheless constitute Eligible Account Receivables in an amount not to exceed $25,000,000 (when taken together with all installment Accounts included as Eligible Accounts Receivable pursuant to clause (ii) below) and (ii) an installment Account that does not otherwise meet the terms of this clause (c) shall nevertheless constitute an Eligible Account Receivable so long as (x) with respect to any particular payment installment of such installment Account, not more than 90 days have elapsed since the date on which the original bill for such particular payment installment was mailed, (y) no particular payment installment of such installment Account is more than 60 days past the due date for payment and (z) the aggregate of all such installment Accounts does not exceed $25,000,000 (when taken together with all Accounts included as Eligible Accounts Receivable pursuant to clause (i) above);

(d) which is owing by an Account Debtor for which more than 50% of the Accounts owing from such Account Debtor and its Affiliates are ineligible hereunder;

(e) which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to all Loan Parties exceeds 2% of the aggregate amount of Eligible Accounts Receivable of all Loan Parties;

(f) with respect to which any covenant, representation, or warranty contained in this Agreement or in the Security Agreement has been breached or is not true;

(g) which (i) does not arise from the sale of goods or performance of services in the ordinary course of business, (ii) is not evidenced by an invoice or other documentation satisfactory to the Agent (in its Permitted Discretion) which has been sent or otherwise delivered to the Account Debtor, (iii) represents a progress billing, (iv) is contingent upon such Loan Party's completion of any further performance, or (v) represents a sale on a bill-and-hold, guaranteed sale, sale-and-return, sale on approval, consignment, cash-on-delivery or any other repurchase or return basis;

(h) for which the goods giving rise to such Account have not been shipped to the Account Debtor or for which the services giving rise to such Account have not been performed by such Loan Party;

(i) with respect to which any check or other instrument of payment has been returned uncollected for any reason;

(j) which is owed by an Account Debtor which has (i) applied for, suffered, or consented to the appointment of any receiver, custodian, trustee, or liquidator of its assets, (ii) has had possession of all or a material part of its property taken by any receiver, custodian, trustee or liquidator, (iii) filed, or had filed against it, any request or petition for liquidation, reorganization, arrangement, adjustment of debts, adjudication as bankrupt, winding-up, or voluntary or involuntary case under any state or federal bankruptcy laws, (iv) has admitted in writing its inability, or is generally unable to, pay its debts as they become due, (v) become insolvent, or (vi) ceased operation of its business;

(k) which is owed by any Account Debtor which has sold all or a substantially all of its assets;

(l) which is owed by an Account Debtor which (i) does not maintain its chief executive office in the U.S. or Canada (other than the Province of Newfoundland) or (ii) is not organized under applicable law of the U.S., any state of the U.S., Canada, or any province of Canada (other than the Province of Newfoundland) unless, in either case, such Account is backed by a Letter of Credit acceptable to the Agent in its Permitted Discretion which is in the possession of the Agent;

(m) which is owed in any currency other than U.S. dollars;

(n) which is owed by (i) the government (or any department, agency, public corporation, or instrumentality thereof) of any country other than the U.S. unless such Account is backed by a Letter of Credit acceptable to the Agent (in its Permitted Discretion) which is in the possession of the Agent, or (ii) the government of the U.S., or

any department, agency, public corporation, or instrumentality thereof, unless the Federal Assignment of Claims Act of 1940, as amended (31 U.S.C. § 3727 et seq. and 41 U.S.C. § 15 et seq.), and any other steps necessary to perfect the Lien of the Agent in such Account have been complied with to the Agent's satisfaction in its Permitted Discretion;

(o) which is owed by any Affiliate, director or executive officer of any Loan Party;

(p) which, when added to all other Accounts owing to the Loan Parties by the applicable Account Debtor or any of its Affiliates, does not exceed in face amount (i) in the case of commercial Account Debtors, 2.0% of the total Eligible Accounts Receivable and (ii) in the case of residential Account Debtors, 1.0% of the total Eligible Accounts Receivable;

(q) which is owed by an Account Debtor or any Affiliate of such Account Debtor to which any Loan Party is indebted, but only to the extent of such indebtedness;

(r) which is subject to any counterclaim, deduction, defense, setoff or dispute but only to the extent of any such counterclaim, deduction, defense, setoff or dispute;

(s) which is evidenced by any promissory note, chattel paper, or instrument;

(t) which is owed by an Account Debtor located in any jurisdiction which requires filing of a "Notice of Business Activities Report" or other similar report in order to permit such Loan Party to seek judicial enforcement in such jurisdiction of payment of such Account, unless such Loan Party has filed such report or qualified to do business in such jurisdiction;

(u) with respect to which such Loan Party has made any agreement with the Account Debtor for any reduction thereof, other than discounts and adjustments given in the ordinary course of business; or

(v) which the Agent determines (in its Permitted Discretion) may not be paid by reason of the Account Debtor's inability to pay or which the Agent otherwise determines (in its Permitted Discretion) is unacceptable for any reason whatsoever.

"Eligible Carrier" means each of the carriers and pipeline companies listed on Schedule 1.1 or otherwise approved from time to time by the Agent in its Permitted Discretion.

"Eligible Heating Oil and Other Fuel Inventory" means, at any time, the Inventory of a Loan Party consisting of propane, home heating oil, diesel fuel and other petroleum derivative products, but excluding natural gas, which the Agent determines in its Permitted Discretion is eligible as the basis for Credit Extensions hereunder and as to which all of the following requirements have been fulfilled to the reasonable satisfaction of the Agent:

(a) such Inventory is owned by such Loan Party, is subject to a first priority perfected Lien in favor of the Agent, and is subject to no other Lien whatsoever other than a Permitted Lien which does not have priority over the Lien in favor of the Agent;

(b) such Inventory is not held on consignment;

(c) such Inventory is of customary quality and meets all standards applicable to such Inventory, its use or sale imposed by any Governmental Authority having regulatory authority over such matters;

(d) such Inventory is of a type sold in the ordinary course of the business of such Loan Party;

(e) such Inventory is located within the United States (i) in the Buckeye or Colonial pipeline systems, (ii) in commercial storage facilities; (iii) at one of the locations listed in Exhibit A to the Security Agreement; or (iv) in transit to a location described in the foregoing clause (i), (ii) or (iii) with an Eligible Carrier;

(f) such Inventory does not constitute goods in transit unless it is in transit with an Eligible Carrier;

(g) such Inventory is stored in storage facilities of such Loan Party or in commercial storage facilities and if located in a warehouse or other facility leased by such Loan Party, the lessor has delivered to the Agent a waiver, consent and agreement in form and substance satisfactory to the Agent (in its Permitted Discretion) or a Reserve for rent, charges, and other amounts due or to become due with respect to such warehouse or facility has been established by the Agent in its Permitted Discretion; provided that any such Inventory stored in any particular commercial storage facility or warehouse does not in the aggregate exceed 15% of the total Eligible Heating Oil and Other Fuel Inventory;

(h) such Inventory has not been delivered to a customer of such Loan Party (regardless of whether such delivery is on a consignment basis) and has not been returned by any customer; and

(i) in the case of any Inventory consisting of any petroleum derivative products other than home heating oil, such Inventory does not exceed 10% of the total Eligible Heating Oil and Other Fuel Inventory.

"Eligible Inventory" means all Eligible Heating Oil and Other Fuel Inventory and all Eligible Other Inventory.

"Eligible Machinery and Equipment" means, at any time, the Machinery and Equipment (other than Vehicles and items included in the definition of Eligible Other Inventory) of a Loan Party then used or useful in such Loan Party's business, which the Agent determines in its Permitted Discretion is eligible as the basis for Credit Extensions hereunder and as to which all of the following requirements have been fulfilled to the reasonable satisfaction of the Agent:

(a) such Machinery and Equipment (i) is owned by such Loan Party, (ii) is subject to a first priority perfected Lien in favor of the Agent and (iii) is subject to no other Lien whatsoever other than a Permitted Lien which does not have priority over the Lien in favor of the Agent;

(b) the full purchase price for such Machinery and Equipment has been paid by such Loan Party;

(c) such Machinery and Equipment is located on premises (i) owned by such Loan Party, which premises are subject to a first priority perfected Lien in favor of the Agent and to no other Lien whatsoever other than a Permitted Lien which does not have priority over the Lien in favor of the Agent or (ii) leased by such Loan Party with respect to which the Agent has received waiver, consent and agreement in form and substance satisfactory to the Agent;

(d) such Machinery and Equipment is in reasonable repair and working order and is used or held for use by such Loan Party in the ordinary course of business of such Loan Party;

(e) such Machinery and Equipment is not subject to any agreement which materially restricts the ability of the Loan Parties to use, sell, transport or dispose of such Machinery and Equipment or which materially restricts the Agent's ability to take possession of, sell or otherwise dispose of such Machinery and Equipment; and

(f) such Machinery and Equipment does not constitute "fixtures" under the applicable laws of the jurisdiction in which such Machinery and Equipment is located;

provided, however, that with respect to any item of Machinery or Equipment which is subject to a Permitted Lien and which satisfies each of the eligibility criteria set forth above, only that portion of such item which is in excess of the amount secured by such Permitted Lien shall be deemed to constitute Eligible Machinery and Equipment.

"Eligible Other Inventory" means, at any time, the Inventory of a Loan Party consisting of furnaces, boilers and other heating components and replacement parts, air conditioner and air conditioning components, water purifying equipment and parts, and other related equipment and parts held for resale in the ordinary course of business, but excluding Eligible Heating Oil and Other Fuel Inventory, which the Agent determines in its Permitted Discretion is eligible as the basis for Credit Extensions hereunder. Without limiting the Agent's discretion provided herein, Eligible Other Inventory shall not include any Inventory:

(a) which is not subject to a first priority perfected Lien in favor of the Agent;

(b) which is subject to any Lien other than (i) a Lien in favor of the Agent and (ii) a Permitted Lien which does not have priority over the Lien in favor of the Agent;

(c) which is, in the Agent's Permitted Discretion, slow moving, obsolete, unmerchantable, defective, unfit for sale, not salable at prices approximating at least the cost of such Inventory in the ordinary course of business or unacceptable due to age, type, category and/or quantity;

(d) with respect to which any covenant, representation, or warranty contained in this Agreement or the Security Agreement has been breached or is not true;

(e) which does not conform to all standards imposed by any Governmental Authority;

(f) which is not located in the U.S. or is in transit with a common carrier from vendors and suppliers**;**

(g) which is located in any location leased by such Loan Party unless (i) the lessor has delivered to the Agent a Collateral Access Agreement or (ii) a Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Agent in its Permitted Discretion;

(h) which is located in any third party warehouse or is in the possession of a bailee and is not evidenced by a Document, unless (i) such warehouseman or bailee has delivered to the Agent a Collateral Access Agreement and such other documentation as the Agent may require or (ii) an appropriate Reserve has been established by the Agent in its Permitted Discretion;

(i) which is the subject of a consignment by such Loan Party as consignor;

(j) which is perishable;

(k) which contains or bears any Intellectual Property Rights licensed to such Loan Party unless the Agent is satisfied in its Permitted Discretion that it may sell or otherwise dispose of such Inventory without (i) infringing the rights of such licensor, (ii) violating any contract with such licensor, or (iii) incurring any liability with respect to payment of royalties other than royalties incurred pursuant to sale of such Inventory under the current licensing agreement;

(l) which is not reflected in a current inventory report of such Loan Party; or

(m) which the Agent otherwise determines in its Permitted Discretion is unacceptable for any reason whatsoever.

provided, however, that with respect to any item of Equipment which is subject to a Permitted Lien and which satisfies each of the eligibility criteria set forth above, only that portion of such item which is in excess of the amount secured by such Permitted Lien shall be deemed to constitute Eligible Other Inventory.

"Eligible Vehicles" means, at any time, the Equipment of a Loan Party consisting of trucks, vans and other vehicles used to transport home heating oil, diesel fuel and other petroleum derivative products and other Inventory (other than propane and natural gas), or are used primarily in connection with the provisions of service to customers, which the Agent determines in its Permitted Discretion is eligible as the basis for Credit Extensions hereunder and as to which all of the following requirements have been fulfilled to the reasonable satisfaction of the Agent:

(a) such Equipment (i) is owned by such Loan Party, (ii) is subject to a first priority perfected Lien in favor of the Agent and (iii) is subject to no other Lien

whatsoever other than a Permitted Lien which does not have priority over the Lien in favor of the Agent;

(b) the full purchase price for such Equipment has been paid by such Loan Party;

(c) such Equipment is located on premises (i) owned by such Loan Party, which premises are subject to a first priority perfected Lien in favor of the Agent and to no other Lien whatsoever other than a Permitted Lien which does not have priority over the Lien in favor of the Agent, (ii) leased by such Loan Party with respect to which the Agent has received waiver, consent and agreement in form and substance satisfactory to the Agent, or (iii) is both (A) currently being tracked by a Loan Party pursuant to a GPS or other similar system and (B) "at or in transit to" a Loan Party location, the home of the driver of such Equipment or other location pursuant to a legitimate business purpose;

(d) such Equipment is in reasonable repair and working order and is used or held for use by such Loan Party in the ordinary course of business of such Loan Party;

(e) such Equipment is not subject to any agreement which materially restricts the ability of the Loan Parties to use, sell, transport or dispose of such Equipment or which materially restricts the Agent's ability to take possession of, sell or otherwise dispose of such Equipment; and

(f) such Equipment does not constitute "fixtures" under the applicable laws of the jurisdiction in which such Equipment is located;

provided, however, that with respect to any item of Equipment which is subject to a Permitted Lien and which satisfies each of the eligibility criteria set forth above, only that portion of such item which is in excess of the amount secured by such Permitted Lien shall be deemed to constitute Eligible Vehicles.

"Environmental Laws" means any and all federal, state, local and foreign statutes, laws, including without limitation common laws, judicial decisions, regulations, ordinances, rules, judgments, orders, decrees, plans, injunctions, permits, concessions, grants, franchises, licenses, agreements and other governmental restrictions relating to (a) the protection of the environment, (b) the effect of the environment on human health, (c) emissions, discharges or releases of Materials of Environmental Concern into the environment, or (d) the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern or the clean-up or other remediation thereof.

"Equipment" has the meaning specified in the Security Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and any rule or regulation issued thereunder.

"ERISA Event" means (a) a Reportable Event with respect to any Plan, (b) a determination that any Plan is, or is expected to be, in "at risk" status (within the meaning of Section 430 of the Code or Title IV of ERISA), (c) the taking of any steps to terminate any Plan,

the incurrence by Loan Party or any Controlled Group member of any liability under Title IV of ERISA with respect to the termination of any Plan, or the receipt by any Loan Party or any Controlled Group member from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan, (d) the withdrawal by any Loan Party or any Controlled Group member from any Multiemployer Plan or the initiation of steps to do so, (e) receipt by any Loan Party or any Controlled Group member of a notice that any Multiemployer Plan is, or is expected to be, Insolvent or in "endangered" or "critical status" (within the meaning of Section 432 of the Code or Section 305 or Title IV of ERISA), (f) any Loan Party or any Controlled Group member has incurred or is reasonably expected to incur, any Withdrawal Liability to one or more Multiemployer Plans, or (g) any failure by any Single Employer Plan to satisfy the minimum funding standards (within the meaning of Sections 412 or 430 of the Code or Section 302 of ERISA) applicable to such Single Employer Plan, whether or not waived, or the filing pursuant to Section 412(d) of the Code or Section 303(d) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan.

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

"Eurodollar Advance" means an Advance which, except as otherwise provided in Section 2.13, bears interest at the Eurodollar Rate.

"Eurodollar Base Rate" means, with respect to any Eurodollar Advance for any Interest Period, the London interbank offered rate as administered by the ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for Dollars for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters Screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Agent in its reasonable discretion; in each case, the "Screen Rate") at approximately 11:00 A.M., London time, two Business Days prior to the commencement of such Interest Period. If the Screen Rate shall not be available at such time for such Interest Period (an "Impacted Interest Period") with respect to Dollars, then the Eurodollar Base Rate shall be the Interpolated Rate at such time; provided that if the Screen Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. "Interpolated Rate" means, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the Screen Rate) determined by the Agent (which determination shall be conclusive and binding absent manifest error) to be equal to the rate that results from interpolating on a linear basis between: (a) the Screen Rate for the longest period (for which that Screen Rate is available in Dollars) that is shorter than the Impacted Interest Period and (b) the Screen Rate for the shortest period (for which that Screen Rate is available for Dollars) that exceeds the Impacted Interest Period, in each case, at such time; provided that if the Eurodollar Base Rate or Interpolated Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Eurodollar Loan" means a Loan which, except as otherwise provided in Section 2.13, bears interest at the Eurodollar Rate.

"Eurodollar Rate" means, with respect to any Eurodollar Advance for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to the sum of (a) the product of (i) the Eurodollar Base Rate for such Interest Period *multiplied by* (ii) the Statutory Reserve Rate *plus* (b) the Applicable Margin.

"Excess Cash Flow" means, for any fiscal year of the Borrower, the excess, if any of (a) Consolidated EBITDA for such fiscal year (which for purposes of this definition of "Excess Cash Flow", notwithstanding anything in the definition of "Consolidated EBITDA" to the contrary, shall not include the pro forma effect of any Material Acquisition) over (b) the sum, without duplication, of (i) Consolidated Interest Expense for such fiscal year, (ii) expense for taxes actually paid by the Parent and its Subsidiaries in cash during such fiscal year, (iii) the aggregate amount actually paid by the Parent and its Subsidiaries in cash during such fiscal year on account of Capital Expenditures (excluding the principal amount of Indebtedness incurred in connection with such expenditures and any such expenditures financed with the proceeds of any Reinvestment Deferred Amount), (iv) the aggregate amount actually paid by the Parent and its Subsidiaries in cash during such fiscal year for Acquisitions, (v) the aggregate amount of regular dividends or distributions paid in cash during such fiscal year as permitted under Section 6.16, (vi) deferred charges and expenses incurred in connection with financing transactions and (vii) the aggregate amount actually paid by the Parent and its Subsidiaries in cash during such fiscal year in respect of any Plan.

"Excess Cash Flow Application Date" is defined in Section 2.16(e).

"Excluded Swap Obligation" means, with respect to any Guarantor, (a) any Swap Obligation if, and to the extent that, and only for so long as, all or a portion of the guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, as applicable, such Swap Obligation (or any 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 Guarantor's failure to constitute an "eligible contract participant," as defined in the Commodity Exchange Act and the regulations thereunder, at the time the guarantee of (or grant of such security interest by, as applicable) such Guarantor becomes or would become effective with respect to such Swap Obligation or (b) any other Swap Obligation designated as an "Excluded Swap Obligation" of such Guarantor as specified in any agreement between the relevant Loan Parties and counterparty applicable to such Swap Obligations, and agreed by the Agent. 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.

"Excluded Taxes" means, in the case of each Lender or applicable Lending Installation and the Agent, (i) Taxes imposed on its overall revenue or net income, branch profits Taxes, and franchise taxes (imposed in lieu of net income taxes) imposed on it, by (a) the jurisdiction under the laws of which such Lender or the Agent is incorporated or organized or (b) the jurisdiction in which the Agent's or such Lender's principal executive office or such Lender's applicable Lending Installation is located, (ii) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (a) such

Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 3.7) or (b) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 3.5, 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 and (iii) any U.S. federal withholding Taxes imposed under FATCA.

"Exhibit" refers to an exhibit to this Agreement, unless another document is specifically referenced.

"Existing Credit Agreement" has the meaning specified in the Recitals hereto.

"Existing Lenders" has the meaning specified in the Recitals hereto.

"Existing Letters of Credit" means the letters of credit set forth on Schedule 1.1A that have been issued prior to the Effective Date by the LC Issuers identified on Schedule 1.1A.

"Existing Mortgages" means each of the mortgages, deeds of trust or other agreements made pursuant to the Existing Credit Agreement by any Loan Party in favor of the Agent for the benefit of the Agent and the Lenders.

"Existing Term Loans" has the meaning specified for the term "Term Loans" under the Existing Credit Agreement.

"Facility" means the credit facility described in Section 2.1 hereof to be provided to the Borrower on the terms and conditions set forth in this Agreement.

"Facility LC" is defined in Section 2.1.2(a).

"Facility LC Application" is defined in Section 2.1.2(c).

"Facility LC Collateral Account" is defined in Section 2.1.2(j).

"Facility Termination Date" means December 4, 2024 or any earlier date on which (a) the Aggregate Revolving Commitment is reduced to zero or otherwise terminated pursuant to the terms hereof and (b) the Term Loan is not outstanding.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amendment or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof and any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements in respect thereof (and any legislation, regulations or other official guidance pursuant to, or in respect of, such intergovernmental agreements).

"Federal Funds Effective Rate" means, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the effective federal

funds rate; provided that if the Federal Funds Effective Rate as so determined would be less than zero, such rate shall be deemed to be zero for the purposes of this Agreement.

"Federal Reserve Bank of New York's Website" means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

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

"Fee Letter" means, collectively, (i) that certain Fee Letter, dated as of November 6, 2019, between Chase and the Borrower, (ii) that certain Fee Letter, dated as of November 6, 2019, between Bank of America, N.A. and the Borrower and (iii) that certain Fee Letter, dated as of November 6, 2019, between Citizens Bank, N.A. and the Borrower.

"Financial Contract" of a Person means (a) any exchange-traded or over-the-counter futures, forward, swap or option contract or other financial instrument with similar characteristics, or (b) any Rate Management Transaction.

"FIRREA" means the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended.

"Fiscal Month" means the calendar month.

"Fiscal Quarter" means any of the quarterly accounting periods of the Parent, ending on December 31, March 31, June 30 and September 30 of each year.

"Fiscal Year" means any of the annual accounting periods of the Parent ending on September 30 of each year.

"Fixed Charge Coverage Ratio" means, the ratio, determined as of the end of each Fiscal Month of the Parent for the then most-recently ended 12 Fiscal Months, of (a) Consolidated EBITDA *minus* the unfinanced portion of Consolidated Capital Expenditures (excluding, for each such period, actual Capital Expenditures in respect of propane tanks in an amount not to exceed $6,500,000) *minus* taxes paid in cash to (b) Consolidated Fixed Charges, all calculated for the Parent and its Subsidiaries on a consolidated basis.

"Fixtures" has the meaning specified in the Security Agreement.

"Flood Insurance Laws" means collectively, (i) the National Flood Insurance Reform Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (ii) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (iii) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Floating Rate" means, for any day, a rate per annum equal to (a) the Alternate Base Rate for such day *plus* (b) the Applicable Margin, in each case changing when and as the Alternate Base Rate changes.

"Floating Rate Advance" means an Advance which, except as otherwise provided in Section 2.13, bears interest at the Floating Rate.

"Floating Rate Loan" means a Loan which, except as otherwise provided in Section 2.13, bears interest at the Floating Rate.

"Foreign Subsidiary" means any Subsidiary which is not a Domestic Subsidiary.

"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 business.

"Funded Debt" means as to any Person, all Indebtedness (other than Indebtedness described in clause (h) of the definition thereof with respect to letters of credit to the extent not drawn) of such Person that matures more than one year from the date of its creation or matures within one year from such date but is renewable or extendible, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including all current maturities and current sinking fund payments in respect of such Indebtedness whether or not required to be paid within one year from the date of its creation and, in the case of the Borrower, Indebtedness in respect of the Loans.

"Funding Account" is defined in Section 2.5.

"GAAP" means generally accepted accounting principles in the United States as in effect from time to time, applied in a manner consistent with that used in preparing the financial statements referred to in Section 5.5.

"General Partner" means Kestrel Heat LLC, a Delaware limited liability company.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof and any entity exercising executive, legislative, judicial, taxing, regulatory or administrative functions of or pertaining to government.

"Guaranteed Obligations" is defined in Section 15.1.

"Guarantor" means the Parent, the Borrower, PHI and each of the Parent's other direct or indirect Domestic Subsidiaries (excluding CaptiveCo), including any Person who becomes a Loan Party pursuant to a Joinder Agreement and their successors and assigns.

"Guaranty" means Article XV of this Agreement.

"IBA" has the meaning assigned to such term in Section 1.3.

"Impacted Interest Period" has the meaning assigned to it in the definition of "Eurodollar Base Rate."

"Indebtedness" of a Person means such Person's (a) obligations for borrowed money, (b) obligations representing the deferred purchase price of Property or services (other than accounts payable arising in the ordinary course of such Person's business payable on terms customary in the trade), (c) obligations, whether or not assumed, secured by Liens or payable out of the proceeds or production from Property now or hereafter owned or acquired by such Person, (d) obligations which are evidenced by notes, acceptances, or other instruments, (e) obligations of such Person to purchase securities or other Property arising out of or in connection with the sale of the same or substantially similar securities or Property or any other Off-Balance Sheet Liabilities, (f) Capitalized Lease Obligations, (g) Contingent Obligations for which the underlying transaction constitutes Indebtedness under this definition, (h) the maximum available stated amount of all letters of credit or bankers' acceptances created for the account of such Person and, without duplication, all reimbursement obligations with respect to letters of credit, (i) Net Mark-to-Market Exposure under all Rate Management Transactions, (j) obligations of such Person under any Sale and Leaseback Transaction, (k) obligations under any liquidated earn-out and (l) any other obligation for borrowed money or other financial accommodation which in accordance with GAAP would be shown as a liability on the consolidated balance sheet of such Person.

"Indemnified Taxes" means any and all Taxes, but excluding Excluded Taxes imposed on or with respect to any payment made by or on account of any obligation of any Loan Party under any Loan Document, and, to the extent not otherwise described, Other Taxes.

"Insolvent" with respect to any Multiemployer Plan means the condition that such Multiemployer Plan is insolvent within the meaning of Section 4245 of ERISA.

"Intellectual Property Rights" means, with respect to any Person, all of such Person's Patents, Copyrights, Trademarks, and Licenses, all other rights under any of the foregoing, all extensions, renewals, reissues, divisions, continuations and continuations-in-part of any of the foregoing, and all rights to sue for past, present, and future infringement of any of the foregoing.

"Intercompany Notes" is defined in Section 6.17(e).

"Interest Period" means, with respect to a Eurodollar Advance, a period of one, two, three or six months commencing on a Business Day selected by the Borrower Representative pursuant to this Agreement. Such Interest Period shall end on the day which corresponds numerically to such date one, two, three or six months thereafter, provided, however, that if there is no such numerically corresponding day in such next, second, third or sixth succeeding month, such Interest Period shall end on the last Business Day of such next, second, third or sixth succeeding month. If an Interest Period would otherwise end on a day which is not a Business Day, such Interest Period shall end on the next succeeding Business Day, provided however, that if said next succeeding Business Day falls in a new calendar month, such Interest Period shall end on the immediately preceding Business Day.

"Interpolated Rate" is defined in the definition of "Eurodollar Base Rate".

"Inventory" has the meaning specified in the Security Agreement.

"Investment" of a Person means any (a) loan, advance, extension of credit (other than accounts receivable arising in the ordinary course of business on terms customary in the trade) or contribution of capital by such Person, (b) stocks, bonds, mutual funds, partnership interests, notes, debentures, securities or other Capital Stock owned by such Person, (c) any deposit accounts and certificate of deposit owned by such Person, and (d) structured notes, derivative financial instruments and other similar instruments or contracts owned by such Person; provided that any Rate Management Transaction entered into in compliance with Section 6.17(i) shall not constitute an "Investment."

"Joinder Agreement" is defined in Section 6.15(a).

"Kestrel Group" means Kestrel Energy Partners, LLC and any officers, directors or employees of the General Partner owning equity interests in the General Partner.

"LC Exposure" is defined in Section 2.24(c).

"LC Fee" is defined in Section 2.10(b).

"LC Issuer" means each of (a) Chase (or any subsidiary or Affiliate of Chase designated by Chase) and (b) Bank of America, N.A.

"LC Obligations" means, at any time, the sum, without duplication, of (a) the aggregate undrawn stated amount under all Facility LCs outstanding at such time *plus* (b) the aggregate unpaid amount at such time of all Reimbursement Obligations.

"LC Payment Date" is defined in Section 2.1.2(d).

"Lenders" means the lending institutions listed on the signature pages of this Agreement and their respective successors and assigns.

"Lending Installation" means, with respect to a Lender, the LC Issuer or the Agent, the office, branch, subsidiary or Affiliate of such Lender, LC Issuer or the Agent listed on the signature pages hereof or on a Schedule or otherwise selected by such Lender, the LC Issuer or the Agent pursuant to Section 2.23.

"Letter of Credit" of a Person means a letter of credit or similar instrument which is issued upon the application of such Person or upon which such Person is an account party or for which such Person is in any way liable.

"Licenses" shall have the meaning given to such term in the Security Agreement.

"Lien" means any lien (statutory or other), mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including, without limitation, the interest of a vendor or lessor under any conditional sale, Capitalized Lease or other title retention agreement).

"Loan Documents" means this Agreement, any Notes, the Facility LC Applications, the Collateral Documents, the Guaranty and all other agreements, instruments, documents and certificates identified in Section 4.1 executed and delivered to, or in favor of, the Agent or any Lenders and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Agent or any Lender in connection with the Agreement or the transactions contemplated thereby, but shall not include agreements in connection with Rate Management Transactions. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Parties" means the Parent, the Borrower, PHI and each other Guarantor.

"Loans" means, with respect to a Lender, such Lender's loans made pursuant to Article II (or any conversion or continuation thereof), including Non-Ratable Loans, Swingline Loans, Overadvances and Protective Advances.

"Machinery" has the meaning specified in the Security Agreement.

"Margin Stock" is defined in Section 5.13.

"Management Fees and Expenses" means any amounts paid by a Loan Party in respect of any management, consulting or other similar arrangement with an equity holder or Affiliate of a Loan Party (other than another Loan Party).

"Material Adverse Effect" means a material adverse effect on (a) the business, operations, Property, condition (financial or otherwise) or prospects of the Parent and its Subsidiaries taken as a whole or (b) the validity or enforceability of any of the Loan Documents or the rights and remedies of the Agent, the LC Issuer and the Lenders thereunder.

"Material Indebtedness" means Indebtedness in an outstanding principal amount of $1,000,000 or more in the aggregate (or the equivalent thereof in any currency other than U.S. dollars).

"Material Indebtedness Agreement" means any agreement under which any Material Indebtedness was created or is governed or which provides for the incurrence of Indebtedness in an amount which would constitute Material Indebtedness (whether or not an amount of Indebtedness constituting Material Indebtedness is outstanding thereunder).

"Material Real Property" means real property not subject to a mortgage, deed of trust or other similar instrument (other than pursuant hereto) that (i) is owned in fee by any Loan Party and is not subject to a ground lease in favor of any other Person as lessee, (ii) is located in the United States and (iii) (A) has been developed with a facility used of useful in the business of the Loan Parties with respect to which a certificate of occupancy or temporary certificate of occupancy or the local equivalent thereof (or any other similar proof of completion) shall have

been issued by the relevant Governmental Authority or (B) is undeveloped and has a book value (excluding soft costs) of at least $100,000.

"Materials of Environmental Concern" means (a) any and all hazardous air pollutants, criteria air pollutants, pollutants, contaminants, hazardous substances, hazardous materials, hazardous wastes, solid wastes or toxic substances, or any other term of similar regulatory import, as defined in the Clean Air Act of 1970, as amended, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act of 1976, as amended, the Hazardous Materials Transportation Act of 1975, as amended, or any other applicable Environmental Law, each as amended, and the regulations promulgated thereunder, (b) any substance or materials listed as hazardous or toxic, or any other term of similar regulatory import, in the United States Department of Transportation Table, or by the Environmental Protection Agency or any successor agency or under any applicable federal, state, local or foreign laws or regulations, (c) any asbestos, poly-chlorinated biphenyls, urea formaldehyde foam, explosives or radioactive waste, (d) any gasoline or petroleum (including crude oil or any fraction thereof) or petroleum products, or (e) any other chemical, material or substance which is not classified as hazardous or toxic, or any other term of similar regulatory import, but exposure to which is prohibited, limited or regulated by any applicable federal, state, local or foreign authority or other Governmental Authority having jurisdiction over the Material Real Property, including, without limitation, propane and any related petroleum products or by-products.

"Maximum Liability" is defined in Section 15.9.

"MIRE Event" shall mean if there are any property subject to a Mortgage at such time, any increase, extension or renewal of any of the Commitments of Loans (including any other incremental credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) the making of any Loan or (iii) the issuance, renewal or extension of Letters of Credit).

"Modify" and "Modification" are defined in Section 2.1.2(a).

"Monthly Reports" is defined in Section 4.1(m).

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

"Mortgages" means any mortgage, deed of trust or other agreement which conveys or evidences a Lien in favor of the Agent, for the benefit of the Agent and the Lenders, on real Property of a Loan Party, including the Existing Mortgages and any amendments, modifications or supplements thereto.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Parent or any member of the Controlled Group is obligated to make contributions.

"Net Cash Proceeds" means, if in connection with (a) an asset disposition, cash proceeds net of (i) commissions and other reasonable and customary transaction costs, fees and expenses properly attributable to such transaction and payable by such Loan Party in connection therewith

(in each case, paid to non-Affiliates), (ii) transfer taxes, (iii) amounts payable to holders of senior Liens on such asset (to the extent such Liens constitute Permitted Liens hereunder), if any, and (iv) an appropriate reserve for income taxes in accordance with GAAP established in connection therewith, (b) the issuance or incurrence of Indebtedness, cash proceeds net of attorneys' fees, investment banking fees, accountants' fees, underwriting discounts and commissions and other customary fees and expenses actually incurred in connection therewith or, (c) an equity issuance, cash proceeds net of underwriting discounts and commissions and other reasonable costs paid to non-Affiliates in connection therewith.

"Net Mark-to-Market Exposure" of a Person means, as of any date of determination, the excess (if any) of all unrealized losses over all unrealized profits of such Person arising from Rate Management Transactions. As used in this definition, "unrealized losses" means the fair market value of the cost to such Person of replacing such Rate Management Transaction as of the date of determination (assuming the Rate Management Transaction were to be terminated as of that date), and "unrealized profits" means the fair market value of the gain to such Person of replacing such Rate Management Transaction as of the date of determination (assuming such Rate Management Transaction were to be terminated as of that date).For the avoidance of doubt, "Net Mark-to-Market Exposure" shall not include the upfront cost of purchasing call or put options.

"Net Orderly Liquidation Value" means, with respect to Inventory, Equipment or Machinery of any Person, the net orderly liquidation value thereof as determined after the Effective Date in a manner acceptable to the Agent (in its Permitted Discretion) by an appraiser reasonably acceptable to the Agent.

"Non-Consenting Lender" is defined in Section 8.3(d).

"Non-Paying Guarantor" is defined in Section 15.10.

"Non-Ratable Loan" and "Non-Ratable Loans" are defined in Section 2.1.3.

"Non-Seasonal Availability Amount" means $300,000,000*;* provided that, if the Aggregate Revolving Commitment is increased pursuant to Section 2.17 hereof, the Non-Seasonal Availability Amount shall (if the Borrower so elects on the effective date of any such increase) be deemed to be an amount equal to the Non-Seasonal Availability Amount in effect immediately prior to such increase ***plus*** an amount equal to up to the aggregate amount of such increase and all prior increases in Aggregate Revolving Commitments (to the extent such increased Aggregate Revolving Commitments have not since been terminated or reduced in accordance with this Agreement) made pursuant to Section 2.17.

"Non-U.S. Lender" is defined in Section 3.5(d).

"Note" is defined in Section 2.22(d).

"NYFRB" means the Federal Reserve Bank of New York.

"NYFRB Rate" means, for any day, the greater of (a) the Federal Funds Effective Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any

day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" means the rate for a federal funds transaction quoted at 11:00 a.m. on such day received by the Agent from a federal funds broker of recognized standing selected by it; provided, further, that if any of the aforesaid rates as so determined be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Obligations" means, collectively, all unpaid principal of and accrued and unpaid interest on (including interest accruing after the maturity of the Loans and Reimbursement Obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans, all LC Obligations, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Loan Parties to the Lenders or to any Lender, the Agent, the LC Issuer or any indemnified party arising under the Loan Documents; provided, that for purposes of determining any Guarantor Obligations of any Guarantor under this Agreement, the definition of "Obligations" shall not create any guarantee of (or grant of security interest by any Guarantor to support, if applicable) any Excluded Swap Obligations of such Guarantor.

"Off-Balance Sheet Liability" of a Person means (a) any repurchase obligation or liability of such Person with respect to accounts or notes receivable sold by such Person, (b) any indebtedness, liability or obligation under any Sale and Leaseback Transaction which is not a Capitalized Lease, (c) any indebtedness, liability or obligation under any so-called "synthetic lease" transaction entered into by such Person, or (d) any indebtedness, liability or obligation arising with respect to any other transaction which is the functional equivalent of or takes the place of borrowing but which does not constitute a liability on the balance sheets of such Person, but excluding from this clause (d) Operating Leases.

"Operating Lease" of a Person means any lease of Property (other than a Capitalized Lease) by such Person as lessee which has an original term (including any required renewals and any renewals effective at the option of the lessor) of one year or more.

"Operating Lease Obligations" means, as at any date of determination, the amount obtained by aggregating the present values, determined in the case of each particular Operating Lease by applying a discount rate (which discount rate shall equal the discount rate which would be applied under GAAP if such Operating Lease were a Capitalized Lease) from the date on which each fixed lease payment is due under such Operating Lease to such date of determination, of all fixed lease payments due under all Operating Leases of the Parent and its Subsidiaries.

"Other Taxes" is defined in Section 3.5(b).

"Overadvances" has the meaning specified in Section 2.1.4(c).

"Overnight Bank Funding Rate" means, for any day, the rate comprised of both overnight federal funds and overnight Eurodollar borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on

its public website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate.

"Parent" means Star Group, L.P., a Delaware limited partnership.

"Parent Subordinated Debt" is defined in Section 6.31.

"Participants" is defined in Section 12.2(a).

"Participant Register" is defined in Section 12.2(c).

"Patents" shall have the meaning given to such term in the Security Agreement.

"Paying Guarantor" is defined in Section 15.10.

"Payment Date" means (a) with respect to interest payments due on any Floating Rate Loan, the first day of each calendar month and the Facility Termination Date, (b) with respect to interest payments due on any Eurodollar Loan, (i) the last day of the applicable Interest Period, (ii) in the case of any Interest Period in excess of three months, the day which is three months after the first day of such Interest Period and (iii) the date on which such Eurodollar Loan is prepaid, whether by acceleration or otherwise, and the Facility Termination Date, and (c) with respect to any payment of LC Fees, Unused Commitment Fees or fronting fees in respect of Letters of Credit, the first day of each calendar month and the Facility Termination Date.

"Payoff Amount" is defined in the definition of "Facility Termination Date".

"PBGC" means the Pension Benefit Guaranty Corporation, or any successor thereto.

"Permitted Acquisition" means any Acquisition by any Loan Party in a transaction that satisfies each of the following requirements:

(a) such Acquisition is not a hostile or contested acquisition;

(b) the business acquired in connection with such Acquisition is (i) located in the U.S., (ii) organized under U.S. and applicable state laws, and (iii) except for assets not constituting more than 5% of the assets acquired in such Acquisition, not engaged, directly or indirectly, in any line of business other than the businesses in which the Loan Parties are engaged on the Effective Date and any business activities that are substantially similar, related, or incidental thereto;

(c) both before and after giving effect to such Acquisition and the Loans (if any) requested to be made in connection therewith, each of the representations and warranties in the Loan Documents is true and correct (except (i) any such representation or warranty which relates to a specified prior date and (ii) to the extent the Agent and the Lenders have been notified in writing by the Loan Parties that any representation or warranty is not correct and the Required Lenders have explicitly waived in writing compliance with such representation or warranty) and no Default or Unmatured Default exists, will exist, or would result therefrom;

(d) if the consideration for such Acquisition is greater than $5,000,000, as soon as available, but not less than ten days prior to such Acquisition, the Borrower Representative has provided the Lenders (i) notice of such Acquisition and (ii) a copy of all business and financial information reasonably requested by the Agent, including pro forma historical and projected financial information and cash flow and Availability calculations provided in a manner reasonably acceptable to the Agent;

(e) if the Accounts and Inventory acquired in connection with such Acquisition are proposed to be included in the determination of the Borrowing Base, the Agent shall have conducted an audit and field examination of such Accounts and Inventory to its reasonable satisfaction;

(f) the purchase price of such Acquisition does not exceed $25,000,000;

(g) if such Acquisition is an acquisition of the Capital Stock of a Person, the Acquisition is structured so that the acquired Person shall become a Wholly-Owned Subsidiary of the Borrower or PHI and, to the extent required by Section 6.15(a), a Loan Party pursuant to the terms of this Agreement;

(h) if such Acquisition is an acquisition of assets, the Acquisition is structured so that the Borrower or a Guarantor shall acquire such assets;

(i) if such Acquisition is an acquisition of Capital Stock, such Acquisition will not result in any violation of Regulation U;

(j) no Loan Party shall, as a result of or in connection with any such Acquisition, assume or incur any direct or contingent liabilities (whether relating to environmental, tax, litigation, or other matters) that could have a Material Adverse Effect;

(k) in connection with an Acquisition of the Capital Stock of any Person, all Liens on property of such Person shall be terminated unless the Agent in its Permitted Discretion consents otherwise, and in connection with an Acquisition of the assets of any Person, all Liens on such assets shall be terminated;

(l) the Borrower Representative shall certify (and provide the Agent with a pro forma calculation in form and substance reasonably satisfactory to the Agent), on its behalf and on behalf of the Borrower, to the Agent and the Lenders that, after giving effect to the completion of such Acquisition, Availability (with any Suppressed Availability being included in each calculation of Availability pursuant to this clause (l)) was not less than $40,000,000 for any period of three consecutive days during the six-month period ending on the date on which such Acquisition was consummated and is not projected to be less than $40,000,000 during the six-month period immediately after consummation of such Acquisition (with such projected Availability to be determined by reference to the average projected Availability on the last day of each of the relevant six months), in each case on a pro forma basis which includes all consideration given in connection with such Acquisition, other than Capital Stock of the Borrower delivered to

the seller(s) in such Acquisition, as having been paid in cash at the time of making such Acquisition; and

(m) no Default exists or would result therefrom.

"Permitted Discretion" means a determination made in good faith and in the exercise of reasonable (from the perspective of a secured asset-based lender) business judgment.

"Permitted Liens" is defined in Section 6.21.

"Person" means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, trust or other entity or organization, or any government or political subdivision or any agency, department or instrumentality thereof.

"Petro" has the meaning specified in the preamble hereto.

"PHI" means Petro Holdings, Inc., a Minnesota corporation.

"Plan" means any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA and in respect of which any Loan Party or any member of the Controlled Group is (or, if such Plan were terminated, would under Section 4062 or Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" means 29 CFR § 2510.3-101 et seq., as modified by Section 3(42) of ERISA, as amended from time to time.

"Prime Rate" means the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Agent) or any similar release by the Federal Reserve Board (as determined by the Agent). Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Privacy Policies" is defined in Section 5.15.

"Project Friday Disposition" means the sale of certain assets of the Borrower, PHI and their Subsidiaries separately identified to the Lenders as Project Friday.

"Projections" is defined in Section 6.1(d).

"Proposed Change" is defined in Section 8.3(d).

"Property" of a Person means any and all property, whether real, personal, tangible, intangible, or mixed, of such Person, or other assets owned, leased or operated by such Person.

"Pro Rata Share" means, with respect to any Lender, (a) with respect to Revolving Loans, LC Obligations, Non-Ratable Loans, Swingline loans or Overadvances, a portion equal to a fraction the numerator of which is such Lender's Revolving Commitment and the denominator of which is the Aggregate Revolving Commitment, (b) with respect to Protective Advances or with respect to all Credit Extensions in the aggregate prior to the Facility Termination Date, a portion equal to a fraction the numerator of which is such Lender's Commitment and the denominator of which is the Aggregate Commitment, (c) with respect to Protective Advances or with respect to all Credit Extensions in the aggregate after the Facility Termination Date, a portion equal to a fraction the numerator of which is such Lender's Credit Exposure and the denominator of which is the Aggregate Credit Exposure and (d) with respect to Term Loans, a portion equal to a fraction, the numerator of which is such Lender's Term Commitment and the denominator of which is the Aggregate Term Commitment or, if the Aggregate Term Commitment has been terminated, a portion equal to a fraction, the numerator of which is such Lender's Term Credit Exposure and the denominator of which is the Aggregate Term Credit Exposure; provided that, in the case of Section 2.24 when a Defaulting Lender shall exist, any Defaulting Lender's Commitment hereunder shall be disregarded for purposes of calculating a Lender's Pro Rata Share.

"Protective Advances" is defined in Section 2.1.4(a).

"Purchasers" is defined in Section 12.3(a).

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" has the meaning assigned to it in Section 9.16.

"Qualified Keepwell Provider" means, in respect of any Swap Obligation, each Loan Party that, at the time the relevant guarantee (or grant of the relevant security interest, as applicable) becomes effective with respect to such Swap Obligation, has total assets exceeding $10,000,000 or otherwise 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" with respect to such Swap Obligation at such time by entering into a keepwell pursuant to section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

"Rate Management Obligations" of a Person means any and all obligations of such Person, whether absolute or contingent and howsoever and whensoever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under (a) any and all Rate Management Transactions, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any Rate Management Transactions.

"Rate Management Transaction" means any transaction (including any Commodity Hedging Agreement and any other agreement with respect thereto) now existing or hereafter entered by any Loan Party which is a rate swap, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, forward transaction, currency swap transaction, cross-currency rate swap transaction,

currency option or any other similar transaction (including any option with respect to any of these transactions) or any combination thereof, whether linked to one or more interest rates, foreign currencies, commodity prices, equity prices or other financial measures.

"RCRA" is defined in Section 5.18(b).

"Reference Period" is defined in the definition of "Consolidated EBITDA".

"Regions Cash Collateral Account" means the account established by the Borrower from time to time for the purpose of cash collateralizing obligations with respect to certain Commodity Hedging Agreements previously entered into with Regions Bank (such obligations, the "Regions Hedge Obligations")

"Regions Hedge Obligations" has the meaning specified in the definition of "Regions Cash Collateral Account".

"Register" is defined in Section 12.3(d).

"Regulation D" means Regulation D of the Board as from time to time in effect and any successor thereto or other regulation or official interpretation of said Board relating to reserve requirements applicable to member banks of the Federal Reserve System.

"Regulation U" means Regulation U of the Board as from time to time in effect and any successor or other regulation or official interpretation of said Board relating to the extension of credit by banks for the purpose of purchasing or carrying margin stocks applicable to member banks of the Federal Reserve System.

"Reimbursement Obligations" means, at any time, the aggregate of all obligations of the Borrower then outstanding under Section 2.1.2 to reimburse the LC Issuer for amounts paid by the LC Issuer in respect of any one or more drawings under Facility LCs.

"Reinvestment Deferred Amount" means with respect to any asset disposition, the aggregate Net Cash Proceeds received in connection therewith that are not applied to prepay the Obligations pursuant to Section 2.16(b)(i) as a result of the delivery of a Reinvestment Notice.

"Reinvestment Notice" means a written notice executed by the Borrower Representative stating that no Default or Unmatured Default has occurred and is continuing and that a Loan Party intends and expects to use all or a specified portion of the Net Cash Proceeds of an asset disposition to consummate a Permitted Acquisition and/or acquire assets useful in its business (other than current assets).

