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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 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 December 31, 2016

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 No. 001-36876

BABCOCK & WILCOX ENTERPRISES, INC.

(Exact name of registrant as specified in its charter)

DELAWARE	**47-2783641**
(State or other Jurisdiction of Incorporation or Organization)	(I.R.S. Employer Identification No.)
THE HARRIS BUILDING **13024 BALLANTYNE CORPORATE PLACE, SUITE 700** **CHARLOTTE, NORTH CAROLINA**	**28277**
(Address of Principal Executive Offices)	(Zip Code)

Registrant's Telephone Number, Including Area Code: **(704) 625-4900**

Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class	**Name of each Exchange on which registered**
Common Stock, $0.01 par value	**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 Exchange 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 and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

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

Large accelerated filer	☒	Accelerated filer	☐

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

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

The aggregate market value of the registrant's common stock held by non-affiliates of the registrant on the last business day of the registrant's most recently completed second fiscal quarter (based on the closing sales price on the New York Stock Exchange on June 30, 2016) was approximately $737 million.

The number of shares of the registrant's common stock outstanding at February 20, 2017 was 48,698,385 .

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the registrant's proxy statement for the 2017 Annual Meeting of Stockholders are incorporated by reference into Part III of this Form 10-K.

BABCOCK & WILCOX ENTERPRISES, INC.

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PART I

Item 1. Business

In this annual report on Form 10-K, unless the context otherwise indicates, "B&W," "we," "us," the "Company" and "our" mean Babcock & Wilcox Enterprises, Inc. and its consolidated and combined subsidiaries.

B&W is a leading technology-based provider of advanced fossil and renewable power generation and environmental equipment that includes a broad suite of boiler products, environmental systems, and services for power and industrial uses. We specialize in technology and engineering for power generation and various other industries, the related procurement, erection and specialty manufacturing of equipment, and the provision of related services, including:

- high-pressure equipment for energy conversion, such as boilers fueled by coal, oil, bitumen, natural gas, and renewables including municipal solid waste and biomass fuels;
- environmental control systems for both power generation and industrial applications to incinerate, filter, capture, recover and/or purify air, liquid and vapor-phase effluents from a variety of power generation and specialty manufacturing processes;
- aftermarket support for the global installed base of operating plants with a wide variety of products and technical services including replacement parts, retrofit and upgrade capabilities, field engineering, construction, inspection, operations and maintenance, condition assessment and other technical support;
- custom-engineered comprehensive dry and wet cooling solutions ;
- gas turbine inlet and exhaust systems, custom silencers, filters and custom enclosures; and
- engineered-to-order services, products and systems for energy conversion worldwide and related auxiliary equipment, such as burners, pulverizers, soot blowers and ash and material handling systems.

We operate in three reportable segments: Power, Renewable and Industrial. Through our Power segment, we provide the supply of and aftermarket services for steam-generating, environmental, and auxiliary equipment for power generation and other industrial applications. Through our Renewable segment, we supply steam-generating systems, environmental and auxiliary equipment for the waste-to-energy and biomass power generation industries. Our Industrial segment provides custom-engineered environmental solutions, industrial equipment and aftermarket parts and services through Babcock & Wilcox MEGTEC Holdings, Inc. ("MEGTEC"), and provides custom-engineered comprehensive dry and wet cooling solutions and aftermarket services to the power generation industry including natural gas-fired and renewable energy power plants, as well as downstream oil and gas, petrochemical and other industrial end markets through SPIG S.p.A. ("SPIG"), which we acquired on July 1, 2016. See Note 5 in our consolidated and combined financial statements included in Item 8 for additional information about our segments.

Our overall activity depends significantly on the capital expenditures and operations and maintenance expenditures of global electric power generating companies, other steam-using industries and industrial facilities with environmental compliance and noise abatement needs. Several factors influence these expenditures, including:

- prices for electricity, along with the cost of production and distribution including the cost of fuel within the United States or internationally;
- demand for electricity and other end products of steam-generating facilities;
- requirements for environmental and noise abatement improvements;
- expectation of future requirements to further limit or reduce greenhouse gas and other emissions in the United States and internationally;
- environmental policies which include waste-to-energy or biomass as options to meet legislative requirements and clean energy portfolio standards;

- level of capacity utilization at operating power plants and other industrial uses of steam production;
- requirements for maintenance and upkeep at operating power plants to combat the accumulated effects of usage;
- overall strength of the industrial industry; and
- ability of electric power generating companies and other steam users to raise capital.

Customer demand is heavily affected by the variations in our customers' business cycles and by the overall economies and energy, environmental and noise abatement needs of the countries in which they operate.

On June 8, 2015, the board of directors of The Babcock & Wilcox Company (now known as BWX Technologies, Inc.) ("BWC" or the "former Parent") approved the spin-off of B&W through the distribution of shares of B&W common stock to holders of BWC common stock. The distribution of B&W common stock was made on June 30, 2015, and consisted of one share of B&W common stock for every two shares of BWC common stock to holders of BWC common stock as of 5:00 p.m. New York City time on the record date, June 18, 2015. Cash was paid in lieu of any fractional shares of B&W common stock. On June 30, 2015, B&W became a separate publicly traded company, and BWC did not retain any ownership interest in B&W. We filed our Form 10 describing the spin-off with the Securities and Exchange Commission, which was declared effective on June 16, 2015. The spin-off is further described in Note 1 to the consolidated and combined financial statements included in Item 8 .