"Reinvestment Prepayment Amount" means with respect to any asset disposition, the Reinvestment Deferred Amount relating thereto less any amount expended prior to the relevant Reinvestment Prepayment Date to consummate Permitted Acquisitions and/or acquire assets useful in the Borrower's business (other than current assets).

"Reinvestment Prepayment Date" means with respect to any asset disposition, the earlier of (a) the date occurring twelve months after such asset disposition and (b) the date on which a

Loan Party shall have determined not to, or shall have otherwise ceased to, consummate Permitted Acquisitions and/or acquire assets useful in its business with all or any portion of the relevant Reinvestment Deferred Amount.

"Relevant Governmental Body" means the Federal Reserve Board and/or the NYFRB, or a committee officially endorsed or convened by the Federal Reserve Board and/or the NYFRB or, in each case, any successor thereto.

"Rentals" of a Person means the aggregate fixed amounts payable by such Person under any Operating Lease.

"Reportable Event" means a "reportable event" as defined in Section 4043 of ERISA and the regulations issued under such section, with respect to a Plan, excluding, however, such events as to which the PBGC has by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within thirty days of the occurrence of such event, provided, however, that a failure to meet the minimum funding standards of Sections 412 and 430 of the Code and of Section 302 of ERISA shall be a Reportable Event regardless of the issuance of any such waiver of the notice requirement in accordance with either Section 4043(a) of ERISA or Section 412(d) of the Code.

"Reports" means reports prepared by Chase or another Person showing the results of appraisals, field examinations or audits pertaining to the Borrower's and PHI's and their respective Subsidiaries' assets from information furnished by or on behalf of the Borrower, after Chase has exercised its rights of inspection pursuant to this Agreement, which Reports may be distributed to the Lenders by Chase.

"Required Lenders" means Lenders in the aggregate having at least a majority of the sum of (i) the Aggregate Revolving Commitment or, if the Aggregate Revolving Commitment has been terminated, Lenders in the aggregate holding at least a majority of the Aggregate Revolving Credit Exposure and (ii) the Aggregate Term Commitment or, if the Aggregate Term Commitment has been terminated, Lenders in the aggregate holding at least a majority of the Aggregate Term Credit Exposure.

"Required Revolving Lenders" means Lenders in the aggregate having at least a majority of the Aggregate Revolving Commitment or, if the Aggregate Revolving Commitment has been terminated, Lenders in the aggregate holding at least a majority of the Aggregate Revolving Credit Exposure.

"Required Term Lenders" means Lenders in the aggregate having at least a majority of the Aggregate Term Commitment or, if the Aggregate Term Commitment has been terminated, Lenders in the aggregate holding at least a majority of the Aggregate Term Credit Exposure.

"Reserves" means any and all reserves which the Agent deems necessary, in its Permitted Discretion, to maintain (including, without limitation, reserves for accrued and unpaid interest on the Secured Obligations, reserves for Banking Services then provided or outstanding, volatility reserves (including reserves for amounts owing with respect to obligations of the Loan Parties in respect of any Commodity Hedging Agreements that are secured by the Collateral), reserves for rent and usage fees at storage depots and other locations leased by any Loan Party and for

consignee's, warehousemen's and bailee's charges, reserves for dilution of Accounts, reserves for Inventory shrinkage, reserves for customs charges and shipping charges related to any Inventory in transit, reserves for contingent liabilities of any Loan Party, reserves for uninsured losses of any Loan Party, reserves for through-put fees and reserves for taxes, fees, assessments, and other governmental charges) with respect to the Collateral or any Loan Party.

"Revolving Commitment" means, for each Lender, the obligation of such Lender to make Loans (other than Term Loans) to the Borrower, and participate in Facility LCs issued upon the application of the Borrower, in an aggregate amount not exceeding the amount set forth in Schedule I or as set forth in any Assignment Agreement that has become effective pursuant to Section 12.3(c), as such amount may be modified from time to time pursuant to the terms hereof.

"Revolving Credit Exposure" means, as to any Lender at any time, the sum of (a) the aggregate principal amount of its Revolving Loans outstanding at such time, *plus* (b) an amount equal to all accrued interest, fees and other charges under this Agreement then owing to it, *plus* (c) an amount equal to its Pro Rata Share of the LC Obligations at such time, *plus* (d) an amount equal to its Pro Rata Share of the aggregate principal amount of Non-Ratable Loans, Swingline Loans, Overadvances and Protective Advances outstanding at such time.

"Revolving Lender" means each Lender holding a portion of the Aggregate Revolving Commitments or, if the Aggregate Revolving Commitments have been terminated, each Lender holding Aggregate Revolving Credit Exposure

"Revolving Loans" means the revolving loans extended by the Lenders to the Borrower pursuant to Section 2.1.1 hereof.

"Risk-Based Capital Guidelines" is defined in Section 3.2.

"Sanctioned Country" means, at any time, a country, region or territory which is itself the subject or target of any Sanctions (at the time of this Agreement, Crimea, Cuba, Iran, North Korea and Syria).

"Sanctioned Person" means, at any time (a) any Person listed in any Sanctions-related list of designated Persons maintained by the U.S. government (including those maintained by the Office of Foreign Assets Control of the U.S. Department of Treasury and the U.S. Department of State), the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority, (b) any Person operating, organized or resident of any Sanctioned Country, (c) any Person owned or controlled by any such Person or Persons described in the foregoing clauses (a) or (b), or (d) any Person otherwise the subject of Sanctions.

"Sanctions" means all economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom or other relevant sanctions authority.

"S&P" means Standard and Poor's Financial Services LLC, a division of The McGraw Hill Companies, Inc.

"Sale and Leaseback Transaction" means any sale or other transfer of Property by any Person with the intent to lease such Property as lessee.

"Schedule" refers to a specific schedule to this Agreement, unless another document is specifically referenced.

"Screen Rate" is defined in the definition of "Eurodollar Base Rate".

"Seasonal Availability Notice" means a written notice requesting an increase in the Aggregate Revolving Commitments during a Seasonal Availability Period given by the Borrower at least three Business Days prior to the proposed effective date of such increase specifying (i) the first day and length of such period and (ii) the amount of the requested increase in the Aggregate Revolving Commitments during such period, provided that (i) the Borrower may not deliver any Seasonal Availability Notice if a Default or Event of Default shall have then occurred and be continuing, (ii) the Borrower may not make more than three (3) such increase requests during each Seasonal Availability Period, (iii) each such increase shall be in increments of no less than $25,000,000 and (iv) in the event that the Aggregate Revolving Commitments are reduced during a Seasonal Availability Period pursuant to the terms hereof, the Aggregate Revolving Commitments may not be increased further pursuant to a Seasonal Availability Notice during such Seasonal Availability Period.

"Seasonal Availability Period" means, until the Facility Termination Date, any period of up to five consecutive months during the period from December 1 of each year through April 30 of the following year, which period may be initiated by a Seasonal Availability Notice. The Seasonal Availability Period may be terminated early by written notice to such effect by the Borrower to the Agent at least three Business Days prior to the effective date of such termination.

"Section" means a numbered section of this Agreement, unless another document is specifically referenced.

"Secured Obligations" means, collectively, (a) the Obligations, (b) all obligations of the Loan Parties in respect of any Commodity Hedging Agreements owing to any Person that is a Lender or an Affiliate of a Lender at the time such agreement is entered into (or, if such Commodity Hedging Agreement is in place on or prior to the date of this Agreement, on the date of this Agreement) and (c) Banking Services and Rate Management Transactions (other than Commodity Hedging Agreements) owing to any Person that is a Lender or an Affiliate of a Lender at the time such agreement is entered into.

"Security Agreement" means that certain Fifth Amended and Restated Pledge and Security Agreement, dated as of the date hereof, between the Loan Parties and the Agent, for the benefit of the Agent and the Lenders, and any other pledge or security agreement entered into after the Effective Date by any other Loan Party (as required by this Agreement or any other Loan Document), or any other Person, as the same may be amended, restated or otherwise modified from time to time.

"Security Business Disposition" means the disposition of any Loan Party's business of installing, monitoring and servicing alarm and related systems (such as remote camera systems or home automation services) to customers.

"Senior Secured Leverage Ratio" means as at any date, the ratio of (a) Consolidated Senior Secured Debt on such date to (b) Consolidated EBITDA for the four Fiscal Quarters of the Parent and its Subsidiaries ending on such date (or, if such date is not the last day of a fiscal quarter, the four Fiscal Quarters of the Parent and its Subsidiaries most recently ended prior to such date).

"Settlement" is defined in Section 2.20.

"Settlement Date" is defined in Section 2.20.

"Single Employer Plan" means a Plan maintained by the Parent or any member of the Controlled Group for employees of the Parent or any member of the Controlled Group.

"SOFR" with respect to any day means the secured overnight financing rate published for such day by the NYFRB, as the administrator of the benchmark (or a successor administrator), on the Federal Reserve Bank of New York's Website.

"SOFR-Based Rate" means SOFR, Compounded SOFR or Term SOFR.

"Statutory Reserve Rate" means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentage (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Federal Reserve Board to which the Agent is subject with respect to the Eurodollar Rate, for eurocurrency funding (currently referred to as "Eurocurrency liabilities" in Regulation D). Such reserve percentage shall include those imposed pursuant to Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"Subordinated Indebtedness" of a Person means any Indebtedness of such Person the payment of which is subordinated to payment of the Secured Obligations to the written satisfaction of the Agent in its Permitted Discretion.

"Subsidiary" of a Person means, subject to the following sentence, any corporation, partnership, limited liability company, association, joint venture or similar business organization more than 50% of the outstanding Capital Stock having ordinary voting power of which shall at the time be owned or controlled by such Person. Unless otherwise expressly provided, all references herein to a "Subsidiary" shall mean a subsidiary of the Borrower or PHI other than an Unrestricted Subsidiary (provided that all references to a "Subsidiary" in Sections 6.1(a), (b) and (c) shall mean each subsidiary of the Borrower or PHI).

"Substantial Portion" means Property which represents more than 10% of the consolidated assets of the Parent and its Subsidiaries or property which is responsible for more than 10% of the consolidated net sales or of the Consolidated EBITDA of the Parent and its Subsidiaries, in each case, as would be shown in the consolidated financial statements of the Parent and its Subsidiaries as at the beginning of the twelve-month period ending with the month in which such determination is made (or if financial statements have not been delivered hereunder for that month which begins the twelve-month period, then the financial statements delivered hereunder for the quarter ending immediately prior to that month).

"Supported QFC" has the meaning assigned to it in Section 9.16.

"Supporting Letter of Credit" is defined in Section 2.1.2(l).

"Suppressed Availability" means the amount of excess, if any, of the amount of the Borrowing Base over the Aggregate Revolving Commitment.

"Swap" means any agreement, contract, or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swap Agreement" means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Borrower or the Subsidiaries shall be a Swap Agreement.

"Swap Obligation" means, with respect to any Person, any obligation to pay or perform under any Swap.

"Swingline Exposure" is defined in Section 2.24(c).

"Swingline Loan" means a Loan made pursuant to Section 2.1.4(b).

"Taxes" means any and all present or future taxes, duties, levies, imposts, deductions, charges, assessments, fees or withholdings (including backup withholding), now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority, and any and all liabilities with respect to the foregoing (including any interest, additions to tax or penalties applicable thereto).

"Term Commitment" means, for each Lender, the obligation of such Lender to make Term Loans to the Borrower in an aggregate amount not exceeding the amount set forth in Schedule I (a portion of which, for the avoidance of doubt, will be deemed to have been applied to a "cashless" prepayment of the aggregate principal amount of Existing Term Loans outstanding on the Effective Date with the proceeds of a borrowing of new Term Loans hereunder in an equal amount, in each case, deemed to occur as of the Effective Date) or as set

forth in any Assignment Agreement that has become effective pursuant to Section 12.3(c), as such amount may be modified from time to time pursuant to the terms hereof.

"Term Credit Exposure" means, as to any Lender at any time, the aggregate principal amount of its Term Loans outstanding at such time.

"Term Lender" means each Lender holding a portion of the Aggregate Term Commitments or, if the Aggregate Term Commitments have been terminated, each Lender holding Term Loans.

"Term Loan" means a term loan extended by the Lenders to the Borrower pursuant to Section 2.1.4 hereof.

"Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Trademarks" shall have the meaning given to such term in the Security Agreement.

"Transferee" is defined in Section 12.4.

"Type" means, with respect to any Advance, its nature as a Floating Rate Advance or a Eurodollar Advance and with respect to any Loan, its nature as a Floating Rate Loan or a Eurodollar Loan.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York or any other state the laws of which are required to be applied in connection with the issue of perfection of security interests.

"Unadjusted Benchmark Replacement" means the Benchmark Replacement excluding the Benchmark Replacement Adjustment; provided that, if the Unadjusted Benchmark Replacement as so determined would be less than zero, the Unadjusted Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

"Unliquidated Secured Obligations" means, at any time, any Secured Obligations (or portion thereof) that is contingent in nature or unliquidated at such time, including any Secured Obligation that is: (i) an obligation to reimburse a bank for drawings not yet made under a letter of credit issued by it; (ii) any other obligation (including any guarantee) that is contingent in nature at such time; or (iii) an obligation to provide collateral to secure any of the foregoing types of obligations.

"Unmatured Default" means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default.

"Unrestricted Subsidiary" means any subsidiary of the Borrower or PHI that is designated as such by the respective boards of directors of the Borrower or PHI; provided that (i) the board of directors of the Borrower shall only be permitted to so designate a subsidiary acquired or organized after April 6, 2012 as an Unrestricted Subsidiary, (ii) any such designation shall be made substantially concurrently with the acquisition or organization of such subsidiary and any

Investments made in such subsidiary by the Borrower and PHI and their respective Subsidiaries shall be treated as Investments in an Unrestricted Subsidiary and (iii) immediately after giving effect to any such designation there exists no Default or Event of Default. Subject to the foregoing, the board of directors of the Borrower or PHI, as applicable, may designate an Unrestricted Subsidiary to be a Subsidiary; provided that no Unrestricted Subsidiary that has been designated as a Subsidiary may again be designated as an Unrestricted Subsidiary.

"Unused Commitment Fee" is defined in Section 2.10(a).

"U.S." means the United States of America.

"U.S. Person" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"U.S. Special Resolution Regime" has the meaning assigned to it in Section 9.16.

"Wholly-Owned Subsidiary" of a Person means, any Subsidiary all of the outstanding Capital Stock of which shall at the time be owned or controlled, directly or indirectly, by such Person or one or more Wholly-Owned Subsidiaries of such Person, or by such Person and one or more Wholly-Owned Subsidiaries of such Person.

"Withdrawal Liability" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Title IV of ERISA.

"Write-Down and Conversion Powers" means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

1.2. Accounting Terms; GAAP

. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that if the Borrower notifies the Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. Notwithstanding any other provision contained herein, (i) all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to any election under Financial Accounting Standards Board Accounting Standards Codification 820 (or any other Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other

liabilities of any Loan Party at "fair value", as defined therein and (ii) in the event of an accounting change that is effective for any Loan Party for periods ending after the Effective Date requiring that any leases that under GAAP as of the Effective Date are not required to be capitalized must be capitalized going forward, only those leases (assuming for purposes hereof that such leases were in existence on the Effective Date) that would constitute Capitalized Leases in conformity with GAAP on the Effective Date shall be considered Capitalized Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made or delivered, as applicable, in accordance therewith.

1.3. Interest Rates; Eurodollar Base Rate Notification

. The interest rate on Eurodollar Loans is determined by reference to the Eurodollar Base Rate, which is derived from the London interbank offered rate. The London interbank offered rate is intended to represent the rate at which contributing banks may obtain short-term borrowings from each other in the London interbank market. In July 2017, the U.K. Financial Conduct Authority announced that, after the end of 2021, it would no longer persuade or compel contributing banks to make rate submissions to the ICE Benchmark Administration (together with any successor to the ICE Benchmark Administrator, the "IBA") for purposes of the IBA setting the London interbank offered rate. As a result, it is possible that commencing in 2022, the London interbank offered rate may no longer be available or may no longer be deemed an appropriate reference rate upon which to determine the interest rate on Eurodollar Loans. In light of this eventuality, public and private sector industry initiatives are currently underway to identify new or alternative reference rates to be used in place of the London interbank offered rate. Upon the occurrence of a Benchmark Transition Event or an Early Opt-In Election, Section 2.12(b) provides a mechanism for determining an alternative rate of interest. The Agent will promptly notify the Borrower, pursuant to Section 2.12(d), of any change to the reference rate upon which the interest rate on Eurodollar Loans is based. However, the Agent does not warrant or accept any responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the London interbank offered rate or other rates in the definition of "LIBO Rate" or with respect to any alternative or successor rate thereto, or replacement rate thereof (including, without limitation, (i) any such alternative, successor or replacement rate implemented pursuant to Section 2.12(b), whether upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, and (ii) the implementation of any Benchmark Replacement Conforming Changes pursuant to Section 2.12(c)), including without limitation, whether the composition or characteristics of any such alternative, successor or replacement reference rate will be similar to, or produce the same value or economic equivalence of, the Eurodollar Base Rate or have the same volume or liquidity as did the London interbank offered rate prior to its discontinuance or unavailability.

1.4. Divisions

. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized and acquired on the first date of its existence by the holders of its Equity Interests at such time.

**ARTICLE II**

**THE FACILITY**

2.1. The Facility

. Each Lender severally agrees, on the terms and conditions set forth in this Agreement, to (a) make Loans to the Borrower as set forth below and (b) participate in Facility LCs issued upon the request of the Borrower, provided that, after giving effect to the making of each such Loan and the issuance of each such Facility LC, such Lender's Revolving Credit Exposure shall not exceed its Revolving Commitment; provided further, that (i) the Aggregate Revolving Credit Exposure shall not exceed the Aggregate Revolving Commitment and (ii) the Aggregate Term Credit Exposure shall not exceed the Aggregate Term Commitment. The LC Issuer will issue Facility LCs hereunder on the terms and conditions set forth in Section 2.1.2. The Facility shall be composed of Revolving Loans, Non-Ratable Loans, Protective Advances, Swingline Loans, Overadvances and Facility LCs as set forth below.

2.1.1. Revolving Loans

.

(a) Amount. From and including the Effective Date and prior to the Facility Termination Date, each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make revolving loans (the "Revolving Loans") to the Borrower Representative on behalf of the applicable Borrower and participate in Facility LCs issued for the account of the Borrower as set forth in Section 2.1.2 below, in aggregate amounts that will not result in (i) such Lender's Revolving Credit Exposure exceeding its Revolving Commitment or (ii) the Aggregate Revolving Credit Exposure exceeding the lesser of (x) the Aggregate Revolving Commitment or (y) the Borrowing Base, subject to the Agent's authority, in its sole discretion, to make Protective Advances and Overadvances pursuant to the terms of Section 2.1.4. The Revolving Loans may consist of Floating Rate Advances or Eurodollar Advances, or a combination thereof, selected by the Borrower Representative in accordance with Sections 2.1.1(b) and 2.7. Subject to the terms of this Agreement, the Borrower may borrow, repay and reborrow Revolving Loans at any time prior to the Facility Termination Date. The Commitments to extend credit under this Section 2.1.1(a) shall expire on the Facility Termination Date.

(b) Borrowing Procedures. The Borrower Representative shall select the Type of Advance and, in the case of each Eurodollar Advance, the Interest Period applicable thereto, from time to time. The Borrower Representative shall give the Agent irrevocable notice in the form of Exhibit A (a "Borrowing Notice") not later than 10:00 a.m. (Chicago time) on the Borrowing Date of each Floating Rate Advance and three Business Days before the Borrowing Date for each Eurodollar Advance, specifying: (1) the name of the applicable Borrower, (2) the Borrowing Date, which shall be a Business Day, of such Advance, (3) the aggregate amount of such Advance, (4) the Type of Advance selected; provided that, if the Borrower Representative fails to specify the Type of Advance requested, such request shall be deemed a request for a Floating Rate Advance; and (5) the duration of the Interest Period if the Type of Advance requested is a Eurodollar Advance; provided that, if the Borrower Representative fails to select the duration of the Interest Period for the requested Eurodollar Advance, the Borrower

Representative shall be deemed to have requested on behalf of the applicable Borrower that such Eurodollar Advance be made with an Interest Period of one month.

(c) The Agent's Election. Promptly after receipt of a Borrowing Notice (or telephonic notice in lieu thereof) of a requested Floating Rate Advance, the Agent shall elect in its discretion to have the terms of Section 2.1.1(d) (pro rata advance by all Lenders), Section 2.1.3 (advance by the Agent, in the form of a Non-Ratable Loan, on behalf of the Lenders) or Section 2.1.4(b) (Swingline Loans) apply to such requested Advance.

(d) Pro Rata Advance. Unless the Agent elects to have the terms of Section 2.1.3 or Section 2.1.4(b) apply to a requested Floating Rate Advance or if a requested Advance is for a Eurodollar Advance, then promptly after receipt of a Borrowing Notice or telephonic notice in lieu thereof as permitted by Section 2.8, the Agent shall notify the Lenders by telecopy, telephone, or e-mail of the requested Advance. Not later than noon (Chicago time) on each Borrowing Date, each Lender shall make available its Revolving Loan in funds immediately available in Chicago to the Agent and the Agent will make the funds so received from the Lenders available to the Borrower Representative at the Funding Account as set forth in Section 2.5.

2.1.2. Facility LCs

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(a) Issuance. The LC Issuer hereby agrees, on the terms and conditions set forth in this Agreement, to issue to the Borrower standby and commercial Letters of Credit (each, and each Existing Letter of Credit, a "Facility LC") and to renew, extend, increase, decrease or otherwise modify each Facility LC ("Modify," and each such action a "Modification"), from time to time from and including the Effective Date and prior to the Facility Termination Date upon the request of the Borrower Representative for the account of the applicable Borrower; provided that, the maximum face amount of the Facility LC to be issued or Modified does not exceed the lesser of (i) an amount equal to $25,000,000 minus the sum of (1) the aggregate undrawn amount of all outstanding Facility LCs at such time *plus*, without duplication, (2) the aggregate unpaid Reimbursement Obligations with respect to all Facility LCs outstanding at such time and (ii) Availability. On the Effective Date, each Existing Letter of Credit shall be deemed to be a Facility LC issued hereunder for the account of the applicable Borrower. No Facility LC (or any renewal thereof) shall have an expiry date later than the earlier of (x) the fifth (5th) Business Day prior to the Facility Termination Date and (y) one year after its issuance; provided that any Letter of Credit with a one-year tenor may provide for the renewal thereof for additional one-year periods (which shall in no event extend beyond the date referred to in clause (x) above).

(b) Participations. Upon the issuance or Modification by the LC Issuer of a Facility LC in accordance with this Section 2.1.2, the LC Issuer shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably sold to each Lender, and each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the LC Issuer, a participation in

such Facility LC (and each Modification thereof) and the related LC Obligations in proportion to its Pro Rata Share.

(c) Notice. Subject to Section 2.1.2(a), the Borrower Representative, on behalf of the applicable Borrower, shall give the LC Issuer notice prior to 10:00 a.m. (Chicago time) at least three Business Days prior to the proposed date of issuance or Modification of each Facility LC, specifying the beneficiary, the proposed date of issuance (or Modification) and the expiry date of such Facility LC, and describing the proposed terms of such Facility LC and the nature of the transactions proposed to be supported thereby. Upon receipt of such notice, the LC Issuer shall promptly notify the Agent, and the Agent shall promptly notify each Lender, of the contents thereof and of the amount of such Lender's participation in such proposed Facility LC. The issuance or Modification by the LC Issuer of any Facility LC shall, in addition to the conditions precedent set forth in Article IV (the satisfaction of which the LC Issuer shall have no duty to ascertain), be subject to the conditions precedent that such Facility LC shall be reasonably satisfactory to the LC Issuer and that the applicable Borrower shall have executed and delivered such application agreement and/or such other instruments and agreements relating to such Facility LC as the LC Issuer shall have reasonably requested (each, a "Facility LC Application"). In the event of any conflict between the terms of this Agreement and the terms of any Facility LC Application, the terms of this Agreement shall control.

(d) Administration; Reimbursement by Lenders. Upon receipt from the beneficiary of any Facility LC of any demand for payment under such Facility LC, the LC Issuer shall notify the Agent and the Agent shall promptly notify the Borrower Representative and each other Lender as to the amount to be paid by the LC Issuer as a result of such demand and the proposed payment date (the "LC Payment Date"). The responsibility of the LC Issuer to the Borrower Representative, the Borrower and each Lender shall be only to determine that the documents (including each demand for payment) delivered under each Facility LC in connection with such presentment shall be in conformity in all material respects with such Facility LC. The LC Issuer shall endeavor to exercise the same care in the issuance and administration of the Facility LCs as it does with respect to letters of credit in which no participations are granted, it being understood that in the absence of any gross negligence or willful misconduct by the LC Issuer, each Lender shall be unconditionally and irrevocably liable without regard to the occurrence of any Default or any condition precedent whatsoever, to reimburse the LC Issuer on demand for (i) such Lender's Pro Rata Share of the amount of each payment made by the LC Issuer under each Facility LC to the extent such amount is not reimbursed by the Borrower pursuant to Section 2.1.2(e) below, *plus* (ii) interest on the foregoing amount to be reimbursed by such Lender, for each day from the date of the LC Issuer's demand for such reimbursement (or, if such demand is made after 11:00 a.m. (Chicago time) on such date, from the next succeeding Business Day) to the date on which such Lender pays the amount to be reimbursed by it, at a rate of interest per annum equal to the NYFRB Rate for the first three days and, thereafter, at a rate of interest equal to the rate applicable to Floating Rate Advances.

(e) Reimbursement by Borrower. The Borrower shall be irrevocably and unconditionally obligated to reimburse the LC Issuer on or before the applicable LC Payment Date for any amounts to be paid by the LC Issuer upon any drawing under any Facility LC, without presentment, demand, protest or other formalities of any kind; provided that, neither the Borrower nor any Lender shall hereby be precluded from asserting any claim for direct (but not consequential) damages suffered by the Borrower or such Lender to the extent, but only to the extent, caused by (i) the willful misconduct or gross negligence of the LC Issuer in determining whether a request presented under any Facility LC issued by it complied with the terms of such Facility LC or (ii) the LC Issuer's failure to pay under any Facility LC issued by it after the presentation to it of a request strictly complying with the terms and conditions of such Facility LC. All such amounts paid by the LC Issuer and remaining unpaid by the Borrower shall bear interest, payable on demand, for each day until paid at a rate per annum equal to (x) the rate applicable to Floating Rate Advances for such day if such day falls on or before the applicable LC Payment Date and (y) the sum of 2% *plus* the rate applicable to Floating Rate Advances for such day if such day falls after such LC Payment Date. The LC Issuer will pay to each Lender ratably in accordance with its Pro Rata Share all amounts received by it from the Borrower for application in payment, in whole or in part, of the Reimbursement Obligation in respect of any Facility LC issued by the LC Issuer, but only to the extent such Lender has made payment to the LC Issuer in respect of such Facility LC pursuant to Section 2.1.2(d). Subject to the terms and conditions of this Agreement (including without limitation the submission of a Borrowing Notice in compliance with Section 2.1.1(b) and the satisfaction of the applicable conditions precedent set forth in Article IV), the Borrower Representative may request an Advance hereunder on behalf of the applicable Borrower for the purpose of satisfying any Reimbursement Obligation.

(f) Obligations Absolute. The Borrower's obligations under this Section 2.1.2 shall be absolute and unconditional under any and all circumstances and irrespective of any setoff, counterclaim or defense to payment which the Borrower may have or have had against the LC Issuer, any Lender or any beneficiary of a Facility LC. The Borrower further agrees with the LC Issuer and the Lenders that the LC Issuer and the Lenders shall not be responsible for, and the Borrower's Reimbursement Obligation in respect of any Facility LC shall not be affected by, among other things, the validity or genuineness of documents or of any endorsements thereon, even if such documents should in fact prove to be in any or all respects invalid, fraudulent or forged, or any dispute between or among the Borrower, any of its Affiliates, the beneficiary of any Facility LC or any financing institution or other party to whom any Facility LC may be transferred or any claims or defenses whatsoever of the Borrower or of any of its Affiliates against the beneficiary of any Facility LC or any such transferee. The LC Issuer shall not 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 Facility LC. The Borrower agrees that any action taken or omitted by the LC Issuer or any Lender under or in connection with each Facility LC and the related drafts and documents, if done without gross negligence or willful misconduct, shall be binding upon the Borrower and shall not put the LC Issuer or any Lender under any liability to the Borrower. Nothing in this Section 2.1.2(f) is intended to limit the right of the Borrower

to make a claim against the LC Issuer for damages as contemplated by the proviso to the first sentence of Section 2.1.2(e).

(g) Actions of LC Issuer. The LC Issuer shall be entitled to rely, and shall be fully protected in relying, upon any Facility LC, draft, writing, resolution, notice, consent, certificate, affidavit, letter, cablegram, telegram, telecopy, telex or teletype message, statement, order or other document believed by it (in its Permitted Discretion) to be genuine and correct and to have been signed, sent or made by the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the LC Issuer. The LC Issuer shall be fully justified in failing or refusing to take any action under this Agreement unless it shall first have received such advice or concurrence of the Required Lenders as it reasonably deems appropriate or it shall first be indemnified to its reasonable satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Notwithstanding any other provision of this Section 2.1.2, the LC Issuer shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement in accordance with a request of the Required Lenders, and such request and any action taken or failure to act pursuant thereto shall be binding upon the Lenders and any future holders of a participation in any Facility LC.

(h) Indemnification. The Borrower hereby agrees to indemnify and hold harmless each Lender, the LC Issuer and the Agent, and their respective directors, officers, agents and employees from and against any and all claims and damages, losses, liabilities, costs or expenses which such Lender, the LC Issuer or the Agent may incur (or which may be claimed against such Lender, the LC Issuer or the Agent by any Person whatsoever) by reason of or in connection with the issuance, execution and delivery or transfer of or payment or failure to pay under any Facility LC or any actual or proposed use of any Facility LC, including, without limitation, any claims, damages, losses, liabilities, costs or expenses which the LC Issuer may incur by reason of or in connection with (i) the failure of any other Lender to fulfill or comply with its obligations to the LC Issuer hereunder (but nothing herein contained shall affect any rights the Borrower may have against any Defaulting Lender) or (ii) by reason of or on account of the LC Issuer issuing any Facility LC which specifies that the term "Beneficiary" included therein includes any successor by operation of law of the named Beneficiary, but which Facility LC does not require that any drawing by any such successor Beneficiary be accompanied by a copy of a legal document, satisfactory to the LC Issuer (in its Permitted Discretion), evidencing the appointment of such successor Beneficiary; provided that, the Borrower shall not be required to indemnify any Lender, the LC Issuer or the Agent for any claims, damages, losses, liabilities, costs or expenses to the extent, but only to the extent, caused by (x) the willful misconduct or gross negligence of the LC Issuer in determining whether a request presented under any Facility LC complied with the terms of such Facility LC or (y) the LC Issuer's failure to pay under any Facility LC after the presentation to it of a request strictly complying with the terms and conditions of such Facility LC. Nothing in this Section 2.1.2(h) is intended to limit the obligations of the Borrower under any other provision of this Agreement.

(i) Lenders' Indemnification. Each Lender shall, ratably in accordance with its Pro Rata Share, indemnify the LC Issuer, its Affiliates and their respective directors, officers, agents and employees (to the extent not reimbursed by the Borrower) against any cost, expense (including reasonable counsel fees and disbursements), claim, demand, action, loss or liability (except such as result from such indemnitees' gross negligence or willful misconduct or the LC Issuer's failure to pay under any Facility LC after the presentation to it of a request strictly complying with the terms and conditions of the Facility LC) that such indemnitees may suffer or incur in connection with this Section 2.1.2 or any action taken or omitted by such indemnitees hereunder.

(j) Facility LC Collateral Account. The Borrower agrees that it will, upon the request of the Agent or the Required Lenders and until the final expiration date of any Facility LC and thereafter as long as any amount is payable to the LC Issuer or the Lenders in respect of any Facility LC, maintain a special collateral account pursuant to arrangements satisfactory to the Agent in its Permitted Discretion (the "Facility LC Collateral Account") at the Agent's office at the address specified pursuant to Article XIII, in the name of the Borrower but under the sole dominion and control of the Agent, for the benefit of the Lenders and in which the Borrower shall have no interest other than as set forth in Section 8.1. Nothing in this Section 2.1.2(j) shall either obligate the Agent to require the Borrower to deposit any funds in the Facility LC Collateral Account or limit the right of the Agent to release any funds held in the Facility LC Collateral Account in each case other than as required by Section 8.1. The Borrower hereby pledges, assigns and grants to the Agent, on behalf of and for the ratable benefit of the Lenders and the LC Issuer, a security interest in all of the Borrower's right, title and interest in and to all funds which may from time to time be on deposit in the Facility LC Collateral Account to secure the prompt and complete payment and performance of the Secured Obligations. The Agent will invest any funds on deposit from time to time in the Facility LC Collateral Account in certificates of deposit of Chase having a maturity not exceeding thirty days.

(k) Rights as a Lender. In its capacity as a Lender, the LC Issuer shall have the same rights and obligations as any other Lender.

(l) Termination of the Facility. If, notwithstanding the provisions of this Section 2.1.2, any Facility LC is outstanding upon the earlier of (x) the termination of this Agreement and (y) the Facility Termination Date, then upon such termination the Borrower shall deposit with the Agent, for the benefit of the Agent and the Lenders, with respect to all LC Obligations, as the Agent in its discretion shall specify, either (i) a standby letter of credit (a "Supporting Letter of Credit"), in form and substance satisfactory to the Agent (in its Permitted Discretion), issued by an issuer satisfactory to the Agent (in its Permitted Discretion), in a stated amount equal to 105% of the difference of (x) the amount of LC Obligations at such time, less (y) the amount on deposit in the Facility LC Collateral Account at such time which is free and clear of all rights and claims of third parties and has not been applied against the Obligations (such difference, the "Collateral Shortfall Amount"), under which Supporting Letter of Credit the Agent is entitled to draw amounts necessary to reimburse the Agent, the LC Issuer and the Lenders for payments to be made by the Agent, the LC Issuer and the Lenders

under any such Facility LC and any fees and expenses associated with such Facility LC, or (ii) cash, in immediately available funds, in an amount equal to 105% of the Collateral Shortfall Amount to be held in the Facility LC Collateral Account. Such Supporting Letter of Credit or deposit of cash shall be held by the Agent, for the benefit of the Agent and the Lenders, as security for, and to provide for the payment of, the aggregate undrawn amount of such Facility LC remaining outstanding.

2.1.3. Non-Ratable Loans

. Subject to the restrictions set forth in Section 2.1.1(a), the Agent may elect to have the terms of this Section 2.1.3 apply to any requested Floating Rate Advance and Chase shall thereafter make an Advance, on behalf of the Lenders and in the amount requested, available to the Borrower on the applicable Borrowing Date by transferring same day funds to the Funding Account. Each Advance made solely by the Agent pursuant to this Section 2.1.3 is referred to in this Agreement as a "Non-Ratable Loan," and such Advances are referred to as the "Non-Ratable Loans." Each Non-Ratable Loan shall be subject to all the terms and conditions applicable to other Advances funded by the Lenders, except that all payments thereon shall be payable to Chase solely for its own account. The aggregate amount of Non-Ratable Loans outstanding at any time shall not exceed $20,000,000. The Agent shall not make any Non-Ratable Loan if the requested Non-Ratable Loan exceeds Availability (before giving effect to such Non-Ratable Loan). Non-Ratable Loans may be made even if a Default or Unmatured Default exists, but may not be made if the conditions precedent set forth in Section 4.2 (other than Section 4.2(a)) have not been satisfied. The Non-Ratable Loans shall be secured by the Liens granted to the Agent in and to the Collateral and shall constitute Obligations hereunder. All Non-Ratable Loans shall be Floating Rate Advances and are subject to the settlement provisions set forth in Section 2.20.

2.1.4. Protective Advances, Swingline Loans and Overadvances.

(a) Protective Advances. Subject to the limitations set forth below, the Agent is authorized by the Borrower and the Lenders, from time to time in the Agent's sole discretion (but shall have absolutely no obligation to), to make Advances, on behalf of all Lenders, in an aggregate amount outstanding at any time that, when added to the aggregate amount of Overadvances outstanding at such time, does not exceed 5% of the Aggregate Revolving Commitment at such time, which the Agent, in its Permitted Discretion, deems necessary or desirable (i) to preserve or protect the Collateral, or any portion thereof, (ii) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Obligations, or (iii) to pay any other amount chargeable to or required to be paid by the Borrower pursuant to the terms of this Agreement, including costs, fees, and expenses as described in Section 9.6 (any of such Advances are herein referred to as "Protective Advances"); provided that, no Protective Advance shall cause the Aggregate Revolving Credit Exposure to exceed the Aggregate Revolving Commitment. Protective Advances may be made even if the conditions precedent set forth in Section 4.2 have not been satisfied. The Protective Advances shall be secured by the Liens in favor of the Agent in and to the Collateral and shall constitute Obligations hereunder. All Protective Advances shall be Floating Rate Advances, shall bear interest at the default rate set forth in Section 2.13 and shall be payable on the earlier of demand or the Facility Termination Date. The Required Lenders may at any time revoke the Agent's authorization to make Protective Advances. Any such revocation must be in

writing and shall become effective prospectively upon the Agent's receipt thereof. At any time that there is sufficient Availability and the conditions precedent set forth in Section 4.2 have been satisfied, the Agent may request the Lenders to make a Revolving Loan to repay a Protective Advance. At any other time the Agent may require the Lenders to fund their risk participations described in Section 2.2.

(b) Swingline Loans. Subject to the terms and conditions set forth herein, the Agent is authorized by the Borrower and the Lenders, from time to time in the Agent's sole discretion (but shall have absolutely no obligation to), to make Swingline Loans, on behalf of all Lenders, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $15,000,000 or (ii) the Aggregate Revolving Credit Exposure exceeding the lesser of the (x) Aggregate Revolving Commitment and (y) the Borrowing Base; provided that the Agent shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrower may borrow, prepay and reborrow Swingline Loans. To request a Swingline Loan, the Borrower shall notify the Agent of such request by telephone (confirmed by facsimile), not later than 11:00 a.m., Chicago time, on the day of a proposed Swingline Loan. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Swingline Loan. The Agent shall make each Swingline Loan available to the Borrower by means of a credit to the Funding Account (or, in the case of a Swingline Loan made to finance the reimbursement of a Facility LC as provided in Section 2.1.2(e), by remittance to the LC Issuer, and in the case of repayment of another Loan or fees or expenses as provided herein, by remittance to the Agent to be distributed to the Lenders) by 2:00 p.m., Chicago time, on the requested date of such Swingline Loan. All Swingline loans shall be Floating Rate Advances, shall bear interest at the default rate set forth in Section 2.13 and shall be payable on the earlier of demand or the Facility Termination Date.

The Agent may require the Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. In such event, the Agent shall give the Lenders notice, specifying the aggregate amount of Swingline Loans in which Lenders will participate, as well as each Lender's Pro Rata Share of such Swingline Loan or Loans. Each Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Agent such Lender's Pro Rata Share of such Swingline Loan or Loans. Each Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender shall comply with its obligation under this paragraph by transfer of immediately available funds, in the same manner as provided in Section 2.1.1(d) (and Section 2.1.1(d) shall apply, mutatis mutandis, to the payment obligations of the Lenders). Any amounts received by the Agent from the Borrower (or other party on behalf of the Borrower) in respect of a Swingline Loan after receipt by the Agent of the proceeds of a sale of participations therein shall be promptly remitted by the Agent to the Lenders that shall have made their payments pursuant to this paragraph or

retained by the Agent, as their interests may appear; provided that any such payment so remitted shall be repaid to the Agent if and to the extent such payment is required to be refunded to the Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve the Borrower of any default in the payment thereof.

(c) Overadvances. Any provision of this Agreement to the contrary notwithstanding, at the request of the Borrower Representative on behalf of the Borrower, the Agent may in its sole discretion (but shall have absolutely no obligation to), make Advances to the Borrower Representative (for the account of the Borrower), on behalf of the Lenders, in amounts that exceed Availability (any such excess Advances are herein referred to collectively as "Overadvances"); provided that, (i) no such event or occurrence shall cause or constitute a waiver of the Agent's or Lenders' right to refuse to make any further Swingline Loans, Overadvances, Revolving Loans or Non-Ratable Loans, or issue Facility LCs, as the case may be, at any time that an Overadvance exists, (ii) no Overadvance shall result in a Default or Unmatured Default due to the Borrower's failure to comply with Section 2.1.1(a) for so long as the Agent permits such Overadvance to remain outstanding, but solely with respect to the amount of such Overadvance and (iii) the aggregate amount of Overadvances outstanding at any time, when added to the aggregate amount of Protective Advances outstanding at such time, shall not exceed 5% of the Aggregate Revolving Commitment at such time. In addition, Overadvances may be made even if a Default or Unmatured Default exists, but may not be made if the conditions precedent set forth in Section 4.2 have not been satisfied (other than the condition regarding Availability and other than Section 4.2(a)). All Overadvances shall constitute Floating Rate Advances, shall bear interest at the default rate set forth in Section 2.13, shall be payable on the earlier of demand or the Facility Termination Date and are subject to the settlement provisions set forth in Section 2.20. The authority of the Agent to make Overadvances is limited to an aggregate amount not to exceed 5% of the Borrowing Base at any time, no Overadvance may remain outstanding for more than thirty days and no Overadvance shall cause any Lender's Revolving Credit Exposure to exceed its Revolving Commitment or the Aggregate Revolving Credit Exposure to exceed the Aggregate Revolving Commitment; provided that, the Required Lenders may at any time revoke the Agent's authorization to make Overadvances. Any such revocation must be in writing and shall become effective prospectively upon the Agent's receipt thereof.

2.1.5. Term Loans

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(a) On the Effective Date each Lender severally agrees, on the terms and conditions set forth in this Agreement, to make term loans (the "Term Loans") (or be deemed to have made Term Loans which, for the avoidance of doubt, will be deemed to have been applied to a "cashless" prepayment of the aggregate principal amount of Existing Term Loans outstanding on the Effective Date deemed to occur as of the Effective Date) to the Borrower Representative on behalf of the applicable Borrower in aggregate amounts that will not result in (i) such Lender's Term Credit Exposure exceeding its Term Commitment or (ii) the Aggregate Term Credit Exposure exceeding the Aggregate Term Commitment. The Term Loans may consist of Floating Rate

Advances or Eurodollar Advances, or a combination thereof, selected by the Borrower Representative in accordance with Section 2.7. Once repaid Term Loans may not be reborrowed.

(b) Borrowing Procedures. The Borrower Representative shall select the Type of Advance and, in the case of each Eurodollar Advance, the Interest Period applicable thereto, from time to time. The Borrower Representative shall give the Agent irrevocable notice in the form of a Borrowing Notice not later than 10:00 a.m. (Chicago time) on the Borrowing Date of a Floating Rate Advance and three Business Days before the Borrowing Date for a Eurodollar Advance, specifying: (1) the name of the applicable Borrower, (2) the Borrowing Date, which shall be a Business Day, of such Advance, (3) the aggregate amount of such Advance, (4) the Type of Advance selected; provided that, if the Borrower Representative fails to specify the Type of Advance requested, such request shall be deemed a request for a Floating Rate Advance; and (5) the duration of the Interest Period if the Type of Advance requested is a Eurodollar Advance; provided that, if the Borrower Representative fails to select the duration of the Interest Period for the requested Eurodollar Advance, the Borrower Representative shall be deemed to have requested on behalf of the applicable Borrower that such Eurodollar Advance be made with an Interest Period of one month.

2.2. Ratable Loans; Risk Participation

. Except as otherwise provided below, each Advance made in connection with a Revolving Loan shall consist of Loans made by each Lender in an amount equal to such Lender's Pro Rata Share. Upon the making of an Advance by the Agent in connection with a Non-Ratable Loan, a Swingline Loan, an Overadvance or a Protective Advance (whether before or after the occurrence of a Default or an Unmatured Default and regardless of whether the Agent has requested a Settlement with respect to such Non-Ratable Loan, Swingline Loan, Overadvance or Protective Advance), the Agent shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably sold to each Lender and each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Agent, without recourse or warranty, an undivided interest and participation in such Non-Ratable Loan, Swingline Loan, Overadvance or Protective Advance in proportion to its Pro Rata Share of the Aggregate Revolving Commitment. From and after the date, if any, on which any Lender is required to fund its participation in any Non-Ratable Loan, Swingline Loan, Overadvance or Protective Advance purchased hereunder, the Agent shall promptly distribute to such Lender, such Lender's Pro Rata Share of all payments of principal and interest and all proceeds of Collateral received by the Agent in respect of such Loan.

2.3. Payment of the Obligations

. The Borrower shall repay the outstanding principal balance of the Loans, together with all other Obligations, including all accrued and unpaid interest thereon, on the Facility Termination Date.

2.4. Minimum Amount of Each Advance

. Each Eurodollar Advance shall be in the minimum amount of $5,000,000 and in multiples of $1,000,000 if in excess thereof. Floating Rate Advances may be in any amount.

2.5. Funding Account

. The Borrower Representative shall deliver to the Agent, on the Effective Date, a notice setting forth the deposit account of the Borrower Representative (the "Funding Account") to which the Agent is authorized by the Borrower to transfer the proceeds of any Advances requested pursuant to this Agreement. The Borrower Representative may designate a replacement Funding Account from time to time by written notice to the Agent. Any designation by the Borrower Representative of the Funding Account must be reasonably acceptable to the Agent.

2.6. Reliance Upon Authority; No Liability

. The Agent is entitled to rely conclusively on any individual's request for Advances hereunder, so long as the proceeds thereof are to be transferred to the Funding Account. The Agent shall have no duty to verify the identity of any individual representing himself or herself as a person authorized by the Borrower to make such requests on their behalf. The Agent shall not incur any liability to the Borrower as a result of acting upon any notice referred to in Section 2.1 which the Agent reasonably believes to have been given by an officer or other person duly authorized by the Borrower to request Advances on their behalf or for otherwise acting under this Agreement. The crediting of Advances to the Funding Account shall conclusively establish the obligation of the Borrower to repay such Advances as provided herein.

2.7. Conversion and Continuation of Outstanding Advances

. Floating Rate Advances shall continue as Floating Rate Advances unless and until such Floating Rate Advances are converted into Eurodollar Advances pursuant to this Section 2.7 or are repaid in accordance with this Agreement. Each Eurodollar Advance shall continue as a Eurodollar Advance until the end of the then applicable Interest Period therefor, at which time such Eurodollar Advance shall be automatically converted into a Floating Rate Advance unless (x) such Eurodollar Advance is or was repaid in accordance with this Agreement or (y) the Borrower Representative shall have given the Agent a Conversion/Continuation Notice (as defined below) requesting that, at the end of such Interest Period, such Eurodollar Advance continue as a Eurodollar Advance for the same or another Interest Period. Subject to the terms of Section 2.4, the Borrower Representative may elect from time to time to convert all or any part of a Floating Rate Advance into a Eurodollar Advance on behalf of the applicable Borrower. The Borrower Representative shall give the Agent irrevocable notice in the form of Exhibit B (a "Conversion/Continuation Notice") of each conversion of a Floating Rate Advance into a Eurodollar Advance or continuation of a Eurodollar Advance not later than 10:00 a.m. (Chicago time) at least three Business Days prior to the date of the requested conversion or continuation, specifying (i) the requested date, which shall be a Business Day, of such conversion or continuation, (ii) the aggregate amount and Type of the Advance which is to be converted or continued, and (iii) the amount of such Advance which is to be converted into or continued as a Eurodollar Advance and the duration of the Interest Period applicable thereto.

2.8. Telephonic Notices

. The Borrower hereby authorizes the Lenders and the Agent to extend, convert or continue Advances, effect selections of Types of Advances and to transfer funds based on telephonic notices made by any person or persons the Agent or any Lender in good faith believes to be acting on behalf of the Borrower Representative, it being understood that the foregoing authorization is specifically intended to allow Borrowing Notices and Conversion/Continuation Notices to be given telephonically. The Borrower Representative agrees to deliver promptly to the Agent a written confirmation, if such confirmation is requested

by the Agent or any Lender, of each telephonic notice signed by an Authorized Officer of the Borrower Representative. If the written confirmation differs in any material respect from the action taken by the Agent and the Lenders, the records of the Agent and the Lenders shall govern absent manifest error.

2.9. Notification of Advances, Interest Rates and Repayments

. Promptly after receipt thereof, the Agent will notify each Lender of the contents of each Borrowing Notice, Conversion/Continuation Notice, and repayment notice received by it hereunder. Promptly after notice from the LC Issuer, the Agent will notify each Lender of the contents of each request for issuance of a Facility LC hereunder or any Modification. The Agent will notify each Lender of the interest rate applicable to each Eurodollar Advance promptly upon determination of such interest rate and will give each Lender prompt notice of each change in the Alternate Base Rate.

2.10. Fees

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(a) Unused Commitment Fee. The Borrower agrees to pay to the Agent, for the account of each Lender in accordance with such Lender's Pro Rata Share, an unused commitment fee at a per annum rate equal to the Applicable Fee Rate on the average daily Available Revolving Commitment, such fee to be payable in arrears on each Payment Date hereafter and on the Facility Termination Date (the "Unused Commitment Fee").

(b) LC Fees. The Borrower shall pay to the Agent, for the account of the Lenders ratably in accordance with their respective Pro Rata Shares, a letter of credit fee at a per annum rate equal to the Applicable Margin for Eurodollar Loans in effect from time to time on the average daily undrawn stated amount under each Facility LC, such fee to be payable in arrears on each Payment Date (the "LC Fee"). The Borrower shall also pay to the LC Issuer for its own account (x) a fronting fee of 0.125% per annum of the face amount of the Facility LC, based on average daily undrawn amounts under each Facility LC and payable in arrears on each Payment Date, and (y) documentary and processing charges in connection with the issuance or Modification of and draws under Facility LCs in accordance with the LC Issuer's standard schedule for such charges as in effect from time to time.

(c) Agent and Arranger Fees. The Borrower agrees to pay all fees and expenses payable to the Agent, Arrangers and Lenders.

2.11. Interest Rates

. Each Floating Rate Advance shall bear interest on the outstanding principal amount thereof, for each day from and including the date such Advance is made or is automatically converted from a Eurodollar Advance into a Floating Rate Advance pursuant to Section 2.7, to but excluding the date it is paid or is converted into a Eurodollar Advance pursuant to Section 2.7 hereof, at a rate per annum equal to the Floating Rate for such day. Changes in the rate of interest on that portion of any Advance maintained as a Floating Rate Advance will take effect simultaneously with each change in the Alternate Base Rate. Each Eurodollar Advance shall bear interest on the outstanding principal amount thereof from and including the first day of the Interest Period applicable thereto to (but not including) the last day of such Interest Period at the interest rate determined by the Agent as applicable to such

Eurodollar Advance based upon the Borrower Representative's selections under Sections 2.1.1 and 2.7 and otherwise in accordance with the terms hereof. No Interest Period may end after the Facility Termination Date. If at any time Loans are outstanding with respect to which the Borrower Representative has not delivered a notice to the Agent specifying the basis for determining the interest rate applicable thereto, those Loans shall bear interest at the Floating Rate.

2.12. Alternate Rate of Interest

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(a) If prior to the commencement of any Interest Period for a borrowing of a Eurodollar Loan:

(i) The Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Eurodollar Rate or the Eurodollar Base Rate, as applicable (including because the Screen Rate is not available or published on a current basis), for such Interest Period; provided that no Benchmark Transition Event shall have occurred at such time; or

(ii) The Agent is advised by the Required Lenders that the Eurodollar Rate or the Eurodollar Base Rate, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or Loan) included in such Credit Extension for such Interest Period;

then the Agent shall give notice thereof to the Borrower and the Lenders by telephone, telecopy or electronic mail as promptly as practicable thereafter and, until the Agent notifies the Borrower and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Conversion/Continuation Notice that requests the conversion of any Loan to, or continuation of any Loan as, a Eurodollar Loan shall be ineffective and (B) if any Borrowing Notice requests a Revolving Loan that is a Eurodollar Loan, such Loan shall be made as a Floating Rate Loan.

(b) Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Agent and the Borrower may amend this Agreement to replace the Eurodollar Base Rate with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Agent has posted such proposed amendment to all Lenders and the Borrower, so long as the Agent has not received, by such time, written notice of objection to such proposed amendment from Lenders comprising the Required Lenders; provided that, with respect to any proposed amendment containing any SOFR-Based Rate, the Lenders shall be entitled to object only to the Benchmark Replacement Adjustment contained therein. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Agent written notice that such Required Lenders accept such amendment. No replacement of Eurodollar Base Rate with a Benchmark Replacement will occur prior to the applicable Benchmark Transition Start Date.

(c) In connection with the implementation of a Benchmark Replacement, the Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(d) The Agent will promptly notify the Borrower and the Lenders of (i) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, (ii) the implementation of any Benchmark Replacement, (iii) the effectiveness of any Benchmark Replacement Conforming Changes and (iv) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Agent or Lenders pursuant to this Section 2.12, including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.12.

(e) Upon the Borrower's receipt of notice of the commencement of a Benchmark Unavailability Period, (i) any Conversion/Continuation Notice that requests the conversion of any Loan to, or continuation of any Loan as, a Eurodollar Loan shall be ineffective and (ii) if any Borrowing Notice requests a Revolving Loan that is a Eurodollar Loan, such Loan shall be made as a Floating Rate Loan.

2.13. Eurodollar Advances Post Default; Default Rates

. Notwithstanding anything to the contrary contained hereunder, during the continuance of a Default or Unmatured Default the Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.3 requiring unanimous consent of the Lenders to reductions in interest rates), declare that no Advance may be made as, converted into or continued as a Eurodollar Advance. During the continuance of a default in the payment of the principal, interest or any other amount due hereunder or under another Loan Document, the Agent or the Required Lenders may, at their option, by notice to the Borrower Representative (which notice may be revoked at the option of the Required Lenders notwithstanding any provision of Section 8.3 requiring unanimous consent of the Lenders to reductions in interest rates), declare that (i) each Eurodollar Advance shall bear interest for the remainder of the applicable Interest Period at the rate otherwise applicable to such Interest Period plus 2% per annum, (ii) each Floating Rate Advance shall bear interest at a rate per annum equal to the Floating Rate in effect from time to time plus 2% per annum and (iii) the LC Fee shall be increased by 2% per annum, provided that, during the continuance of a Default under subsection (f) or (g) of Article VII, the interest rates set forth in clauses (i) and (ii) above and the increase in the LC Fee set forth in clause (iii) above shall be applicable to all Credit Extensions without any election or action on the part of the Agent or any Lender.

2.14. Interest Payment Dates; Interest and Fee Basis

. Interest accrued on each Floating Rate Advance shall be payable on each Payment Date, commencing with the first such date to

occur after the date hereof and at maturity. Interest accrued on each Eurodollar Advance shall be payable on each Payment Date. Interest on all Advances, Unused Commitment Fees and LC Fees shall be calculated for actual days elapsed on the basis of a 360-day year (or 365/366 days, in the case of Loans the interest rate payable on which is based on the Prime Rate). Interest shall be payable for the day an Advance is made but not for the day of any payment on the amount paid if payment is received prior to noon (local time) at the place of payment. If any payment of principal of or interest on an Advance shall become due on a day which is not a Business Day, such payment shall be made on the next succeeding Business Day and, in the case of a principal payment, such extension of time shall be included in computing interest in connection with such payment. After giving effect to any Loan, Advance, continuation, or conversion of any Eurodollar Rate Loan, there may not be more than fourteen (14) different Interest Periods in effect hereunder.

2.15. Voluntary Prepayments

. Subject to Section 2.26, the Borrower may from time to time prepay, but without penalty or premium, all or any portion of the outstanding Floating Rate Advances. The Borrower may also from time to time prepay, subject to the payment of any funding indemnification amounts required by Section 3.4 but without penalty or premium, all outstanding Eurodollar Advances, or, in a minimum aggregate amount of $5,000,000 or any integral multiple of $1,000,000 in excess thereof, any portion of the outstanding Eurodollar Advances upon three Business Days' prior notice to the Agent. Any prepayments made in respect of the Term Loans pursuant to this Section 2.15 shall be applied against the scheduled payments to be made by the Borrower pursuant to Section 2.27 at the direction of the Borrower; provided that in the absence of such direction, such payments shall be applied against the scheduled payments to be made by the Borrower pursuant to Section 2.27 in reverse order of the dates when scheduled payments are due.

2.16. Mandatory Prepayments

(a) Borrowing Base Compliance. Except for Overadvances permitted pursuant to Section 2.1.4(c), the applicable Borrower shall immediately repay the Revolving Loans, Swingline Loans, Reimbursement Obligations and/or Non-Ratable Loans (and, if required, cash collateralize any undrawn Facility LC in the manner contemplated in Section 2.1.2(j)) if at any time the Aggregate Revolving Credit Exposure exceeds the lesser of (i) the Aggregate Revolving Commitment and (ii) the Borrowing Base to the extent required to eliminate such excess.

(b) Sale of Assets. Immediately upon receipt by the General Partner, the Borrower or PHI or any of their respective Subsidiaries of the Net Cash Proceeds of any asset disposition (other than (A) sales of inventory in the ordinary course of business, (B) until the first anniversary of the Effective Date, the Project Friday Disposition with aggregate Net Cash Proceeds not exceeding $10,000,000 and (C) up to $10,000,000 per Fiscal Year of Net Cash Proceeds from sales of obsolete or worn-out property in the ordinary course of business), the General Partner or applicable Borrower shall prepay the Obligations, or shall cause the applicable Subsidiary to deliver funds to the Agent for application to the Obligations, in an amount equal to all such Net Cash Proceeds. Any such prepayment shall be applied first, to pay the principal of the Overadvances and Protective Advances, second, to pay the principal of the Non-Ratable Loans, third, to pay

the principal of the Term Loans and fourth, to pay the principal of the Revolving Loans (including the Swingline Loans) without a concomitant reduction in the Aggregate Revolving Commitment.

(c) Issuance of Debt or Equity. If any Loan Party or any of its respective Subsidiaries issues Capital Stock or Indebtedness (other than Indebtedness permitted by Sections 6.17(a),(c), (d), (e), (f), (g), (h), (j) and (k)), no later than the Business Day following the date of receipt of any Net Cash Proceeds of such issuance or receipt of such dividend, distribution, loan or advance, the Borrower, or applicable Loan Party, shall prepay the Obligations in an amount equal to all such Net Cash Proceeds. Any such prepayment shall be applied first, to pay the principal of the Overadvances and Protective Advances, second, to pay the principal of the Non-Ratable Loans, third, to pay the principal of the Term Loans and fourth, to pay the principal of the Revolving Loans (including the Swingline Loans) without a concomitant reduction in the Aggregate Revolving Commitment.

(d) Insurance/Condemnation Proceeds. Any insurance or condemnation proceeds to be applied to the Obligations in accordance with Section 6.7(d) shall be applied as follows: (i) insurance proceeds from casualties or losses to cash or Inventory shall be applied, first, to the Overadvances and Protective Advances, pro rata, second, to the Non-Ratable Loans, third, to the Revolving Loans (including the Swingline Loans), and fourth, to cash collateralize outstanding Facility LCs; and (ii) insurance or condemnation proceeds from casualties or losses to Equipment, Fixtures and real Property shall be applied first, to pay the principal of the Overadvances and Protective Advances, second, to pay the principal of the Non-Ratable Loans, third, to pay the principal of the Term Loans and fourth, to pay the principal of the Revolving Loans (including Swingline Loans). The Aggregate Revolving Commitment shall not be permanently reduced by the amount of any such prepayments. If the precise amount of insurance or condemnation proceeds allocable to Inventory as compared to Equipment, Fixtures and real Property is not otherwise determined, the allocation and application of those proceeds shall be determined by the Agent, in its Permitted Discretion.

(e) Excess Cash Flow. If, for any fiscal year of the Borrower commencing with the fiscal year ending September 30, 2019, there shall be Excess Cash Flow, the Borrower shall, on the relevant Excess Cash Flow Application Date, apply 25% of such Excess Cash Flow toward the prepayment of the Term Loans; provided that notwithstanding the foregoing, the Borrower shall not be required to prepay Term Loans pursuant to this Section 2.16(e) for any fiscal year in an aggregate amount in excess of (i) $25,000,000, less (ii) the scheduled payments made with respect to the Term Loans during such fiscal year pursuant to Section 2.27 less (iii) the amount of voluntary prepayments made with respect to the Term Loans pursuant to Section 2.15 (except to the extent such prepayments were made with the proceeds of Indebtedness). Each such prepayment and commitment reduction shall be made on a date (an "Excess Cash Flow Application Date") no later than five Business Days after the earlier of (i) the date on which the financial statements of the Borrower referred to in Section 6.1(a), for the fiscal year with respect to which such prepayment is made, are required to be delivered to the Lenders and (ii) the date on which such financial statements are actually delivered.

(f) General. Without in any way limiting the foregoing, immediately upon receipt by any Loan Party of proceeds of any sale of any Collateral, the Borrower shall cause such Loan Party to deliver such proceeds to the Agent, or deposit such proceeds in a deposit account subject to a Deposit Account Control Agreement. All of such proceeds shall be applied as set forth above or otherwise as provided in Section 2.19. Nothing in this Section 2.16 shall be construed to constitute Agent's or any Lender's consent to any transaction that is not permitted by other provisions of this Agreement or the other Loan Documents.

(g) Term Loans; Application Thereto. Any mandatory prepayments made in respect of the Term Loans pursuant to this Section 2.16 shall be applied against the scheduled payments to be made by the Borrower pursuant to Section 2.27 in reverse order of the dates on which such scheduled payments are due.

2.17. Termination of the Commitments; Increase in Aggregate Revolving Commitment

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(a) Without limiting Section 2.3 or Section 8.1, (i) the Aggregate Revolving Commitment shall expire on the Facility Termination Date, (ii) the Aggregate Term Commitment shall expire upon the occurrence of the Advance of the Term Loans on the Effective Date and (iii) the Aggregate Credit Exposure and all other unpaid Obligations shall be paid in full by the Borrower on the Facility Termination Date.

(b) The Borrower may terminate this Agreement with at least five Business Days' prior written notice thereof to the Agent and the Lenders, upon (i) the payment in full of all outstanding Loans, together with accrued and unpaid interest thereon, (ii) the cancellation and return of all outstanding Facility LCs (or alternatively, with respect to each such Facility LC, the furnishing to the Agent of a cash deposit or Supporting Letter of Credit as required by Section 2.1.2(l)), (iii) the payment in full of all reimbursable expenses and other Obligations together with accrued and unpaid interest thereon, and (iv) the payment in full of any amount due under Section 3.4.

(c) The Borrower shall have the right to increase the Aggregate Revolving Commitment by obtaining additional Revolving Commitments, either from one or more of the Lenders or another lending institution provided that (i) any such request for an increase shall be in a minimum amount of $25,000,000, (ii) the Aggregate Revolving Commitment does not exceed $650,000,000, (iii) the Borrower may make a maximum of two such requests, (iv) the Agent has approved the identity of any such new Lender, such approval not to be unreasonably withheld, (v) any such new Lender assumes all of the rights and obligations of a "Lender" hereunder, and (vi) the procedures described in Section 2.17(d) have been satisfied.

(d) Any amendment hereto to effect such an increase or addition shall be in form and substance satisfactory to the Agent and shall only require the written signatures of the Agent, the Borrower and the Lender(s) being added or increasing their Commitment. As a condition precedent to such an increase, Borrower shall deliver to the Agent a certificate of each Loan Party (in sufficient copies for each Lender) signed by an authorized officer of such Loan Party (i) certifying and attaching the resolutions adopted

by such Loan Party approving or consenting to such increase, and (ii) in the case of the Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in Article V and the other Loan Documents are true and correct, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and (B) no Default or Unmatured Default exists. Promptly following the effectiveness of any such amendment, the Agent will provide a copy thereof to the Lenders.

(e) Within a reasonable time after the effective date of any increase, the Agent shall, and is hereby authorized and directed to, revise the Commitments set forth on Schedule I hereto to reflect such increase and shall distribute such revised schedule to each of the Lenders and the Borrower, whereupon such revised schedule shall replace the old schedule and become part of this Agreement. On the Business Day on which any such increase becomes effective, all outstanding Floating Rate Advances and Eurodollar Advances shall be reallocated among the Lenders (including any newly added Lenders) in accordance with the Lenders' respective revised Pro Rata Shares (and shall be deemed repaid in connection with any such reallocation).

2.18. Method of Payment

(a) All payments of the Obligations hereunder shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the Agent at the Agent's address specified pursuant to Article XIII, or at any other Lending Installation of the Agent specified in writing by the Agent to the Borrower Representative, by noon (local time) on the date when due and shall be applied ratably by the Agent among the Lenders. Any payment received by the Agent after such time shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue. Solely for purposes of determining the amount of Loans available for borrowing purposes, checks and cash or other immediately available funds from collections of items of payment and proceeds of any Collateral shall be applied in whole or in part against the Obligations, on the day of receipt, subject to actual collection. Each payment delivered to the Agent for the account of any Lender shall be delivered promptly by the Agent to such Lender in the same type of funds that the Agent received at its address specified pursuant to Article XIII or at any Lending Installation specified in a notice received by the Agent from such Lender.

(b) At the election of the Agent, all payments of principal, interest, reimbursement obligations in connection with Facility LCs, fees, premiums, reimbursable expenses (including, without limitation, all reimbursement for fees and expenses pursuant to Section 9.6), and other sums payable under the Loan Documents, may be paid from the proceeds of Advances made hereunder whether made following a request by the Borrower Representative pursuant to Section 2.1 or a deemed request as provided in this Section 2.18 or may be deducted from the Funding Account or any other deposit account of the Borrower maintained with the Agent. The Borrower hereby irrevocably authorizes (i) the Agent to make an Advance for the purpose of paying each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents and agrees that all such amounts charged shall constitute Loans (including

Non-Ratable Loans, Swingline Loans, Overadvances and Protective Advances) and that all such Advances shall be deemed to have been requested pursuant to Section 2.1 and (ii) the Agent to charge the Funding Account or any other deposit account of the Borrower maintained with Chase for each payment of principal, interest and fees as it becomes due hereunder or any other amount due under the Loan Documents.

2.19. Apportionment, Application, and Reversal of Payments

. Except as otherwise required pursuant to Section 2.20, principal and interest payments shall be apportioned ratably among the Lenders as set forth in this Article II and payments of the fees shall, as applicable, be apportioned ratably among the Lenders, except for fees payable solely to the Agent or the LC Issuer and except as provided in Section 2.10(c). All payments shall be remitted to the Agent and all such payments not relating to principal or interest of specific Loans or not constituting payment of specific fees as specified by the Borrower Representative, and all proceeds of any Collateral received by the Agent, shall be applied, ratably, subject to the provisions of this Agreement, first, to pay any fees, indemnities, or expense reimbursements including amounts then due to the Agent from the Borrower (other than in connection with Rate Management Transactions and Banking Services), second, to pay any fees or expense reimbursements then due to the Lenders from the Borrower (other than in connection with Rate Management Transactions and Bank Services), third, to pay interest due in respect of the Overadvances and Protective Advances, fourth, to pay the principal of the Overadvances and Protective Advances, fifth, to pay interest due in respect of the Non-Ratable Loans, sixth, to pay interest due in respect of the Revolving Loans and Swingline Loans (other than Non-Ratable Loans, Overadvances and Protective Advances), seventh, to pay or prepay principal of the Non-Ratable Loans, eighth, to pay or prepay principal of the Revolving Loans and Swingline Loans (other than Non-Ratable Loans, Overadvances and Protective Advances) and unpaid reimbursement obligations in respect of Facility LCs, ninth, to pay an amount to the Agent equal to one hundred five percent (105%) of the aggregate undrawn face amount of all outstanding Facility LCs and the aggregate amount of any unpaid reimbursement obligations in respect of Facility LCs, to be held as cash collateral for such Obligations, tenth, to pay interest due in respect of the Term Loans, eleventh, to pay principal due in respect of the Term Loans, twelfth, to payment of any amounts owing with respect to obligations of the Loan Parties in respect of any Rate Management Transactions (including Commodity Hedging Agreements) and Banking Services that are secured by the Collateral, and thirteenth, to the payment of any other Secured Obligation due to the Agent or any Lender by the Borrower. Notwithstanding anything to the contrary contained in this Agreement, unless so directed by the Borrower Representative, or unless a Default is in existence, neither the Agent nor any Lender shall apply any payment which it receives to any Eurodollar Loan, except (a) on the expiration date of the Interest Period applicable to any such Eurodollar Loan or (b) in the event, and only to the extent, that there are no outstanding Floating Rate Loans and, in any event, the Borrower shall pay the Eurodollar breakage losses in accordance with Section 3.4. The Agent and the Lenders shall have the continuing and exclusive right to apply and reverse and reapply any and all such proceeds and payments to any portion of the Secured Obligations.

2.20. Settlement

. Each Lender's funded portion of the Loans is intended by the Lenders to be equal at all times to such Lender's Pro Rata Share of the outstanding Loans. Notwithstanding such agreement, the Agent, Chase, and the Lenders agree (which agreement shall not be for the benefit of or enforceable by the Loan Parties) that in order to facilitate the

administration of this Agreement and the other Loan Documents, settlement among them as to the Loans, including the Non-Ratable Loans, Swingline Loans and Overadvances shall take place on a periodic basis as follows. The Agent shall request settlement (a "Settlement") with the Lenders on at least a weekly basis, or on a more frequent basis at the Agent's election, by notifying the Lenders of such requested Settlement by telecopy, telephone, or e-mail no later than 12:00 noon (Chicago time) on the date of such requested Settlement (the "Settlement Date"). Each Lender (other than the Agent, in the case of the Non-Ratable Loans, Swingline Loans and Overadvances) shall transfer the amount of such Lender's Pro Rata Share of the outstanding principal amount of the applicable Loan with respect to which Settlement is requested to the Agent, to such account of the Agent as the Agent may designate, not later than 2:00 p.m. (Chicago time), on the Settlement Date applicable thereto. Settlements may occur during the existence of a Default or an Unmatured Default and whether or not the applicable conditions precedent set forth in Section 4.2 have then been satisfied. Such amounts transferred to the Agent shall be applied against the amounts of the applicable Loan and, together with Chase's Pro Rata Share of such Non-Ratable Loan, Swingline Loan or Overadvance, shall constitute Revolving Loans of such Lenders, respectively. If any such amount is not transferred to the Agent by any Lender on the Settlement Date applicable thereto, the Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon as specified in Section 2.24.

2.21. Indemnity for Returned Payments

. If after receipt of any payment which is applied to the payment of all or any part of the Obligations, the Agent or any Lender is for any reason compelled to surrender such payment or proceeds to any Person because such payment or application of proceeds is invalidated, declared fraudulent, set aside, determined to be void or voidable as a preference, impermissible setoff, or a diversion of trust funds, or for any other reason, then the Obligations or part thereof intended to be satisfied shall be revived and continued and this Agreement shall continue in full force as if such payment or proceeds had not been received by the Agent or such Lender and the Borrower shall be liable to pay to the Agent and the Lenders, and the Borrower hereby indemnifies the Agent and the Lenders and holds the Agent and the Lenders harmless for the amount of such payment or proceeds surrendered. The provisions of this Section 2.21 shall be and remain effective notwithstanding any contrary action which may have been taken by the Agent or any Lender in reliance upon such payment or application of proceeds, and any such contrary action so taken shall be without prejudice to the Agent's and the Lenders' rights under this Agreement and shall be deemed to have been conditioned upon such payment or application of proceeds having become final and irrevocable. The provisions of this Section 2.21 shall survive the termination of this Agreement.

2.22. Noteless Agreement; Evidence of Indebtedness

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(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrower to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Agent shall also maintain accounts in which it will record (i) the amount of each Loan extended hereunder, the Type thereof, the name of the Borrower who requested such Loan and the Interest Period with respect thereto, (ii) the amount of

any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder, (iii) the original stated amount of each Facility LC and the amount of LC Obligations outstanding at any time, and (iv) the amount of any sum received by the Agent hereunder from the Borrower and each Lender's share thereof.

(c) The entries maintained in the accounts maintained pursuant to paragraphs (a) and (b) above shall, absent manifest error, be *prima facie* evidence of the existence and amounts of the Obligations therein recorded; provided however, that the failure of the Agent or any Lender to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay the Obligations in accordance with their terms. The Agent shall, in accordance with its regular practice, deliver to the Borrower periodic statements with respect to the accounts maintained pursuant to paragraphs (a) and (b) above.

(d) Any Lender may request that its Loans be evidenced by a promissory note in substantially the form of Exhibit C (a "Note"). In such event, the Borrower shall prepare, execute and deliver to such Lender such Note payable to the order of such Lender. Thereafter, the Loans evidenced by such Note and interest thereon shall at all times (prior to any assignment pursuant to Section 12.3) be represented by one or more Notes payable to the order of the payee named therein, except to the extent that any such Lender subsequently returns any such Note for cancellation and requests that such Loans once again be evidenced as described in paragraphs (a) and (b) above.

2.23. Lending Installations

. Each Lender may book its Loans and its participation in any LC Obligations and the LC Issuer may book the Facility LCs at any Lending Installation selected by such Lender or the LC Issuer, as the case may be, and may change its Lending Installation from time to time; provided, however, such selection shall not increase, if otherwise reasonably avoidable, the Borrower's costs under Article III. All terms of this Agreement shall apply to any such Lending Installation and the Loans, Facility LCs, Reimbursement Obligations and any Notes issued hereunder shall be deemed held by each Lender or the LC Issuer, as the case may be, for the benefit of any such Lending Installation. Each Lender and the LC Issuer may, by written notice to the Agent and the Borrower Representative in accordance with Article XIII, designate replacement or additional Lending Installations through which Loans will be made by it or Facility LCs will be issued by it and for whose account Loan payments or payments with respect to Facility LCs are to be made.

2.24. Non-Receipt of Funds by the Agent; Defaulting Lenders

.

(a) Unless the Borrower Representative or a Lender, as the case may be, notifies the Agent prior to the date on which it is scheduled to make payment to the Agent of (i) in the case of a Lender, the proceeds of a Loan or (ii) in the case of the Borrower, a payment of principal, interest or fees to the Agent for the account of the Lenders, that it does not intend to make such payment, the Agent may assume that such payment has been made. The Agent may, but shall not be obligated to, make the amount of such payment available to the intended recipient in reliance upon such assumption. If such Lender or the Borrower, as the case may be, has not in fact made such payment to the Agent, the recipient of such payment shall, on demand by the Agent, repay to the

Agent the amount so made available together with interest thereon in respect of each day during the period commencing on the date such amount was so made available by the Agent until the date the Agent recovers such amount at a rate per annum equal to (x) in the case of payment by a Lender, the NYFRB Rate for such day for the first three days and, thereafter, the interest rate applicable to the relevant Loan or (y) in the case of payment by the Borrower, the interest rate applicable to the relevant Loan.

(b) Notwithstanding any provision of this Agreement to the contrary, if any Lender becomes a Defaulting Lender, then the following provisions shall apply for so long as such Lender is a Defaulting Lender:

(i) fees shall cease to accrue on the unfunded portion of the Commitment of such Defaulting Lender pursuant to Section 2.10(a);

(ii) the Commitment and Credit Exposure of such Defaulting Lender shall not be included in determining whether all Lenders or the Required Lenders have taken or may take any action hereunder (including any consent to any amendment or waiver pursuant to Section 8.3), provided that any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender which affects such Defaulting Lender differently than other affected Lenders shall require the consent of such Defaulting Lender;

(c) If any exposure in respect of Swingline Loans or Letters of Credit ("Swingline Exposure" and "LC Exposure", respectively) exists at the time a Lender becomes a Defaulting Lender then:

(i) all or any part of such exposure shall be reallocated among the non-Defaulting Lenders in accordance with their respective Pro Rata Share but only to the extent (x) the sum of all non-Defaulting Lenders' Credit Exposures *plus* such Defaulting Lender's Swingline Exposure and LC Exposure does not exceed the total of all non-Defaulting Lenders' Commitments and (y) the conditions set forth in Section 4.2 are satisfied at such time;

(ii) if the reallocation described in clause (i) above cannot, or can only partially, be effected, the Borrower shall within one Business Day following notice by the Agent (x) first, prepay such Swingline Exposure and (y) second, cash collateralize such Defaulting Lender's LC Exposure (after giving effect to any partial reallocation pursuant to clause (i) above) in accordance with the procedures set forth in Section 2.1.2(j) for so long as such LC Exposure is outstanding;

(iii) if the Borrower cash collateralizes any portion of such Defaulting Lender's LC Exposure pursuant to Section 2.24(c)(ii), the Borrower shall not be required to pay any fees to such Defaulting Lender pursuant to Section 2.10(b) with respect to such Defaulting Lender's LC Exposure during the period such Defaulting Lender's LC Exposure is cash collateralized;

(iv) if the LC Exposure of the non-Defaulting Lenders is reallocated pursuant to Section 2.24(c)(i), then the fees payable to the Lenders pursuant to Section 2.10(a) and Section 2.10(b) shall be adjusted in accordance with such non-Defaulting Lenders' Pro Rata Share; and

(v) if any Defaulting Lender's LC Exposure is neither cash collateralized nor reallocated pursuant to Section 2.24(c)(i), then, without prejudice to any rights or remedies of the LC Issuer or any Lender hereunder, all Unused Commitment Fees that otherwise would have been payable to such Defaulting Lender (solely with respect to the portion of such Defaulting Lender's Commitment that was utilized by such LC Exposure) and Letter of Credit fees payable under Section 2.10(b) with respect to such Defaulting Lender's LC Exposure shall be payable to the LC Issuer until such LC Exposure is cash collateralized and/or reallocated.

(d) So long as any Lender is a Defaulting Lender, the Agent shall not be required to fund any Swingline Loan and the LC Issuer shall not be required to issue, amend or increase any Letter of Credit, unless it is satisfied that the related exposure will be 100% covered by the Commitments of the non-Defaulting Lenders and/or cash collateral will be provided by the Borrower in accordance with Section 2.24(c)(ii), and participating interests in any such newly issued or increased Letter of Credit or newly made Swingline Loan shall be allocated among non-Defaulting Lenders in a manner consistent with Section 2.24(c)(i) (and Defaulting Lenders shall not participate therein).

(e) Any amount payable to such Defaulting Lender hereunder (whether on account of principal, interest, fees or otherwise and including any amount that would otherwise be payable to such Defaulting Lender pursuant to Section 2.19) shall, in lieu of being distributed to such Defaulting Lender, be retained by the Agent in a segregated account and, subject to any applicable requirements of law, be applied at such time or times as may be determined by the Agent (i) first, to the payment of any amounts owing by such Defaulting Lender to the Agent hereunder, (ii) second, pro rata, to the payment of any amounts owing by such Defaulting Lender to the LC Issuer hereunder, (iii) third, if so determined by the Agent or requested by an LC Issuer, held in such account as cash collateral for future funding obligations of the Defaulting Lender in respect of any existing or future participating interest in any Swingline Loan or Letter of Credit, (iv) fourth, to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Agent, (v) fifth, if so determined by the Agent and the Borrower, held in such account as cash collateral for future funding obligations of the Defaulting Lender in respect of any Loans under this Agreement, (vi) sixth, to the payment of any amounts owing to the Agent, the Lenders or an LC Issuer as a result of any judgment of a court of competent jurisdiction obtained by the Agent, any Lender or such LC Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement, (vii) seventh, 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 (viii) eighth, to such Defaulting Lender or as otherwise directed by a

court of competent jurisdiction; provided that, with respect to this clause (viii), that if such payment is (x) a prepayment of the principal amount of any Loans or reimbursement obligations in respect of Letters of Credit which a Defaulting Lender has funded its participation obligations and (y) made at a time when the conditions set forth in Section 4.2 are satisfied, such payment shall be applied solely to prepay the Loans of, and reimbursement obligations owed to, all non-Defaulting Lenders pro rata prior to being applied to the prepayment of any Loans, or reimbursement obligations owed to, any Defaulting Lender.

If (i) any Lender shall file a petition for bankruptcy or a Bail-In Action with respect to a Lender shall occur following the date hereof and for so long as such event shall continue or (ii) any LC Issuer has a good faith belief that any Lender has defaulted in fulfilling its obligations under one or more other agreements in which such Lender commits to extend credit, no Swingline Lender shall be required to fund any Swingline Loan and no LC Issuer shall be required to issue, amend or increase any Letter of Credit, unless the LC Issuer may be, shall have entered into arrangements with the Borrower or such Lender, satisfactory to such LC Issuer, as the case may be, to defease any risk to it in respect of such Lender hereunder.

In the event that the Agent, the Borrower and the LC Issuer each agrees that a Defaulting Lender has adequately remedied all matters that caused such Lender to be a Defaulting Lender, then the Swingline Exposure and LC Exposure of the Lenders shall be readjusted to reflect the inclusion of such Lender's Commitment and on such date such Lender shall purchase at par such of the Loans of the other Lenders (other than Swingline Loans) as the Agent shall determine may be necessary in order for such Lender to hold such Loans in accordance with its Pro Rata Share. The operation of this Section shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder.

2.25. Limitation of Interest

. The Borrower, the Agent and the Lenders intend to strictly comply with all applicable laws, including applicable usury laws. Accordingly, the provisions of this Section 2.25 shall govern and control over every other provision of this Agreement or any other Loan Document which conflicts or is inconsistent with this Section 2.25, even if such provision declares that it controls. As used in this Section 2.25, the term "interest" includes the aggregate of all charges, fees, benefits or other compensation which constitute interest under applicable law, provided that, to the maximum extent permitted by applicable law, (a) any non-principal payment shall be characterized as an expense or as compensation for something other than the use, forbearance or detention of money and not as interest, and (b) all interest at any time contracted for, reserved, charged or received shall be amortized, prorated, allocated and spread, in equal parts during the full term of the Obligations. In no event shall the Borrower or any other Person be obligated to pay, or any Lender have any right or privilege to reserve, receive or retain, (a) any interest in excess of the maximum amount of nonusurious interest permitted under the laws of the State of New York or the applicable laws (if any) of the U.S. or of any other applicable state, or (b) total interest in excess of the amount which such Lender could lawfully have contracted for, reserved, received, retained or charged.

2.26. Applicable Mortgage Minimum Amount

. Notwithstanding anything to the contrary in this Agreement, (a) the Borrower shall not optionally prepay or reduce the Aggregate Credit Exposure pursuant to Section 2.15 to the extent that, after giving effect thereto, the Aggregate Credit Exposure would be less than the Applicable Mortgage Minimum Amount and (b) to the extent that the Aggregate Credit Exposure exceeds the Applicable Mortgage Minimum Amount at the time of any Credit Extension under this Agreement as a result of the requirements of Section 2.16, the Borrower shall, as a condition to each such Credit Extension, pay all mortgages recording taxes, documentary stamp taxes, intangible taxes and other similar taxes payable under the Applicable Mortgages in connection such Credit Extension.

2.27. Amortization of Term Loans

.

(a) Subject to adjustment pursuant to Section 2.16 and Section 2.17, the Borrower shall repay Term Loans on September 30th, December 31st, March 31st and June 30th of each fiscal year (commencing with March 31, 2020) in an amount of $3,250,000, together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment; provided that if any such date is not a Business Day, such payment shall be due on the next-following Business Day.

(b) To the extent not previously paid, all Term Loans shall be due and payable on the Facility Termination Date.

2.28. MIRE Event

. Notwithstanding the foregoing, no MIRE Event may be closed until the date that is (a) if there are no real property subject to a Mortgage in a "special flood hazard area", ten (10) Business Days or (b) if there are any real property subject to a Mortgage in a "special flood hazard area", thirty (30) days (in each case, the "Notice Period"), after the Agent has delivered to the Lenders the following documents in respect of such real property: (i) a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each real property subject to a Mortgage (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower or the applicable Loan Party in the event any such real property subject to a Mortgage is located in a special flood hazard area) and (B) evidence of flood insurance as required by Section 6.7(a); provided that any such MIRE Event may be closed prior to the Notice Period if the Agent shall have received confirmation from each applicable Lender that such Lender has completed any necessary flood insurance due diligence to its reasonable satisfaction.

**ARTICLE III**

**YIELD PROTECTION; TAXES**

3.1. Yield Protection

. If, on or after the Effective Date, the adoption of any law or any governmental or quasi-governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any change in the interpretation or administration thereof by any governmental or quasi-governmental authority, central bank or comparable agency charged with the interpretation or administration thereof or and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel

Committee on Banking Supervision or any successor or similar authority to any of the foregoing) or compliance by any Lender or applicable Lending Installation or the LC Issuer with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency or and any group or body charged with setting financial accounting or regulatory capital rules or standards (including, without limitation, the Financial Accounting Standards Board, the Bank for International Settlements or the Basel Committee on Banking Supervision or any successor or similar authority to any of the foregoing) made after the Effective Date:

(a) subjects any Lender or any applicable Lending Installation or the LC Issuer or the Agent to any Taxes or changes the basis of taxation of payments (other than with respect to Excluded Taxes and Indemnified Taxes) to any Lender or the LC Issuer or the Agent in respect of its Eurodollar Loans, Facility LCs or participations therein, or

(b) imposes or increases or deems applicable any reserve, assessment, insurance charge, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender or any applicable Lending Installation or the LC Issuer (other than reserves and assessments taken into account in determining the interest rate applicable to Eurodollar Advances), or

(c) imposes any other condition the result of which is to increase the cost to any Lender or any applicable Lending Installation or the LC Issuer of making, funding, converting to, continuing or maintaining its Eurodollar Loans, or of issuing or participating in Facility LCs, or reduces any amount receivable by any Lender or any applicable Lending Installation or the LC Issuer in connection with its Eurodollar Loans, Facility LCs or participations therein, or requires any Lender or any applicable Lending Installation or the LC Issuer to make any payment calculated by reference to the amount of Eurodollar Loans, Facility LCs or participations therein held or interest or LC Fees received by it, by an amount deemed material by such Lender or the LC Issuer as the case may be,

and the result of any of the foregoing is to increase the cost to such Lender or applicable Lending Installation or the LC Issuer or the Agent, as the case may be, of making, converting to, continuing or maintaining its Eurodollar Loans or Commitment or of issuing or participating in Facility LCs or to reduce the return received by such Lender or applicable Lending Installation or the LC Issuer, as the case may be, in connection with such Eurodollar Loans, Commitment, Facility LCs or participations therein, then, within fifteen days of demand by such Lender or the LC Issuer or the Agent, as the case may be, the Borrower shall pay such Lender or the LC Issuer or the Agent, as the case may be, such additional amount or amounts as will compensate such Lender or the LC Issuer or the Agent, as the case may be, for such increased cost or reduction in amount received. Notwithstanding anything to the contrary in this Section 3.1, the Borrower shall not be required to compensate a Lender pursuant to this Section 3.1 for any amounts incurred more than nine months prior to the date that such Lender notifies the Borrower of such Lender's intention to claim compensation therefore; and provided that, if the circumstances giving rise to such claim have a retroactive effect, then such nine-month period shall be extended to include the period of such retroactive effect. If any Lender becomes entitled to claim any additional amounts pursuant to this Section 3.1, it shall promptly notify the Borrower (with a

copy to the Agent) of the event by reason of which it has become so entitled and shall include in such notice a calculation of such additional amounts in reasonable detail. Notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements or directives thereunder or issued in connection therewith (whether or not having the force of law) or in implementation thereof, and (ii) all requests, rules, regulations, guidelines, interpretations, requirements, interpretations and 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 (whether or not having the force of law), in each case pursuant to Basel III, shall, in each case, be deemed to be Change, regardless of the date enacted, adopted, issued or implemented.

3.2. Changes in Capital Adequacy or Liquidity Regulations

. If a Lender or the LC Issuer determines the amount of capital or liquidity required or expected to be maintained by such Lender or the LC Issuer, any Lending Installation of such Lender or the LC Issuer, or any corporation controlling such Lender or the LC Issuer is increased as a result of a Change, then, within fifteen days of demand by such Lender or the LC Issuer, the Borrower shall pay such Lender or the LC Issuer the amount necessary to compensate for any shortfall in the rate of return on the portion of such increased capital which such Lender or the LC Issuer determines is attributable to this Agreement, its Credit Exposure or its Commitment to make Loans and issue or participate in Facility LCs or Swingline loans, as the case may be, hereunder (after taking into account such Lender's or the LC Issuer's policies as to capital adequacy or liquidity); provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, regulations, guidelines, interpretations or directives thereunder or issued in connection therewith (whether or not having the force of law) and (y) all requests, rules, regulations, guidelines, interpretations or directives promulgated by the Bank of International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities (whether or not having the force of law), in each case pursuant to Basel III, shall in each case be deemed to be a Change regardless of the date enacted, adopted, issued, promulgated or implemented. "Change" means (i) any change after the date of this Agreement in the Risk-Based Capital Guidelines (as defined below) or (ii) any adoption of or change in any other law, governmental or quasi-governmental rule, regulation, policy, guideline, interpretation, or directive (whether or not having the force of law) after the date of this Agreement which affects the amount of capital or liquidity required or expected to be maintained by any Lender or the LC Issuer or any Lending Installation or any corporation controlling any Lender or the LC Issuer. "Risk-Based Capital Guidelines" means (i) the risk-based capital guidelines in effect in the U.S. on the date of this Agreement, including transition rules, and (ii) the corresponding capital regulations promulgated by regulatory authorities outside the U.S. implementing the June 2006 document of the Basel Committee on Banking Regulation and Supervisory Practices entitled "Basel II: International Convergence of Capital Measurements and Capital Standards: A Revised Framework – Comprehensive Version," including transition rules, and any amendments to such regulations adopted prior to the date of this Agreement. Notwithstanding anything herein or otherwise to the contrary, the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder or issued in connection therewith or in implementation thereof, shall in each case be deemed to be a "Change", regardless of the date enacted, adopted, issued or implemented.

3.3. Availability of Types of Advances

. If any Lender determines that maintenance of its Eurodollar Loans at a suitable Lending Installation would violate any applicable law, rule, regulation, or directive, whether or not having the force of law, or if the Required Lenders determine that (i) deposits of a type and maturity appropriate to match fund Eurodollar Advances are not available or (ii) the interest rate applicable to Eurodollar Advances does not accurately reflect the cost of making or maintaining Eurodollar Advances, then the Agent shall suspend the availability of Eurodollar Advances and require any affected Eurodollar Advances to be repaid or converted to Floating Rate Advances, subject to the payment of any funding indemnification amounts required by Section 3.4.

3.4. Funding Indemnification

. If any payment of a Eurodollar Advance occurs on a date which is not the last day of the applicable Interest Period, whether because of acceleration, prepayment or otherwise, or a Eurodollar Advance is not made on the date specified by the Borrower Representative for any reason other than default by the Lenders, the Borrower will indemnify each Lender for any loss or cost incurred by it resulting therefrom, including, without limitation, any loss or cost in liquidating or employing deposits acquired to fund or maintain such Eurodollar Advance.

3.5. Taxes

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(a) All payments by any Loan Party by or on account of any obligation hereunder or under any Note or Facility LC Application shall be made free and clear of and without deduction or withholding for or on account of any and all Taxes, except as required by applicable law. If any Loan Party or the Agent shall be required by law to deduct or withhold any Taxes from or in respect of any such payment, (a) if such Tax is an Indemnified Tax or Other Tax, the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 3.5) such Lender, the LC Issuer or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (b) the applicable withholding agent shall make such deductions, (c) the applicable withholding agent shall pay the full amount deducted to the relevant authority in accordance with applicable law and (d) the Borrower shall furnish to the Agent a certified copy of all official receipts evidencing payment thereof as promptly as possible but in any case within thirty days after such payment is made.

(b) In addition, the Loan Parties hereby agree to timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Agent timely reimburse it for, any present or future stamp, court, documentary, intangible, recording, filing or similar Taxes and any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or under any Note or Facility LC Application or from the execution, delivery, performance or enforcement of, or otherwise with respect to, this Agreement or any Note or Facility LC Application ("Other Taxes"). The Borrower shall furnish to the Agent a certified copy of all official receipts evidencing payment thereof as promptly as possible but in any case within thirty days after such payment is made.

(c) The Loan Parties hereby agree to jointly and severally indemnify the Agent, the LC Issuer and each Lender for the full amount of Indemnified Taxes (including, without limitation, any Indemnified Taxes imposed on amounts payable under this Section 3.5) paid or payable by the Agent, the LC Issuer or such Lender as a result of its Commitment, any Loans made by it hereunder, any Facility LC issued hereunder or otherwise in connection with its participation in this Agreement or required to be withheld or deducted from a payment to the Agent, the LC Issuer or such Lender 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. Payments due under this indemnification shall be made within 10 days of the date the Agent, the LC Issuer or such Lender makes demand therefor pursuant to Section 3.6. A certificate as to the amount of such payment or liability delivered to the Borrower by the party seeking indemnification shall be conclusive absent manifest error.

(d) Each Lender and LC Issuer shall indemnify the Agent within 10 days after demand therefor, for (i) the full amount of any Indemnified Taxes attributable to such Lender that are payable or paid by the Agent, (but only to the extent that any Loan Party has not already indemnified that Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so) and (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.2(c) relating to the maintenance of a Participant Register, in either case, that are payable or paid by the 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 Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the 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 Agent to the Lender from any other source against any amount due to the Agent under this paragraph (d).

(e) Status of Lenders.

(i) Each Lender that is a U.S. Person agrees that it will deliver to the Borrower and the 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 Agent), executed originals of U.S. Internal Revenue Service ("IRS") Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax.

(ii) (1) Each Lender that is not a U.S. Person (each a "Non-U.S. Lender") agrees that it will, not more than ten Business Days after the date of this Agreement, to the extent legally entitled to do so, deliver to the Borrower Representative and the Agent whichever of the following is applicable: (x) two duly completed copies of IRS Form W-8BEN, W-8BEN-E, or W-8ECI, certifying in either case that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any, or is subject to a reduced

rate of withholding of, U.S. federal income taxes, (y) if claiming an exemption from U.S. withholding tax under Section 871(h) or 881(c) of the Code, a duly completed copy of the IRS Form W-8BEN or W-8BEN-E and a properly executed certificate representing that such Non-U.S. Lender is not a "bank" for purposes of Section 881(c)(3)(A) of the Code, is not a "ten percent (10%) shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, is not a "controlled foreign corporation" related to the Borrower within the meaning of Section 881(c)(3)(C) of the Code, or (z) if not the beneficial owner, a duly completed copy of the IRS Form W-8IMY, accompanied by IRS Form W-8ECI, W-8BEN, W-8BEN-E, W-9 and/or other certification documents from each beneficial owner, as applicable. (2) Each Non-U.S. Lender further undertakes to deliver to each of the Borrower Representative and the Agent (x) renewals or additional copies of such form (or any successor form) on or before the date that such form expires or becomes obsolete, and (y) after the occurrence of any event requiring a change in the most recent forms so delivered by it, such additional forms or amendments thereto as may be reasonably requested by the Borrower Representative or the Agent. All forms or amendments described in the preceding sentence shall certify that such Lender is entitled to receive payments under this Agreement without deduction or withholding of any, or is subject to a reduced rate of withholding of, U.S. federal income taxes, *unless* an event (including without limitation any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent such Lender from duly completing and delivering any such form or amendment with respect to it and such Lender advises the Borrower Representative and the Agent that it is not capable of receiving payments without any deduction or withholding, or at the reduced rate of withholding, of U.S. federal income tax. (3) Notwithstanding any other provision of this paragraph (ii), a Non-U.S. Lender shall not be required to deliver any form pursuant to this paragraph that such Non-U.S. Lender is not legally able to deliver.

(f) For any period during which a Non-U.S. Lender has failed to provide the Borrower Representative with an appropriate form pursuant to clause (e), above, such Non-U.S. Lender shall not be entitled to indemnification under this Section 3.5 with respect to Taxes imposed by the U.S. because of its failure to deliver the appropriate form; provided that, should a Non-U.S. Lender which is otherwise exempt from or subject to a reduced rate of withholding tax become subject to Taxes because of its failure to deliver a form required under clause (e), above, the Borrower shall, at the expense of such Non-U.S. Lender, take such steps as such Non-U.S. Lender shall reasonably request to assist such Non-U.S. Lender to recover such Taxes.

(g) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under this Agreement or any Note pursuant to the law of any relevant jurisdiction or any treaty shall deliver to the Borrower Representative (with a copy to the Agent), at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as will permit such payments to be made without withholding or at a reduced rate. In

addition, any Lender, if reasonably requested by the Borrower or the Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Agent as will enable the Borrower or the 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 and execution of such documentation (other than documentation set forth in Section 3.5(e)(i), (ii)(1) and (h)) 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.

(h) If a payment made to a Lender under any Loan Document would be subject to U.S. Federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA, such Lender shall deliver to the Borrower and Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or Agent, such documentation prescribed by applicable law and such additional documentation reasonably requested by the Borrower or Agent as may be necessary for the Borrower or 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 (h), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

3.6. Lender Statements; Survival of Indemnity

. To the extent reasonably possible, each Lender shall designate an alternate Lending Installation with respect to its Eurodollar Loans to reduce any liability of the Borrower to such Lender under Sections 3.1, 3.2 and 3.5 or to avoid the unavailability of Eurodollar Advances under Section 3.3, (subject to overall policy considerations of such Lender); provided, that such designation is made on terms that, in the sole judgment of such Lender, cause such Lender and its lending office(s) to suffer no economic, legal or regulatory disadvantage, and provided, further, that nothing in this Section shall affect or postpone any of the obligations of the Borrower or the rights of any Lender pursuant to Section 3.1, 3.2, 3.4 or 3.5. Each Lender shall deliver a written statement of such Lender to the Borrower Representative (with a copy to the Agent) as to the amount due, if any, under Section 3.1, 3.2, 3.4 or 3.5. Such written statement shall set forth in reasonable detail the calculations upon which such Lender determined such amount and shall be final, conclusive and binding on the Borrower in the absence of manifest error. Determination of amounts payable under such Sections in connection with a Eurodollar Loan shall be calculated as though each Lender funded its Eurodollar Loan through the purchase of a deposit of the type and maturity corresponding to the deposit used as a reference in determining the Eurodollar Rate applicable to such Loan, whether in fact that is the case or not. Unless otherwise provided herein, the amount specified in the written statement of any Lender shall be payable on demand after receipt by the Borrower Representative of such written statement. The obligations of the Borrower under Sections 3.1, 3.2, 3.4 and 3.5 shall survive payment of the Obligations and termination of this Agreement.

3.7. Replacement of Lender

. If the Borrower is required pursuant to Section 3.1, 3.2 or 3.5 to make any additional payment to any Lender or if any Lender's obligation to make or continue, or to convert Floating Rate Advances into, Eurodollar Advances shall be suspended

pursuant to Section 3.3 or if any Lender is a Defaulting Lender (any such Lender, an "Affected Lender"), the Borrower may elect, if such amounts continue to be charged or such suspension is still effective, to replace such Affected Lender as a Lender party to this Agreement, provided that, no Default or Unmatured Default shall have occurred and be continuing at the time of such replacement, and provided further that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower and the Agent shall agree, as of such date, to purchase for cash the Advances and other Obligations due to the Affected Lender pursuant to an Assignment Agreement (and a Defaulting Lender shall be deemed to have executed and delivered such Assignment Agreement if it fails to do so) and to become a Lender for all purposes under this Agreement and to assume all obligations of the Affected Lender to be terminated as of such date and to comply with the requirements of Section 12.3 applicable to assignments, and (ii) the Borrower shall pay to such Affected Lender in same day funds on the day of such replacement (A) all interest, fees and other amounts then accrued but unpaid to such Affected Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Affected Lender under Sections 3.1, 3.2 and 3.5, and (B) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 3.4 had the Loans of such Affected Lender been prepaid on such date rather than sold to the replacement Lender.

## ARTICLE IV

## CONDITIONS PRECEDENT

4.1. Effectiveness

. This Agreement will not become effective unless the Loan Parties have satisfied each of the following conditions in a manner satisfactory to the Agent and the Lenders, and with respect to any condition requiring delivery of any agreement, certificate, document, or instrument, the Loan Parties shall have furnished to the Agent sufficient copies of any such agreement, certificate, document, or instrument for distribution to the Lenders.

(a) This Agreement or counterparts hereof shall have been duly executed by each Loan Party and the Agent, and the Agent shall have received duly executed copies of the Loan Documents and such other documents, instruments, agreements and legal opinions as the Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the other Loan Documents, each in form and substance reasonably satisfactory to the Agent.

(b) Each Loan Party shall have delivered copies of its articles or certificate of incorporation or organization, together with all amendments, and a certificate of good standing, each certified by the appropriate governmental officer in its jurisdiction of incorporation or organization.

(c) Each Loan Party shall have delivered copies, certified by its Secretary or Assistant Secretary, of its by-laws or operating, management or partnership agreement and of its Board of Directors' resolutions or the resolutions of its members and of resolutions or actions of any other body authorizing the execution, delivery and performance of the Loan Documents to which such Loan Party is a party.

(d) Each Loan Party shall have delivered an incumbency certificate, executed by its Secretary or Assistant Secretary, which shall identify by name and title and bear the signatures of the Authorized Officers and any other officers such Loan Party authorized to sign the Loan Documents to which such Loan Party is a party, upon which certificate the Agent and the Lenders shall be entitled to rely until informed of any change in writing by such Loan Party.

(e) The Borrower shall have delivered a certificate, signed by the chief financial officer of the Borrower, on the initial Credit Extension Date (i) stating that no Default or Unmatured Default has occurred and is continuing, (ii) stating that the representations and warranties contained in Article V are true and correct as of such Credit Extension Date, (iii) specifying the deposit account at Chase which shall be used as the Funding Account, (iv) certifying that the condition set forth in clause (t) below has been met, and (v) certifying any other factual matters as may be reasonably requested by the Agent or any Lender.

(f) The Loan Parties shall have delivered a written legal opinion of the Loan Parties' counsel, addressed to the Agent, the LC Issuer and the Lenders in substantially the form of Exhibit D and the legal opinion of such other special and local counsel as may be required by the Agent.

(g) The Borrower shall have delivered any Notes requested by a Lender pursuant to Section 2.22 payable to the order of each such requesting Lender.

(h) The Borrower shall have delivered money transfer authorizations as the Agent may have reasonably requested.

(i) The Agent shall have received the results of a recent Lien and other searches that the Agent deems necessary and such searches shall reveal no Liens on any of the assets of the Loan Parties except for Permitted Liens or Liens discharged on or prior to the Effective Date pursuant to documentation satisfactory to the Agent, the Loan Parties shall have delivered UCC termination statements or amendments to existing UCC financing statements with respect to any filings against the Collateral as may be requested by the Agent and shall have authorized the filing of such termination statements or amendments, the Agent shall have been authorized to file any UCC financing statements that the Agent deems necessary to perfect its Liens in the Collateral and Liens creating a first priority security interest in the Collateral in favor of the Agent shall be in proper form for filing, registration or recordation.

(j) The Borrower Representative shall have delivered a Borrowing Base Certificate which calculates the Borrowing Base as of October 31, 2019.

(k) The Borrower shall have delivered to the Agent Parent's most recent projected income statement, balance sheet and cash flows for the period through the end of the 2024 Fiscal Year (which shall have been prepared on a monthly basis through the first year after the Effective Date and yearly thereafter).

(l) All legal (including tax implications) and regulatory matters, including, but not limited to compliance with applicable requirements of Regulations U, T and X of the Board, shall be satisfactory to the Agent and the Lenders.

(m) The Agent or its designee shall have conducted a satisfactory field examination of the accounts receivable, Inventory and related working capital matters and financial information of the Loan Parties and of the related data processing and other systems, the results of which shall be satisfactory to the Arrangers and the Agent (it being acknowledged by the Arrangers and the Agent that the field examination dated as of April 30, 2019 shall satisfy the requirement described in this Section 4.1(m)).

(n) The Borrower shall have delivered evidence of insurance coverage in form, scope, and substance reasonably satisfactory to the Agent and otherwise in compliance with the terms of Section 6.7.

(o) The Borrower shall have paid all of the fees and expenses owing to the Agent, the Arrangers, the LC Issuer and the Lenders pursuant to Section 2.10, and Section 9.6(a).

(p) The Borrower shall have delivered to the Agent true and complete Customer Lists for the Borrower, PHI and their respective Subsidiaries, together with a recent satisfactory appraisal with respect thereto (it being understood that the Agent and the Lenders shall treat such Customer Lists as confidential information subject to Section 9.11), it being acknowledged by the Agent that the appraisal dated as of March 31, 2019 shall satisfy the requirement described in this Section 4.1(p).

(q) The Loan Parties shall have delivered to the Agent a certified actuarial valuation report for each Single Employer Plan for the Plan year beginning January 1, 2017.

(r) The Loan Parties shall have delivered to the Agent a statement by an actuary enrolled under ERISA certifying that each Single Employer Plan is not, and is not expected to be, in "at risk" status (within the meaning of Section 430 of the Code or Title IV of ERISA).

(s) The Agent shall have received a satisfactory solvency certificate from the chief financial officer of the Parent that shall document the solvency of the Parent and its Subsidiaries as of the Effective Date.

(t) The Agent shall have received a copy of each hedging and inventory policy contemplated by Section 5.33, and the Agent shall be satisfied with each such policy.

(u) The Agent shall have received written consents from each Term Loan Lender and the "Required Lenders" under and as defined in the Existing Credit Agreement to the execution and delivery of this Agreement (it being agreed that the entering into of this Agreement by any such Term Loan Lender and/or Existing Lender shall constitute such written consent).

(v) The Agent shall have received (A) a "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each real property subject to a Mortgage (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower or the applicable Loan Party in the event any such real property is located in a special flood hazard area) and (B) a copy of, or a certificate as to coverage under, the flood insurance policies required by Section 6.7(a);

(w) The Agent shall have received, (i) at least five days prior to the Effective Date, all documentation and other information regarding the Borrower requested in connection with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, to the extent requested in writing of the Borrower at least 10 days prior to the Effective Date and (ii) to the extent the Borrower qualifies as a "legal entity customer" under the Beneficial Ownership Regulation, at least five days prior to the Effective Date, any Lender that has requested, in a written notice to the Borrower at least 10 days prior to the Effective Date, a Beneficial Ownership Certification in relation to the Borrower shall have received such Beneficial Ownership Certification; provided that, upon the execution and delivery by such Lender of its signature page to this Agreement, the conditions set forth in this clause (x) shall be deemed to be satisfied.

(x) The Effective Date shall occur on or before December 20, 2019.

4.2. Each Credit Extension

. Except as otherwise expressly provided herein, the Lenders shall not be required to make any Credit Extension if on the applicable Credit Extension Date:

(a) There exists any Default or Unmatured Default or any Default or Unmatured Default shall result from any such Credit Extension.

(b) Any representation or warranty contained in Article V is untrue or incorrect in any material respect as of such Credit Extension Date except to the extent any such representation or warranty is stated to relate solely to an earlier date.

(c) After giving effect to any Credit Extension, Availability would be less than zero.

(d) Any legal matter incident to the making of such Credit Extension shall not be satisfactory to the Agent and its counsel.

(e) The Borrower is not in compliance with Section 2.26.

Each Borrowing Notice or request for issuance of Facility LC with respect to each such Credit Extension shall constitute a representation and warranty by the Borrower that the conditions contained in Section 4.1 have been satisfied and that none of the conditions set forth in Section 4.2 exist as of the applicable Credit Extension Date. Any Lender may require a duly completed Compliance Certificate as a condition to making a Credit Extension.

**ARTICLE V**

**REPRESENTATIONS AND WARRANTIES**

Each Loan Party represents and warrants to the Lenders as follows:

5.1. Existence and Standing

. Each Loan Party is a corporation, partnership or limited liability company duly and properly incorporated or organized, as the case may be, validly existing and (to the extent such concept applies to such entity) in good standing under the laws of its jurisdiction of incorporation or organization and has all requisite authority to conduct its business in each jurisdiction in which its business is conducted.

5.2. Authorization and Validity

. Each Loan Party has the power and authority and legal right to execute and deliver the Loan Documents to which it is a party and to perform its obligations thereunder. The execution and delivery by each Loan Party of the Loan Documents to which it is a party and the performance of its obligations thereunder have been duly authorized by proper proceedings, and the Loan Documents to which such Loan Party is a party constitute legal, valid and binding obligations of such Loan Party enforceable against such Loan Party in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5.3. No Conflict; Government Consent

. Neither the execution and delivery by any Loan Party of the Loan Documents to which it is a party, nor the consummation of the transactions therein contemplated, nor compliance with the provisions thereof will violate (i) any law, rule, regulation, order, writ, judgment, injunction, decree or award binding on such Loan Party or (ii) any Loan Party's articles or certificate of incorporation, partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating or other management agreement, as the case may be, or (iii) the provisions of any indenture, instrument or agreement to which any Loan Party is a party or is subject, or by which it, or its Property, is bound, or conflict with or constitute a default thereunder, or result in, or require, the creation or imposition of any Lien in, of or on the Property of such Loan Party pursuant to the terms of any such indenture, instrument or agreement. No order, consent, adjudication, approval, license, authorization, or validation of, or filing, recording or registration with, or exemption by, or other action in respect of any Governmental Authority which has not been obtained by a Loan Party, is required to be obtained by any Loan Party in connection with the execution and delivery of the Loan Documents, the borrowings under this Agreement, the payment and performance by the Loan Parties of the Obligations or the legality, validity, binding effect or enforceability of any of the Loan Documents, except for (i) filing of amendments to Mortgages and UCC financing statements to be filed on or immediately after the Effective Date and (ii) routine approvals required in connection with the performance by the Loan Parties of their businesses.

5.4. Security Interest in Collateral

. The provisions of this Agreement and the other Loan Documents create legal and valid Liens on all the Collateral in favor of the Agent, for the benefit of the Agent and the Lenders, and such Liens (upon any required filing and recordation) constitute perfected and continuing Liens on the Collateral, securing the Obligations, enforceable against the applicable Loan Party and all third parties, and having priority over all other Liens on the Collateral except in the case of (a) Permitted Liens, to the extent any such Permitted Liens

would have priority over the Liens in favor of the Agent pursuant to any applicable law or agreement and (b) Liens perfected only by possession (including possession of any certificate of title) to the extent the Agent has not obtained or does not maintain possession of such Collateral.

5.5. Financial Statements

.

(a) The audited consolidated financial statements of the Parent and its Subsidiaries for the period ended September 30, 2018 heretofore delivered to the Lenders (A) were prepared in accordance with GAAP (as in effect on the date such statements were prepared) and fairly present the consolidated financial condition and operations of the Parent and its Subsidiaries at such date and the consolidated results of their operations for the period then ended and (B) with respect to the financial statements referred to in clause (i) hereof, are accompanied by an unqualified audit report certified by independent certified public accountants.

(b) The most recent Projections delivered to the Agent and the Lenders pursuant to Section 6.1(d) represent the Borrower's good faith estimate of the future financial performance of the Parent and its Subsidiaries for the period set forth therein.

5.6. Material Adverse Change

. Since September 30, 2018, after giving effect to the consummation of the transactions contemplated hereby on the Effective Date, there has been no change in the business, operations, Property, condition (financial or otherwise) or prospects of the Loan Parties which could reasonably be expected to have a Material Adverse Effect.

5.7. Taxes

. The Loan Parties have filed all U.S. federal tax returns and all other Tax returns which are required to be filed, all such returns are complete and correct and the Loan Parties have paid all Taxes due pursuant to said returns or pursuant to any assessment received by any Loan Party, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided in accordance with GAAP and as to which no Lien exists. No tax liens have been filed and no claims are being asserted with respect to any such Taxes. The charges, accruals and reserves on the books of the Loan Parties in respect of any taxes or other governmental charges are adequate. If any Loan Party is a limited liability company, each such limited liability company qualifies for partnership tax treatment under U.S. federal tax law.

5.8. Litigation and Contingent Obligations

. Except as set forth on Schedule 5.8, there is no litigation, arbitration, governmental investigation, proceeding or inquiry pending or, to the knowledge of any of their officers, threatened against or affecting any Loan Party which could reasonably be expected to have a Material Adverse Effect or which seeks to prevent, enjoin or delay the making of any Credit Extensions. Other than any liability incident to any litigation, arbitration or proceeding which (i) could not reasonably be expected to have a Material Adverse Effect or (ii) is set forth on Schedule 5.8, no Loan Party has any material contingent obligations not provided for or disclosed in the financial statements referred to in Section 5.5.

5.9. Capitalization and Subsidiaries

. Schedule 5.9 sets forth (a) a correct and complete list of the name of each and all of the Parent's Subsidiaries (excluding CaptiveCo), (b) the location of the chief executive office of each Loan Party and each of its Subsidiaries (excluding CaptiveCo) and each other location where any of them have maintained their chief executive

office in the past five years, (c) a true and complete listing of each class of each Loan Party's authorized Capital Stock, of which all of such issued shares are validly issued, outstanding, fully paid and non-assessable, and owned beneficially and of record by the Persons identified on Schedule 5.9, and (d) the type of entity of each Loan Party. With respect to each Loan Party, Schedule 5.9 also sets forth the employer or taxpayer identification number of each Loan Party and the organizational identification number issued by each Loan Party's jurisdiction of organization or a statement that no such number has been issued. All of the issued and outstanding Capital Stock owned by any Loan Party has been (to the extent such concepts are relevant with respect to such ownership interests) duly authorized and issued and is fully paid and non-assessable.

5.10. ERISA

. Except as would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Effect, (i) each Plan complies with all applicable requirements of law and regulations and (ii) no ERISA Event has occurred.

5.11. Accuracy of Information

. No information, exhibit or report furnished by any Loan Party to the Agent or to any Lender in connection with the negotiation of, or compliance with, the Loan Documents contained any material misstatement of fact or omitted to state a material fact or any fact necessary to make the statements contained therein not misleading. As of the Effective Date, to the best knowledge of the Borrower, the information included in the Beneficial Ownership Certification provided on or prior to the Effective Date to any Lender in connection with this Agreement is true and correct in all respects.

5.12. Names; Prior Transactions

. Except as set forth on Schedule 5.12, the Loan Parties have not, during the past five years, been known by or used any other corporate or fictitious name, or been a party to any merger or consolidation, or been a party to any Acquisition.

5.13. Regulation U

. No Loan Party is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of "purchasing" or "carrying" any "margin stock" as such terms are defined in Regulation U of the Board as now and from time to time hereafter in effect (such securities being referred to herein as "Margin Stock"). No Loan Party owns any Margin Stock, and none of the proceeds of the Loans or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might cause any of the Loans or other extensions of credit under this Agreement to be considered a "purpose credit" within the meaning of Regulations T, U or X of the Board. No Loan Party will take or permit to be taken any action that might cause any Loan Document to violate any regulation of the Board.

5.14. Material Agreements

. Schedule 5.14 hereto sets forth as of the Effective Date all material agreements and contracts to which any Loan Party is a party or is bound as of the date hereof. No Loan Party is subject to any charter or other corporate restriction which could reasonably be expected to have a Material Adverse Effect. No Loan Party is in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in (i) any material agreement to which it is a party or (ii) any agreement or instrument evidencing or governing Indebtedness.

5.15. Compliance With Laws

. The Loan Parties have complied with all applicable statutes, rules, regulations, orders and restrictions of any domestic or foreign government or any instrumentality or agency thereof having jurisdiction over the conduct of their respective businesses or the ownership of their respective Property ("Applicable Laws") and their own agreements, policies and procedures with respect to personal information, privacy and data and system security ("Privacy Policies"), except for any failure to comply with any of the foregoing which could not reasonably be expected to have a Material Adverse Effect.

5.16. Ownership of Properties

. Except as set forth on Schedule 5.16, on the date of this Agreement, the Loan Parties will have good title, free of all Liens other than those permitted by Section 6.21, to all of the Property and assets reflected in the Loan Parties' most recent consolidated financial statements provided to the Agent as owned by the Loan Parties.

5.17. Plan Assets; Prohibited Transactions

. No Loan Party is an entity deemed to hold "plan assets" (within the meaning of the Plan Asset Regulations), and neither the execution, delivery or performance of the transactions contemplated under this Agreement, including the making of Credit Extensions hereunder, will give rise to a prohibited transaction within the meaning of Section 406 of ERISA or Section 4975 of the Code.

5.18. Environmental Matters

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(a) Each of the Loan Parties is, and has been, in compliance with all Environmental Laws applicable to it or to the Collateral except where such noncompliance would not have a Material Adverse Effect. Each Loan Party holds all environmental permits and licenses that are necessary for the conduct of the business and operations of such Loan Party as now conducted and as proposed to be conducted, and has timely and properly applied for renewal of all environmental permits or licenses that have expired or are about to expire, except where the failure to hold, or to timely and properly reapply for, such environmental permits or licenses would not have a Material Adverse Effect. Schedule 5.18 lists (i) all notices from federal, state or local environmental agencies to any Loan Party citing environmental violations or other conditions that could be the subject of investigation, remediation or other action under Environmental Law affecting the business and operations of any Loan Party or the Collateral that have not been finally resolved and disposed of, and no such violation or condition, whether or not notice regarding such violation or condition is listed on Schedule 5.18, if ultimately resolved against such party, would have a Material Adverse Effect and (ii) all material reports filed by each of the Loan Parties during the past twelve months with respect to its business and operations or the Collateral with any federal, state or local environmental agency having jurisdiction over any of the Loan Parties or the Collateral, true and complete copies of which reports have been made available to the Lenders. Notwithstanding any such notice, except for matters the consequences of which will not have a Material Adverse Effect, the business and operations of each Loan Party and the Collateral are currently being operated in all respects within the limits set forth in such environmental permits or licenses and any current noncompliance with such permits or licenses will not result in any liability or penalty to any of the Loan Parties or in the revocation, loss or termination of any such environmental permits or licenses.

(b) All facilities located on the real property owned or leased by the Loan Parties, including without limitation the Collateral, which are subject to regulation by the Resource Conservation and Recovery Act of 1976, as amended, and regulations promulgated thereunder, ("RCRA") are and have been operated in compliance with RCRA, except where such noncompliance would not have a Material Adverse Effect and none of the Loan Parties has received, or, to the knowledge of any Loan Party, been threatened with, a notice of violation of RCRA regarding such facilities.

(c) No Materials of Environmental Concern are or, to the knowledge of any Loan Party, have been located or present at any of the real property owned or leased by the Loan Parties, including without limitation the Collateral, or any previously owned properties, in violation of any Environmental Law, which violation will have a Material Adverse Effect, or in such circumstances as to give rise to liability, which liability will have a Material Adverse Effect, and with respect to such real property there has not occurred, to the knowledge of any Loan Party (i) any release or threatened release of any Materials of Environmental Concern, (ii) any discharge or threatened discharge of any Materials of Environmental Concern into the environment which violates any Environmental Law or (iii) any assertion of any lien pursuant to Environmental Laws resulting from any use, spill, discharge or clean-up of any Materials of Environmental Concern, which occurrence referred to in clause (i), (ii) or (iii) above will have a Material Adverse Effect.

(d) Except as set forth on Schedule 5.18(d), none of the Loan Parties has received notice that it has been identified as a potentially responsible party under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and regulations promulgated thereunder, or any comparable state, local or foreign law nor has any Loan Party received any notification that any Materials of Environmental Concern that it has used, generated, stored, treated, handled, transported or disposed of or arranged for transport for disposal or treatment of, or arranged for disposal or treatment of, has been found at any site at which any Governmental Authority or private party is conducting or plans to conduct a remedial investigation or other action pursuant to any Environmental Law.

(e) None of the matters disclosed in Schedule 5.18 or Schedule 5.18(d), either individually or in the aggregate, involves a violation of or a liability under any Environmental Law, the consequences of which will have a Material Adverse Effect.

5.19. Investment and Holding Company Status

. No Loan Party is (a) an "investment company" or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended or (b) a "holding company" as defined in, or subject to regulation under, the Public Utility Holding Company Act of 1935, as amended.

5.20. Bank Accounts

. As of the Effective Date, Exhibit B to the Security Agreement contains a complete and accurate list of all bank accounts maintained by each Loan Party with any bank or other financial institution.

5.21. Indebtedness

. As of the Effective Date and after giving effect to the Credit Extensions to be made on the Effective Date (if any), the Loan Parties have no Indebtedness, except for (a) the Obligations, and (b) any Indebtedness described on Schedule 5.21.

5.22. Affiliate Transactions

. Except as set forth on Schedule 5.22, as of the Effective Date, there are no existing or proposed agreements, arrangements, understandings, or transactions between any Loan Party and any of the officers, members, managers, directors, stockholders, parents, other interest holders, employees, or Affiliates (other than Subsidiaries) of any Loan Party or any members of their respective immediate families (other than employment agreements and arrangements and transactions entered into in the ordinary course of business on terms that are arms-length), and none of the foregoing Persons are directly or indirectly indebted to or have any direct or indirect ownership, partnership, or voting interest in any Affiliate of any Loan Party or any Person with which any Loan Party has a business relationship or which competes with any Loan Party.

5.23. Real Property; Leases

. As of the Effective Date, Schedule 5.23 sets forth a correct and complete list of all real Property owned by each Loan Party (indicating, in each case, whether such owned real Property is subject to an Existing Mortgage as of the Effective Date), all leases and subleases of real Property by each Loan Party as lessee or sublessee, and all leases and subleases of real Property by each Loan Party as lessor or sublessor. Each of such leases and subleases is valid and enforceable in accordance with its terms and is in full force and effect, and no default by any party to any such lease or sublease exists. Each Loan Party has good and indefeasible title in fee simple to the real Property identified on Schedule 5.23 as owned by such Loan Party, or valid leasehold interests in all real Property designated therein as "leased" by such Loan Party.

5.24. Intellectual Property Rights

. As of the Effective Date: (a) Schedule 5.24 sets forth a correct and complete list of all registrations and applications for Intellectual Property Rights of each Loan Party; (b) no Intellectual Property Rights owned by the Loan Parties are subject to any licensing agreement or similar arrangement except as set forth in Schedule 5.24; (c) the material proprietary Intellectual Property Rights of the Loan Parties are owned exclusively by the Loan Parties and constitute all of the property of such type necessary to the current and anticipated future conduct of the Loan Parties' business; (d) no Intellectual Property Rights now used or now contemplated to be used by any Loan Party infringes in any material respect upon any rights held by any other Person; (e) no claim or litigation regarding Intellectual Property Rights is pending or threatened which could reasonably be expected to have a Material Adverse Effect; (f) the Loan Parties take all reasonable actions to protect and maintain the integrity, continuous operation and security of the systems, networks, software and information technology assets used in their business (and all data, including personal data, stored thereon or processed thereby), and there have been no material breaches, outages, violations or unauthorized use of or access to any of the foregoing; and (g) the Loan Parties have created, executed and/or posted all Privacy Policies that are required by Applicable Laws.

5.25. Insurance

. Schedule 5.25 lists all insurance policies of any nature maintained, as of the Effective Date, by each Loan Party, as well as a summary of the terms of each such policy.

5.26. Solvency

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(a) Immediately after the consummation of the transactions to occur on the date hereof and immediately following the making of each Credit Extension, if any, made on the date hereof and after giving effect to the application of the proceeds of such Credit Extensions, (a) the fair value of the assets of each Loan Party, at a fair valuation, will exceed the debts and liabilities, subordinated, contingent or otherwise, of each Loan Party; (b) the present fair saleable value of the Property of each Loan Party will be greater than the amount that will be required to pay the probable liability of each Loan Party on its debts and other liabilities, subordinated, contingent or otherwise, as such debts and other liabilities become absolute and matured; (c) each Loan Party will be able to pay its debts and liabilities, subordinated, contingent or otherwise, as such debts and liabilities become absolute and matured; and (d) each Loan Party will not have unreasonably small capital with which to conduct the businesses in which it is engaged as such businesses are now conducted and are proposed to be conducted after the date hereof.

(b) The Borrower does not intend to, nor will the Borrower permit any of its Subsidiaries to, and the Borrower does not believe that it or any of its Subsidiaries will, incur debts beyond its ability to pay such debts as they mature, taking into account the timing of and amounts of cash to be received by it or any such Subsidiary and the timing of the amounts of cash to be payable on or in respect of its Indebtedness or the Indebtedness of any such Subsidiary.

5.27. Subordinated Indebtedness

. The Secured Obligations constitute senior indebtedness which is entitled to the benefits of the subordination provisions of all outstanding Subordinated Indebtedness.

5.28. Post-Retirement Benefits

. The present value of the expected cost of post-retirement medical and insurance benefits payable by the Loan Parties to their employees and former employees, as estimated by such Loan Parties in accordance with procedures and assumptions deemed reasonable by the Required Lenders, does not exceed $10,000,000 in the aggregate.

5.29. Common Enterprise

. The successful operation and condition of each of the Loan Parties is dependent on the continued successful performance of the functions of the group of the Loan Parties as a whole and the successful operation of each of the Loan Parties is dependent on the successful performance and operation of each other Loan Party. Each Loan Party expects to derive benefit (and its board of directors or other governing body has determined that it may reasonably be expected to derive benefit), directly and indirectly, from (i) successful operations of each of the other Loan Parties and (ii) the credit extended by the Lenders to the Borrower hereunder, both in their separate capacities and as members of the group of companies. Each Loan Party has determined that execution, delivery, and performance of this Agreement and any other Loan Documents to be executed by such Loan Party is within its purpose, will be of direct and indirect benefit to such Loan Party, and is in its best interest.

5.30. Reportable Transaction

. The Borrower does not intend to treat the Advances and related transactions as being a “reportable transaction” (within the meaning of Treasury

Regulation Section 1.6011-4). In the event the Borrower determines to take any action inconsistent with such intention, it will promptly notify the Agent thereof.

5.31. Labor Disputes

. Except as set forth on Schedule 5.31, as of the Effective Date (a) there is no collective bargaining agreement or other labor contract covering employees of the Borrower or PHI or any of their respective Subsidiaries, (b) no such collective bargaining agreement or other labor contract is scheduled to expire during the term of this Agreement, (c) no union or other labor organization is seeking to organize, or to be recognized as, a collective bargaining unit of employees of the Borrower or PHI or any of their respective Subsidiaries or for any similar purpose, and (d) there is no pending or (to the best of the Borrower's knowledge) threatened, strike, work stoppage, material unfair labor practice claim, or other material labor dispute against or affecting the Borrower or PHI or any of their respective Subsidiaries or their employees.

5.32. Fixed Price Supply Contracts

. None of the Loan Parties is a party to any contract for the purchase or supply by such parties of any product except where (a) the purchase price is set with reference to a spot index or indices substantially contemporaneously with the delivery of such product or (b) delivery of such product is to be made no more than 18 months after the purchase price is agreed to. All such contracts for the delivery of product to any Loan Party referred to in the foregoing clause (b) which are in effect on the Effective Date are set forth in Schedule 5.32.

5.33. Trading and Inventory Policies

. Each Loan Party maintains a hedging policy to the effect that it will not trade any commodities. Each Loan Party maintains a supply inventory position policy to the effect that it will not hold on hand, as of any date, more Commodities Inventory than will be sold in the normal course of business during the following 90 days. Each Loan Party is in compliance with such policies.

5.34. Use of Proceeds

. The Borrower will use the proceeds of the Loans solely as set forth in Section 6.2.

5.35. EEA Financial Institutions

. No Loan Party is an EEA Financial Institution.

5.36. Anti-Corruption Laws and Sanctions

. The Loan Parties have implemented and maintain in effect policies and procedures designed to ensure compliance by the Loan Parties, their respective Subsidiaries and their respective directors, officers, employees and agents, with Anti-Corruption Laws and applicable Sanctions, and the Loan Parties, their respective Subsidiaries and their respective officers and directors and to the knowledge of any Loan Party its employees and agents, are in compliance with Anti-Corruption Laws in all materials respects and applicable Sanctions. None of (a) any Loan Party, any Subsidiary any of their respective directors or officers or, to the knowledge of such Loan Party or such Subsidiary, employees, or (b) to the knowledge of such Loan Party, any agent of a Loan Party or any Subsidiary that will act in any capacity in connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No Advance or Letter of Credit, use of proceeds or other transaction contemplated by this Agreement will violate any Anti-Corruption Law or applicable Sanctions.

**ARTICLE VI**

**COVENANTS**

Each Loan Party executing this Agreement jointly and severally agrees as to all Loan Parties that from and after the date hereof and until the Facility Termination Date:

6.1. Financial and Collateral Reporting

. Each Loan Party will maintain, for itself and each Subsidiary, a system of accounting established and administered in accordance with GAAP, and will furnish to the Lenders:

(a) within ninety days after the close of each Fiscal Year of the Parent and its Subsidiaries, an unqualified audit report certified by independent certified public accountants reasonably acceptable to the Required Lenders, prepared in accordance with GAAP on a consolidated and consolidating basis (consolidating statements need not be certified by such accountants), including balance sheets as of the end of such Fiscal Year, related profit and loss and reconciliations of statements of retained earnings, and a statement of cash flows, accompanied by (i) any management letter prepared by said accountants and (ii) a certificate of said accountants that, in the course of their examination necessary for their certification of the foregoing, they have obtained no knowledge of any Default or Unmatured Default, or if, in the opinion of such accountants, any Default or Unmatured Default shall exist, stating the nature and status thereof;

(b) within forty-five days after the close of the first three quarterly periods of each Fiscal Year of the Parent and its Subsidiaries, consolidated and consolidating unaudited balance sheets as at the close of each such Fiscal Quarter and consolidated and consolidating profit and loss and reconciliations of statements of retained earnings and a statement of cash flows for the period from the beginning of the applicable Fiscal Year to the end of such Fiscal Quarter, setting forth in each case in comparative form the figures for the applicable period, all certified by its chief financial officer and prepared in accordance with GAAP (except for exclusion of footnotes and subject to normal year-end audit adjustments);

(c) within thirty days after the close of each Fiscal Month, consolidated and consolidating unaudited balance sheets of the Parent and its Subsidiaries at the close of each such Fiscal Month and consolidated and consolidating profit and loss and reconciliations of statements of retained earnings and a statement of cash flows for the period from the beginning of the applicable Fiscal Year to the end of such Fiscal Month, setting forth in each case in comparative form the figures for the prior 12-month period, all prepared in accordance with GAAP (except for exclusion of footnotes and subject to normal year-end audit adjustments) and certified by its chief financial officer or vice president - controller;

(d) as soon as available, but not less than 10 days prior to the end of such Fiscal Year, a copy of the plan and forecast (including a projected consolidated and consolidating balance sheet, income statement and funds flow statement) of the Parent for

each month of such Fiscal Year (the "Projections") in form reasonably satisfactory to the Agent;

(e) together with each of the financial statements required under Sections 6.1(a), (b) and (c), a compliance certificate in substantially the form of Exhibit E (a "Compliance Certificate") signed by the chief financial officer, vice president - controller or treasurer of the Borrower Representative showing the calculations necessary to determine compliance with this Agreement (including calculation of (i) Availability for purposes of Sections 6.16 and 6.25 and (ii) the Fixed Charge Coverage Ratio and Senior Secured Leverage Ratio for purposes of Section 6.28 to the extent then applicable) and the Applicable Margin and stating that no Default or Unmatured Default exists, or if any Default or Unmatured Default exists, stating the nature and status thereof;

(f) as soon as available but in any event within 20 days of the end of each Fiscal Month (or, during the Seasonal Availability Period or to the extent Availability is less than 15.0% of the Aggregate Revolving Commitment, within 3 days of the end of each week), and at such other times as may be requested by the Agent (in its Permitted Discretion), as of the period then ended, a Borrowing Base Certificate;

(g) as soon as available but in any event within 20 days of the end of each Fiscal Month (or, during the Seasonal Availability Period or to the extent Availability is less than 15.0% of the Aggregate Revolving Commitment, within 3 days of the end of each week) and at such other times as may be requested by the Agent (in its Permitted Discretion), as of the period then ended:

(i) (1) a summary aging of the Accounts of the Borrower and PHI and each of their respective Subsidiaries, including an aged accounts receivable total for each Account Debtor, supported by a total page from the system summary aging for each branch, and (2) reconciled to the Borrowing Base Certificate delivered as of such date prepared in a manner reasonably acceptable to the Agent, together with such transaction analysis or roll-forward information as the Agent requests, in its Permitted Discretion;

(ii) a schedule detailing the Inventory of the Borrower and PHI and their respective Subsidiaries, in form reasonably satisfactory to the Agent, (1) by location (showing Inventory in transit, any Inventory located with a third party under any consignment, bailee arrangement, or warehouse agreement), by product type, and by volume on hand, which Inventory shall be valued at the lower of cost (determined on a weighted average basis) or market and adjusted for Reserves as the Agent has previously indicated to the Borrower are deemed by the Agent to be appropriate, (2) including a report of any variances or other results of Inventory counts performed by the Borrower since the last Inventory schedule (including information regarding sales or other reductions, additions, returns, credits issued by the Borrower or PHI or any of their respective Subsidiaries and complaints and claims made against them), and (3) reconciled to the Borrowing Base Certificate delivered as of such date;

(iii) a worksheet of calculations prepared by the Borrower to determine Eligible Accounts Receivable, Eligible Heating Oil and Other Fuel Inventory and Eligible Other Inventory, such worksheets detailing the Accounts and Inventory excluded from Eligible Accounts Receivable, Eligible Heating Oil and Other Fuel Inventory and Eligible Other Inventory and the reason for such exclusion;

(iv) a reconciliation of the Accounts and Inventory of the Borrower, PHI and their respective Subsidiaries between the amounts shown in their general ledgers and financial statements and the reports delivered pursuant to clauses (i) and (ii) above; and

(v) a reconciliation of the loan balance per the Borrower's general ledger to the loan balance set forth in statements given to the Borrower under this Agreement;

(h) as soon as available but in any event within 20 days of the end of each Fiscal Month (or, during the Seasonal Availability Period or to the extent Availability is less than 15.0% of the Aggregate Revolving Commitment, within 3 days of the end of each week) and at such other times as may be requested by the Agent (in its Permitted Discretion), as of the month then ended, a schedule and aging of the Borrower's and PHI's accounts payable;

(i) promptly upon the Agent's request (in its Permitted Discretion):

(i) copies of invoices in connection with the invoices issued by the Borrower or PHI or any of their respective Subsidiaries in connection with any Accounts, credit memos, shipping and delivery documents, and other information related thereto;

(ii) copies of purchase orders, invoices, and shipping and delivery documents in connection with any Inventory, Machinery or Equipment purchased by any Loan Party; and

(iii) a schedule detailing the balance of all intercompany accounts of the Loan Parties;

(j) as soon as possible and in any event within 20 days of filing thereof, copies of all tax returns filed by any Loan Party with the U.S. Internal Revenue Service;

(k) as soon as possible and in any event within 300 days after the close of the Fiscal Year of each Single Employer Plan, a certified financial statement of such Single Employer Plan;

(l) as soon as possible and in any event within 10 days after the Borrower (i) knows that any Reportable Event has occurred with respect to any Plan, a statement, signed by the chief financial officer of the Borrower, describing said Reportable Event and the action which the Borrower proposes to take with respect thereto; (ii) receives a determination that any Plan is, or is expected to be in "at risk" status (within the meaning

of Section 430 of the Code or Title IV of ERISA), a statement describing such status determination and the action which the Borrower proposes to take with respect thereto; or (iii) receives any determination that a Multiemployer Plan is expected in endangered or critical status (within the meaning of Section 432 of the Code or Section 305 or Title IV of ERISA), a copy of such determination;

(m) as soon as possible and in any event within 10 days (i) of filing therewith with the PBGC, the U.S. Internal Revenue Service or any other governmental entity, a copy of each annual report or other filing with respect to any Single Employer Plan;

(n) as soon as possible and in any event with 10 days following receipt thereof, copies of any documents described in Sections 101(k) or 101(l) of ERISA that the Borrower or any member of its Controlled Group may request with respect to any Multiemployer Plan to which it is a party; provided, that if the Borrower or any member of its Controlled Group has not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plan, then, upon reasonable request of the Agent, the Borrower and/or the Controlled Group members shall promptly make a request for such documents and notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Agent (on behalf of each requesting Lender) promptly after receipt thereof, and further provided, that the rights granted to the Agent in this section shall not be exercised more than once during a 12-month period;

(o) as soon as possible and in any event within 10 days after receipt by any Loan Party and to the extent pertaining to a matter that could have a material impact on any Loan Party, a copy of (i) any notice or claim to the effect that any Loan Party is or may be liable to any Person as a result of the release by any Loan Party, or any other Person of any Materials of Environmental Concern into the environment, and (ii) any notice alleging any violation of any Environmental Laws by any Loan Party;

(p) concurrently with the delivery of annual audited financial statements pursuant to Section 6.1(a), an updated Customer List for the Borrower and PHI and their respective Subsidiaries, certified as true and correct by an Authorized Officer of the Borrower (it being understood that the Agent and the Lenders shall treat such Customer Lists as confidential information subject to Section 9.11);

(q) concurrently with the furnishing thereof to the unitholders of the Parent, copies of all financial statements, reports and proxy statements so furnished;

(r) promptly upon the filing thereof, copies of all registration statements and annual, quarterly, monthly or other regular reports which any Loan Party files with the Securities and Exchange Commission; and

(s) such other information (including, without limitation, non-financial information as more fully described on Schedule 6.1(s)) as the Agent or any Lender may from time to time reasonably request.

6.2. Use of Proceeds

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(a) The Borrower will use the proceeds of the Credit Extensions (other than the Term Loans) solely to finance the working capital needs of the Borrower and its Subsidiaries in the ordinary course of business; provided that Facility LCs may also be used to support (i) obligations under workers' compensation laws, (ii) obligations to suppliers of petroleum derivative products or energy commodity derivative providers in the ordinary course of business consistent with past practices and (iii) other ordinary course obligations of the Loan Parties. The Borrower will use the proceeds of the Term Loans, together with cash on hand and drawings of Revolving Loans on the Effective Date to, among other things, repay the aggregate principal amount of all Loans (as defined in the Existing Credit Agreement) outstanding under the Existing Credit Agreement on the Effective Date (it being understood that a portion of the Term Loans will be deemed to have been applied to a "cashless" prepayment of the aggregate principal amount of Existing Term Loans outstanding on the Effective Date with the proceeds of a borrowing of new Term Loans hereunder in an equal amount, in each case, deemed to occur as of the Effective Date).

(b) No Loan Party will use any of the proceeds of the Credit Extensions to (i) purchase or carry any Margin Stock in violation of Regulation U, (ii) repay or refinance any Indebtedness of any Person incurred to buy or carry any Margin Stock, or (iii) acquire any security in any transaction that is subject to Section 13 or Section 14 of the Securities Exchange Act of 1934 (and the regulations promulgated thereunder).

(c) No Loan Party shall Request any Credit Extension, and no Loan Party shall use, or shall ensure that their respective Subsidiaries and its or their respective directors, officers, employees and agents shall use, the proceeds of any Credit Extension (A) 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, (B) to fund, finance or facilitate any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (C) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

6.3. Notices

. Each Loan Party will give prompt notice in writing to the Agent and the Lenders of:

(a) the occurrence of any Default or Unmatured Default;

(b) any other development, financial or otherwise, which could reasonably be expected to have a Material Adverse Effect;

(c) the assertion by the holder of any Capital Stock of any Loan Party or the holder of any Indebtedness of any Loan Party in excess of $1,000,000 that any default exists with respect thereto or that any Loan Party is not in compliance therewith;

(d) receipt of any written notice that any Loan Party is subject to any investigation by any Governmental Authority with respect to any potential or alleged violation of any applicable Environmental Law or of imposition of any Lien against any Property of any Loan Party for any liability with respect to damages arising from, or costs

resulting from, any violation of any Environmental Laws, in each case, that could reasonably be expected to result in a material impact on any Loan Party;

(e) receipt of any notice of litigation commenced or threatened against any Loan Party that (i) seeks damages in excess of (A) $500,000 above insurance coverage limits or (B) $5,000,000 regardless of insurance coverage limits, (ii) seeks injunctive relief, (iii) is asserted or instituted against any Plan, its fiduciaries or its assets, (iv) alleges criminal misconduct by any Loan Party, (v) alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Laws; or (vi) involves any product recall;

(f) any Lien (other than Permitted Liens) or claim made or asserted against any of the Collateral;

(g) its decision to change, (i) such Loan Party's name or type of entity, (ii) such Loan Party's articles or certificate of incorporation, partnership agreement, certificate of partnership, articles or certificate of organization, by-laws, or operating or other management agreement, and (iii) the location where any Collateral is held or maintained; provided that, in no event shall the Agent receive notice of such change less than thirty days prior thereto;

(h) commencement of any proceedings contesting any tax, fee, assessment, or other governmental charge in excess of $250,000;

(i) the opening of any new deposit account by any Loan Party with any bank or other financial institution;

(j) any loss, damage, or destruction to the Collateral in the amount of $500,000 or more, whether or not covered by insurance;

(k) any and all default notices received under or with respect to any leased location or public warehouse where Collateral is located (which shall be delivered within two Business Days after receipt thereof);

(l) all material amendments to real estate leases, together with a copy of each such amendment;

(m) immediately after becoming aware of any pending or threatened strike, work stoppage, unfair labor practice claim, or other labor dispute affecting the Borrower, PHI or any of their respective Subsidiaries in a manner which could reasonably be expected to have a Material Adverse Effect;

(n) concurrently with the delivery of each Borrowing Base Certificate, a listing of each Rate Management Transaction or amendment to a Rate Management Transaction that such Loan Party has entered into since the date on which a Borrowing Base Certificate was last delivered pursuant to Section 6.1(f), together with copies of all agreements evidencing such Rate Management Transactions or amendments thereto;

(o) [Intentionally omitted];

(p) any circumstances that it reasonably believes may result in an assertion that a withdrawal under Title IV of ERISA has occurred by any Loan Party or any member of its Controlled Group with respect to any Multiemployer Plan; and

(q) any other matter as the Agent may reasonably request.

6.4. Conduct of Business

. Each Loan Party will:

(a) carry on and conduct its business in substantially the same manner and in substantially the same fields of enterprise as it is presently conducted;

(b) do all things necessary to remain duly incorporated or organized, validly existing and (to the extent such concept applies to such entity) in good standing as a domestic corporation, partnership or limited liability company in its jurisdiction of incorporation or organization, as the case may be, and maintain all requisite authority to conduct its business in each jurisdiction in which its business is conducted; provided that nothing in this Section 6.4 shall prohibit any transaction permitted by Section 6.18.

(c) keep adequate books and records with respect to its business activities in which proper entries, reflecting all financial transactions, are made in accordance with GAAP and on a basis consistent with the financial statements delivered to the Agent pursuant to Section 4.1(m);

(d) at all times maintain, preserve and protect all of its assets and properties used or useful in the conduct of its business, and keep the same in good repair, working order and condition in all material respects (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices; and

(e) transact business only in such corporate and trade names as are set forth in Schedule 5.12 (as such schedule may be amended or supplemented from time to time with prompt notification to the Agent of such amendment or supplement).

6.5. Taxes

. Each Loan Party will timely file complete and correct U.S. federal and applicable foreign, state and local Tax returns required by law and pay when due all Taxes upon it or its income, profits, Property or Collateral, except those which are being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been set aside in accordance with GAAP. At any time that any Loan Party is organized as a limited liability company, each such limited liability company will qualify for partnership tax treatment under U.S. federal tax law.

6.6. Payment of Indebtedness and Other Liabilities

. Each Loan Party will pay or discharge when due all Material Indebtedness permitted by Section 6.17 owed by such Loan Party and all other liabilities and obligations due to materialmen, mechanics, carriers, warehousemen, and landlords, except that the Loan Parties may in good faith contest, by appropriate proceedings diligently pursued, any such obligations; provided that, (a) adequate

reserves have been set aside for such liabilities in accordance with GAAP, (b) no Lien shall be imposed to secure payment of such liabilities that is superior to the Agent's Liens securing the Secured Obligations, (c) none of the Collateral becomes subject to forfeiture or loss as a result of the contest and (d) such Loan Party shall promptly pay or discharge such contested liabilities, if any, and shall deliver to the Agent evidence reasonably acceptable to the Agent of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to such Loan Party or the conditions set forth in this proviso are no longer met.

6.7. Insurance; Weather Hedging

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(a) Each Loan Party shall at all times maintain, with CaptiveCo or financially sound and reputable carriers having a Financial Strength rating of at least A- by A.M. Best Company, insurance against: (i) loss or damage by fire and loss in transit; (ii) theft, burglary, pilferage, larceny, embezzlement, and other criminal activities; (iii) general liability and (iv) and such other hazards, as is customary in the business of such Loan Party. All such insurance shall be in amounts, cover such assets and be under policies acceptable to the Agent in its Permitted Discretion. If any portion of any Material Real Property is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency) as a "Special Flood Hazard Area" with respect to which flood insurance has been made available under the Flood Insurance Laws, then the Borrower shall, or shall cause the applicable Loan Party to (A) maintain, or cause to be maintained, with a financially sound and reputable insurer, flood insurance in an amount and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (B) deliver to the Agent evidence of such compliance in form and substance reasonably acceptable to the Agent. All premiums on such insurance shall be paid when due by the applicable Loan Party, and copies of the policies delivered to the Agent. If any Loan Party fails to obtain any insurance as required by this Section, the Agent at the direction of the Required Lenders may obtain such insurance at the Borrower's expense. By purchasing such insurance, the Agent shall not be deemed to have waived any Default or Unmatured Default arising from any Loan Party's failure to maintain such insurance or pay any premiums therefor. No Loan Party will use or permit any Property to be used in violation of applicable law or in any manner which might render inapplicable any insurance coverage.

(b) All insurance policies required under Section 6.7(a) shall name the Agent (for the benefit of the Agent and the Lenders) as an additional insured or as loss payee, as applicable, and shall provide that, or contain loss payable clauses or mortgagee clauses, in form and substance reasonably satisfactory to the Agent, which provide that:

(i) all proceeds thereunder with respect to any Collateral shall be payable to the Agent;

(ii) no such insurance shall be affected by any act or neglect of the insured or owner of the Property described in such policy; and

(iii) such policy and loss payable clauses may be canceled, amended, or terminated only upon at least thirty days prior written notice given to the Agent.

(c) The Borrower must give the Agent prior written notice of any change in insurance carriers and any new insurance policy shall comply with the provisions of this Section 6.7 and otherwise be reasonably acceptable to the Agent. Without in any way limiting the foregoing, in no event shall the Borrower change their insurance carrier without first obtaining a loss payable endorsement in form and substance reasonably satisfactory to the Agent.

(d) Notwithstanding the foregoing, any insurance or condemnation proceeds received by the Loan Parties shall be immediately forwarded to the Agent and the Agent may, at its option, apply any such proceeds to the reduction of the Obligations in accordance with Section 2.16(d), provided that in the case of insurance proceeds pertaining to any Loan Party other than the Borrower, such insurance proceeds shall be applied to the Loans owing by the Borrower. The Agent may permit or require any Loan Party to use such money, or any part thereof, to replace, repair, restore or rebuild the Collateral in a diligent and expeditious manner with materials and workmanship of substantially the same quality as existed before the loss, damage or destruction. Notwithstanding the foregoing, if the casualty giving rise to such insurance proceeds could not reasonably be expected to have a Material Adverse Effect and such insurance proceeds do not exceed $500,000 in the aggregate, upon the applicable Loan Party's request, the Agent shall permit such Loan Party to replace, restore, repair or rebuild the property; provided that, if such Loan Party has not completed or entered into binding agreements to complete such replacement, restoration, repair or rebuilding within ninety days of such casualty, the Agent may apply such insurance proceeds to the Obligations in accordance with Section 2.16. All insurance proceeds that are to be made available to the Borrower to replace, repair, restore or rebuild the Collateral shall be applied by the Agent to reduce the outstanding principal balance of the Revolving Loans (which application shall not result in a permanent reduction of the Aggregate Revolving Commitment) and upon such application, the Agent shall establish a Reserve against the Borrowing Base in an amount equal to the amount of such proceeds so applied. All insurance proceeds made available to any Loan Party that is not the Borrower to replace, repair, restore or rebuild Collateral shall be deposited in a cash collateral account. In either case, thereafter, such funds shall be made available to the applicable Loan Party to provide funds to replace, repair, restore or rebuild the Collateral as follows:

(i) the Borrower Representative, on behalf of the applicable Borrower, shall request a Revolving Loan or the Borrower Representative, on behalf of the applicable Loan Party, shall request a release from the cash collateral account be made in the amount needed;

(ii) so long as the conditions set forth in Section 4.2 have been met, the Lenders shall make such Revolving Loan or the Agent shall release funds from the cash collateral account; and

(iii) in the case of insurance proceeds applied against the Revolving Loan, the Reserve established with respect to such insurance proceeds shall be reduced by the amount of such Revolving Loan.

(e) Each Loan Party shall maintain a program to hedge against business risks associated with weather as deemed appropriate by its board of directors.

6.8. Compliance with Laws

. Each Loan Party will comply with all laws, rules, regulations, orders, writs, judgments, injunctions, decrees or awards to which it may be subject including, without limitation, all Environmental Laws. Except with regard to compliance with applicable Sanctions and Anti-Corruption Laws, this covenant shall be deemed not breached by a noncompliance with the foregoing if, upon learning of such noncompliance, the affected Loan Parties promptly undertake reasonable efforts to eliminate such noncompliance, and such noncompliance and the elimination thereof, in the aggregate with any other noncompliance with any of the foregoing and the elimination thereof, could not reasonably be expected to have a Material Adverse Effect. Each Loan Party will maintain and enforce policies and procedures designed to ensure compliance by Loan Parties, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

6.9. Maintenance of Properties and Intellectual Property Rights

. Each Loan Party will do all things necessary to (i) maintain, preserve, protect and keep its Property in good repair, working order and condition, and make all necessary and proper repairs, renewals and replacements so that its business carried on in connection therewith may be properly conducted at all times and (ii) obtain and maintain in effect at all times all material franchises, governmental authorizations, Intellectual Property Rights, licenses and permits, which are necessary for it to own its Property or conduct its business as conducted on the Effective Date.

6.10. Inspection

. Each Loan Party will permit the Agent and, at the expense of such Lender, any Lender, by their respective employees, representatives and agents, from time to time upon two Business Days' prior notice as frequently as the Agent reasonably determines (in its Permitted Discretion) to be appropriate, to (a) inspect any of the Property, the Collateral, and the books and financial records of such Loan Party, (b) examine, audit and make extracts or copies of the books of accounts and other financial records of such Loan Party, (c) have access to its properties, facilities, the Collateral and its advisors, officers, directors and employees to discuss the affairs, finances and accounts of such Loan Party and (d) review, evaluate and make test verifications and counts of the Accounts, Inventory and other Collateral of such Loan Party (it being understood that it is anticipated that the examinations referred to in clauses (a) through (d) of this Section 6.10 will be conducted once per year, with up to two such examinations per year to be permitted at the Agent's sole discretion). If a Default or an Unmatured Default has occurred and is continuing or if Availability is less than 15.0% of the Aggregate Revolving Commitment, each Loan Party shall provide such access to the Agent and to each Lender at all times and without advance notice. Furthermore, so long as any Default has occurred and is continuing, each Loan Party shall provide the Agent and each Lender with access to its suppliers. Each Loan Party shall promptly make available to the Agent and its counsel originals or copies of all books and records that the Agent may reasonably request. The Loan Parties acknowledge that from time to time the Agent may prepare and may distribute to the Lenders certain audit reports pertaining to the Loan Parties' assets for internal use by the Agent and the Lenders from information furnished to it by or on behalf of the Loan Parties, after the Agent has exercised its rights of inspection pursuant to this Agreement.

6.11. Appraisals

. Whenever a Default or Unmatured Default exists or Availability is less than 15.0% of the Aggregate Revolving Commitment, and at such other times as the Agent requests, the Loan Parties shall, at their sole expense, provide the Agent with appraisals or updates thereof of their Inventory, Equipment, Customer Lists and real Property from an appraiser selected and engaged by the Agent, and prepared on a basis, satisfactory to the Agent, such appraisals and updates to include, without limitation, information required by applicable law and regulations and by the internal policies of the Lenders (it being understood and agreed that appraisals with respect to Customer Lists shall be required on an annual basis).

6.12. Communications with Accountants

. Each Loan Party executing this Agreement authorizes (a) the Agent and (b) so long as a Default has occurred and is continuing, each Lender, to communicate directly with its independent certified public accountants and authorizes and shall instruct those accountants and advisors to communicate to the Agent and each Lender information relating to any Loan Party with respect to the business, results of operations and financial condition of any Loan Party.

6.13. Post-Closing Obligations with respect to Real Property; Mortgage Amendments, Collateral Access Agreements, etc.

(a) The Loan Parties shall deliver to the Agent by no later than the date that is 60 days after the Effective Date (or by such other date to which the Agent may agree in its sole discretion), with respect to each parcel of owned real Property set forth on Schedule 5.23, each of the following (to the extent customary or reasonably requested), in form and substance reasonably satisfactory to the Agent either:

(i) written or e-mail confirmation from local counsel in the jurisdiction in which the real property subject to a Mortgage is located substantially to the effect that: (x) the recording of the Existing Mortgage is the only filing or recording necessary to give constructive notice to third parties of the lien created by such Existing Mortgage as security for the Secured Obligations, including the Secured Obligations evidenced by this Agreement and the other documents executed in connection herewith, for the benefit of the Lenders, and (y) no other documents, instruments, filings, recordings, re-recordings, re-filings or other actions, including without limitation, the payment of any mortgage recording taxes or similar taxes are necessary or appropriate under the applicable law in order to maintain the continued enforceability, validity or priority of the lien created by such Existing Mortgage as security for the Secured Obligations, including the Secured Obligations evidenced by this Agreement and the other documents executed in connection herewith, for the benefit of the Lenders; or

(ii) (A) an amendment to the Existing Mortgage in any form and substance reasonably acceptable to the Agent;

(B) a “date-down” endorsement to the existing title insurance policy for such parcel of real Property issued by the title company that issued such existing title insurance policy, which endorsement shall update the effective date of such existing title insurance policy and amend the description of the insured Existing Mortgage to include the amendment to such Existing Mortgage;

(C) evidence that the Borrower has paid all premiums in respect of the endorsement to the existing title policy for such parcel of real Property, as well as all charges for mortgage recording taxes and mortgage filing fees payable in connection with the recording of the amendment to the Existing Mortgage or new Mortgage, as the case may be, covering such parcel of real Property, and all related expenses, if any; and

(D) such other information, opinions, documentation, and certifications as may be reasonably required by the Agent.

(b) If requested by the Agent, each Loan Party shall use commercially reasonable efforts to obtain a Collateral Access Agreement 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 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 or bailee or consignee may assert against the Collateral at that location, and shall otherwise be reasonably satisfactory in form and substance to the Agent. With respect to such locations or warehouse space leased or owned as of the Effective Date and thereafter, if the Agent has not received a Collateral Access Agreement as of the Effective Date (or, if later, as of the date such location is acquired or leased), the Eligible Inventory at that location shall be subject to such Reserves as may be established by the Agent (in its Permitted Discretion). After the Effective Date, no real property or warehouse space shall be leased by any Loan Party and no Inventory shall be shipped to a processor or converter under arrangements established after the Effective Date, unless and until, if requested by the Agent, a Collateral Access Agreement reasonably satisfactory to the Agent shall first have been obtained with respect to such location (it being understood that the Borrower shall provide the Agent with written notice prior to taking any such actions) and if it has not been obtained, the Eligible Inventory at that location shall be subject to the establishment of Reserves reasonably acceptable to the Agent. Each Loan Party shall timely and fully pay and perform its obligations under all leases and other agreements with respect to each leased location or third party warehouse where any Collateral is or may be located.

6.14. Deposit Account Control Agreements

. No later than the date that is 60 days after the Effective Date (or by such other date to which the Agent may agree in its sole discretion), the Loan Parties will provide to the Agent a Deposit Account Control Agreement duly executed on behalf of each financial institution holding a deposit account of a Loan Party as set forth in the Security Agreement.

6.15. Additional Collateral; Further Assurances

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(a) Subject to applicable law, each Loan Party shall, unless the Required Lenders otherwise consent, (i) cause each Subsidiary of the Parent (excluding any Foreign Subsidiary and CaptiveCo) to become or remain a Loan Party and a Guarantor and (ii) cause each Subsidiary of the Parent (excluding any Foreign Subsidiary and CaptiveCo) formed or acquired after the Effective Date in accordance with the terms of this Agreement to (1) become a party to this Agreement by executing the Joinder

Agreement set forth as Exhibit F hereto (the "Joinder Agreement"), and (2) guarantee payment and performance of the Guaranteed Obligations pursuant to the Guaranty.

(b) Upon the request of the Agent, each Loan Party shall (i) grant Liens to the Agent, for the benefit of the Agent and the Lenders, pursuant to such documents as the Agent may reasonably deem necessary and deliver such property, documents, and instruments as the Agent may request to perfect the Liens of the Agent in any Property of such Loan Party which constitutes Collateral (including any real Property owned by any Loan Party that is currently subject to a Mortgage in favor of the Agent on the Effective Date but excluding a Mortgage on all other parcels of real Property located in the U.S. owned by any Loan Party) and (ii) in connection with the foregoing requirements, or either of them, deliver to the Agent all items of the type required by Section 4.1 (as applicable). Upon execution and delivery of such Loan Documents and other instruments, certificates, and agreements, each such Person shall automatically become a Guarantor hereunder and thereupon shall have all of the rights, benefits, duties, and obligations in such capacity under the Loan Documents.

(c) Without limiting the foregoing, each Loan Party shall, and shall cause each of the Parent's Subsidiaries which is required to become a Loan Party pursuant to the terms of this Agreement to, execute and deliver, or cause to be executed and delivered, to the Agent such documents and agreements, and shall take or cause to be taken such actions as the Agent may, from time to time, reasonably request to carry out the terms and conditions of this Agreement and the other Loan Documents.

(d) Notwithstanding anything herein to the contrary, and except for such real Property currently subject to a Mortgage in favor of the Agent on the Effective Date, no Loan Party shall create, incur, assume or suffer to exist any Lien, mortgage, deed of trust or similar instrument other than Permitted Liens upon any of its real Property, including any Material Real Property acquired after the Closing Date.

6.16. Dividends

.

(a) No Loan Party will declare or pay any dividends or make any distributions on its Capital Stock (other than dividends or distributions payable in its own common stock) or redeem, repurchase or otherwise acquire or retire any of its Capital Stock at any time outstanding, except that (x) any Subsidiary may declare and pay dividends or make distributions to the Borrower or PHI or to a Wholly-Owned Subsidiary of the Borrower or PHI, (y) so long as no Default or Unmatured Default then exists or would result therefrom, if the Parent qualifies as a partnership for U.S. federal income tax purposes, it may pay dividends or make distributions to its shareholders in an aggregate amount not greater than the amount necessary for such shareholders to pay their actual state and U.S. federal income tax liabilities in respect of income allocated to such shareholders by the Parent and (z) so long as no Default or Unmatured Default then exists or would result therefrom, the Borrower, PHI, Star Acquisitions, Inc. and their respective Subsidiaries may pay dividends or make distributions to the Parent in an aggregate amount not to exceed $10,000,000 per Fiscal Year solely to enable the Parent to pay, as the same becomes due and payable, its overhead expenses and any legal, accounting and other

professional fees and expenses it may incur. Notwithstanding the foregoing, any Loan Party may make any dividends or distributions to its respective parent company (and the Parent may make any dividends or distributions to its equity owners) or redeem, repurchase or otherwise acquire or retire any of its Capital Stock so long as (x) after giving pro forma effect thereto, Availability (with any Suppressed Availability being included in each calculation of Availability pursuant to this clause (x)) was not less than 15% of the Aggregate Revolving Commitment for any period of three consecutive days during the six-month period ending on the date on which such dividends, distributions, redemptions, repurchases or other acquisitions or retirements of its Capital Stock were made and is not projected to be less than 15% of the Aggregate Revolving Commitment during the six-month period immediately after the date on which such dividends, distributions, redemptions, repurchases or other acquisitions or retirements of its Capital Stock are made (with such projected Availability to be determined by reference to the average projected Availability on the last day of each of the relevant six months) and (y) the Fixed Charge Coverage Ratio is not less than 1.15 to 1.00 after giving pro forma effect to such distributions as if such distributions were paid on the first day of the relevant period; provided, however, that (1) no Default or Unmatured Default then exists or would result therefrom and (2) the Borrower Representative has delivered a certificate of an Authorized Officer attesting to the matters set forth in clauses (x) and (y) above and showing in reasonable detail all calculations with respect thereto.

(b) No Loan Party shall directly or indirectly enter into or become bound by any agreement, instrument, indenture or other obligation (other than this Agreement and the other Loan Documents) that could directly or indirectly restrict, prohibit or require the consent of any Person with respect to the payment of dividends or distributions or the making or repayment of intercompany loans by a Subsidiary of the Borrower or PHI to the Borrower or PHI, as applicable.

6.17. Indebtedness

. No Loan Party will create, incur or suffer to exist any Indebtedness, except:

(a) the Obligations;

(b) Indebtedness existing on the date hereof and described in Schedule 5.21;

(c) purchase money Indebtedness incurred in connection with the purchase of any Equipment; provided that, the amount of such purchase money Indebtedness shall be limited to an amount not in excess of the purchase price of such Equipment and the aggregate of all such purchase money Indebtedness incurred in any Fiscal Year shall not exceed $10,000,000 at any time outstanding;

(d) Indebtedness which represents an extension, refinancing, or renewal of any of the Indebtedness described in clauses (b), (c), (g), (h) and (m) hereof; provided that, (i) other than with respect to any extension, refinancing or renewal of the Indebtedness described in clause (m), the principal amount or interest rate of such Indebtedness is not increased (except to the extent of the capitalization of transaction fees and expenses), (ii) any Liens securing such Indebtedness are not extended to any

additional Property of any Loan Party, (iii) no Loan Party or other Subsidiary that is not originally obligated with respect to repayment of such Indebtedness is required to become obligated with respect thereto, (iv) such extension, refinancing or renewal does not result in a shortening of the average weighted maturity of the Indebtedness so extended, refinanced, or renewed (and, with respect to the Indebtedness described in clause (m), such extension, refinancing or renewal has a maturity no earlier than six months after the Facility Termination Date), (v) the terms of any such extension, refinancing, or renewal are not more onerous to the obligor thereunder than the original terms of such Indebtedness and (iv) if the Indebtedness that is refinanced, renewed, or extended was subordinated in right of payment to the Obligations, then the terms and conditions of the refinancing, renewal, or extension Indebtedness must include subordination terms and conditions that are at least as favorable to the Agent and the Lenders as those that were applicable to the refinanced, renewed, or extended Indebtedness;

(e) Indebtedness owing by any Loan Party, other than the Parent, to any other Loan Party with respect to intercompany loans, provided further, that:

(i) the applicable Loan Parties shall have executed and delivered to the other Loan Party, on the Effective Date, a demand note (collectively, the "Intercompany Notes") to evidence any such intercompany Indebtedness owing at any time by any Loan Party to another Loan Party, which Intercompany Notes shall be in form and substance reasonably satisfactory to the Agent and shall be pledged and delivered to the Agent pursuant to the Security Agreement as additional collateral security for the Secured Obligations;

(ii) the Loan Parties shall record all intercompany transactions on their books and records in accordance with GAAP consistently applied;

(iii) the obligations of the Loan Parties under any such Intercompany Notes shall be subordinated to the Obligations of the Loan Parties hereunder in a manner reasonably satisfactory to the Agent;

(iv) at the time any such intercompany loan or advance is made by a Loan Party and after giving effect thereto, such Loan Party shall be Solvent; and

(v) no Default or Unmatured Default would occur and be continuing after giving effect to any such proposed intercompany loan;

(f) (i) Contingent Obligations (A) by endorsement of instruments for deposit or collection in the ordinary course of business, (B) consisting of the Reimbursements Obligations and (C) consisting of the Guaranty and guarantees of Indebtedness incurred for the benefit of any other Loan Party (other than the Parent) if the primary obligation is not prohibited elsewhere in this Agreement and (ii) Indebtedness consisting of the excess of the benefit obligations of each Single Employer Plan over the fair market value of the assets of each such Plan, so long as the amount of such Indebtedness for all such Single Employer Plans, determined as of the most recent valuation date for each Plan using

PBGC actuarial assumptions for single employer plan termination, does not, individually or in the aggregate, create a Material Adverse Effect;

(g) Capitalized Lease Obligations which in the aggregate do not exceed $2,500,000 in any Fiscal Year;

(h) Indebtedness assumed in connection with any Permitted Acquisition; provided that, the aggregate amount of Indebtedness assumed under this clause (h) shall not exceed $1,000,000 and provided further that, such Indebtedness is not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and does not attach to any asset of the Borrower, PHI or any of their respective Subsidiaries;

(i) Indebtedness arising under Rate Management Transactions, so long as such Rate Management Transactions (i) are entered into to hedge or mitigate risks to which a Loan Party has actual exposure and (ii) are not entered into for investment or speculative purposes;

(j) unsecured Indebtedness in an amount not in excess of $150,000,000; provided that, after giving pro-forma effect thereto, the Senior Secured Leverage Ratio, as of the date of the incurrence of such Indebtedness, shall be no greater than (i) if such Indebtedness is incurred between April 1 and September 30 of any calendar year, 2.75 to 1.0, and (ii) if such Indebtedness is incurred on any other date, 4.25 to 1.0;

(k) Parent Subordinated Debt;

(l) other unsecured Indebtedness in an amount not in excess of $25,000,000; and

(m) unsecured Indebtedness of Parent, the Borrower and their respective Subsidiaries evidenced by a Demand Note.

6.18. Merger

. No Loan Party will merge or consolidate with or into any other Person, except that (a) any Subsidiary of the Borrower or PHI may merge into the Borrower, PHI or a Wholly-Owned Subsidiary of the Borrower or PHI and (b) any Loan Party (other than the Borrower) may merge with any other Loan Party.

6.19. Sale of Assets

. No Loan Party will lease, sell or otherwise dispose of its Property (including any Capital Stock owned by it) to any other Person, except:

(a) sales of Inventory in the ordinary course of business;

(b) the sale or other disposition of Equipment and the sale and/or leasing of real property that is obsolete or no longer useful in such Loan Party's business and having a book value not exceeding $10,000,000 in the aggregate in any Fiscal Year; and

(c) the sale or disposition of other assets having a book value not exceeding a Substantial Portion in the aggregate in any Fiscal Year.

The Net Cash Proceeds of any sale or disposition permitted pursuant to this Section (other than pursuant to Section 6.19(a)) shall be delivered to the Agent as required by Section 2.16 and applied to the Obligations as set forth therein.

6.20. Investments and Acquisitions

. No Loan Party will (i) make or suffer to exist any Investments (including without limitation, loans and advances to, and other Investments in, Subsidiaries), or commitments therefor, (ii) create any Subsidiary, (iii) become or remain a partner in any partnership or joint venture, or (iv) make any Acquisition, except:

(a) Cash Equivalent Investments, subject to control agreements in favor of the Agent for the benefit of the Lenders or otherwise subject to a perfected security interest in favor of the Agent for the benefit of the Lenders;

(b) Investments in Subsidiaries existing as of the Effective Date;

(c) other Investments in existence on the Effective Date and described in Schedule 6.20;

(d) Investments consisting of loans or advances made to employees of such Loan Party on an arms-length basis in the ordinary course of business consistent with past practices for travel and entertainment expenses, relocation costs and similar purposes up to a maximum of $250,000 to any employee and up to a maximum of $1,000,000 in the aggregate at any one time outstanding;

(e) subject to Sections 4.2(a) and 4.4 of the Security Agreement, Investments comprised of notes payable, or stock or other securities issued by Account Debtors to such Loan Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices, or acquired as a result of the bankruptcy or reorganization of such Account Debtor;

(f) additional Investments in Wholly-Owned Subsidiaries which are Loan Parties;

(g) Permitted Acquisitions and the formation of Wholly-Owned Subsidiaries of the Borrower or PHI in connection with a Permitted Acquisition;

(h) other Investments not to exceed $10,000,000 in the aggregate at any time outstanding;

(i) Investments in any existing or future, direct or indirect, Subsidiary which exists for the sole purpose of obtaining and holding a license which the Borrower deems necessary or advisable for its business; provided that (i) the total Investment in such Subsidiary does not exceed $100,000 in the aggregate for any one such Subsidiary or $200,000 in the aggregate for all such Subsidiaries and (ii) if the failure to have such license could reasonably be expected to have a Material Adverse Effect, the Subsidiary holding such license shall be a Guarantor;

(j) Investments in Unrestricted Subsidiaries not to exceed $20,000,000 in the aggregate at any time outstanding; and

(k) the creation and capitalization of CaptiveCo by Parent, the Borrower or any of their respective Subsidiaries and Investments in CaptiveCo by Parent, the Borrower or any of their respective Subsidiaries including (i) the initial capitalization of CaptiveCo related to the establishment thereof as a captive insurance company and/or (ii) ongoing capital contributions by Parent, the Borrower or such Subsidiary as may be required to satisfy applicable capital requirements with respect to CaptiveCo (which amounts described in this clause (ii) shall include the aggregate value of applicable insurance claims projected by Parent, the Borrower and their advisors to be filed in a future period), in each case, to be made in accordance with customary practice in the insurance industry and applicable laws, rules and regulations.

6.21. Liens

.

(a) No Loan Party will create, incur, or suffer to exist any Lien in, of, or on the Property of such Loan Party, except the following (collectively, "Permitted Liens"):

(i) Liens for taxes, fees, assessments, or other governmental charges or levies on the Property of such Loan Party if such Liens (1) shall not at the time be delinquent or (2) subject to the provisions of Section 6.6, do not secure obligations in excess of $1,000,000, are being contested in good faith and by appropriate proceedings diligently pursued, adequate reserves in accordance with GAAP have been set aside on the books of such Loan Party, and a stay of enforcement of such Lien is in effect;

(ii) Liens imposed by law, such as carrier's, warehousemen's, and mechanic's Liens and other similar Liens arising in the ordinary course of business which secure payment of obligations not more than ten days past due or which are being contested in good faith by appropriate proceedings diligently pursued and for which adequate reserves shall have been set aside on such Loan Party's books;

(iii) statutory Liens in favor of landlords of real Property leased by such Loan Party; provided that, such Loan Party is current with respect to payment of all rent and other amounts due to such landlord under any lease of such real Property;

(iv) Liens arising out of pledges or deposits under worker's compensation laws, unemployment insurance, old age pensions, or other social security or retirement benefits, or similar legislation or to secure the performance of bids, tenders, or contracts (other than for the repayment of Indebtedness) or to secure indemnity, performance, or other similar bonds for the performance of bids, tenders, or contracts (other than for the repayment of Indebtedness) or to secure statutory obligations (other than liens arising under ERISA or

Environmental Laws) or surety or appeal bonds, or to secure indemnity, performance, or other similar bonds;

(v) Leases or subleases granted to others in the ordinary course of business, utility easements, building restrictions, and such other encumbrances or charges against real Property as are of a nature generally existing with respect to properties of a similar character, which do not in any material way affect the marketability or impair the value of such real Property, which do not interfere with the use thereof in the business of such Loan Party and which do not impair the ability of the Agent or the Lenders to realize upon the Collateral;

(vi) Liens existing on the Effective Date and described in Schedule 6.21;

(vii) Liens resulting from any extension, refinancing, or renewal of the related Indebtedness as permitted pursuant to Section 6.17(d); provided that, the Liens evidenced thereby are not increased to cover any additional Property not originally covered thereby;

(viii) Liens securing purchase money Indebtedness of such Loan Party permitted pursuant to Section 6.17(c); provided that, such Liens attach only to the Property which was purchased with the proceeds of such purchase money Indebtedness;

(ix) Liens on property or assets (other than Accounts and Inventory) acquired pursuant to a Permitted Acquisition, or on property or assets (other than Accounts and Inventory) of a Loan Party in existence at the time such Loan Party is acquired pursuant to a Permitted Acquisition, provided that (1) any Indebtedness that is secured by such Liens is permitted under Section 6.17, and (2) such Liens are not incurred in connection with, or in contemplation or anticipation of, such Permitted Acquisition and do not attach to any asset of any other Loan Party;

(x) Liens in favor of the Agent granted pursuant to any Loan Document and Liens in respect of other Secured Obligations;

(xi) Liens on up to $500,000 of cash on deposit in the Regions Cash Collateral Account securing the Regions Hedge Obligations;

(xii) any attachment or judgment Lien, unless the judgment it secures shall not, within 30 days after notice of the entry thereof, have been discharged or execution thereof stayed pending appeal or review, or shall not have been discharged within 30 days after expiration of any such stay; and

(xiii) any beneficial interest granted by CaptiveCo in, and any contribution of assets to, any trust account established for the benefit of a ceding insurance company pursuant to 11 NYCRR § 126.1 et seq. (Regulation 114 of the New York Insurance Department) or any comparable law or regulation of the

domiciliary jurisdiction of any insurance company ceding insurance business to CaptiveCo.

(b) Notwithstanding the foregoing, none of the Liens permitted pursuant to this Section 6.21, other than (1) clauses (i) and (x) above, may at any time attach to any Accounts of any Loan Party and (2) clauses (i) through (iii) and (x) above, may at any time attach to any Inventory of any Loan Party.

(c) Other than as provided in the Loan Documents or in connection with the creation or incurrence of any Indebtedness under Section 6.17(c), no Loan Party will enter into or become subject to any negative pledge or other restriction on the right of such Loan Party to grant Liens to the Agent and the Lenders on any of its Property; provided that, any such negative pledge or other restriction entered into in connection with the creation of Indebtedness under Section 6.17(c) shall be limited to the Property securing such purchase money Indebtedness.

6.22. Change of Name or Location; Change of Fiscal Year

. No Loan Party shall (a) change its name as it appears in official filings in the state of its incorporation or organization, (b) change its chief executive office, principal place of business, mailing address, corporate offices or warehouses or locations at which Collateral is held or stored, or the location of its records concerning the Collateral as set forth in the Security Agreement, (c) change the type of entity that it is for state law or income tax purposes, (d) change its organization identification number, if any, issued by its state of incorporation or other organization or (e) change its state of incorporation or organization, in each case, unless (1) the Agent shall have received at least thirty days prior written notice of such change and (2) the Agent shall have acknowledged in writing that, either (i) such change will not adversely affect the validity, perfection or priority of the Agent's security interest in the Collateral, or (ii) any reasonable action requested by the Agent in connection therewith has been completed or taken (including any action to continue the perfection of any Liens in favor of the Agent, on behalf of Lenders, in any Collateral), provided that, any new location shall be in the continental U.S. No Loan Party shall change its Fiscal Year. Notwithstanding the foregoing, the Parent may make an election to be treated as a corporation or association for income tax purposes only without meeting the requirements of (1) and (2) of this Section 6.22 provided that the Agent shall receive written notice of the election within 10 days of the date such election was made and that the election will not materially increase the combined income tax liability of the Loan Parties.

6.23. Affiliate Transactions

. No Loan Party will enter into any transaction (including, without limitation, the purchase or sale of any Property or service) with, or make any payment or transfer (including, without limitation, any payment or transfer with respect to any fees or expenses for management services) to, any Affiliate which is not a Loan Party except in the ordinary course of business and pursuant to the reasonable requirements of such Loan Party's business and upon fair and reasonable terms no less favorable to such Loan Party than such Loan Party would obtain in a comparable arms-length transaction; provided that, solely for purposes of this Section 6.23, CaptiveCo shall be deemed to not be an Affiliate. No Loan Party shall pay any amount in respect of Management Fees and Expenses; provided that, so long as no Default or Unmatured Default then exists or would result therefrom (after giving pro forma effect thereto), the Parent may pay Management Fees and Expenses to the General Partner pursuant to the

Second Amended and Restated Agreement of Limited Partnership, as in effect on the date hereof.

6.24. Amendments to Agreements

. No Loan Party will, nor will any Loan Party permit any of its Subsidiaries to, amend, modify, terminate or waive any of its rights under its articles of incorporation, charter, certificate of formation, by-laws, operating, management or partnership agreement or other organizational document to the extent any such amendment, modification, termination or waiver would be materially adverse to the Lenders.

6.25. Prepayment of Indebtedness; Subordinated Indebtedness

.

(a) No Loan Party shall, directly or indirectly, voluntarily purchase, redeem, defease or prepay any principal of, premium, if any, interest or other amount payable in respect of any Indebtedness prior to its scheduled maturity, other than (i) the Obligations; (ii) Indebtedness secured by a Permitted Lien if the asset securing such Indebtedness has been sold or otherwise disposed of; (iii) Indebtedness permitted by Section 6.17(d) upon any refinancing thereof in accordance therewith; and (iv) Indebtedness that is refinanced with Indebtedness permitted under Section 6.17 (d).

(b) No Loan Party shall make any amendment or modification that is in any way adverse to the interests of the Lenders, to the indenture, note or other agreement evidencing or governing any Subordinated Indebtedness, or directly or indirectly voluntarily prepay, defease or in substance defease, purchase, redeem, retire or otherwise acquire, any Subordinated Indebtedness.

6.26. Financial Contracts

. No Loan Party shall enter into or remain liable upon any Financial Contract, except for Rate Management Transactions permitted by Section 6.17 and Section 6.33.

6.27. Capital Expenditures

. The Loan Parties shall not expend, or be committed to expend, in excess of $15,000,000 for Capital Expenditures during any Fiscal Year in the aggregate for the Parent and its Subsidiaries; provided, however, that the amount of permitted Capital Expenditures under this Section 6.27 only will be increased in any Fiscal Year by the amount, if positive, equal to 50% of the difference between the Capital Expenditures limit specified in this Section 6.27 *minus* the actual amount of any Capital Expenditures expended pursuant this Section 6.27 during the prior Fiscal Year (the "Carry Over Amount"). Any Carry Over Amount may only be carried over to the next succeeding year.

6.28. Financial Covenants

.

(a) On any date on which any Term Loans are outstanding, or any date thereafter on which Availability is less than 12.5% of the Aggregate Revolving Commitment, the Borrower will not permit the Fixed Charge Coverage Ratio at any such time to be less than 1.10 to 1.00; and

(b) If any Term Loans are outstanding on the last date of any Fiscal Quarter, the Borrower will not permit the Senior Secured Leverage Ratio on such date to be more

than (i) 3.0 to 1.0 as of June 30th or September 30th of any Fiscal Year or (ii) 4.50 to 1.0 as of December 31st or March 31st of any Fiscal Year.

6.29. Depository Banks

. Each Loan Party shall maintain either (a) the Agent or (b) any other financial institution reasonably acceptable to the Agent that has executed and delivered to the Agent satisfactory control agreements, as such Loan Party's principal depository bank, including for the maintenance of operating, administrative, cash management, collection activity, and other deposit accounts for the conduct of its business.

6.30. Real Property Purchases

. Except as otherwise permitted in connection with a Permitted Acquisition, no Loan Party shall purchase a fee simple ownership interest in real Property with an aggregate purchase price in excess of $2,000,000.

6.31. Sale of Accounts

. No Loan Party will, nor will any Loan Party permit its Subsidiary to, sell or otherwise dispose of any notes receivable or accounts receivable, with or without recourse.

6.32. Parent

. The Parent shall not engage in any trade or business, or own any assets (other than the Capital Stock of its Subsidiaries) or incur any Indebtedness (other than the Secured Obligations, its existing Indebtedness; provided that the Parent may also (x) incur Indebtedness that is subordinated to the Obligations on terms satisfactory to the Agent in its Permitted Discretion ("Parent Subordinated Debt") and (y) incur Indebtedness pursuant to Section 6.17(l) to the extent no principal payments are payable with respect thereto prior to the date which is six months after the Facility Termination Date; provided further that, in the case of clauses (x) and (y) above, (i) the Net Cash Proceeds of such Parent Subordinated Debt or other unsecured Indebtedness, as the case may be, are contributed to Petro as a common equity contribution, or as an intercompany loan in accordance with Section 6.17(e), and (ii) the Parent has provided the Agent with all documents evidencing such Parent Subordinated Debt or such other unsecured Indebtedness, as the case may be, at least 5 Business Days prior to the issuance or incurrence thereof.

6.33. Fixed Price Supply Contracts; Certain Policies

.

(a) No Loan Party will at any time be a party or subject to any contract for the purchase or supply by such parties of any product except where (i) the purchase price is set with reference to a spot index or indices substantially contemporaneously with the delivery of such product or (ii) delivery of such product is to be made no more than 18 months after the purchase price is agreed to (subject to appropriate hedging with respect to the delivery of such products in accordance with the hedging policies of the relevant Loan Parties).

(b) No Loan Party will amend, modify or waive the hedging policy or supply inventory position policy referred to in Section 5.33, except that any Loan Party may enter into Commodity Hedging Agreements as permitted under the other provisions hereof. Such Loan Party will provide the Agent and the Lenders with prompt written notice of any such new Commodity Hedging Agreement. Subject to the foregoing

exception, each Loan Party will comply in all material respects with such policies at all times.

6.34. CaptiveCo Loans and Claim Reimbursement.

. Subject to the requirements and restrictions of applicable insurance laws, rules and regulations, Parent or a Subsidiary of Parent shall cause CaptiveCo to (i) distribute cash and/or make loans (such distributions and/or loans, the "CaptiveCo Loans") evidenced by a Demand Note from Parent or its Subsidiaries at times and in the maximum amounts as are customary and permitted under applicable laws, rules and regulations (which amount, for the avoidance of doubt, shall be no greater than 50% of all assets of CaptiveCo, (ii) reimburse Parent or its Subsidiaries for any payments made in respect of claims applicable to and covered by CaptiveCo within one month of any such payments being made and (iii) engage solely in business activities that are customary for captive insurance companies in the insurance industry and permitted under applicable laws, rules and regulations with respect thereto.

## ARTICLE VII

## DEFAULTS

The occurrence of any one or more of the following events shall constitute a "Default" hereunder:

(a) any representation or warranty made or deemed made by or on behalf of any Loan Party to any Lender or the Agent under or in connection with this Agreement, any other Loan Document, any Credit Extension, or any certificate or information delivered in connection with any of the foregoing shall be materially false on the date as of which made;

(b) (i) nonpayment, when due (whether upon demand or otherwise), of any principal owing under any of the Loan Documents and (ii) nonpayment, within 2 days after it is due, of any interest, fee, Reimbursement Obligation or any other obligation owing under any of the Loan Documents;

(c) the breach by any Loan Party of any of the terms or provisions of Section 6.1, 6.2, 6.3(a), 6.13, 6.14, 6.16 through 6.34;

(d) the breach by any Loan Party (other than a breach which constitutes a Default under another Section of this Article VII) of any of the terms or provisions of (i) Section 6.3 (other than Section 6.3(a)) or 6.4 through 6.15 of this Agreement which is not remedied within 10 days after the earlier of such breach or written notice from the Agent or any Lender or (ii) any other Section of this Agreement which is not remedied within 20 days after the earlier of such breach or written notice from the Agent or any Lender;

(e) failure of any Loan Party to pay when due any Material Indebtedness or a default, breach or other event occurs under any term, provision or condition contained in any Material Indebtedness Agreement of any Loan Party, the effect of which default, event or condition is to cause, or to permit the holder(s) of such Material Indebtedness or the lender(s) under any Material Indebtedness Agreement to cause, such Material

Indebtedness to become due prior to its stated maturity or any commitment to lend under any Material Indebtedness Agreement to be terminated prior to its stated expiration date; any Material Indebtedness of any Loan Party shall be declared to be due and payable or required to be prepaid or repurchased (other than by a regularly scheduled payment) prior to the stated maturity thereof; or any Loan Party shall not pay, or admit in writing its inability to pay, its debts generally as they become due;

(f) any Loan Party shall (i) have an order for relief entered with respect to it under the Bankruptcy Code as now or hereafter in effect, (ii) make an assignment for the benefit of creditors, (iii) apply for, seek, consent to, or acquiesce in, the appointment of a receiver, custodian, trustee, examiner, liquidator or similar official for it or any portion of its Property which constitutes a Substantial Portion, (iv) institute any proceeding seeking an order for relief under the Bankruptcy Code as now or hereafter in effect or seeking to adjudicate it a bankrupt or insolvent, or seeking dissolution, winding up, liquidation, reorganization, arrangement, adjustment or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors or fail to file an answer or other pleading denying the material allegations of any such proceeding filed against it, (v) take any corporate or partnership action to authorize or effect any of the foregoing actions set forth in this subsection (f) or (vi) fail to contest in good faith any appointment or proceeding described in subsection (g) below;

(g) a receiver, trustee, examiner, liquidator or similar official shall be appointed for any Loan Party or any portion of its Property which constitutes a Substantial Portion, or a proceeding described in subsection (f)(iv) of Article VII shall be instituted against any Loan Party and such appointment continues undischarged or such proceeding continues undismissed or unstayed for a period of sixty consecutive days;

(h) any court, government or governmental agency shall condemn, seize or otherwise appropriate, or take custody or control of, all or any portion of the Property of any Loan Party which, when taken together with all other Property of any Loan Party so condemned, seized, appropriated, or taken custody or control of, during the twelve-month period ending with the month in which any such action occurs, constitutes a Substantial Portion;

(i) any loss, theft, damage or destruction of any item or items of Collateral or other property of any Loan Party occurs which could reasonably be expected to cause a Material Adverse Effect and is not adequately covered by insurance;

(j) any Loan Party shall fail within thirty days to pay, bond or otherwise discharge one or more (i) judgments or orders for the payment of money in excess of $500,000 (or the equivalent thereof in currencies other than U.S. Dollars) in the aggregate, or (ii) nonmonetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect, which judgments or orders, in any such case, are not stayed on appeal or otherwise being appropriately contested in good faith by proper proceedings diligently pursued;

(k) any Change in Control shall occur;

(l) an ERISA Event shall have occurred which, together with all such other ERISA Events that have occurred, singly or in the aggregate, could reasonably be expected to have a Material Adverse Effect;

(m) any Loan Party shall (i) be the subject of any proceeding or investigation pertaining to the release by any Loan Party or any other Person of any Materials of Environmental Concern into the environment, or (ii) violate any Environmental Law, which, in the case of an event described in clause (i) or clause (ii), could reasonably be expected to have a Material Adverse Effect;

(n) the occurrence of any "default", as defined in any Loan Document (other than this Agreement) or the breach of any of the terms or provisions of any Loan Document (other than this Agreement), which default or breach continues beyond any period of grace therein provided;

(o) the Guaranty or the partnership agreement of the Parent shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of the Guaranty or the partnership agreement of the Parent, or any Guarantor shall fail to comply with any of the terms or provisions of the Guaranty to which it is a party, or any Guarantor shall deny that it has any further liability under the Guaranty to which it is a party, or shall give notice to such effect;

(p) any Collateral Document shall for any reason fail to create a valid and perfected first priority security interest in any Collateral purported to be covered thereby, except as permitted by the terms of any Collateral Document, or any Collateral Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Collateral Document, or any Loan Party shall fail to comply with any of the terms or provisions of any Collateral Document;

(q) any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms);

(r) the representations and warranties set forth in Section 5.17 (Plan Assets; Prohibited Transactions) shall at any time not be true and correct; or

(s) the Borrower, PHI or any of their respective Subsidiaries shall fail to pay when due any Operating Lease Obligation in excess of $750,000.

## ARTICLE VIII

## REMEDIES; WAIVERS AND AMENDMENTS

8.1. Remedies

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(a) If any Default occurs, the Agent may in its discretion (and at the written request of the Required Lenders, shall) (i) reduce or terminate the Aggregate Revolving Commitment, Aggregate Term Commitment or the Commitment, (ii) reduce the advance rates set forth in the definition of the Borrowing Base or reduce one or more of the other elements used in computing the Borrowing Base, (iii) terminate or suspend the obligations of the Lenders to make Loans hereunder and the obligation and power of the LC Issuer to issue Facility LCs, (iv) declare all or any portion of the Obligations to be due and payable, whereupon such Obligations shall become immediately due and payable, without presentment, demand, protest or notice of any kind, all of which the Borrower hereby expressly waives, (v) upon notice to the Borrower Representative and in addition to the continuing right to demand payment of all amounts payable under this Agreement, the Agent may either (1) make demand on the Borrower to pay, and the Borrower will, forthwith upon such demand and without any further notice or act, pay to the Agent an amount, in immediately available funds (which funds shall be held in the Facility LC Collateral Account), equal to 105% of the Collateral Shortfall Amount or (2) deliver a Supporting Letter of Credit as required by Section 2.1.3(l), whichever the Agent may specify in its sole discretion, (vi) increase the rate of interest applicable to the Loans and the LC Fees as set forth in this Agreement and (vii) exercise any rights and remedies provided to the Agent under the Loan Documents or at law or equity, including all remedies provided under the UCC.

(b) If any Default described in subsections (f) or (g) of Article VII occurs with respect to any Loan Party, the obligations of the Lenders to make Loans hereunder and the obligation and power of the LC Issuer to issue Facility LCs shall automatically terminate and all Obligations shall immediately become due and payable without any election or action on the part of the Agent, the LC Issuer or any Lender and the Loan Parties will be and become thereby unconditionally obligated, without any further notice, act or demand, to pay to the Agent an amount equal to 105% of the Collateral Shortfall Amount, which funds shall be deposited in the Facility LC Collateral Account.

(c) If, within thirty days after acceleration of the maturity of the Obligations or termination of the obligations of the Lenders to make Loans and the obligation and power of the LC Issuer to issue Facility LCs hereunder as a result of any Default (other than any Default as described in subsections (f) or (g) of Article VII with respect to the Borrower) and before any judgment or decree for the payment of the Obligations due shall have been obtained or entered, the Required Lenders (in their sole discretion) shall so direct, the Agent shall, by notice to the Borrower Representative, rescind and annul such acceleration and/or termination.

(d) If at any time while any Default is continuing, the Agent determines that the Collateral Shortfall Amount at such time is greater than zero, the Agent may make demand on the Borrower (upon notice to the Borrower Representative) to pay, and the Borrower will, forthwith upon such demand and without any further notice or act, pay to the Agent an amount equal to 105% of the Collateral Shortfall Amount, which funds shall be deposited in the Facility LC Collateral Account. The Borrower hereby pledges, assigns, and grants to the Agent, on behalf of and for the benefit of the Agent, the Lenders, and the LC Issuer, a security interest in all of the Borrower's right, title, and

interest in and to all funds which may from time to time be on deposit in the Facility LC Collateral Account to secure the prompt and complete payment and performance of the Obligations.

(e) The Agent may at any time or from time to time after funds are deposited in the Facility LC Collateral Account, first, apply such funds to the payment of the Obligations (other than the Obligations with respect to the Term Loans) and any other amounts as shall from time to time have become due and payable by the Borrower to the Revolving Lenders or the LC Issuer under the Loan Documents and second, apply such funds to the payment of the Obligations with respect to the Term Loans and any other amounts as shall from time to time have become due and payable by the Borrower to the Term Lenders under the Loan Documents.

(f) At any time while any Default is continuing, neither the Borrower nor any Person claiming on behalf of or through the Borrower shall have any right to withdraw any of the funds held in the Facility LC Collateral Account. After all of the Secured Obligations have been indefeasibly paid in full and the Commitment has been terminated, any funds remaining in the Facility LC Collateral Account shall be returned by the Agent to the Borrower or paid to whomever may be legally entitled thereto at such time.

8.2. Waivers by Loan Parties

. Except as otherwise provided for in this Agreement or by applicable law, each Loan Party waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the Agent on which any Loan Party may in any way be liable, and hereby ratifies and confirms whatever the Agent may do in this regard, (b) all rights to notice and a hearing prior to the Agent's taking possession or control of, or to the Agent's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing the Agent to exercise any of its remedies, and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

8.3. Amendments

.

(a) Subject to the provisions of Sections 2.12(b) and (c) and this Section 8.3, no amendment, waiver or modification of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by any Loan Party therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or the Agent with the consent in writing of the Required Lenders) and the Loan Parties and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given; provided, however, that no such amendment, waiver or modification shall (A) (i) include additional categories of Collateral in the Borrowing Base if such inclusion would increase Availability, (ii) increase the amount to be added to the calculation of the Borrowing Base pursuant to clause (e) of the definition thereof or (iii) modify any Eligibility Definition if such modification would increase Availability, in each case, without the prior written consent of the Revolving Lenders in the aggregate holding at least 75% of

the Aggregate Revolving Commitments or, if the Aggregate Revolving Commitments have been terminated, Lenders in the aggregate holding at least 75% of the Aggregate Revolving Credit Exposure, (B) increase the percentage advance rates set forth in the definition of Borrowing Base without the prior written consent of each Revolving Lender, (C) amend the definition of "Excess Cash Flow" (and its component definitions) or the provisions of Section 2.16(e) without the consent of the Required Term Lenders or (D) amend the provisions of Section 4.2 (to the extent such amendment relates solely to conditions precedent to Credit Extensions other than Term Loans) without the consent of the Required Revolving Lenders.

(b) Notwithstanding subsection (a) above, no such amendment, waiver or other modification with respect to this Agreement shall

(i) without the consent of each Lender directly affected thereby:

(A) extend the final maturity of any Loan to a date after the Facility Termination Date;

(B) postpone any regularly scheduled payment of principal of any Loan or reduce or forgive all or any portion of the principal amount of any Loan or any Reimbursement Obligation or reduce the amount or extend the payment date for, the mandatory payments required under Article II (other than Section 2.16(e));

(C) reduce the rate or extend the time of payment of interest or fees payable to the Lenders pursuant to any Loan Document;

(D) extend the Facility Termination Date;

(E) increase the amount of the Commitment of any Lender hereunder (other than pursuant to Section 12.3); or

(F) amend this Section 8.3; and

(ii) without the consent of all of the Lenders:

(A) change Section 2.19 hereof in any manner that would alter the sharing of payments required thereunder;

(B) reduce the percentage or number of Lenders specified in the definition of Required Lenders, Required Revolving Lenders or Required Term Lenders or eliminate or reduce the voting rights of any Lender under this Section 8.3;

(C) permit any Loan Party to assign its rights under this Agreement;

(D) release all or substantially all of the Guarantors; or

(E) except as provided in any Collateral Document, release all or substantially all of the Collateral.

(c) No amendment of any provision of this Agreement relating to the Agent or to the Non-Ratable Loans, the Swingline Loans, the Overadvances or the Protective Advances shall be effective without the written consent of the Agent. No amendment of any provision relating to the LC Issuer shall be effective without the written consent of the LC Issuer. The Agent may (i) amend Schedule I to reflect assignments entered into pursuant to Section 12.3 and (ii) waive payment of the fee required under Section 12.3(c) without obtaining the consent of any other party to this Agreement.

(d) If, in connection with any proposed amendment, waiver or consent (a "Proposed Change") requiring the consent of all Lenders, the consent of the Required Lenders is obtained, but the consent of other Lenders is not obtained (any such Lender whose consent is not obtained being referred to herein as a "Non-Consenting Lender"), then, so long as the Agent is not a Non-Consenting Lender, the Borrower may elect to replace such Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is reasonably satisfactory to the Borrower and the Agent shall agree, as of such date, to purchase for cash the Advances and other Obligations due to the Non-Consenting Lender pursuant to an Assignment Agreement (provided that, if such purchase is otherwise made in accordance with the terms hereof, the Agent may, in its sole discretion, deem such purchase to have been made pursuant to an Assignment Agreement without requiring the execution of an Assignment Agreement by any party, and each party hereto hereby agrees for all purposes hereunder and under the other Loan Documents that such purchase shall be deemed to have been effected pursuant to an executed Assignment Agreement in respect of such purchased amount and each Person that would have otherwise been required to be a party thereto shall be bound by the provisions thereof) and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of Section 12.3 applicable to assignments, and (ii) the Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrower hereunder to and including the date of termination, including without limitation payments due to such Non-Consenting Lender under Sections 3.1, 3.2 and 3.5, and (2) an amount, if any, equal to the payment which would have been due to such Lender on the day of such replacement under Section 3.4 had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

(e) Notwithstanding the foregoing, any provision of this Agreement or any other Credit Document may be amended by an agreement in writing entered into by the Borrower and the Agent to (x) cure any ambiguity, omission, mistake, defect or inconsistency (as reasonably determined by the Agent and the Borrower) and (y) effect administrative changes of a technical or immaterial nature (including to effect changes to the terms and conditions applicable solely to the LC Issuers in respect of issuances of Letters of Credit)

8.4. Preservation of Rights

. No delay or omission of the Lenders, the LC Issuer or the Agent to exercise any right under the Loan Documents shall impair such right or be construed to be a waiver of any Default or an acquiescence therein, and the making of a Credit Extension notwithstanding the existence of a Default or the inability of the Borrower to satisfy the conditions precedent to such Credit Extension shall not constitute any waiver or acquiescence. Any single or partial exercise of any such right shall not preclude other or further exercise thereof or the exercise of any other right, and no waiver, amendment or other variation of the terms, conditions or provisions of the Loan Documents whatsoever shall be valid unless in writing signed by the Lenders required pursuant to Section 8.3, and then only to the extent in such writing specifically set forth. All remedies contained in the Loan Documents or by law afforded shall be cumulative and all shall be available to the Agent, the LC Issuer and the Lenders until the Obligations have been paid in full.

**ARTICLE IX**

**GENERAL PROVISIONS**

9.1. Survival of Representations

. All representations and warranties of the Loan Parties contained in this Agreement and the other Loan Documents shall survive the execution and delivery of the Loan Documents and the making of the Credit Extensions herein contemplated.

9.2. Governmental Regulation

. Anything contained in this Agreement to the contrary notwithstanding, neither the LC Issuer nor any Lender shall be obligated to extend credit to the Borrower in violation of any limitation or prohibition provided by any applicable statute or regulation.

9.3. Headings

. Section headings in the Loan Documents are for convenience of reference only, and shall not govern the interpretation of any of the provisions of the Loan Documents.

9.4. Entire Agreement

. The Loan Documents embody the entire agreement and understanding among the Loan Parties, the Agent, the LC Issuer and the Lenders and supersede all prior agreements and understandings among the Loan Parties, the Agent and the Lenders relating to the subject matter thereof other than those contained in the Fee Letter which shall survive and remain in full force and effect during the term of this Agreement.

9.5. Several Obligations; Benefits of this Agreement

. The respective obligations of the Lenders hereunder are several and not joint and no Lender shall be the partner or agent of any other lender (except to the extent to which the Agent is authorized to act as administrative agent for the Lenders hereunder). The failure of any Lender to perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. This Agreement shall not be construed so as to confer any right or benefit upon any Person other than the parties to this Agreement and their respective successors and assigns, provided however, that the parties hereto expressly agree that the Arranger shall enjoy the benefits of the provisions of Sections 9.6, 9.10 and 10.11 to the extent specifically set forth therein and shall have the right to

enforce such provisions on its own behalf and in its own name to the same extent as if it were a party to this Agreement.

9.6. Expenses; Indemnification

(a) Expenses. The Borrower shall reimburse the Agent and the Arrangers for any costs, internal charges and reasonable out-of-pocket expenses (including attorneys' fees and time charges of attorneys for the Agent, which attorneys may be employees of the Agent) paid or incurred by the Agent or the Arrangers in connection with the preparation, negotiation, execution, delivery, syndication, distribution (including, without limitation, via the internet or through a service such as IntraLinks), review, amendment, modification, and administration of the Loan Documents. The Borrower also agrees to reimburse the Agent, the Arrangers, the LC Issuer and the Lenders for any costs, internal charges and out-of-pocket expenses (including attorneys' fees and time charges of attorneys for the Agent, the Arrangers, the LC Issuer and the Lenders, which attorneys may be employees of the Agent, the Arrangers, the LC Issuer or the Lenders) paid or incurred by the Agent, the Arrangers, the LC Issuer or any Lender in connection with the collection and enforcement of the Loan Documents. Expenses being reimbursed by the Borrower under this Section include, without limitation, costs and expenses incurred in connection with:

(i) appraisals of all or any portion of the Collateral, including each parcel of real Property or interest in real Property, Machinery or Equipment described in any Collateral Document, which appraisals shall be in conformity with the applicable requirements of any law or any governmental rule, regulation, policy, guideline or directive (whether or not having the force of law), or any interpretation thereof, including, without limitation, the provisions of Title XI of FIRREA, and any rules promulgated to implement such provisions (including reasonable travel, lodging, meals and other out of pocket expenses);

(ii) field examinations and audits and the preparation of Reports at the Agent's then customary charge, *plus* reasonable travel, lodging, meals and other out of pocket expenses;

(iii) any amendment, modification, supplement, consent, waiver or other documents prepared with respect to any Loan Document and the transactions contemplated thereby;

(iv) lien and title searches and title insurance;

(v) taxes, fees and other charges for recording the Mortgages, filing financing statements and continuations, and other actions to perfect, protect, and continue the Agent's Liens (including costs and expenses paid or incurred by the Agent in connection with the consummation of the Agreement);

(vi) sums paid or incurred to take any action required of any Loan Party under the Loan Documents that such Loan Party fails to pay or take;

(vii) any litigation, contest, dispute, proceeding or action (whether instituted by Agent, the LC Issuer, any Lender, any Loan Party or any other Person and whether as to party, witness or otherwise) in any way relating to the Collateral, the Loan Documents or the transactions contemplated thereby; and

(viii) costs and expenses of forwarding loan proceeds, collecting checks and other items of payment, and establishing and maintaining the Funding Account and lock boxes, and costs and expenses of preserving and protecting the Collateral.

The foregoing shall not be construed to limit any other provisions of the Loan Documents regarding costs and expenses to be paid by the Borrower. All of the foregoing costs and expenses may be charged to the Borrower's Funding Account as Revolving Loans or to another deposit account, all as described in Section 2.18(b).

(b) Indemnification. The Borrower hereby further agrees to indemnify the Agent, the Arrangers, the LC Issuer, each Lender, their respective Affiliates, and each of their directors, officers and employees against all losses, claims, damages, penalties, judgments, liabilities and expenses (including, without limitation, all expenses of litigation or preparation therefor whether or not the Agent, the Arrangers, the LC Issuer, any Lender or any Affiliate is a party thereto) which any of them may pay or incur arising out of or relating to this Agreement, the other Loan Documents, the transactions contemplated hereby or the direct or indirect application or proposed application of the proceeds of any Credit Extension hereunder except to the extent that they are determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the party seeking indemnification. The obligations of the Borrower under this Section 9.6 shall survive the termination of this Agreement.

9.7. Numbers of Documents

. All statements, notices, closing documents, and requests hereunder shall be furnished to the Agent with sufficient counterparts so that the Agent may furnish one to each of the Lenders.

9.8. Accounting

. Except as provided to the contrary herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP in a manner consistent with that used in preparing the financial statements referred to in Section 5.5. 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 the Borrower (through the Borrower Representative), the Agent or the Required Lenders shall so request the Agent, the Lenders and the Loan Parties 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, such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and the Borrower shall provide to the Agent and the Lenders reconciliation statements showing the difference in such calculation, together with the delivery of monthly, quarterly and annual financial statements required hereunder.

9.9. Severability of Provisions

. Any provision in any Loan Document that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of all Loan Documents are declared to be severable.

9.10. Nonliability of Lenders

. The relationship between any Loan Party on the one hand and the Lenders, the LC Issuer and the Agent on the other hand shall be solely that of debtor and creditor. Neither the Agent, the Arrangers, the LC Issuer nor any Lender shall have any fiduciary responsibilities to any Loan Party. Neither the Agent, the Arrangers, the LC Issuer nor any Lender undertakes any responsibility to any Loan Party to review or inform such Loan Party of any matter in connection with any phase of any Loan Party's business or operations. The Loan Parties agree that neither the Agent, the Arrangers, the LC Issuer nor any Lender shall have liability to any Loan Party (whether sounding in tort, contract or otherwise) for losses suffered by any Loan Party in connection with, arising out of, or in any way related to, the transactions contemplated and the relationship established by the Loan Documents, or any act, omission or event occurring in connection therewith, unless it is determined in a final non-appealable judgment by a court of competent jurisdiction that such losses resulted from the gross negligence or willful misconduct of the party from which recovery is sought. Neither the Agent, the Arrangers, the LC Issuer nor any Lender shall have any liability with respect to, and each Loan Party hereby waives, releases and agrees not to sue for, any special, indirect, consequential or punitive damages suffered by any Loan Party in connection with, arising out of, or in any way related to the Loan Documents or the transactions contemplated thereby.

9.11. Confidentiality

. The Agent and each Lender agrees to hold any confidential information which it may receive from the Borrower in connection with this Agreement in confidence, except for disclosure (a) to its Affiliates and to the Agent and any other Lender and their respective Affiliates, (b) to legal counsel, accountants, and other professional advisors to such Lender or to a Transferee or proposed Transferee, (c) to regulatory officials, (d) to any Person as requested pursuant to or as required by law, regulation, or legal process, (e) to any Person in connection with any legal proceeding to which it is a party, (f) to its direct or indirect contractual counterparties in swap agreements or to legal counsel, accountants and other professional advisors to such counterparties, (g) permitted by Section 12.4, (h) to rating agencies if requested or required by such agencies in connection with a rating relating to the Credit Extensions hereunder and (i) in connection with the exercise of any remedy hereunder or under any other Loan Document. Without limiting Section 9.4, the Borrower agrees that the terms of this Section 9.11 shall set forth the entire agreement between the Borrower and each Lender (including the Agent) with respect to any confidential information previously or hereafter received by such Lender in connection with this Agreement, and this Section 9.11 shall supersede any and all prior confidentiality agreements entered into by such Lender with respect to such confidential information.

9.12. Nonreliance

. Each Lender hereby represents that it is not relying on or looking to any Margin Stock for the repayment of the Credit Extensions provided for herein.

9.13. Disclosure

. Each Loan Party and each Lender hereby acknowledges and agrees that Chase and/or its Affiliates from time to time may hold investments in, make other loans to or

have other relationships with any of the Loan Parties and their respective Affiliates. In addition, each Loan Party and each Lender hereby acknowledges that Chase and/or its Affiliates may also purchase certain equity interests in one or more Loan Parties, make a subordinated loan to the Borrower and receive a warrant from the Borrower, invest in a fund that has invested debt or equity directly or indirectly in one or more Loan Parties and/or act as a financial or other advisor, placement or similar agent or underwriter for one or more Loan Parties.

9.14. USA PATRIOT ACT

. Each Lender that is subject to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") hereby notifies the Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Act.

9.15. Acknowledgement and Consent to Bail-In of EEA Financial Institutions

. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

9.16. Acknowledgement Regarding Any Supported QFCs.

To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Agreements or any other agreement or instrument that is a QFC (such support "QFC Credit Support" and each such QFC a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street

Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

## ARTICLE X

## THE AGENT

10.1. Appointment; Nature of Relationship

. Chase is hereby appointed by each of the Lenders as its contractual representative (referred to in this Section 10.1 in such capacity as the "Agent") hereunder and under each other Loan Document (including, without limitation, as "Collateral Agent" under each of the Collateral Documents), and each of the Lenders irrevocably authorizes the Agent to act as the contractual representative of such Lender with the rights and duties expressly set forth herein and in the other Loan Documents. The Agent agrees to act as such contractual representative upon the express conditions contained in this Article X. Notwithstanding the use of the defined term "Agent," it is expressly understood and agreed that the Agent shall not have any fiduciary responsibilities to any Lender by reason of this Agreement or any other Loan Document and that the Agent is merely acting as the contractual representative of the Lenders with only those duties as are expressly set forth in this Agreement and the other Loan Documents. In its capacity as the Lenders' contractual representative, the Agent (a) does not hereby assume any fiduciary duties to any of the Lenders, (b) is a "representative" of the Lenders within the meaning of the term "secured party" as defined in the New York Uniform Commercial Code and (c) is acting as an independent contractor, the rights and duties of which are limited to those expressly set forth in this Agreement and the other Loan Documents. Each of the Lenders hereby agrees to assert no claim against the Agent on any agency theory or any other theory of liability for breach of fiduciary duty, all of which claims each Lender hereby waives.

10.2. Powers. The Agent shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Agent by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Agent shall have no implied duties to the Lenders, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Agent.

10.3. General Immunity. Neither the Agent nor any of its directors, officers, agents or employees shall be liable to the Borrower, the Lenders or any Lender for any action taken or omitted to be taken by it or them hereunder or under any other Loan Document or in connection herewith or therewith except to the extent such action or inaction is determined in a final non-appealable judgment by a court of competent jurisdiction to have arisen from the gross negligence or willful misconduct of such Person.

10.4. No Responsibility for Credit Extensions, Recitals, etc. Neither the Agent nor any of its directors, officers, agents or employees shall be responsible for or have any duty to ascertain, inquire into, or verify (a) any statement, warranty or representation made in connection with any Loan Document or any borrowing hereunder; (b) the performance or observance of any of the covenants or agreements of any obligor under any Loan Document, including, without limitation, any agreement by an obligor to furnish information directly to each Lender; (c) the satisfaction of any condition specified in Article IV, except receipt of items required to be delivered solely to the Agent; (d) the existence or possible existence of any Default or Unmatured Default; (e) the validity, enforceability, effectiveness, sufficiency or genuineness of any Loan Document or any other instrument or writing furnished in connection therewith; (f) the value, sufficiency, creation, perfection or priority of any Lien in any Collateral; or (g) the financial condition of any Loan Party, any Guarantor or any Affiliate of any Loan Party.

10.5. Action on Instructions of the Lenders. The Agent shall in all cases be fully protected in acting, or in refraining from acting, hereunder and under any other Loan Document in accordance with written instructions signed by the Required Lenders, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders. The Lenders hereby acknowledge that the Agent shall be under no duty to take any discretionary action permitted to be taken by it pursuant to the provisions of this Agreement or any other Loan Document unless it shall be requested in writing to do so by the Required Lenders. The Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

10.6. Employment of Agents and Counsel. The Agent may execute any of its duties as the Agent hereunder and under any other Loan Document by or through employees, agents, and attorneys-in-fact and shall not be answerable to the Lenders, except as to money or securities received by the Agent or its authorized agents, for the default or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care. The Agent shall be entitled to advice of counsel concerning the contractual arrangement between the Agent and the Lenders and all matters pertaining to the Agent's duties hereunder and under any other Loan Document.

10.7. Reliance on Documents; Counsel

. The Agent shall be entitled to rely upon any Note, notice, consent, certificate, affidavit, letter, telegram, facsimile, telex, electronic mail message, statement, paper or document believed by it (in its Permitted Discretion) to be genuine and correct and to have been signed or sent by the proper person or persons, and, in respect to legal matters, upon the opinion of counsel selected by the Agent, which counsel may be employees of the Agent. For purposes of determining compliance with the conditions specified in Sections 4.1 and 4.2, 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 Agent shall have received written notice from such Lender prior to the applicable date specifying its objection thereto.

10.8. Agent's Reimbursement and Indemnification

. The Lenders agree to reimburse and indemnify the Agent ratably in proportion to their respective Commitments (or, if the Commitments have been terminated, in proportion to their Commitments immediately prior to such termination) (a) for any amounts not reimbursed by the Borrower for which the Agent is entitled to reimbursement by the Borrower under the Loan Documents, (b) for any other expenses incurred by the Agent on behalf of the Lenders, in connection with the preparation, execution, delivery, administration and enforcement of the Loan Documents (including, without limitation, for any expenses incurred by the Agent in connection with any dispute between the Agent and any Lender or between two or more of the Lenders) and (c) for any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever which may be imposed on, incurred by or asserted against the Agent in any way relating to or arising out of the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby (including, without limitation, for any such amounts incurred by or asserted against the Agent in connection with any dispute between the Agent and any Lender or between two or more of the Lenders), or the enforcement of any of the terms of the Loan Documents or of any such other documents, provided that, no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Agent. The obligations of the Lenders under this Section 10.8 shall survive payment of the Obligations and termination of this Agreement.

10.9. Notice of Default

. The Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Unmatured Default hereunder unless the Agent has received written notice from a Lender, the Borrower or the Borrower Representative referring to this Agreement describing such Default or Unmatured Default and stating that such notice is a "notice of default." In the event that the Agent receives such a notice, the Agent shall give prompt notice thereof to the Lenders; provided, that, the Agent shall not be liable to any Lender for any failure to do so, except to the extent that such failure is attributable to the Agent's gross negligence or willful misconduct.

10.10. Rights as a Lender

. In the event the Agent is a Lender, the Agent shall have the same rights and powers hereunder and under any other Loan Document with respect to its Commitment and its Credit Extensions as any Lender and may exercise the same as though it were not the Agent, and the term "Lender" or "Lenders" shall, at any time when the Agent is a

Lender, unless the context otherwise indicates, include the Agent in its individual capacity. The Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of trust, debt, equity or other transaction, in addition to those contemplated by this Agreement or any other Loan Document, with any Loan Party in which such Loan Party is not restricted hereby from engaging with any other Person, all as if Chase were not the Agent and without any duty to account therefor to Lenders. Chase and its Affiliates may accept fees and other consideration from any Loan Party for services in connection with this Agreement or otherwise without having to account for the same to Lenders. The Agent in its individual capacity, is not obligated to remain a Lender.

10.11. Lender Credit Decision

. Each Lender acknowledges that it has, independently and without reliance upon the Agent, the Arrangers or any other Lender and based on the financial statements prepared by the Loan Parties and such other documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Agent, the Arrangers or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement and the other Loan Documents. Except for any notice, report, document, credit information or other information expressly required to be furnished to the Lenders by the Agent or Arrangers hereunder, neither the Agent nor the Arrangers shall have any duty or responsibility (either initially or on a continuing basis) to provide any Lender with any notice, report, document, credit information or other information concerning the affairs, financial condition or business of the Borrower or any of its Affiliates that may come into the possession of the Agent or Arrangers (whether or not in their respective capacity as Agent or Arrangers) or any of their Affiliates.

10.12. Successor Agent

. The Agent may resign at any time by giving written notice thereof to the Lenders and the Borrower Representative, such resignation to be effective upon the appointment of a successor Agent or, if no successor Agent has been appointed, forty-five days after the retiring Agent gives notice of its intention to resign. Upon any such resignation the Required Lenders shall have the right to appoint, on behalf of the Borrower and the Lenders, a successor Agent. If no successor Agent shall have been so appointed by the Required Lenders within thirty days after the resigning Agent's giving notice of its intention to resign, then the resigning Agent may appoint, on behalf of the Borrower and the Lenders, a successor Agent. Notwithstanding the previous sentence, the Agent may at any time without the consent of the Borrower or any Lender, appoint any of its Affiliates which is a commercial bank as a successor Agent hereunder. If the Agent has resigned and no successor Agent has been appointed, the Lenders may perform all the duties of the Agent hereunder and the Borrower shall make all payments in respect of the Obligations to the applicable Lender and for all other purposes shall deal directly with the Lenders. No successor Agent shall be deemed to be appointed hereunder until such successor Agent has accepted the appointment. Any such successor Agent shall be a commercial bank having capital and retained earnings of at least $100,000,000. Upon the acceptance of any appointment as the Agent hereunder by a successor Agent, such successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the resigning Agent. Upon the effectiveness of the resignation of the Agent, the resigning Agent shall be discharged from its duties and obligations hereunder and under the Loan Documents. After the effectiveness of the resignation of an Agent, the provisions of this Article

X shall continue in effect for the benefit of such Agent in respect of any actions taken or omitted to be taken by it while it was acting as the Agent hereunder and under the other Loan Documents. In the event that there is a successor to the Agent by merger, or the Agent assigns its duties and obligations to an Affiliate pursuant to this Section 10.12, then the term "Prime Rate" as used in this Agreement shall mean the prime rate, base rate or other analogous rate of the new Agent.

10.13. Delegation to Affiliates

. The Borrower and the Lenders agree that the Agent may delegate any of its duties under this Agreement to any of its Affiliates. Any such Affiliate (and such Affiliate's directors, officers, agents and employees) which performs duties in connection with this Agreement shall be entitled to the same benefits of the indemnification, waiver and other protective provisions to which the Agent is entitled under Articles IX and X.

10.14. Execution of Loan Documents

. Each Lender agrees that any action taken by the Agent or the Required Lenders in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Agent or the Required Lenders of their respective powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders. The Lenders acknowledge that all of the Obligations hereunder constitute one debt, secured pari passu by all of the Collateral.

10.15. Collateral Matters

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(a) The Lenders hereby irrevocably authorize the Agent, at its option and in its Permitted Discretion, to release any Liens granted to the Agent by the Loan Parties on any Collateral (i) upon the termination of the Commitments, payment and satisfaction in full in cash of all Obligations (other than Unliquidated Secured Obligations), and the cash collateralization of all Unliquidated Secured Obligations in a manner satisfactory to each affected Lender (in its Permitted Discretion), (ii) constituting Property being sold or disposed of if the Loan Party disposing of such Property certifies to the Agent that the sale or disposition is made in compliance with the terms of this Agreement (and the Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting Property in which no Loan Party has at any time during the term of this Agreement owned any interest, (iv) constituting property leased to a Loan Party under a lease which has expired or been terminated in a transaction permitted under this Agreement, (v) owned by or leased to any Loan Party which is subject to a purchase money security interest or which is the subject of a Capitalized Lease, in either case, entered into by such Loan Party pursuant to Section 6.17(c), (vi) as required to effect any sale or other disposition of such Collateral in connection with any exercise of remedies of the Agent and the Lenders pursuant to Section 8.1, (vii) of any Unrestricted Subsidiary upon the designation of any subsidiary as an Unrestricted Subsidiary by the Borrower in accordance with the terms of this Agreement or (viii) constituting real property in a "special flood hazard area". Upon request by the Agent at any time, the Lenders will promptly confirm in writing the Agent's authority to release any Liens upon particular types or items of Collateral pursuant to this Section 10.15. Except as provided in the preceding sentence, the Agent will not release any Liens on any Substantial Portion of the Collateral without the prior written authorization of the Required Lenders.

(b) Upon receipt by the Agent of any authorization required pursuant to Section 10.15(a) from the Required Lenders of the Agent's authority to release any Liens upon particular types or items of Collateral, and upon at least 2 Business Days prior written request by the Loan Parties, the Agent shall (and is hereby irrevocably authorized by the Lenders to), as soon thereafter as practicable, execute such documents as may be necessary to evidence the release of its Liens upon such Collateral; provided that, (i) the Agent shall not be required to execute any such document on terms which, in the Agent's opinion (in its Permitted Discretion), would expose the Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty and (ii) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral.

(c) The Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by the Loan Parties or is cared for, protected, or insured or has been encumbered, or that the Liens granted to the Agent therein have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure, or fidelity, or to continue exercising, any of the rights, authorities, and powers granted or available to the Agent pursuant to any of the Loan Documents; provided that, no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Agent.

(d) Each Lender hereby appoints each other Lender as its agent for the purpose of perfecting Liens, for the benefit of the Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other applicable law can be perfected only by possession. Should any Lender (other than the Agent) obtain possession of any such Collateral, such Lender shall notify the Agent thereof, and, promptly upon the Agent's request therefor shall deliver such Collateral to the Agent or otherwise deal with such Collateral in accordance with the Agent's instructions.

(e) Each Lender hereby agrees as follows: (a) such Lender is deemed to have requested that the Agent furnish such Lender, promptly after it becomes available, a copy of each Report prepared by or on behalf of the Agent; (b) such Lender expressly agrees and acknowledges that neither Chase nor the Agent (i) makes any representation or warranty, express or implied, as to the completeness or accuracy of any Report or any of the information contained therein, or (ii) shall be liable for any information contained in any Report; (c) such Lender expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Agent, Chase, or any other party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel and that Chase undertakes no obligation to update, correct or supplement the Reports; (d) such Lender agrees to keep

all Reports confidential and strictly for its internal use, not share the Report with any Loan Party and not to distribute any Report to any other Person except as otherwise permitted pursuant to this Agreement; and (e) without limiting the generality of any other indemnification provision contained in this Agreement, such Lender agrees (i) that neither Chase nor the Agent shall be liable to such Lender or any other Person receiving a copy of the Report for any inaccuracy or omission contained in or relating to a Report, (ii) to conduct its own due diligence investigation and make credit decisions with respect to the Loan Parties based on such documents as such Lender deems appropriate without any reliance on the Reports or on the Agent or Chase, (iii) to hold the Agent and any such other Person preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Credit Extensions that the indemnifying Lender has made or may make to the Loan Parties, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, any Obligations and (iv) to pay and protect, and indemnify, defend, and hold the Agent and any such other Person preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including reasonable attorney fees) incurred by the Agent and any such other Person preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

10.16. Co-Agents, Co-Syndication Agents, Co-Documentation Agents, etc

. Neither any of the Lenders identified in this Agreement as a "co-agent" nor any Co-Syndication Agent or Co-Documentation Agent shall have any right, power, obligation, liability, responsibility or duty under this Agreement other than those applicable to all Lenders as such. Without limiting the foregoing, none of such Lenders shall have or be deemed to have a fiduciary relationship with any Lender. Each Lender hereby makes the same acknowledgments with respect to such Lenders as it makes with respect to the Agent in Section 10.11.

10.17. Certain ERISA Matters

. (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with

respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, and the conditions for exemptive relief thereunder are and will continue to be satisfied in connection therewith,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Agent, in its sole discretion, and such Lender.

(b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Agent and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrower or any other Loan Party, that:

(i) none of the Agent or any of its respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21, as amended from time to time) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this

Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Agent or any of its respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) The Agent hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## ARTICLE XI

## SETOFF; RATABLE PAYMENTS

11.1. Setoff. In addition to, and without limitation of, any rights of the Lenders under applicable law, if any Loan Party becomes insolvent, however evidenced, or any Default occurs, any and all deposits (including all account balances, whether provisional or final and whether or not collected or available) and any other Indebtedness at any time held or owing by any Lender or any Affiliate of any Lender to or for the credit or account of the Borrower may be offset and applied toward the payment of the Secured Obligations then due and owing to such Lender, whether or not the Secured Obligations, or any part thereof, shall then be due; provided, that to the extent prohibited by applicable law as described in the definition of "Excluded Swap Obligation," no amounts received from, or set off with respect to, any Guarantor shall be applied to any Excluded Swap Obligations of such Guarantor.

11.2. Ratable Payments

. If any Lender, whether by setoff or otherwise, has payment made to it upon its Credit Exposure (other than payments received pursuant to Section 3.1, 3.2, 3.4 or 3.5) in a greater proportion than that received by any other Lender, such Lender agrees, promptly upon demand, to purchase a portion of the Aggregate Credit Exposure held by the other Lenders so that after such purchase each Lender will hold its Pro Rata Share of the Aggregate Credit Exposure. If any Lender, whether in connection with setoff or amounts which might be subject to setoff or otherwise, receives collateral or other protection for its Secured Obligations or such amounts which may be subject to setoff, such Lender agrees, promptly upon demand, to take such action necessary such that all Lenders share in the benefits of such collateral ratably in proportion to respective Pro Rata Share of the Aggregate Credit Exposure. In case any such payment is disturbed by legal process, or otherwise, appropriate further adjustments shall be made.

## ARTICLE XII

## BENEFIT OF AGREEMENT; ASSIGNMENTS; PARTICIPATIONS

12.1. Successors and Assigns

. The terms and provisions of the Loan Documents shall be binding upon and inure to the benefit of the Loan Parties and the Lenders and their respective successors and assigns permitted hereby, except that (a) the Loan Parties shall not have the right to assign their rights or obligations under the Loan Documents without the prior written consent of each Lender, (b) any assignment by any Lender must be made in compliance with Section 12.3, and (c) any transfer by Participation must be made in compliance with Section 12.2. Any attempted assignment or transfer by any party not made in compliance with this Section 12.1 shall be null and void, unless such attempted assignment or transfer is treated as a participation in accordance with Section 12.2. The parties to this Agreement acknowledge that clause (b) of this Section 12.1 relates only to absolute assignments and this Section 12.1 does not prohibit assignments creating security interests, including, without limitation, (x) any pledge or assignment by any Lender of all or any portion of its rights under this Agreement and any Note to a Federal Reserve Bank or (y) in the case of a Lender which is a Fund, any pledge or assignment of all or any portion of its rights under this Agreement and any Note to its trustee in support of its obligations to its trustee; provided however, that no such pledge or assignment creating a security interest shall release the transferor Lender from its obligations hereunder unless and until the parties thereto have complied with the provisions of Section 12.3. The Agent may treat the Person which made any Credit Extension or which holds any Note as the owner thereof for all purposes hereof unless and until such Person complies with Section 12.3; provided however, that the Agent may in its discretion (but shall not be required to) follow instructions from the Person which made any Credit Extension or which holds any Note to direct payments relating to such Credit Extension or Note to another Person. Any assignee of the rights to any Credit Extension or any Note agrees by acceptance of such assignment to be bound by all the terms and provisions of the Loan Documents. Any request, authority or consent of any Person, who at the time of making such request or giving such authority or consent is the owner of the rights to any Credit Extension (whether or not a Note has been issued in evidence thereof), shall be conclusive and binding on any subsequent holder or assignee of the rights to such Credit Extension.

12.2. Participations

(a) Permitted Participants; Effect. Any Lender may at any time sell to one or more banks or other entities ("Participants") participating interests in any Credit Exposure of such Lender, any Note held by such Lender, any Commitment of such Lender or any other interest of such Lender under the Loan Documents. In the event of any such sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, such Lender shall remain the owner of its Credit Exposure and the holder of any Note issued to it in evidence thereof for all purposes under the Loan Documents, all amounts payable by the Borrower under this Agreement shall be determined as if such Lender had not sold such participating interests, and the Borrower and the Agent shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under the Loan Documents.

(b) Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, modification or waiver of any provision of the Loan Documents other than any amendment, modification or waiver which would (i) require the consent of such Lender pursuant to the terms of Section 8.3(b) or (ii) (A) modify any Eligibility Definition or (B) include additional categories of Collateral in the Borrowing Base which, in either case, would increase Availability, and which would require the consent of such Lender pursuant to the terms of Section 8.3(a) or of any other Loan Document.

(c) Benefit of Certain Provisions. Each Loan Party agrees that each Participant shall be deemed to have the right of setoff provided in Section 11.1 in respect of its participating interest in amounts owing under the Loan Documents to the same extent as if the amount of its participating interest were owing directly to it as a Lender under the Loan Documents, provided that, each Lender shall retain the right of setoff provided in Section 11.1 with respect to the amount of participating interests sold to each Participant. The Lenders agree to share with each Participant, and each Participant, by exercising the right of setoff provided in Section 11.1, agrees to share with each Lender, any amount received pursuant to the exercise of its right of setoff, such amounts to be shared in accordance with Section 11.2 as if each Participant were a Lender. The Borrower further agrees that each Participant shall be entitled to the benefits of Sections 3.1, 3.2, 3.4 and 3.5 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.3, provided that, (i) a Participant shall not be entitled to receive any greater payment under Section 3.1, 3.2 or 3.5 than the Lender who sold the participating interest to such Participant would have received had it retained such interest for its own account, unless the sale of such interest to such Participant is made with the prior written consent of the Borrower Representative or to the extent such entitlement to receive a greater payment results from an adoption of or any change in any law or in the interpretation or application thereof that occurs after the Participant acquired the applicable participation, and (ii) any Participant not incorporated under the laws of the U.S. or any state thereof agrees to comply with the provisions of Section 3.5 to the same extent as if it were a Lender. Each Lender that sells a participation shall maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other

obligations hereunder (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any person except to the extent such disclosure is necessary to establish that such Commitment, Loan, Letter of Credit or other obligation is in registered form under Treasury Regulation Section 5f.103-1(c). 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 Agent shall have no responsibility for maintaining a Participant Register.

12.3. Assignments

(a) Permitted Assignments. Any Lender may at any time assign to one or more banks or other entities (other than the Parent, its Subsidiaries or their respective Affiliates) ("Purchasers") all or any part of its rights and obligations under the Loan Documents. Such assignment shall be substantially in the form of Exhibit G (an "Assignment Agreement"). Each such assignment with respect to a Purchaser which is not a Lender or an Affiliate of a Lender or an Approved Fund shall either be in an amount equal to the entire applicable Commitment and Credit Extensions of the assigning Lender or (unless each of the Borrower Representative and the Agent otherwise consents) be in an aggregate amount not less than $5,000,000. The amount of the assignment shall be based on the Commitment or outstanding Credit Extensions (if the Commitment has been terminated) subject to the assignment, determined as of the date of such assignment or as of the "Trade Date," if the "Trade Date" is specified in the assignment.

(b) Consents. The consent of the Borrower Representative shall be required prior to an assignment becoming effective unless the Purchaser is a Lender, an Affiliate of a Lender or an Approved Fund, provided that, the consent of the Borrower Representative shall not be required if a Default has occurred and is continuing. The consent of each of the Agent and the LC Issuer shall be required prior to an assignment becoming effective, provided that, (i) the consent of the Agent shall not be required for an assignment of (x) any Revolving Commitment to an assignee that is a Lender (other than a Defaulting Lender) with a Revolving Commitment immediately prior to giving effect to such assignment and (y) all or any portion of a Term Loan to a Lender, an Affiliate of a Lender or an Approved Fund, and (ii) the consent of the LC Issuer shall not be required for an assignment of any portion of a Term Loan. Any consent required under this Section 12.3(b) shall not be unreasonably withheld or delayed.

(c) Effect; Effective Date. Upon (i) delivery to the Agent of a duly executed Assignment Agreement, together with any consents required by Sections 12.3(a) and 12.3(b), and (ii) payment of a $3,500 fee to the Agent for processing such assignment (unless such fee is waived by the Agent), such Assignment Agreement shall become effective on the effective date specified by the Agent in such Assignment Agreement. The Assignment Agreement shall contain a representation by the Purchaser to the effect that none of the consideration used to make the purchase of the Commitment and Credit Exposure under the applicable Assignment Agreement constitutes "plan assets" (within the meaning of the Plan Asset Regulations) and that the rights and interests of the

Purchaser in and under the Loan Documents will not be "plan assets" (within the meaning of the Plan Asset Regulations). On and after the effective date of such Assignment Agreement, such Purchaser shall for all purposes be a Lender party to this Agreement and any other Loan Document executed by or on behalf of the Lenders and shall have all the rights and obligations of a Lender under the Loan Documents, to the same extent as if it were an original party thereto, and the transferor Lender shall be released with respect to the Commitment and Credit Exposure assigned to such Purchaser without any further consent or action by the Borrower, the Lenders or the Agent. In the case of an Assignment Agreement covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a Lender hereunder but shall continue to be entitled to the benefits of, and subject to, those provisions of this Agreement and the other Loan Documents which survive payment of the Obligations and termination of the applicable agreement. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 12.3 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 Section 12.2. Upon the consummation of any assignment to a Purchaser pursuant to this Section 12.3(c), the transferor Lender, the Agent and the Borrower shall, if the transferor Lender or the Purchaser desires that its Loans be evidenced by Notes, make appropriate arrangements so that new Notes or, as appropriate, replacement Notes are issued to such transferor Lender and new Notes or, as appropriate, replacement Notes, are issued to such Purchaser, in each case in principal amounts reflecting their respective Commitments, as adjusted pursuant to such assignment.

(d) Register. The Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices in the U.S. a copy of each Assignment Agreement delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Credit Extensions owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrower, the Agent and the Lenders may 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, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

12.4. Dissemination of Information

. Each Loan Party authorizes each Lender to disclose to any Participant or Purchaser or any other Person acquiring an interest in the Loan Documents by operation of law (each a "Transferee") and any prospective Transferee any and all information in such Lender's possession concerning the creditworthiness of the Loan Parties, including without limitation any information contained in any Reports; provided that, each Transferee and prospective Transferee agrees to be bound by Section 9.11 of this Agreement.

12.5. Tax Treatment

. If any interest in any Loan Document is transferred to any Transferee which is not incorporated under the laws of the U.S. or any state thereof, the transferor Lender shall cause such Transferee, concurrently with the effectiveness of such transfer, to comply with the provisions of Section 3.5(d); provided that in the case of a

Participant, any forms will be provided directly to the transferor Lender rather than the Borrower.

12.6. Assignment by LC Issuer

. Notwithstanding anything contained herein, if at any time an LC Issuer assigns all of its Commitment and Loans pursuant to Section 12.3, such LC Issuer may, upon thirty days' notice to the Borrower Representative and the Lenders, resign as an LC Issuer. In the event of any such resignation as an LC Issuer, the Borrower Representative shall be entitled to appoint from among the Lenders a successor LC Issuer hereunder; provided however, that no failure by the Borrower Representative to appoint any such successor shall affect the resignation of such LC Issuer as an LC Issuer. If an LC Issuer resigns as an LC Issuer, it shall retain all the rights and obligations of an LC Issuer hereunder with respect to the Facility LCs outstanding as of the effective date of its resignation as an LC Issuer and all LC Obligations with respect thereto (including the right to require the Lenders to make Revolving Loans or fund risk participations in outstanding Reimbursement Obligations pursuant to Section 2.1.2(d)).

## ARTICLE XIII

## NOTICES

13.1. Notices; Effectiveness; Electronic Communications

.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows:

(i) if to any Loan Party, at its address or telecopier number set forth on the signature page hereof;

(ii) if to the Agent, at its address or telecopier number set forth on the signature page hereof;

(iii) if to the LC Issuer, at its address or telecopier number set forth on the signature page hereof;

(iv) if to a Lender, to it at its address or telecopier number set forth in its Administrative Questionnaire.

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 telecopier 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).

(b) Electronic Communications. Notices and other communications to the Lenders and the LC Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by the Agent or as otherwise determined by the Agent, provided that, the foregoing shall not apply to notices to any Lender or the LC Issuer pursuant to Article II if such Lender or the LC Issuer, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or any Loan Party may, in its respective discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it or as it otherwise determines, provided that such determination or approval may be limited to particular notices or communications. Notwithstanding the foregoing, in every instance, the Borrower Representative shall be required to provide paper copies of the Compliance Certificates required by Section 6.1(e) to the Agent.

Unless the 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), provided that if such notice or other communication is not given during the normal business hours of the recipient, such notice or communication shall be deemed to have been given at the opening of business on the next Business Day for the recipient, 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.

13.2. Change of Address, Etc.

. Any party hereto may change its address or telecopier number for notices and other communications hereunder by notice to the other parties hereto.

**ARTICLE XIV**

**COUNTERPARTS**

This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by the Loan Parties, the Agent, the LC Issuer and the Lenders and each party has notified the Agent by facsimile transmission or telephone that it has taken such action.

**ARTICLE XV**

**GUARANTY**

15.1. Guaranty

. Each Guarantor hereby agrees that it is jointly and severally liable for, and, as primary obligor and not merely as surety, absolutely and unconditionally guarantees to the Lenders the prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of the Secured Obligations and all costs and expenses

including, without limitation, all court costs and attorneys' and paralegals' fees (including allocated costs of in-house counsel and paralegals) and expenses paid or incurred by the Agent, the LC Issuer and the Lenders in endeavoring to collect all or any part of the Secured Obligations from, or in prosecuting any action against, the Borrower, any Guarantor or any other guarantor of all or any part of the Secured Obligations (other than with respect to any Guarantor, any Excluded Swap Obligations of such Guarantor) (such costs and expenses, together with the Secured Obligations, collectively the "Guaranteed Obligations"). Each Guarantor further agrees that the Guaranteed Obligations may be extended or renewed in whole or in part without notice to or further assent from it, and that it remains bound upon its guarantee notwithstanding any such extension or renewal.

15.2. Guaranty of Payment

. This Guaranty is a guaranty of payment and not of collection. Each Guarantor waives any right to require the Agent, the LC Issuer or any Lender to sue the Borrower, any Guarantor, any other guarantor, or any other person obligated for all or any part of the Guaranteed Obligations, or otherwise to enforce its payment against any collateral securing all or any part of the Guaranteed Obligations.

15.3. No Discharge or Diminishment of Guaranty

.

(a) Except as otherwise provided for herein and to the extent provided for herein, the obligations of each Guarantor hereunder are unconditional and absolute and not subject to any reduction, limitation, impairment or termination for any reason (other than the indefeasible payment in full in cash of the Guaranteed Obligations), including:

(i) any claim of waiver, release, extension, renewal, settlement, surrender, alteration, or compromise of any of the Guaranteed Obligations, by operation of law or otherwise;

(ii) any change in the corporate existence, structure or ownership of the Borrower or any other guarantor of or other person liable for any of the Guaranteed Obligations;

(iii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting the Borrower, any Guarantor, or any other guarantor of or other person liable for any of the Guaranteed Obligations, or their assets or any resulting release or discharge of any obligation of the Borrower, any Guarantor, or any other guarantor of or other person liable for any of the Guaranteed Obligations; or

(iv) the existence of any claim, setoff or other rights which any Guarantor may have at any time against the Borrower, any Guarantor, any other guarantor of the Guaranteed Obligations, the Agent, the LC Issuer, any Lender, or any other person, whether in connection herewith or in any unrelated transactions.

(b) The obligations of each Guarantor hereunder are not subject to any defense or setoff, counterclaim, recoupment, or termination whatsoever by reason of the invalidity, illegality, or unenforceability of any of the Guaranteed Obligations or otherwise, or any provision of applicable law or regulation purporting to prohibit

payment by the Borrower, any Guarantor or any other guarantor of or other person liable for any of the Guaranteed Obligations, of the Guaranteed Obligations or any part thereof.

(c) Further, the obligations of any Guarantor hereunder are not discharged or impaired or otherwise affected by:

(i) the failure of the Agent, the LC Issuer or any Lender to assert any claim or demand or to enforce any remedy with respect to all or any part of the Guaranteed Obligations;

(ii) any waiver or modification of or supplement to any provision of any agreement relating to the Guaranteed Obligations;

(iii) any release, non-perfection, or invalidity of any indirect or direct security for the obligations of the Borrower for all or any part of the Guaranteed Obligations or any obligations of any other guarantor of or other person liable for any of the Guaranteed Obligations;

(iv) any action or failure to act by the Agent, the LC Issuer or any Lender with respect to any collateral securing any part of the Guaranteed Obligations;

(v) any default, failure or delay, willful or otherwise, in the payment or performance of any of the Guaranteed Obligations, or any other circumstance, act, omission or delay that might in any manner or to any extent vary the risk of such Guarantor or that would otherwise operate as a discharge of any Guarantor as a matter of law or equity (other than the indefeasible payment in full in cash of the Guaranteed Obligations).

15.4. Defenses Waived

. To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any Guarantor or the unenforceability of all or any part of the Guaranteed Obligations from any cause, or the cessation from any cause of the liability of the Borrower or any Guarantor, other than the indefeasible payment in full in cash of the Guaranteed Obligations. Without limiting the generality of the foregoing, each Guarantor irrevocably waives acceptance hereof, presentment, demand, protest and, to the fullest extent permitted by law, any notice not provided for herein, as well as any requirement that at any time any action be taken by any person against the Borrower, any Guarantor, any other guarantor of any of the Guaranteed Obligations, or any other person. The Agent may, at its election, foreclose on any Collateral held by it by one or more judicial or nonjudicial sales, accept an assignment of any such Collateral in lieu of foreclosure or otherwise act or fail to act with respect to any collateral securing all or a part of the Guaranteed Obligations, compromise or adjust any part of the Guaranteed Obligations, make any other accommodation with the Borrower, any Guarantor, any other guarantor or any other person liable on any part of the Guaranteed Obligations or exercise any other right or remedy available to it against the Borrower, any Guarantor, any other guarantor or any other person liable on any of the Guaranteed Obligations, without affecting or impairing in any way the liability of such Guarantor under this Guaranty except to the extent the Guaranteed Obligations have been fully

and indefeasibly paid in cash. To the fullest extent permitted by applicable law, each Guarantor waives any defense arising out of any such election even though that election may operate, pursuant to applicable law, to impair or extinguish any right of reimbursement or subrogation or other right or remedy of any Guarantor against the Borrower, any other guarantor or any other person liable on any of the Guaranteed Obligations, as the case may be, or any security.

15.5. Rights of Subrogation

. No Guarantor will assert any right, claim or cause of action, including, without limitation, a claim of subrogation, contribution or indemnification that it has against the Borrower, any Guarantor, any person liable on the Guaranteed Obligations, or any collateral, until the Loan Parties and the Guarantors have fully performed all their obligations to the Agent, the LC Issuer and the Lenders and the Commitments have been terminated.

15.6. Reinstatement; Stay of Acceleration

. If at any time any payment of any portion of the Guaranteed Obligations is rescinded or must otherwise be restored or returned upon the insolvency, bankruptcy, or reorganization of the Borrower or otherwise, each Guarantor's obligations under this Guaranty with respect to that payment shall be reinstated at such time as though the payment had not been made and whether or not the Agent, the LC Issuer and the Lenders are in possession of this Guaranty. If acceleration of the time for payment of any of the Guaranteed Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Guaranteed Obligations shall nonetheless be payable by the Guarantors forthwith on demand by the Lender.

15.7. Information

. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Guaranteed Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Guaranty, and agrees that neither the Agent, the LC Issuer nor any Lender shall have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

15.8. Taxes

. All payments of the Guaranteed Obligations will be made by each Guarantor free and clear of and without deduction for or on account of Taxes. If any Guarantor or the Agent is required by law to deduct any Taxes from or in respect of any sum payable to the Lenders under this Guaranty, (a) if such Tax is an Indemnified Tax, the sum payable must be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this provision) the Lenders receive an amount equal to the sum it would have received had no such deductions been made, (b) the Guarantors or the Agent must then make such deductions, and must pay the full amount deducted to the relevant authority in accordance with applicable law, and (c) the Guarantors must furnish to the Agent as promptly as possible but in any case within forty-five days after their due date certified copies of all official receipts evidencing payment thereof.

15.9. Severability

. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the

amount of such liability shall, without any further action by the Guarantors or the Lenders, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "Maximum Liability"). This Section with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of the Lenders to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other person or entity shall have any right or claim under this Section with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Guaranteed Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this Guaranty or affecting the rights and remedies of the Lenders hereunder, provided that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

15.10. Contribution

. In the event any Guarantor (a "Paying Guarantor") shall make any payment or payments under this Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Guaranty, each other Guarantor (each a "Non-Paying Guarantor") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Pro Rata Share" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article XV, each Non-Paying Guarantor's "Pro Rata Share" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrower after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Guarantors hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Guarantor, the aggregate amount of all monies received by such Guarantors from the Borrower after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Guarantor's several liability for the entire amount of the Guaranteed Obligations (up to such Guarantor's Maximum Liability). Each of the Guarantors covenants and agrees that its right to receive any contribution under this Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the payment in full in cash of the Guaranteed Obligations. This provision is for the benefit of both the Agent, the LC Issuer, the Lenders and the Guarantors and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

15.11. Lending Installations

. The Guaranteed Obligations may be booked at any Lending Installation. All terms of this Guaranty apply to and may be enforced by or on behalf of any Lending Installation.

15.12. Liability Cumulative

. The liability of each Loan Party as a Guarantor under this Article XV is in addition to and shall be cumulative with all liabilities of each Loan Party to the Agent, the LC Issuer and the Lenders under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations of liabilities of the other Loan

Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

15.13. Discharge of Guaranty Upon Certain Events

. If a Guarantor is designated as an Unrestricted Subsidiary in accordance with the provisions of this Agreement or the Capital Stock of any Guarantor is sold in accordance with the provisions of this Agreement such that the Guarantor is no longer a direct or indirect Subsidiary of the Borrower, then in each case the Guaranty of such Guarantor and any subsidiary of such Guarantor that is a Guarantor hereunder shall automatically be discharged and released.

15.14. Keepwell

. Each Qualified Keepwell Provider hereby jointly and severally absolutely, unconditionally, and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this guarantee in respect of any Swap Obligation (provided, however, that each Qualified Keepwell Provider shall only be liable under this Section 15.14 for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this Section 15.14, or otherwise under this guarantee, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Qualified Keepwell Provider under this Section 15.14 shall remain in full force and effect until all of the Secured Obligations have been indefeasibly paid and performed in full (or with respect to any outstanding Facility LCs, a cash deposit or Supporting Letter of Credit has been delivered to the Collateral Agent as required by the Credit Agreement) and no commitments of the Collateral Agent or the Lenders which would give rise to any Secured Obligations are outstanding. Each Qualified Keepwell Provider intends that this Section 15.14 constitute, and this Section 15.14 shall be deemed to constitute, a "keepwell, support, or other agreement" or the benefit of each other Loan Party for all purposes of section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

## ARTICLE XVI

## CHOICE OF LAW; CONSENT TO JURISDICTION; WAIVER OF JURY TRIAL

16.1. CHOICE OF LAW

. THE LOAN DOCUMENTS (OTHER THAN THOSE CONTAINING A CONTRARY EXPRESS CHOICE OF LAW PROVISION) SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

16.2. CONSENT TO JURISDICTION

. EACH LOAN PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN (OR IF SUCH COURT LACKS SUBJECT MATTER JURISDICTION, THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN), AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS AND EACH LOAN PARTY HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN IN SUCH FEDERAL (TO THE EXTENT PERMITTED

BY LAW) OR NEW YORK STATE COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE AGENT, THE LC ISSUER OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY LOAN PARTY IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY LOAN PARTY AGAINST THE AGENT, THE LC ISSUER OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTION WITH ANY LOAN DOCUMENT SHALL BE BROUGHT ONLY IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN (OR IF SUCH COURT LACKS SUBJECT MATTER JURISDICTION, THE SUPREME COURT OF THE STATE OF NEW YORK SITTING IN THE BOROUGH OF MANHATTAN), AND ANY APPELLATE COURT FROM ANY THEREOF.

16.3. WAIVER OF JURY TRIAL

. EACH LOAN PARTY, THE AGENT, THE LC ISSUER AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH ANY LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

## ARTICLE XVII

## THE BORROWER REPRESENTATIVE

17.1. Appointment; Nature of Relationship

. PHI is hereby appointed by the Borrower as its contractual representative (herein referred to as the "Borrower Representative") hereunder and under each other Loan Document, and the Borrower irrevocably authorizes the Borrower Representative to act as the contractual representative of the Borrower with the rights and duties expressly set forth herein and in the other Loan Documents. The Borrower Representative agrees to act as such contractual representative upon the express conditions contained in this Article XVII. Additionally, the Borrower hereby appoints the Borrower Representative as its agent to receive all of the proceeds of the Loans in the Funding Account, at which time the Borrower Representative shall promptly disburse such Loans to the Borrower. The Agent and the Lenders, and their respective officers, directors, agents or employees, shall not be liable to the Borrower Representative or the Borrower for any action taken or omitted to be taken by the Borrower Representative or the Borrower pursuant to this Section 17.1.

17.2. Powers

. The Borrower Representative shall have and may exercise such powers under the Loan Documents as are specifically delegated to the Borrower Representative by the terms of each thereof, together with such powers as are reasonably incidental thereto. The Borrower Representative shall have no implied duties to the Borrower, or any obligation to the Lenders to take any action thereunder except any action specifically provided by the Loan Documents to be taken by the Borrower Representative.

17.3. Employment of Agents

. The Borrower Representative may execute any of its duties as the Borrower Representative hereunder and under any other Loan Document by or through Authorized Officers.

17.4. Notices

. The Borrower shall immediately notify the Borrower Representative of the occurrence of any Default or Unmatured Default hereunder referring to this Agreement describing such Default or Unmatured Default and stating that such notice is a "notice of default." In the event that the Borrower Representative receives such a notice, the Borrower Representative shall give prompt notice thereof to the Agent and the Lenders. Any notice provided to the Borrower Representative hereunder shall constitute notice to the Borrower on the date received by the Borrower Representative.

17.5. Successor Borrower Representative

. Upon the prior written consent of the Agent, the Borrower Representative may resign at any time, such resignation to be effective upon the appointment of a successor Borrower Representative. The Agent shall give prompt written notice of such resignation to the Lenders.

17.6. Execution of Loan Documents; Borrowing Base Certificate

. The Borrower hereby empowers and authorizes the Borrower Representative, on behalf of the Borrower, to execute and deliver to the Agent and the Lenders the Loan Documents and all related agreements, certificates, documents, or instruments as shall be necessary or appropriate to effect the purposes of the Loan Documents, including without limitation, the Borrowing Base Certificates and the Compliance Certificates. The Borrower agrees that any action taken by the Borrower Representative or the Borrower in accordance with the terms of this Agreement or the other Loan Documents, and the exercise by the Borrower Representative of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Borrower.

17.7. Reporting

. The Borrower hereby agrees that it shall furnish promptly to the Borrower Representative a copy of any certificate or report required hereunder or requested by the Borrower Representative on which the Borrower Representative shall rely to prepare the Borrowing Base Certificates and Compliance Certificates required pursuant to the provisions of this Agreement.

## ARTICLE XVIII

## EFFECT OF AMENDMENT AND RESTATEMENT OF EXISTING CREDIT AGREEMENT

On the Effective Date, the Existing Credit Agreement shall be amended, restated and superseded in its entirety. The parties hereto acknowledge and agree that (a) this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the "Obligations" (as defined in the Existing Credit Agreement) under the Existing Credit Agreement as in effect prior to the Effective Date and (b) such "Obligations" are in all respects continuing (as amended and restated hereby) with only the terms thereof being modified as provided in this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Loan Parties, the Lenders, the LC Issuer and the Agent have executed this Agreement as of the date first above written.

**BORROWER:**

PETROLEUM HEAT AND POWER CO., INC.

By: /s/ Richard F. Ambury

Name: Richard F. Ambury

Title: Chief Financial Officer

**OTHER LOAN PARTIES:**

A.P. WOODSON COMPANY
CHAMPION ENERGY LLC
COLUMBIA PETROLEUM
TRANSPORTATION, LLC
GRIFFITH ENERGY SERVICES, INC.
GRIFFITH-ALLIED TRUCKING, LLC
HOFFMAN FUEL COMPANY OF BRIDGEPORT
HOFFMAN FUEL COMPANY OF DANBURY
MILRO GROUP LLC
MEENAN HOLDINGS LLC
MEENAN OIL LLC
MINNWHALE LLC
ORTEP OF PENNSYLVANIA, INC.
PETRO HOLDINGS, INC.
PETRO PLUMBING CORPORATION
PETRO, INC.
REGIONOIL PLUMBING, HEATING AND COOLING CO., INC.
RICHLAND PARTNERS, LLC
RYE FUEL COMPANY
STAR ACQUISITIONS, INC.

By: /s/ Richard F. Ambury

Name: Richard F. Ambury

Title: Chief Financial Officer

STAR GROUP, L.P.

By: KESTREL HEAT, LLC, its General Partner

By: /s/ Richard F. Ambury

Name: Richard F. Ambury

Title: Chief Financial Officer

MEENAN OIL CO., L.P.

By: MEENAN OIL LLC, its General Partner

By: /s/ Richard F. Ambury

Name: Richard F. Ambury

Title: Chief Financial Officer

CFS LLC

By: RICHLAND PARTNERS, LLC, its Sole Member

By: /s/ Richard F. Ambury

Name: Richard F. Ambury

Title: Chief Financial Officer, Executive Vice President, Treasurer and Secretary

**NOTICE ADDRESS FOR LOAN PARTIES:**
**9 West Broad Street**
**Stamford, CT 06902**

**LENDERS:**

JPMORGAN CHASE BANK, N.A.,
as Agent, an LC Issuer and Lender

By: /s/ Donna DiForio

Name: Donna DiForio

Title: Authorized Officer

**NOTICE ADDRESS:**

925 Westchester Avenue, 3rd Floor
White Plains, NY 10604

Attention: Donna DiForio
Telephone: 914-993-7967
Facsimile: 914-949-4871

BANK OF AMERICA, N.A.,
as Co-Syndication Agent, an LC Issuer and Lender

By: /s/ Matthew T. O'Keefe

Name: Matthew T. O'Keefe

Title: Senior Vice President

**NOTICE ADDRESS:**

100 Federal Street
MA5-11-09-12
Boston, MA 02110

Attention: Matthew T. O'Keefe
Telephone: 617-346-1196
Facsimile:
Email: matthew.okeefe@bofa.com

CITIZENS BANK, N.A.,
as Co-Syndication Agent and Lender

By: /s/ Donald A. Wright

Name: Donald A. Wright

Title: SVP

**NOTICE ADDRESS:**

CITIZENS BANK, N.A.
28 State Street
MS 1410
Boston, MA 02109

Attention: Don Wright
Telephone: 617-994-7058

KEYBANK NATIONAL ASSOCIATION,
as Lender

By: /s/ Jonathan Roe

Name: Jonathan Roe

Title: Vice President

**NOTICE ADDRESS:**

KeyBank National Association
127 Public Square
Mailcode: OH-01-13-1300
Cleveland, OH 44134

Attention: KeyBank Business Capital
Telephone: 216-689-3342

WELLS FARGO BANK, N.A.,
as Lender

By: /s/ Jonathan T. Boynton

Name: Jonathan T. Boynton

Title: Authorized Signatory

**NOTICE ADDRESS:**

Attention: Jonathan T. Boynton
Telephone: 617-624-4408
Facsimile: 866-303-4294

*[Signature Page to Fifth Amended and Restated Credit Agreement]*

BMO HARRIS BANK, N.A.,
as Lender

By: /s/ Ran Li

Name: Ran Li

Title: Authorized Officer

**NOTICE ADDRESS:**

111 W. Monroe, Floor 20 East
Chicago, IL 60603

Attention: Ran Li
Telephone: 312-461-7949
Facsimile: 312-293-8535

*[Signature Page to Fifth Amended and Restated Credit Agreement]*

PNC BANK, N.A.,
as Lender

By: /s/ Matthew Leighton

Name: Matthew Leighton

Title: Vice President

**NOTICE ADDRESS:**

340 Madison Ave, 11fl
New York, NY 10173

Attention: Matthew Leighton
Telephone: 212-752-6043
Facsimile: 212-303-0060

*[Signature Page to Fifth Amended and Restated Credit Agreement]*

TD BANK, N.A.,
as Lender

By: /s/ Vijay Prasad

Name: Vijay Prasad

Title: Senior Vice President

**NOTICE ADDRESS:**

222 Bay Street, 15th Floor
Toronto, ON, M5K 1A2

Attention:
Telephone:
Facsimile:

CITIBANK,
as Lender

By: /s/ William H. Moul Jr.

Name: William H. Moul Jr.

Title: Authorized Signatory

**NOTICE ADDRESS:**

Citibank, N.A.
601 Lexington Avenue, 21st Floor
NY, NY 10022

Telephone: 212-559-4236
Facsimile:

ISRAEL DISCOUNT BANK OF NEW YORK,
as Lender

By: /s/ Eric Serenkin

Name: Eric Serenkin

Title: Senior Vice President

By: /s/ Dionne S. Rice

Name: Dionne S. Rice

Title: First Vice President

**NOTICE ADDRESS:**

Israel Discount Bank of New York
511 Fifth Ave., 6th Floor
New York, NY 10017

Attention: Dionne Rice
Telephone: (212) 551-8174
Facsimile: (212) 551-8857

WEBSTER BUSINESS CREDIT CORPORATION,
as Lender

By: /s/ Christopher Magnante

Name: Christopher Magnante

Title: Vice President

**NOTICE ADDRESS:**

360 Lexington Avenue
New York, NY 10017

Attention: Petroleum Heat and Power Account Officer – Chris Magnante
Telephone: 860-612-5441
Facsimile: 860-612-2918

**Exhibit 10.23**
**Execution Version**

# FIFTH AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT

dated as of December 4, 2019

between

STAR GROUP, L.P.,

PETROLEUM HEAT AND POWER CO., INC.,

and certain of their Subsidiaries,
as Grantors,

and

JPMORGAN CHASE BANK, N.A.,
as Collateral Agent

**ARTICLE I**

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**EXHIBITS**

**FIFTH AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT**

THIS FIFTH AMENDED AND RESTATED PLEDGE AND SECURITY AGREEMENT (as it may be amended or modified from time to time, the "Security Agreement") is entered into as of December 4, 2019 by and between Star Group, L.P., a Delaware limited partnership (the "Parent"), Petroleum Heat and Power Co., Inc., a Minnesota corporation ("Petro" or the "Borrower"), and each other direct or indirect subsidiary of the Parent from time to time party to this Security Agreement (each of the Parent, Petro and each other such Subsidiary of the Parent, a "Grantor", and collectively, the "Grantors"), and JPMorgan Chase Bank, N.A., a national banking association, in its capacity as collateral agent (the "Collateral Agent") for the Secured Parties (as defined below) to the Credit Agreement referred to below.

**PRELIMINARY STATEMENT**

Petro, the other loan parties named therein, JPMorgan Chase Bank, N.A., as agent, and the lenders thereto entered into that certain Fourth Amended and Restated Credit Agreement dated as of July 2

Pursuant to the Existing Credit Agreement, Petro, the other loan parties thereto and JPMorgan Chase Bank, N.A., for the benefit of the lenders thereto, entered into that certain Fourth Amended and Restated Pledge and Security Agreement dated as of July 2, 2018 (the "Existing Security Agreement") in order to induce the secured parties thereto to enter into and extend credit to Petro under the Existing Credit Agreement and to secure the obligations that it agreed to guarantee pursuant to Article XV of the Existing Credit Agreement.

Petro, the other Loan Parties named therein, JPMorgan Chase Bank, N.A., as Agent and an LC Issuer, and the Lenders are entering into a Fifth Amended and Restated Credit Agreement dated as of the date hereof (as it may be amended or modified from time to time, the "Credit Agreement").

Each Grantor is entering into this Security Agreement in order to induce the Secured Parties to enter into and extend credit to Petro under the Credit Agreement and to secure the Secured Obligations that it has agreed to guarantee pursuant to Article XV of the Credit Agreement.

ACCORDINGLY, the Grantors and the Collateral Agent, on behalf of the Secured Parties, agree that the Existing Security Agreement is hereby amended and restated as of the Effective Date to read in its entirety as follows:

**ARTICLE I**
**DEFINITIONS**

1.1. Terms Defined in Credit Agreement. All capitalized terms used herein and not otherwise defined herein or in the UCC shall have the meanings assigned to such terms in the Credit Agreement.

1.2. Terms Defined in UCC. Terms defined in the UCC which are not otherwise defined in this Security Agreement are used herein as defined in the UCC.

1.3. Definitions of Certain Terms Used Herein.

As used in this Security Agreement, in addition to the terms defined in the preamble and the Preliminary Statement, the following terms shall have the following meanings:

"Accounts" shall have the meaning set forth in Article 9 of the UCC.

"Article" means a numbered article of this Security Agreement, unless another document is specifically referenced.

"Blocked Accounts" shall have the meaning set forth in Section 7.1(a).

"Blocked Account Agreements" shall have the meaning set forth in Section 7.1(a).

"Chattel Paper" shall have the meaning set forth in Article 9 of the UCC.

"Collateral" shall have the meaning set forth in Article II.

"Collateral Deposit Account" shall have the meaning set forth in Section 7.1(a).

"Collateral Report" means any certificate (including any Borrowing Base Certificate), report or other document delivered by any Grantor to the Collateral Agent or any Lender with respect to the Collateral pursuant to any Loan Document.

"Collection Account" shall have the meaning set forth in Section 7.1(b).

"Control" shall have the meaning set forth in Article 8 or, if applicable, in Section 9-104, 9-105, 9-106 or 9-107 of Article 9 of the UCC.

"Copyrights" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all copyrights, rights and interests in copyrights, works protectable by copyright, copyright registrations, and copyright applications; (b) all 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, including, without limitation, damages or payments for past or future infringements for 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.

"Default" means an event described in Section 5.1.

"Deposit Accounts" shall have the meaning set forth in Article 9 of the UCC.

"Documents" shall have the meaning set forth in Article 9 of the UCC.

"Electronic Chattel Paper" shall have the meaning set forth in Article 9 of the UCC.

"Equipment" shall have the meaning set forth in Article 9 of the UCC.

"Exhibit" refers to a specific exhibit to this Security Agreement, unless another document is specifically referenced.

"Fixtures" shall have the meaning set forth in Article 9 of the UCC.

"General Intangibles" means all "general intangibles" as such term is defined in Article 9 of the UCC including, without limitation, with respect to any Grantor, all contracts, agreements, instruments and indentures in any form, and portions thereof, to which such Grantor is a party or under which such Grantor has any right, title or interest or to which such Grantor or any property

of such Grantor is subject, as the same may from time to time be amended, supplemented or otherwise modified, including, without limitation (but limited as aforesaid), (i) all rights of such Grantor to receive moneys due and to become due to it thereunder or in connection therewith, (ii) all rights of such Grantor to damages arising thereunder, (iii) all equity that constitutes "general intangibles" and (iv) all rights of such Grantor to perform and to exercise all remedies thereunder.

"Goods" shall have the meaning set forth in Article 9 of the UCC.

"Instruments" shall have the meaning set forth in Article 9 of the UCC.

"Inventory" shall have the meaning set forth in Article 9 of the UCC.

"Investment Property" shall have the meaning set forth in Article 9 of the UCC.

"Lenders" means the lenders party to the Credit Agreement and their successors and assigns.

"Letter-of-Credit Rights" shall have the meaning set forth in Article 9 of the UCC.

"Licenses" means, with respect to any Person, all of such Person's right, title, and interest in and to (a) any and all licensing agreements or similar arrangements in and to its Patents, Copyrights, or Trademarks, (b) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future breaches thereof, and (c) all rights to sue for past, present, and future breaches thereof.

"Lockboxes" shall have the meaning set forth in Section 7.1(a).

"Lock Box Agreements" shall have the meaning set forth in Section 7.1(a).

"Patents" means, with respect to any Person, all of such Person's right, title, and interest in and to: (a) any and all patents and patent applications; (b) all inventions and improvements described and claimed therein; (c) all reissues, divisions, continuations, renewals, extensions, and continuations-in-part thereof; (d) all income, royalties, damages, claims, and payments now or hereafter due or payable under and with respect thereto, including, without limitation, damages and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements thereof; and (f) all rights corresponding to any of the foregoing throughout the world.

"Payment Intangibles" shall have the meaning set forth in Article 9 of the UCC.

"Pledged Collateral" means all Instruments, Securities and other Investment Property of the Grantors included as Collateral, whether or not physically delivered to the Collateral Agent pursuant to this Security Agreement.

"Proceeds" shall mean (a) all "proceeds," as defined in Article 9 of the UCC, with respect to the Collateral (including Stock Rights and insurance proceeds), and (b) whatever is recoverable or recovered when any Collateral is sold, exchanged, collected, or disposed of, whether voluntarily or involuntarily.

"Promissory Notes" shall have the meaning set forth in Article 9 of the UCC.

"Receivables" means the Accounts, Chattel Paper, Documents, Investment Property, Instruments and any other rights or claims to receive money which are General Intangibles or which are otherwise included as Collateral.

"Records" shall have the meaning set forth in Article 9 of the UCC.

"Remittance Processor" means Remitco LLC, a Delaware limited liability company.

"Remittance Processing Agreement" means the Remittance Processing Services Agreement, between the Remittance Processor and PHI and signed by PHI on August 22, 2003, as amended on June 30, 2008 and in effect as of the Effective Date.

"Required Secured Parties" means (a) prior to an acceleration of the obligations under the Credit Agreement, the Required Lenders, and (b) after an acceleration of the obligations under the Credit Agreement but prior to the date upon which the Credit Agreement has terminated by its terms and all of the obligations thereunder have been paid in full, Lenders holding in the aggregate at least a majority of the total of the Aggregate Credit Exposure, and (c) after the Credit Agreement has terminated by its terms and all of the obligations thereunder have been paid in full (whether or not the obligations under the Credit Agreement were ever accelerated), Secured Parties holding in the aggregate at least a majority of the aggregate net early termination payments and all other amounts then due and unpaid from any Grantor to the Secured Parties (i) under Commodity Hedging Agreements and (ii) to the extent permitted under applicable debt agreements, with respect to any (x) Banking Services and (y) Rate Management Transactions (other than Commodity Hedging Agreements), as determined by the Collateral Agent in its reasonable discretion.

"Section" means a numbered section of this Security Agreement, unless another document is specifically referenced.

"Secured Parties" means, collectively, the Lenders and the Agent, any other holder from time to time of any of the Secured Obligations and, in each case, their respective successors and assigns.

"Security" has the meaning set forth in Article 8 of the UCC.

"Security Entitlement" has the meaning set forth in Article 8 of the UCC.

"Stock Rights" means all dividends, instruments or other distributions and any other right or property which the Grantors shall receive or shall become entitled to receive for any reason whatsoever with respect to, in substitution for or in exchange for any Capital Stock constituting Collateral, any right to receive Capital Stock and any right to receive earnings, in which the Grantors now have or hereafter acquire any right, issued by an issuer of such Capital Stock.

"Supporting Obligations" shall have the meaning set forth in Article 9 of the UCC.

"Tangible Chattel Paper" shall have the meaning set forth in Article 9 of the UCC.

"Trademarks" means, with respect to any Person, all of such Person's right, title, and interest in and to the following: (a) all trademarks (including service marks), trade names, trade dress, and trade styles and the registrations and applications for registration thereof and the goodwill of the business symbolized by the foregoing; (b) all licenses of the foregoing, whether

as licensee or licensor; (c) all renewals of the foregoing; (d) all income, royalties, damages, and payments now or hereafter due or payable with respect thereto, including, without limitation, damages, claims, and payments for past and future infringements thereof; (e) all rights to sue for past, present, and future infringements of the foregoing, including the right to settle suits involving claims and demands for royalties owing; and (f) all rights corresponding to any of the foregoing throughout the world.

"UCC" means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided that to the extent that the Uniform Commercial Code is used to define any term in any security document and such term is defined differently in differing Articles of the Uniform Commercial Code, the definition of such term contained in Article 9 shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection, publication or priority of, or remedies with respect to, Liens of any Party is governed by the Uniform Commercial Code or foreign personal property security laws as enacted and in effect in a jurisdiction other than the State of New York, the term "Uniform Commercial Code" will mean the Uniform Commercial Code or such foreign personal property security laws as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

"Unmatured Default" means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default hereunder.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms.

**ARTICLE II**
**GRANT OF SECURITY INTEREST**

Each Grantor hereby pledges, assigns and grants to the Collateral Agent, on behalf of and for the benefit of the Secured Parties, a security interest in all of its right, title and interest in, to and under all personal property and other assets, whether now owned by or owing to, or hereafter acquired by or arising in favor of such Grantor (including under any trade name or derivations thereof), and whether owned or consigned by or to, or leased from or to, such Grantor, and regardless of where located (all of which will be collectively referred to as the "Collateral"), including:

(i) all Accounts and Receivables;

(ii) all Chattel Paper (including Tangible Chattel Paper and Electronic Chattel Paper);

(iii) all Documents;

(iv) all Equipment;

(v) all Fixtures;

(vi) all General Intangibles;

(vii) all Goods;

(viii) all Instruments (including, without limitation, Promissory Notes);

(ix) all Inventory;

(x) all Investment Property;

(xi) all cash or cash equivalents;

(xii) all letters of credit, Letter-of-Credit Rights and Supporting Obligations;

(xiii) (x) all Deposit Accounts with any bank or other financial institution and all cash, checks, other negotiable instruments, funds and other evidences of payments held therein and (y) all Securities and Security Entitlements, and securities accounts, in each case, to the extent constituting cash or cash equivalents or representing a claim to cash equivalents;

(xiv) all Intellectual Property Rights;

(xv) all Capital Stock;

(xvi) all Rate Management Transactions (including Commodity Hedging Agreements); and

(xvii) and all accessions to, substitutions for and replacements, Proceeds and products of the foregoing, together with all books and Records, customer lists, credit files, computer files, programs, printouts and other computer materials and records related thereto and any General Intangibles at any time evidencing or relating to any of the foregoing,

to secure the prompt and complete payment and performance of the Secured Obligations; provided that, notwithstanding anything herein or in the Credit Agreement to the contrary, the Secured Obligations shall not include any Obligations with respect to the Term Commitments, Term Loans or Term Lenders until the Credit Extension Date with respect to the Term Loans occurs pursuant to Section 2.1.5 of the Credit Agreement.

**ARTICLE III**
**REPRESENTATIONS AND WARRANTIES**

Each Grantor represents and warrants to the Collateral Agent and the Secured Parties that:

3.1. Title, Perfection and Priority. Such Grantor has good and valid rights in or the power to transfer the Collateral and title to the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of all Liens except for Liens permitted under Section 4.1(e), and has full power and authority to grant to the Collateral Agent the security interest in such Collateral pursuant hereto. When financing statements have been filed in the appropriate offices against such Grantor in the locations listed on Exhibit H, the Collateral Agent will have a fully perfected first priority security interest in that Collateral of the Grantor in which a security interest may be perfected by filing, subject only to Liens permitted under Section 4.1(e).

3.2. Type and Jurisdiction of Organization, Organizational and Identification Numbers. The type of entity of such Grantor, its state of organization, the organizational number issued to it by its state of organization and its federal employer identification number are set forth on Exhibit A.

3.3. Principal Location. Such Grantor's mailing address and the location of its place of business (if it has only one) or its chief executive office (if it has more than one place of business), is disclosed in Exhibit A; such Grantor has no other places of business except those set forth in Exhibit A.

3.4. Collateral Locations. All of such Grantor's locations where Collateral is located are listed on Exhibit A. All of said locations are owned by such Grantor except for locations (i) which are leased by the Grantor as lessee and designated in Part VII(b) of Exhibit A and (ii) at which Inventory is held in a public warehouse or is otherwise held by a bailee or on consignment as designated in Part VII(c) of Exhibit A.

3.5. Deposit Accounts. All of such Grantor's Deposit Accounts are listed on Exhibit B.

3.6. Exact Names. Such Grantor's name in which it has executed this Security Agreement is the exact name as it appears in such Grantor's organizational documents, as amended, as filed with such Grantor's jurisdiction of organization.

3.7. Letter-of-Credit Rights and Chattel Paper. Exhibit C lists all Letter-of-Credit Rights and Chattel Paper of such Grantor. All action by such Grantor necessary or desirable to protect and perfect the Collateral Agent's Lien on each item listed on Exhibit C (including the delivery of all originals and the placement of a legend on all Chattel Paper as required hereunder) has been duly taken. The Collateral Agent will have a fully perfected first priority security interest in the Collateral listed on Exhibit C, subject only to Liens permitted under Section 4.1(e).

3.8. Accounts and Chattel Paper.

(a) The names of the obligors, amounts owing, due dates and other information with respect to its Accounts and Chattel Paper are and will be correctly stated in all records of the Grantor relating thereto and in all invoices and Collateral Reports with respect thereto furnished to the Collateral Agent by such Grantor from time to time. As of the time when each Account or each item of Chattel Paper arises, such Grantor shall be deemed to have represented and warranted that such Account or Chattel Paper, as the case may be, and all records relating thereto, are genuine and in all respects what they purport to be.

(b) With respect to its Accounts, except as specifically disclosed on the most recent Collateral Report, (i) all Accounts are Eligible Accounts; (ii) all Accounts represent bona fide sales of Inventory or rendering of services to Account Debtors in the ordinary course of such Grantor's business and are not evidenced by a judgment, Instrument or Chattel Paper; (iii) there are no setoffs, claims or disputes existing or asserted with respect thereto and such Grantor has not made any agreement with any Account Debtor for any extension of time for the payment thereof, any compromise or settlement for less than the full amount thereof, any release of any Account Debtor from liability therefor, or any deduction therefrom except a discount or allowance allowed by such Grantor in the ordinary course of its business for prompt payment or as are generally offered in the industry by competitors of such Grantor in the applicable markets and in each case as disclosed to the Collateral Agent; (iv) to such Grantor's knowledge, there are no facts, events or occurrences which in any way impair the validity or enforceability thereof or could reasonably be expected to reduce the amount payable thereunder as shown on such Grantor's books and records and any invoices, statements and Collateral Reports with respect thereto; (v) such Grantor has not received any notice of proceedings or actions which are threatened or

pending against any Account Debtor which might result in any adverse change in such Account Debtor's financial condition; and (vi) such Grantor has no knowledge that any Account Debtor is unable generally to pay its debts as they become due.

(c) In addition, with respect to all of its Accounts, (i) the amounts shown on all invoices, statements and Collateral Reports with respect thereto are actually and absolutely owing to such Grantor as indicated thereon and are not in any way contingent; (ii) no payments have been or shall be made thereon except payments immediately delivered to a Blocked Account, Lockbox or a Collateral Deposit Account as required pursuant to Section 7.1; and (iii) to such Grantor's knowledge, all Account Debtors have the capacity to contract.

3.9. Inventory. With respect to any of its Inventory scheduled or listed on the most recent Collateral Report, (a) such Inventory (other than Inventory in transit) is located at one of such Grantor's locations set forth on Exhibit A, (b) no Inventory (other than Inventory in transit) is now, or shall at any time or times hereafter be stored at any other location except as permitted by Section 4.1(g), (c) such Grantor has good, indefeasible and merchantable title to such Inventory and such Inventory is not subject to any Lien or security interest or document whatsoever except for the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and Secured Parties, and except for Permitted Liens, (d) except as specifically disclosed in the most recent Collateral Report, such Inventory is Eligible Heating Oil and Other Fuel Inventory or Other Eligible Inventory, in each case of good and merchantable quality, free from any defects, (e) such Inventory is not subject to any licensing, patent, royalty, trademark, trade name or copyright agreements with any third parties which would require any consent of any third party upon sale or disposition of that Inventory or the payment of any monies to any third party upon such sale or other disposition, and (f) the completion of sale or other disposition of such Inventory by the Collateral Agent following a Default shall not require the consent of any Person and shall not constitute a breach or default under any contract or agreement to which such Grantor is a party or to which such property is subject.

3.10. Intellectual Property. Exhibit D includes all material Patents, Trademarks or Copyrights owned by such Grantor in its own name on the date hereof. To the best of such Grantor's knowledge, each of its material Patents, Trademarks and Copyrights owned or held by such Grantor is, on the date hereof, valid, subsisting, unexpired, enforceable and has not been abandoned. None of such Patents, Trademarks and Copyrights is, on the date hereof, the subject of any licensing or franchise agreement. No action or proceeding is pending on the date hereof seeking to limit, cancel or question the validity, or otherwise materially affect the value of any Patent, Trademark or Copyright. This Security Agreement is effective to create a valid and continuing Lien and, upon filing of appropriate financing statements in the offices listed on Exhibit H and this Security Agreement with the United States Copyright Office and the United States Patent and Trademark Office, fully perfected first priority security interests in favor of the Collateral Agent on such Grantor's Patents, Trademarks and Copyrights, such perfected security interests are enforceable as such as against any and all creditors of and purchasers from the Grantor; and all action necessary or desirable to protect and perfect the Collateral Agent's Lien on such Grantor's Patents, Trademarks or Copyrights shall have been duly taken.

3.11. Filing Requirements. None of its Equipment is covered by any certificate of title, except for the vehicles described in Part I of Exhibit E. None of the Collateral owned by it is of a type for which security interests or liens may be perfected by filing under any federal statute except for (a) the vehicles described in Part II of Exhibit E and (b) Patents, Trademarks and Copyrights held by such Grantor and described in Exhibit D. The legal description, county and street address of each property on which any Fixtures are located is set forth in Exhibit F together with the name and address of the record owner of each such property.

3.12. No Financing Statements, Security Agreements. No financing statement or security agreement describing all or any portion of the Collateral which has not lapsed or been terminated naming such Grantor as debtor has been filed or is of record in any jurisdiction except (a) for financing statements or security agreements naming the Collateral Agent on behalf of the Secured Parties as the secured party, and (b) as permitted by Section 4.1(e).

3.13. Pledged Collateral.

(a) Exhibit G sets forth a complete and accurate list of all Pledged Collateral owned by such Grantor. Such Grantor is the direct, sole beneficial owner and sole holder of record of the Pledged Collateral listed on Exhibit G as being owned by it, free and clear of any Liens, except for Liens permitted under Section 4.1(e). Such Grantor further represents and warrants that (i) all Pledged Collateral owned by it constituting Capital Stock has been (to the extent such concepts are relevant with respect to such Pledged Collateral) duly authorized, validly issued, are fully paid and non-assessable, (ii) with respect to any certificates representing any Pledged Collateral constituting Capital Stock, either such certificates are Securities as defined in Article 8 of the UCC as a result of actions by the issuer or otherwise, or, if such certificates are not Securities, such Grantor has so informed the Collateral Agent so that the Collateral Agent may take steps to perfect its security interest therein as a General Intangible, (iii) all such Pledged Collateral held by a securities intermediary is covered by a control agreement among such Grantor, the securities intermediary and the Collateral Agent pursuant to which the Collateral Agent has Control and (iv) all Pledged Collateral which represents Indebtedness owed to such Grantor has been duly authorized, authenticated or issued and delivered by the issuer of such Indebtedness, is the legal, valid and binding obligation of such issuer and such issuer is not in default thereunder.

(b) In addition, (i) none of the Pledged Collateral owned by it has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject, (ii) there are existing no options, warrants, calls or commitments of any character whatsoever relating to such Pledged Collateral or which obligate the issuer of any Capital Stock included in the Pledged Collateral to issue additional Capital Stock, and (iii) no consent, approval, authorization, or other action by, and no giving of notice, filing with, any governmental authority or any other Person is required for the pledge by such Grantor of such Pledged Collateral pursuant to this Security Agreement or for the execution, delivery and performance of this Security Agreement by such Grantor, or for the exercise by the Collateral Agent of the voting or other rights provided for in this Security Agreement or for the remedies in respect of the Pledged Collateral pursuant to this Security Agreement, except as may be required in connection with such disposition by laws affecting the offering and sale of securities generally.

(c) Except as set forth in Exhibit G, such Grantor or Grantors collectively own 100% of the issued and outstanding Capital Stock which constitutes Pledged Collateral and none of the Pledged Collateral which represents Indebtedness owed to such Grantor is subordinated in right of payment to other Indebtedness or subject to the terms of an indenture.

**ARTICLE IV**
**COVENANTS**

From the date of this Security Agreement, and thereafter until this Security Agreement is terminated, each Grantor agrees that:

4.1. General.

(a) Collateral Records. Such Grantor will maintain complete and accurate books and records with respect to the Collateral owned by it, and furnish to the Collateral Agent, with sufficient copies for each of the Secured Parties, such reports relating to such Collateral as the Collateral Agent shall from time to time request.

(b) Authorization to File Financing Statements; Ratification. Such Grantor hereby authorizes the Collateral Agent to file, and if requested will deliver to the Collateral Agent, all financing statements and other documents and take such other actions as may from time to time be requested by the Collateral Agent in order to maintain a first priority perfected security interest in and, if applicable, Control of, the Collateral owned by such Grantor. Any financing statement filed by the Collateral Agent may be filed in any filing office in any UCC jurisdiction and may (i) indicate such Grantor's Collateral (1) as all assets of the Grantor or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the UCC or such jurisdiction, or (2) by any other description which reasonably approximates the description contained in this Security Agreement, and (ii) contain any other information required by part 5 of Article 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including (A) whether such Grantor is an organization, the type of organization and any organization identification number issued to such Grantor, and (B) in the case of a financing statement filed as a fixture filing or indicating such Grantor's Collateral as as-extracted collateral or timber to be cut, a sufficient description of real Property to which the Collateral relates. Such Grantor also agrees to furnish any such information to the Collateral Agent promptly upon request. Such Grantor also ratifies its authorization for the Collateral Agent to have filed in any UCC jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(c) Further Assurances. Such Grantor will, if so requested by the Collateral Agent, furnish to the Collateral Agent, as often as the Collateral Agent requests, statements and schedules further identifying and describing the Collateral owned by it (including amended exhibits to this Security Agreement) and such other reports and information in connection with its Collateral as the Collateral Agent may reasonably request, all in such detail as the Collateral Agent may specify. Such Grantor also agrees to take any and all actions necessary to defend title to the Collateral owned by it against all persons and to defend the security interest of the Collateral Agent in its Collateral and the priority thereof against any Lien not expressly permitted hereunder.

(d) Disposition of Collateral. Such Grantor will not sell, lease or otherwise dispose of the Collateral owned by it except for dispositions specifically permitted pursuant to Section 6.19 of the Credit Agreement.

(e) Liens. Such Grantor will not create, incur, or suffer to exist any Lien on the Collateral owned by it except (i) the security interest created by this Security Agreement, and (ii) other Permitted Liens.

(f) Other Financing Statements. Such Grantor will not authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by it, except as permitted by Section 4.1(e). Such Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement without the prior written consent of the Collateral Agent, subject to such Grantor's rights under Section 9-509(d)(2) of the UCC.

(g) Locations. Such Grantor will not (i) maintain any Collateral owned by it at any location other than those locations listed on Exhibit A, (ii) otherwise change, or add to, such locations without the Collateral Agent's prior written consent as required by the Credit Agreement (and if the Collateral Agent gives such consent, the Grantor will concurrently therewith obtain a Collateral Access Agreement for each such location to the extent required by the Credit Agreement), or (iii) change its principal place of business or chief executive office from the location identified on Exhibit A, other than as permitted by the Credit Agreement.

(h) Compliance with Terms. Such Grantor will perform and comply with all obligations in respect of the Collateral owned by it and all agreements to which it is a party or by which it is bound relating to such Collateral.

4.2. Receivables.

(a) Certain Agreements on Receivables. Such Grantor will not make or agree to make any discount, credit, rebate or other reduction in the original amount owing on a Receivable or accept in satisfaction of a Receivable less than the original amount thereof, except that, prior to the occurrence of a Default, such Grantor may reduce the amount of Accounts arising from the sale of Inventory in accordance with its present policies and in the ordinary course of business.

(b) Collection of Receivables. Except as otherwise provided in this Security Agreement, such Grantor will collect and enforce, at such Grantor's sole expense, all amounts due or hereafter due to such Grantor under the Receivables owned by it.

(c) Delivery of Invoices. Such Grantor will deliver to the Collateral Agent immediately upon its request duplicate invoices with respect to each Account owned by it bearing such language of assignment as the Collateral Agent shall specify.

(d) Disclosure of Counterclaims on Receivables. If (i) any discount, credit or agreement to make a rebate or to otherwise reduce the amount owing on any Receivable owned by such Grantor exists or (ii) if, to the knowledge of such Grantor, any dispute, setoff, claim, counterclaim or defense exists or has been asserted or threatened with respect to any such Receivable, such Grantor will promptly disclose such fact to the Collateral Agent in writing. Such Grantor shall send the Collateral Agent a copy of each credit memorandum in excess of $1,000 as soon as issued, and such Grantor shall promptly report each credit memo and each of the facts required to be disclosed to the Collateral Agent in accordance with this Section 4.2(d) on the Borrowing Base Certificates submitted by it.

(e) Electronic Chattel Paper. Such Grantor shall take all steps necessary to grant the Collateral Agent Control of all electronic chattel paper in accordance with the UCC and all "transferable records" as defined in each of the Uniform Electronic Transactions Act and the Electronic Signatures in Global and National Commerce Act.

4.3. Inventory and Equipment.

(a) Maintenance of Goods. Such Grantor will do all things necessary to maintain, preserve, protect and keep its Inventory and the Equipment in good repair and working and saleable condition, except for damaged or defective goods arising in the ordinary course of such Grantor's business and except for ordinary wear and tear in respect of the Equipment.

(b) [Reserved]

(c) Inventory Count; Perpetual Inventory System. Such Grantor will conduct a physical count of its Inventory at least once per Fiscal Year, and after and during the continuation of a Default, at such other times as the Collateral Agent requests. Such Grantor, at its own expense, shall deliver to the Collateral Agent the results of each physical verification, which such Grantor has made, or has caused any other Person to make on its behalf, of all or any portion of its Inventory. Such Grantor will maintain a perpetual inventory reporting system at all times.

(d) Equipment. Such Grantor shall inform the Collateral Agent of any additions to or deletions from its Equipment within 30 days of such addition or deletion. Such Grantor shall not permit any Equipment to become a fixture with respect to real property or to become an accession with respect to other personal property with respect to which real or personal property the Collateral Agent does not have a Lien. Such Grantor will not, without the Collateral Agent's prior written consent, alter or remove any identifying symbol or number on any of such Grantor's Equipment constituting Collateral.

(e) Titled Vehicles. Such Grantor will give the Collateral Agent notice of its acquisition of any vehicle covered by a certificate of title and deliver to the Collateral Agent, upon request, the original of any vehicle title certificate and provide and/or file all other documents or instruments necessary to have the Lien of the Collateral Agent noted on any such certificate or with the appropriate state office.

4.4. Delivery of Instruments, Securities, Chattel Paper and Documents. Such Grantor will (a) deliver to the Collateral Agent immediately upon execution of this Security Agreement the originals of all Chattel Paper, Securities and Instruments constituting Collateral owned by it (if any then exist), (b) hold in trust for the Collateral Agent upon receipt and immediately thereafter deliver to the Collateral Agent any such Chattel Paper, Securities and Instruments constituting Collateral, (c) upon the Collateral Agent's request, deliver to the Collateral Agent (and thereafter hold in trust for the Collateral Agent upon receipt and immediately deliver to the Collateral Agent) any Document evidencing or constituting Collateral and (d) upon the Collateral Agent's request, deliver to the Collateral Agent a duly executed amendment to this Security Agreement, in the form of Exhibit I hereto (the "Amendment"), pursuant to which such Grantor will pledge such additional Collateral. Such Grantor hereby authorizes the Collateral Agent to attach each Amendment to this Security Agreement and agrees that all additional Collateral owned by it set forth in such Amendments shall be considered to be part of the Collateral.

4.5. Uncertificated Pledged Collateral. Such Grantor will permit the Collateral Agent from time to time to cause the appropriate issuers (and, if held with a securities intermediary, such securities intermediary) of uncertificated securities or other types of Pledged Collateral owned by it not represented by certificates to mark their books and records with the numbers and face amounts of all such uncertificated securities or other types of Pledged Collateral not represented by certificates and all rollovers and replacements therefor to reflect the Lien of the Collateral Agent granted pursuant to this Security Agreement. With respect to any Pledged Collateral owned by it, such Grantor will take any actions necessary to cause (a) the issuers of uncertificated securities which are Pledged Collateral and (b) any securities intermediary which is the holder of any such Pledged Collateral, to cause the Collateral Agent to have and retain Control over such Pledged Collateral. Without limiting the foregoing, such Grantor will, with respect to any such Pledged Collateral held with a securities intermediary, cause such securities intermediary to enter into a control agreement with the Collateral Agent, in form and substance satisfactory to the Collateral Agent, giving the Collateral Agent Control.

4.6. Pledged Collateral.

(a) Changes in Capital Structure of Issuers. Such Grantor will not (i) permit or suffer any issuer of Capital Stock constituting Pledged Collateral owned by it to dissolve, merge, liquidate, retire

any of its Capital Stock or other Instruments or Securities evidencing ownership, reduce its capital, sell or encumber all or substantially all of its assets (except for Permitted Liens and sales of assets permitted pursuant to Section 4.1(d)) or merge or consolidate with any other entity, or (ii) vote any such Pledged Collateral in favor of any of the foregoing.

(b) Issuance of Additional Securities. Such Grantor will not permit or suffer the issuer of Capital Stock constituting Pledged Collateral owned by it to issue additional Capital Stock, any right to receive the same or any right to receive earnings, except to such Grantor.

(c) Registration of Pledged Collateral. Such Grantor will permit any registerable Pledged Collateral owned by it to be registered in the name of the Collateral Agent or its nominee at any time at the option of the Required Secured Parties.

(d) Exercise of Rights in Pledged Collateral.

(i) Without in any way limiting the foregoing and subject to clause (ii) below, such Grantor shall have the right to exercise all voting rights or other rights relating to the Pledged Collateral owned by it for all purposes not inconsistent with this Security Agreement, the Credit Agreement or any other Loan Document; provided however, that no vote or other right shall be exercised or action taken which would have the effect of impairing the rights of the Collateral Agent in respect of such Pledged Collateral.

(ii) Such Grantor will permit the Collateral Agent or its nominee at any time after the occurrence of a Default, without notice, to exercise all voting rights or other rights relating to the Pledged Collateral owned by it, including, without limitation, exchange, subscription or any other rights, privileges, or options pertaining to any Capital Stock or Investment Property constituting such Pledged Collateral as if it were the absolute owner thereof.

(iii) Such Grantor shall be entitled to collect and receive for its own use all cash dividends and interest paid in respect of the Pledged Collateral owned by it to the extent not in violation of the Credit Agreement other than any of the following distributions and payments (collectively referred to as the "Excluded Payments"): (A) dividends and interest paid or payable other than in cash in respect of such Pledged Collateral, and instruments and other property received, receivable or otherwise distributed in respect of, or in exchange for, such Pledged Collateral; (B) dividends and other distributions paid or payable in cash in respect of such Pledged Collateral in connection with a partial or total liquidation or dissolution or in connection with a reduction of capital, capital surplus or paid-in capital of an issuer; and (C) cash paid, payable or otherwise distributed, in respect of principal of, or in redemption of, or in exchange for, such Pledged Collateral; provided, however, that until actually paid, all rights to such distributions shall remain subject to the Lien created by this Security Agreement; and

(iv) All Excluded Payments and all other distributions in respect of any of the Pledged Collateral owned by such Grantor, whenever paid or made, shall be delivered to the Collateral Agent to hold as Pledged Collateral and shall, if received by such Grantor, be received in trust for the benefit of the Collateral Agent, be segregated from the other property or funds of such Grantor, and be forthwith delivered to the Collateral Agent as Pledged Collateral in the same form as so received (with any necessary endorsement).

4.7. Intellectual Property.

(a) Such Grantor will use its best efforts to secure all consents and approvals necessary or appropriate for the assignment to or benefit of the Collateral Agent of any License held by such Grantor and to enforce the security interests granted hereunder.

(b) Such Grantor shall notify the Collateral Agent immediately if it knows or has reason to know that any application or registration relating to any Patent, Trademark or Copyright (now or hereafter existing) may become abandoned, invalidated, dedicated or otherwise impaired, or of any adverse determination or development (including 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) regarding such Grantor's ownership of any Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same.

(c) In no event shall such Grantor, either directly or through any agent, employee, licensee or designee, file an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency without giving the Collateral Agent prior written notice thereof, and, upon request of the Collateral Agent, such Grantor shall execute and deliver any and all agreements, instruments, documents, papers and/or security agreements as the Collateral Agent may request to evidence the Collateral Agent's first priority security interest on such Patent, Trademark or Copyright, and the General Intangibles of such Grantor relating thereto or represented thereby.

(d) Such Grantor shall take all actions necessary or requested by the Collateral Agent to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of its Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings .

(e) Such Grantor shall, unless it shall reasonably determine that such Patent, Trademark or Copyright is in no way material to the conduct of its business or operations, promptly sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Collateral Agent shall deem appropriate under the circumstances to protect such Patent, Trademark or Copyright. In the event that such Grantor institutes suit because any of its Patents, Trademarks or Copyrights constituting Collateral is infringed upon, or misappropriated or diluted by a third party, such Grantor shall comply with Section 4.8. Such Grantor shall not do any act that knowingly uses a Patent, Trademark or Copyright that infringes the intellectual property rights of any third party.

4.8. Commercial Tort Claims. Such Grantor shall promptly, and in any event within two Business Days after the same is acquired by it, notify the Collateral Agent of any commercial tort claim (as defined in the UCC) in excess of $50,000 acquired by it and, unless the Collateral Agent otherwise consents, such Grantor shall enter into an amendment to this Security Agreement, in the form of Exhibit J hereto, granting to Collateral Agent a first priority security interest in such commercial tort claim.

4.9. Letter-of-Credit Rights. If such Grantor is or becomes the beneficiary of a letter of credit in excess of $50,000, it shall promptly, and in any event within two Business Days after becoming a beneficiary, notify the Collateral Agent thereof and cause the issuer and/or confirmation bank to (i) consent to the assignment of any Letter-of-Credit Rights to the Collateral Agent and (ii) agree to direct all payments thereunder to a Deposit Account at the Collateral Agent or subject to a Deposit Account

Control Agreement for application to the Secured Obligations, in accordance with Section 2.18 of the Credit Agreement, all in form and substance reasonably satisfactory to the Collateral Agent.

4.10. Federal, State or Municipal Claims. Such Grantor will promptly notify the Collateral Agent of any Collateral which constitutes a claim against the United States government or any state or local government or any instrumentality or agency thereof, the assignment of which claim is restricted by federal, state or municipal law.

4.11. No Interference. Such Grantor agrees that it will not interfere with any right, power and remedy of the Collateral Agent provided for in this Security Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Collateral Agent of any one or more of such rights, powers or remedies.

## ARTICLE V
## DEFAULTS AND REMEDIES

5.1. Defaults. The occurrence of any one or more of the following events shall constitute a Default hereunder:

(a) Any representation or warranty made by or on behalf of any Grantor under or in connection with this Security Agreement shall be materially false as of the date on which made.

(b) The breach by any Grantor of any of the terms or provisions of Article IV or Article VII.

(c) The breach by any Grantor (other than a breach which constitutes a Default under any other Section of this Article V) of any of the terms or provisions of this Security Agreement which is not remedied within ten days after such breach.

(d) The occurrence of any "Default" under, and as defined in, the Credit Agreement.

(e) Any Capital Stock which is included within the Collateral shall at any time constitute a Security or the issuer of any such Capital Stock shall take any action to have such interests treated as a Security unless (i) all certificates or other documents constituting such Security have been delivered to the Collateral Agent and such Security is properly defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise, or (ii) the Collateral Agent has entered into a control agreement with the issuer of such Security or with a securities intermediary relating to such Security and such Security is defined as such under Article 8 of the UCC of the applicable jurisdiction, whether as a result of actions by the issuer thereof or otherwise.

5.2. Remedies.

(a) Upon the occurrence of a Default and during the continuation thereof, the Collateral Agent may exercise any or all of the following rights and remedies:

(i) those rights and remedies provided in this Security Agreement, the Credit Agreement, or any other Loan Document; provided that, this Section 5.2(a) shall not be understood to limit any rights or remedies available to the Collateral Agent and the Secured Parties prior to a Default;

(ii) those rights and remedies available to a secured party under the UCC (whether or not the UCC applies to the affected Collateral) or under any other applicable law (including, without limitation, any law governing the exercise of a bank's right of setoff or bankers' lien) when a debtor is in default under a security agreement;

(iii) give notice of sole control or any other instruction under any Deposit Account Control Agreement and other control agreement with any securities intermediary and take any action therein with respect to such Collateral;

(iv) without notice (except as specifically provided in Section 8.1 or elsewhere herein), demand or advertisement of any kind to any Grantor or any other Person, enter the premises of any Grantor where any Collateral is located (through self-help and without judicial process) to collect, receive, assemble, process, appropriate, sell, lease, assign, grant an option or options to purchase or otherwise dispose of, deliver, or realize upon, the Collateral or any part thereof in one or more parcels at public or private sale or sales (which sales may be adjourned or continued from time to time with or without notice and may take place at any Grantor's premises or elsewhere), for cash, on credit or for future delivery without assumption of any credit risk, and upon such other terms as the Collateral Agent may deem commercially reasonable; and

(v) concurrently with written notice to the applicable Grantor, transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, to exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon and to otherwise act with respect to the Pledged Collateral as though the Collateral Agent was the outright owner thereof.

(b) The Collateral Agent, on behalf of the Secured Parties, may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(c) The Collateral Agent shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase for the benefit of the Collateral Agent and the Secured Parties, the whole or any part of the Collateral so sold, free of any right of equity redemption, which equity redemption each Grantor hereby expressly releases.

(d) Until the Collateral Agent is able to effect a sale, lease, or other disposition of Collateral, the Collateral Agent shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Collateral Agent. The Collateral Agent may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Collateral Agent's remedies (for the benefit of the Collateral Agent and the Secured Parties), with respect to such appointment without prior notice or hearing as to such appointment.

(e) If, after the Credit Agreement has terminated by its terms and all of the Obligations have been paid in full, there remain obligations of any Grantor in respect of any Rate Management Transaction (including Commodity Hedging Agreements) or Banking Services, the Required Secured Parties may exercise the remedies provided in this Section 5.2 upon the occurrence of any event which

would allow or require the termination or acceleration of such obligations in respect of such Rate Management Transactions (including Commodity Hedging Agreements) or Banking Services.

(f) Notwithstanding the foregoing, neither the Collateral Agent nor the Secured Parties shall be required to (i) make any demand upon, or pursue or exhaust any of their rights or remedies against, any Grantor, any other obligor, guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of their rights or remedies with respect to any Collateral therefor or any direct or indirect guarantee thereof, (ii) marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, or (iii) effect a public sale of any Collateral.

(g) Each Grantor recognizes that the Collateral Agent may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (a) above. Each Grantor also acknowledges that any private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Collateral Agent shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit any Grantor or the issuer of the Pledged Collateral to register such securities for public sale under the Securities Act of 1933, as amended, or under applicable state securities laws, even if the applicable Grantor and the issuer would agree to do so.

5.3. Grantor's Obligations Upon Default. Upon the request of the Collateral Agent after the occurrence of a Default, each Grantor will:

(a) assemble and make available to the Collateral Agent the Collateral and all books and records relating thereto at any place or places specified by the Collateral Agent, whether at a Grantor's premises or elsewhere;

(b) permit the Collateral Agent, by the Collateral Agent's representatives and agents, to enter any premises where all or any part of the Collateral, or the books and records relating thereto, or both, are located, to take possession of all or any part of the Collateral or the books and records relating thereto, or both, to remove all or any part of the Collateral or the books and records relating thereto, or both, and to conduct sales of the Collateral;

(c) prepare and file, or cause an issuer of Pledged Collateral to prepare and file, with the Securities and Exchange Commission or any other applicable government agency, registration statements, a prospectus and such other documentation in connection with the Pledged Collateral as the Collateral Agent may request, all in form and substance satisfactory to the Collateral Agent, and furnish to the Collateral Agent, or cause an issuer of Pledged Collateral to furnish to the Collateral Agent, any information regarding the Pledged Collateral in such detail as the Collateral Agent may specify;

(d) take, or cause an issuer of Pledged Collateral to take, any and all actions necessary to register or qualify the Pledged Collateral to enable the Collateral Agent to consummate a public sale or other disposition of the Pledged Collateral; and

(e) at its own expense, cause the independent certified public accountants then engaged by each Grantor to prepare and deliver to the Collateral Agent and each Lender, at any time, and from time to time, promptly upon the Collateral Agent's request, the following reports with respect to the applicable Grantor: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts.

5.4. Grant of Intellectual Property License. For the purpose of enabling the Collateral Agent to exercise the rights and remedies under this Article V at such time as the Collateral Agent shall be lawfully entitled to exercise such rights and remedies, each Grantor hereby (a) grants to the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties, an irrevocable, nonexclusive license (exercisable without payment of royalty or other compensation to any Grantor) to use, license or sublicense any Intellectual Property Rights now owned or hereafter acquired by such Grantor, and wherever the same may be located, and including in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof and (b) irrevocably agrees that the Collateral Agent may sell any of such Grantor's Inventory directly to any person, including without limitation persons who have previously purchased the Grantor's Inventory from such Grantor and in connection with any such sale or other enforcement of the Collateral Agent's rights under this Security Agreement, may sell Inventory which bears any Trademark owned by or licensed to such Grantor and any Inventory that is covered by any Copyright owned by or licensed to such Grantor and the Agent may finish any work in process and affix any Trademark owned by or licensed to such Grantor and sell such Inventory as provided herein.

## ARTICLE VI
## ACCOUNT VERIFICATION; ATTORNEY IN FACT; PROXY

6.1. Account Verification. The Collateral Agent may at any time, in the Collateral Agent's own name, in the name of a nominee of the Collateral Agent, or in the name of any Grantor communicate (by mail, telephone, facsimile or otherwise) with the Account Debtors of any such Grantor, parties to contracts with any such Grantor and obligors in respect of Instruments of any such Grantor to verify with such Persons, to the Collateral Agent's satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts, Instruments, Chattel Paper, payment intangibles and/or other Receivables.

6.2. Authorization for Secured Party to Take Certain Action.

(a) Each Grantor irrevocably authorizes the Collateral Agent at any time and from time to time in the sole discretion of the Collateral Agent and appoints the Collateral Agent as its attorney in fact (i) to execute on behalf of such Grantor as debtor and to file financing statements necessary or desirable in the Collateral Agent's sole discretion to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (ii) to endorse and collect any cash Proceeds of the Collateral, (iii) to file a carbon, photographic or other reproduction of this Security Agreement or any financing statement with respect to the Collateral as a financing statement and to file any other financing statement or amendment of a financing statement (which does not add new collateral or add a debtor) in such offices as the Collateral Agent in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of the Collateral Agent's security interest in the Collateral, (iv) to contact and enter into one or more agreements with the issuers of uncertificated securities which are Pledged Collateral or with securities intermediaries holding Pledged Collateral as may be necessary or advisable to give the Collateral Agent Control over such Pledged Collateral, (v) to apply the Proceeds of any Collateral received by the Collateral Agent to the Secured Obligations as provided in Section 7.3, (vi) to discharge past due taxes, assessments, charges, fees or Liens on the Collateral (except for such Liens as are specifically permitted hereunder), (vii) to contact Account Debtors for any reason, (viii) to demand payment or enforce payment of the Receivables in the name of the Collateral Agent or such Grantor and to endorse any and all checks, drafts, and other instruments for the payment of money relating to the Receivables, (ix) to sign such Grantor's name on any invoice or bill of lading relating to the Receivables, drafts against any Account Debtor of such Grantor, assignments and verifications of Receivables, (x) to exercise all of such Grantor's rights and remedies with respect to the collection of the Receivables and any other Collateral, (xi) to settle, adjust, compromise, extend or renew the Receivables, (xii) to settle,

adjust or compromise any legal proceedings brought to collect Receivables, (xiii) to prepare, file and sign such Grantor's name on a proof of claim in bankruptcy or similar document against any Account Debtor of such Grantor, (xiv) to prepare, file and sign such Grantor's name on any notice of Lien, assignment or satisfaction of Lien or similar document in connection with the Receivables, (xv) to change the address for delivery of mail addressed to such Grantor to such address as the Collateral Agent may designate and to receive, open and dispose of all mail addressed to such Grantor, and (xvi) to do all other acts and things necessary to carry out this Security Agreement; and such Grantor agrees to reimburse the Collateral Agent on demand for any payment made or any expense incurred by the Collateral Agent in connection with any of the foregoing; provided that, this authorization shall not relieve such Grantor of any of its obligations under this Security Agreement or under the Credit Agreement.

(b) All acts of said attorney or designee are hereby ratified and approved. The powers conferred on the Collateral Agent, for the benefit of the Collateral Agent and Secured Parties, under this Section 6.2 are solely to protect the Collateral Agent's interests in the Collateral and shall not impose any duty upon the Collateral Agent or any Lender to exercise any such powers.

6.3. Proxy. EACH GRANTOR HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE COLLATERAL AGENT AS ITS PROXY AND ATTORNEY-IN-FACT (AS SET FORTH IN SECTION 6.2 ABOVE) WITH RESPECT TO ITS PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE SUCH PLEDGED COLLATERAL, WITH FULL POWER OF SUBSTITUTION TO DO SO. IN ADDITION TO THE RIGHT TO VOTE ANY SUCH PLEDGED COLLATERAL, THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF SUCH PLEDGED COLLATERAL WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY SUCH PLEDGED COLLATERAL ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF SUCH PLEDGED COLLATERAL OR ANY OFFICER OR THE AGENT THEREOF), UPON THE OCCURRENCE OF A DEFAULT.

6.4. Nature of Appointment; Limitation of Duty. THE APPOINTMENT OF THE COLLATERAL AGENT AS PROXY AND ATTORNEY-IN-FACT IN THIS ARTICLE VI IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE DATE ON WHICH THIS SECURITY AGREEMENT IS TERMINATED IN ACCORDANCE WITH SECTION 8.15. NOTWITHSTANDING ANYTHING CONTAINED HEREIN, NEITHER THE COLLATERAL AGENT, NOR ANY LENDER, NOR ANY OF THEIR RESPECTIVE AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL HAVE ANY DUTY TO EXERCISE ANY RIGHT OR POWER GRANTED HEREUNDER OR OTHERWISE OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION; PROVIDED THAT, IN NO EVENT SHALL THEY BE LIABLE FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

**ARTICLE VII**

**COLLECTION AND APPLICATION OF COLLATERAL PROCEEDS; DEPOSIT ACCOUNTS**

7.1. Collection of Receivables.

(a) Each Grantor has (i) executed and delivered to the Collateral Agent Deposit Account Control Agreements for each Deposit Account maintained by such Grantor into which all cash, checks or other similar payments relating to or constituting payments made in respect of Receivables will be deposited (a "Collateral Deposit Account"), which Collateral Deposit Accounts are identified as such on Exhibit B, (ii) established blocked account service (the "Blocked Accounts") with the bank(s) set forth in Exhibit B, which blocked accounts are subject to irrevocable blocked account agreements in the form provided by or otherwise acceptable to the Collateral Agent and have been accompanied by an acknowledgment by the bank where the Blocked Account is located of the Lien of the Collateral Agent granted hereunder and of irrevocable instructions to wire all amounts collected therein to the Collection Account (a "Blocked Account Agreement") and (iii) established lockbox service (the "Lock Boxes") with the bank(s) and Persons set forth in Exhibit B, which lockboxes are subject to irrevocable lockbox agreements in the form provided by or otherwise acceptable to the Collateral Agent and have been accompanied by an acknowledgment by such Person where the Lockbox is located of the Lien of the Collateral Agent granted hereunder and of irrevocable instructions to wire all amounts collected therein to the Collection Account (a "Lockbox Agreement"). Each of the agreements referred to in this Section 7.1 (a) remains in effect as of the Effective Date and any references therein to the Existing Credit Agreement or Existing Security Agreement, as applicable, include such agreements as amended. After the Effective Date, each Grantor will comply with the terms of Section 7.2.

(b) Each Grantor shall direct all of its Account Debtors to forward all cash, checks or other similar payments relating to or constituting payments made in respect of Receivables directly to Blocked Accounts subject to Blocked Account Agreements or Lockboxes subject to Lockbox Agreements; provided that, with respect to PHI and any Subsidiary thereof, all of such payments shall, unless otherwise consented to by the Collateral Agent, continue to be paid through the Remittance Processor pursuant to the Remittance Processing Agreement. Neither PHI nor any Subsidiary thereof shall amend or terminate the Remittance Processing Agreement or instruct any of its Account Debtors to make payments to any Person other than as set forth in the preceding sentence, without the prior written consent of the Collateral Agent. The Collateral Agent shall have sole access to the Blocked Accounts and the Lockboxes at all times and each Grantor shall take all actions necessary to grant the Collateral Agent such sole access. At no time shall any Grantor remove any item from a Blocked Account, Lockbox or from a Collateral Deposit Account without the Collateral Agent's prior written consent. If any Grantor should refuse or neglect to notify any Account Debtor to forward payments directly to a Blocked Account subject to a Blocked Account Agreement or a Lockbox subject to a Lockbox Agreement after notice from the Collateral Agent, the Collateral Agent shall be entitled to make such notification directly to Account Debtor. If notwithstanding the foregoing instructions, any Grantor receives any Proceeds of any Receivables, such Grantor shall receive such payments as the Collateral Agent's trustee, and shall immediately deposit all cash, checks or other similar payments related to or constituting payments made in respect of Receivables received by it to a Collateral Deposit Account. All funds deposited into any Blocked Account subject to a Blocked Account Agreement, a Lockbox subject to a Lockbox Agreement or a Collateral Deposit Account will be swept on a daily basis into a collection account maintained by Petro with the Collateral Agent (the "Collection Account"). The Collateral Agent shall hold and apply funds received into the Collection Account as provided by the terms of Section 7.3.

7.2. Covenant Regarding New Deposit Accounts; Blocked Accounts; Lockboxes. Upon opening or replacing any Collateral Deposit Account, other Deposit Account, or establishing a new Blocked Account or Lockbox, each Grantor shall (a) notify the Collateral Agent within ten (10) days of the opening of such Deposit Account, Blocked Account or Lockbox, and (b) cause each bank, financial institution or any Person in which it seeks to open (i) a Deposit Account, to enter into a Deposit Account Control Agreement with the Collateral Agent within 60 days of opening such Deposit Account in order to give the Collateral Agent Control of such Deposit Account, (ii) a Blocked Account, to enter into a Blocked Account Agreement with the Collateral Agent within 60 days of opening such Blocked Account in order to give the Collateral Agent Control of the Blocked Account or (iii) a Lockbox, to enter into a Lockbox Agreement with the Collateral Agent within 60 days of opening such Lockox in order to give the Collateral Agent Control of the Lockbox. In the case of Deposit Accounts, Blocked Accounts or Lockboxes maintained with Secured Parties, the terms of such letter shall be subject to the provisions of the Credit Agreement regarding setoffs.

7.3. Application of Proceeds; Deficiency.

(a) All amounts deposited in the Collection Account shall, so long as no Default has occurred and is continuing, be deposited into the Borrower's Funding Account; provided that if Availability is less than 15% of the Aggregate Commitment for any three consecutive days, and until the later of the date which is 90 days after such three-day period or the date on which the average monthly Availability for the 12-month period ending on such date is greater than 20% of the Aggregate Commitment (the "Deficiency Termination Date"), all amounts deposited in the Collection Account shall be deemed received by the Collateral Agent in accordance with Section 2.17 of the Credit Agreement and shall, after having been credited in immediately available funds to the Collection Account, be applied (and allocated) by the Collateral Agent in accordance with Section 2.18 of the Credit Agreement. In no event shall any amount be so applied unless and until such amount shall have been credited in immediately available funds to the Collection Account. Commencing on the Deficiency Termination Date, so long as no Default has occurred and is continuing and subject to the proviso above of this Section 7.3(a), all amounts deposited in the Collection Account shall again be deposited into the Borrower's Funding Account. Notwithstanding the foregoing, the effect of the proviso above of this Section 7.3(a) may not be discontinued more than twice in any 12-month period as a result of the occurrence of a Deficiency Termination Date.

(b) The Collateral Agent shall require all other cash proceeds of the Collateral, which are not required to be applied to the Obligations pursuant to Section 2.15 of the Credit Agreement, to be deposited in a cash collateral account with the Collateral Agent and held there as security for the Secured Obligations (it being understood that amounts deposited and remaining in such account shall be included in the Borrowing Base). No Grantor shall have any control whatsoever over said cash collateral account. Any such Proceeds of the Collateral shall be applied in the order set forth in Section 2.18 of the Credit Agreement unless a court of competent jurisdiction shall otherwise direct. Until so applied, such Proceeds shall continue to be held as security for the Secured Obligations and shall not constitute payment thereof.

(c) Notwithstanding anything herein to the contrary, upon the occurrence of a Default, the Collateral Agent may apply all or any part of Proceeds constituting Collateral, whether or not held in a collateral account, in payment of the Secured Obligations in accordance with Section 2.18 of the Credit Agreement. The Grantors shall remain liable for any deficiency if the Proceeds of any sale or disposition of the Collateral are insufficient to pay all Secured Obligations, including any attorneys' fees and other expenses incurred by Collateral Agent or any Lender to collect such deficiency.

**ARTICLE VIII**
**GENERAL PROVISIONS**

8.1. Waivers. Each Grantor hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to the Grantors, addressed as set forth in Article IX, at least ten days prior to (i) the date of any such public sale or (ii) the time after which any such private sale or other disposition may be made. To the maximum extent permitted by applicable law, each Grantor waives all claims, damages, and demands against the Collateral Agent or any Lender arising out of the repossession, retention or sale of the Collateral, except such as arise solely out of the gross negligence or willful misconduct of the Collateral Agent or such Lender as finally determined by a court of competent jurisdiction. To the extent it may lawfully do so, each Grantor absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Collateral Agent or any Lender, any valuation, stay, appraisal, extension, moratorium, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Security Agreement, or otherwise. Except as otherwise specifically provided herein, each Grantor hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Security Agreement or any Collateral.

8.2. Limitation on Collateral Agent's and Secured Parties' Duty with Respect to the Collateral. The Collateral Agent shall have no obligation to clean-up or otherwise prepare the Collateral for sale. The Collateral Agent and each Lender shall use reasonable care with respect to the Collateral in its possession or under its control. Neither the Collateral Agent nor any Lender shall have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Collateral Agent or such Lender, or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. To the extent that applicable law imposes duties on the Collateral Agent to exercise remedies in a commercially reasonable manner, each Grantor acknowledges and agrees that it is commercially reasonable for the Collateral Agent (i) to fail to incur expenses deemed significant by the Collateral Agent to prepare Collateral for disposition or otherwise to transform raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as such Grantor, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Collateral Agent against risks of loss, collection or disposition of Collateral or to provide to the Collateral Agent a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Collateral Agent, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Collateral

Agent in the collection or disposition of any of the Collateral. Each Grantor acknowledges that the purpose of this Section 8.2 is to provide non-exhaustive indications of what actions or omissions by the Collateral Agent would be commercially reasonable in the Collateral Agent's exercise of remedies against the Collateral and that other actions or omissions by the Collateral Agent shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 8.2. Without limitation upon the foregoing, nothing contained in this Section 8.2 shall be construed to grant any rights to any Grantor or to impose any duties on the Collateral Agent that would not have been granted or imposed by this Security Agreement or by applicable law in the absence of this Section 8.2.

8.3. Compromises and Collection of Collateral. The Grantors and the Collateral Agent recognize that setoffs, counterclaims, defenses and other claims may be asserted by obligors with respect to certain of the Receivables, that certain of the Receivables may be or become uncollectible in whole or in part and that the expense and probability of success in litigating a disputed Receivable may exceed the amount that reasonably may be expected to be recovered with respect to a Receivable. In view of the foregoing, each Grantor agrees that the Collateral Agent may at any time and from time to time, if a Default has occurred and is continuing, compromise with the obligor on any Receivable, accept in full payment of any Receivable such amount as the Collateral Agent in its Permitted Discretion shall determine or abandon any Receivable, and any such action by the Collateral Agent shall be commercially reasonable so long as the Collateral Agent acts in good faith based on information known to it at the time it takes any such action.

8.4. Secured Party Performance of Debtor Obligations. Without having any obligation to do so, the Collateral Agent may perform or pay any obligation which any Grantor has agreed to perform or pay in this Security Agreement and the Grantors shall reimburse the Collateral Agent for any amounts paid by the Collateral Agent pursuant to this Section 8.4. The Grantors' obligation to reimburse the Collateral Agent pursuant to the preceding sentence shall be a Secured Obligation payable on demand.

8.5. Specific Performance of Certain Covenants. Each Grantor acknowledges and agrees that a breach of any of the covenants contained in Sections 4.1(d), 4.1(e), 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.12, 5.3, or 8.7 or in Article VII will cause irreparable injury to the Collateral Agent and the Secured Parties, that the Collateral Agent and Secured Parties have no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of the Collateral Agent or the Lenders to seek and obtain specific performance of other obligations of the Grantors contained in this Security Agreement, that the covenants of the Grantors contained in the Sections referred to in this Section 8.5 shall be specifically enforceable against the Grantors.

8.6. Use and Possession of Certain Premises. Upon the occurrence of a Default, the Collateral Agent shall be entitled to occupy and use any premises owned or leased by any Grantor where any of the Collateral or any records relating to the Collateral are located until the Secured Obligations are paid or the Collateral is removed therefrom, whichever first occurs, without any obligation to pay any Grantor for such use and occupancy.

8.7. Dispositions Not Authorized. No Grantor is authorized to sell or otherwise dispose of the Collateral except as set forth in Section 4.1(d) and notwithstanding any course of dealing between any Grantor and the Collateral Agent or other conduct of the Collateral Agent, no authorization to sell or otherwise dispose of the Collateral (except as set forth in Section 4.1(d)) shall be binding upon the Collateral Agent or the Secured Parties unless such authorization is in writing signed by the Collateral Agent with the consent or at the direction of the Required Secured Parties.

8.8. No Waiver; Amendments; Cumulative Remedies. No delay or omission of the Collateral Agent or any Lender to exercise any right or remedy granted under this Security Agreement shall impair

such right or remedy or be construed to be a waiver of any Default or an acquiescence therein, and any single or partial exercise of any such right or remedy shall not preclude any other or further exercise thereof or the exercise of any other right or remedy. No waiver, amendment or other variation of the terms, conditions or provisions of this Security Agreement whatsoever shall be valid unless in writing signed by the Collateral Agent with the concurrence or at the direction of the Secured Parties required under Section 8.3 of the Credit Agreement and then only to the extent in such writing specifically set forth. All rights and remedies contained in this Security Agreement or by law afforded shall be cumulative and all shall be available to the Collateral Agent and the Secured Parties until the Secured Obligations have been paid in full.

8.9. Limitation by Law; Severability of Provisions. All rights, remedies and powers provided in this Security Agreement may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions of this Security Agreement are intended to be subject to all applicable mandatory provisions of law that may be controlling and to be limited to the extent necessary so that they shall not render this Security Agreement invalid, unenforceable or not entitled to be recorded or registered, in whole or in part. Any provision in any this Security Agreement that is held to be inoperative, unenforceable, or invalid in any jurisdiction shall, as to that jurisdiction, be inoperative, unenforceable, or invalid without affecting the remaining provisions in that jurisdiction or the operation, enforceability, or validity of that provision in any other jurisdiction, and to this end the provisions of this Security Agreement are declared to be severable.

8.10. Reinstatement. This Security Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against any Grantor for liquidation or reorganization, should any Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of any Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Secured Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

8.11. Benefit of Agreement. The terms and provisions of this Security Agreement shall be binding upon and inure to the benefit of the Grantors, the Collateral Agent and the Secured Parties and their respective successors and assigns (including all persons who become bound as a debtor to this Security Agreement), except that no Grantor shall have the right to assign its rights or delegate its obligations under this Security Agreement or any interest herein, without the prior written consent of the Collateral Agent. No sales of participations, assignments, transfers, or other dispositions of any agreement governing the Secured Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to the Collateral Agent, for the benefit of the Collateral Agent and the Secured Parties, hereunder.

8.12. Survival of Representations. All representations and warranties of the Grantors contained in this Security Agreement shall survive the execution and delivery of this Security Agreement.

8.13. Taxes and Expenses. Any taxes (including income taxes) payable or ruled payable by Federal or State authority in respect of this Security Agreement shall be paid by the Grantors, together with interest and penalties, if any. The Grantors shall reimburse the Collateral Agent for any and all out-of-pocket expenses and internal charges (including reasonable attorneys', auditors' and accountants' fees and reasonable time charges of attorneys, paralegals, auditors and accountants who may be

employees of the Collateral Agent) paid or incurred by the Collateral Agent in connection with the preparation, execution, delivery, administration, collection and enforcement of this Security Agreement and in the audit, analysis, administration, collection, preservation or sale of the Collateral (including the expenses and charges associated with any periodic or special audit of the Collateral). Any and all costs and expenses incurred by the Grantors in the performance of actions required pursuant to the terms hereof shall be borne solely by the Grantors.

8.14. Headings. The title of and section headings in this Security Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Security Agreement.

8.15. Termination. This Security Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Secured Obligations outstanding) until (i) the Credit Agreement has terminated pursuant to its express terms and (ii) all of the Secured Obligations have been indefeasibly paid and performed in full (or with respect to any outstanding Facility LCs, a cash deposit or Supporting Letter of Credit has been delivered to the Collateral Agent as required by the Credit Agreement) and no commitments of the Collateral Agent or the Secured Parties which would give rise to any Secured Obligations are outstanding.

8.16. Entire Agreement. This Security Agreement embodies the entire agreement and understanding between the Grantors and the Collateral Agent relating to the Collateral and supersedes all prior agreements and understandings between the Grantors and the Collateral Agent relating to the Collateral.

8.17. CHOICE OF LAW. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

8.18. CONSENT TO JURISDICTION. EACH GRANTOR HEREBY IRREVOCABLY SUBMITS TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK, THE COURTS OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, AND APPELLATE COURTS FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT AND EACH GRANTOR HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH COURT AND IRREVOCABLY WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT OR THAT SUCH COURT IS AN INCONVENIENT FORUM. NOTHING HEREIN SHALL LIMIT THE RIGHT OF THE AGENT OR ANY LENDER TO BRING PROCEEDINGS AGAINST ANY GRANTOR IN THE COURTS OF ANY OTHER JURISDICTION. ANY JUDICIAL PROCEEDING BY ANY GRANTOR AGAINST THE AGENT OR ANY LENDER OR ANY AFFILIATE OF THE AGENT OR ANY LENDER INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL BE BROUGHT ONLY IN A COURT IN THE STATE OF NEW YORK.

8.19. WAIVER OF JURY TRIAL. EACH GRANTOR, THE AGENT AND EACH LENDER HEREBY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING, DIRECTLY OR INDIRECTLY, ANY MATTER (WHETHER SOUNDING IN TORT, CONTRACT OR OTHERWISE) IN ANY WAY ARISING OUT OF, RELATED TO, OR CONNECTED WITH THIS

SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE RELATIONSHIP ESTABLISHED THEREUNDER.

8.20. Indemnity. Each Grantor hereby agrees to indemnify the Collateral Agent and the Secured Parties, and their respective successors, assigns, agents and employees (each an "Indemnified Party"), from and against any and all liabilities, damages, penalties, suits, costs, and expenses of any kind and nature (including, without limitation, all expenses of litigation or preparation therefor whether or not the Collateral Agent or any Lender is a party thereto) imposed on, incurred by or asserted against any Indemnified Party, in any way relating to or arising out of this Security Agreement, or the manufacture, purchase, acceptance, rejection, ownership, delivery, lease, possession, use, operation, condition, sale, return or other disposition of any Collateral (including, without limitation, latent and other defects, whether or not discoverable by the Collateral Agent or the Secured Parties or any Grantor, and any claim for Patent, Trademark or Copyright infringement) except to the extent that such liabilities, damages, penalties, suits, costs, and expenses are determined in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Indemnified Party.

8.21. Counterparts. This Security Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Security Agreement by signing any such counterpart.

8.22. Section Titles. The Section titles contained in this Security Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not part of the agreement between the parties hereto.

## ARTICLE IX
## NOTICES

9.1. Sending Notices. Any notice required or permitted to be given under this Security Agreement shall be sent by United States mail, telecopier, personal delivery or nationally established overnight courier service, and shall be deemed received (a) when received, if sent by hand or overnight courier service, or mailed by certified or registered mail notices or (b) when sent, if sent by telecopier (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), in each case addressed to the Grantors at the notice address set forth on Exhibit A, and to the Collateral Agent and the Secured Parties at the addresses set forth in the Credit Agreement.

9.2. Change in Address for Notices. Each of the Grantors, the Collateral Agent and the Secured Parties may change the address for service of notice upon it by a notice in writing to the other parties.

## ARTICLE X
## THE AGENT

JPMorgan Chase Bank, N.A. has been appointed Collateral Agent for the Secured Parties hereunder pursuant to Article X of the Credit Agreement. It is expressly understood and agreed by the parties to this Security Agreement that any authority conferred upon the Collateral Agent hereunder is subject to the terms of the delegation of authority made by the Secured Parties to the Collateral Agent pursuant to the Credit Agreement, and that the Collateral Agent has agreed to act (and any successor Collateral Agent shall act) as such hereunder only on the express conditions contained in such Article X.

Any successor Collateral Agent appointed pursuant to Article X of the Credit Agreement shall be entitled to all the rights, interests and benefits of the Collateral Agent hereunder.

**ARTICLE XI**
**EFFECT OF AMENDMENT AND RESTATEMENT OF EXISTING SECURITY AGREEMENT**

On the Effective Date, the Existing Security Agreement shall be amended, restated and superseded in its entirety. The parties hereto acknowledge and agree that (a) this Agreement and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, payment and reborrowing, or termination of the "Obligations" (as defined in the Existing Credit Agreement) under the Existing Security Agreement and Existing Credit Agreement as in effect prior to the Effective Date and (b) such "Obligations" are in all respects continuing (as amended and restated hereby) with only the terms thereof being modified as provided in this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantors and the Collateral Agent have executed this Security Agreement as of the date first above written.

GRANTORS:

A.P. WOODSON COMPANY
CHAMPION ENERGY LLC
COLUMBIA PETROLEUM TRANSPORTATION, LLC
GRIFFITH ENERGY SERVICES, INC.
GRIFFITH-ALLIED TRUCKING, LLC
HOFFMAN FUEL COMPANY OF BRIDGEPORT
HOFFMAN FUEL COMPANY OF DANBURY
MEENAN HOLDINGS LLC
MEENAN OIL LLC
MILRO GROUP LLC
MINNWHALE LLC
ORTEP OF PENNSYLVANIA, INC.
PETRO HOLDINGS, INC.
PETRO PLUMBING CORPORATION
PETRO, INC.
REGIONOIL PLUMBING, HEATING AND COOLING CO., INC.
RICHLAND PARTNERS, LLC
RYE FUEL COMPANY
STAR ACQUISITIONS, INC.

By: /s/ Richard F. Ambury
Name: Richard F. Ambury
Title: Chief Financial Officer

STAR GROUP, L.P.

BY: KESTREL HEAT, LLC, its General Partner

By: /s/ Richard F. Ambury
Name: Richard F. Ambury
Title: Chief Financial Officer

MEENAN OIL CO., L.P.

BY: MEENAN OIL LLC, its General Partner

By: /s/ Richard F. Ambury
Name: Richard F. Ambury
Title: Chief Financial Officer

CFS LLC

BY: RICHLAND PARTNERS, LLC, its Sole Member
By: /s/ Richard F. Ambury
Name: Richard F. Ambury
Title: Chief Financial Officer, Executive Vice President, Treasurer and Secretary

JPMORGAN CHASE BANK, N.A., as Collateral Agent

By: /s/ Donna DiForio

Name: Donna DiForio

Title: Authorized Officer

[*Signature Page to Fifth Amended and Restated Pledge and Security Agreement*]

**Exhibit 21**

**Company Subsidiaries**

A.P. Woodson Company—District of Columbia

CFS LLC—Pennsylvania

Champion Energy LLC—Delaware

Columbia Petroleum Transportation, LLC—Delaware

Griffith Energy Services, Inc.—New York

Griffith – Allied Trucking, LLC—Delaware

Hoffman Fuel Company of Bridgeport—Delaware

Hoffman Fuel Company of Danbury—Delaware

Meenan Holdings LLC—Delaware

Meenan Oil LLC—Delaware

Meenan Oil Co., L.P.—Delaware

Milro Group LLC—Delaware

Minnwhale LLC—New York

Ortep of Pennsylvania, Inc.—Pennsylvania

Petro Holdings, Inc.—Minnesota

Petro Plumbing Corporation—New Jersey

Petro, Inc.—Delaware

Petroleum Heat and Power Co., Inc.—Minnesota

Region Oil Plumbing, Heating and Cooling Co., Inc.—New Jersey

Richland Partners, LLC—Pennsylvania

Rye Fuel Company—Delaware

Star Acquisitions, Inc.—Minnesota

Woodbury Insurance Co., Inc.—Connecticut

**Exhibit 31.1**

**CERTIFICATIONS**

I, Jeffrey M. Woosnam, certify that:

1. I have reviewed this annual report on Form 10-K of Star Group, L.P. ("Registrant");

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 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 controls 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 controls over financial reporting, or caused such internal controls 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.

5. The registrant's other certifying officer 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: December 5, 2019

/s/ Jeffrey M. Woosnam

**Jeffrey M. Woosnam**
**President and Chief Executive Officer**
**Star Group, L.P.**

**Exhibit 31.2**

**CERTIFICATIONS**

I, Richard F. Ambury, certify that:

1. I have reviewed this annual report on Form 10-K of Star Group, L.P. ("Registrant");

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 registrants' other certifying officer 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 controls 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 controls over financial reporting, or caused such internal controls 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.

5. The registrant's other certifying officer 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):

   (c) 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;

   (d) 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: December 5, 2019

/S/ RICHARD F. AMBURY

**Richard F. Ambury**
**Chief Financial Officer**
**Star Group, L.P.**

**Exhibit 32.1**

**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 Annual Report of Star Group, L.P. (the "Company") on Form 10-K for the year ended September 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Jeffrey M. Woosnam, President and Chief Executive Officer of the Company, certify to my knowledge pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, following due inquiry, I believe that:

(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 result of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to Star Group, L.P. and will be retained by Star Group, L.P. and furnished to the Securities and Exchange Commission or its staff upon request.

STAR GROUP, L.P.
By: KESTREL HEAT, LLC (General Partner)

Date: December 5, 2019

By: /s/ JEFFREY M. WOOSNAM
**Jeffrey M. Woosnam**
**President and Chief Executive Officer**
**Star Group, L.P.**

**Exhibit 32.2**

**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 Annual Report of Star Group, L.P. (the "Company") on Form 10-K for the year ended September 30, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard F. Ambury, Chief Financial Officer of the Company, certify to my knowledge pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, following due inquiry, I believe that:

(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 result of operations of the Company.

A signed original of this written statement required by Section 906 has been provided to Star Group, L.P. and will be retained by Star Group, L.P. and furnished to the Securities and Exchange Commission or its staff upon request.

STAR GROUP, L.P.
By: KESTREL HEAT, LLC (General Partner)

Date: December 5, 2019

By: /S/ RICHARD F. AMBURY
**Richard F. Ambury**
**Chief Financial Officer**
**Star Group, L.P.**