Our Business Strategies

B&W is a leading technology-based provider of advanced fossil and renewable power generation equipment with a broad suite of new build boiler and environmental products. We provide a comprehensive platform of aftermarket services to a large global installed base of power generation facilities. In addition, B&W is a leading provider of technology and services in the growing market for industrial environmental and noise abatement systems. Across all of our capabilities, we specialize in engineering, specialty manufacturing, procurement and erection of equipment and technology for a large and global customer base.

Business Segments

Our assessment of operating results is based on three reportable segments, which changed during the third quarter of 2016. Our reportable segments are as follows:

Power segment

Our Power segment focuses on the supply of and aftermarket services for steam-generating, environmental, and auxiliary equipment for power generation and other industrial applications. The segment provides a comprehensive mix of aftermarket products and services to support peak efficiency and availability of steam generating and associated environmental and auxiliary equipment, serving large steam generating utility and industrial customers globally. Our products and services include replacement parts, field technical services, retrofit and upgrade projects, fuel switching and repowering projects, construction and maintenance services, start-up and commissioning, training programs and plant operations and maintenance for our full complement of boiler, environmental and auxiliary equipment. Our auxiliary equipment includes boiler cleaning equipment and material handling equipment.

Our worldwide new build boiler and environmental products businesses serve large steam generating and industrial customers. The segment provides a full suite of product and service offerings including engineering, procurement, specialty manufacturing, construction and commissioning. The segment's boilers include utility boilers and industrial boilers fired with coal and natural gas. Our boiler products include advanced supercritical boilers, subcritical boilers, fluidized bed boilers, chemical recovery boilers, industrial power boilers, package boilers, heat recovery steam generators and waste heat boilers.

Our environmental systems offerings include air pollution control products and related equipment for the treatment of nitrogen oxides, sulfur dioxide, fine particulate, mercury, acid gases and other hazardous air emissions, including carbon dioxide capture and sequestration technologies, wet and dry flue gas desulfurization systems, catalytic and non-catalytic

nitrogen oxides reduction systems, low nitrogen oxides burners and overfire air systems, fabric filter baghouses, wet and dry electrostatic precipitators, mercury control systems and dry sorbent injection for acid gas mitigation.

The segment also receives license fees and royalty payments through licensing agreements of our proprietary technologies.

While opportunities to increase revenues in the segment are limited, we are striving to grow margins by:

- selectively bid projects in emerging international markets needing state-of-the-art technology for fossil power generation and environmental systems;
- growing sales of industrial steam generation products in the petrochemical and pulp & paper markets, such as heat recovery, natural gas and oil fired package boilers, due in part to lower fuel prices;
- continuing our strong service presence in support of our installed fleet of steam generation equipment and expand support of other OEM equipment; and
- reducing costs through a focus on operational efficiencies.

We focus our research dollars on improving our products for the markets we serve through: (i) cost reductions resulting in more competitive products in a highly competitive global market and margin improvement; (ii) reduced performance risk assuring our products meet our and our customers' expectations; and (iii) standards development and updates, which results in lower engineering hours consumed on projects and enables us to sublet engineering to low cost engineering centers of excellence.

Our Power segment generated revenues of $975.5 million , $1,235.0 million and $1,156.6 million in 2016 , 2015 and 2014 , respectively, which was 61.8% , 70.3% and 77.8% of our total revenues in those years, respectively.

Renewable segment

Our Renewable segment provides steam-generating systems, environmental and auxiliary equipment for the waste-to-energy and biomass power generation industries, and plant operations and maintenance services for our full complement of systems and equipment. We deliver these products and services to a large base of customers primarily in Europe through our extensive network of technical support personnel and global sourcing capabilities. Our customers consist of traditional, renewable and carbon neutral power utility companies that require steam generation and environmental control technologies to enable beneficial use of municipal waste and biomass. This segment's activity is dependent on the demand for electricity and ultimately the capacity utilization and associated operations and maintenance expenditures of waste-to-energy power generating companies and other industries that use steam to generate energy.

Globally, efforts to reduce the environmental impact of burning fossil fuels may create opportunities for us as existing generating capacity is replaced with cleaner technologies. We expect growth in backlog in the second half of 2017 and beyond, primarily from renewable waste-to-energy projects, as we continue to see numerous opportunities around the globe, although the rate of backlog growth is dependent on many external factors. We have elected to limit bidding any additional Renewable contracts that involve our European resources for at least the first six months of 2017 as we work through our existing contracts.

Our Renewable segment generated revenues of $349.2 million , $338.6 million and $224.0 million in 2016 , 2015 and 2014 , respectively, which was 22.1% , 19.3% and 15.1% of our total revenues in those years, respectively.

Industrial segment

Through December 31, 2016, our Industrial segment was comprised of our MEGTEC and SPIG businesses. The segment is focused on custom-engineered cooling, environmental, noise abatement and industrial equipment along with related aftermarket services.

Through MEGTEC, we provide environmental products and services to numerous industrial end markets. MEGTEC designs, engineers and manufactures products including oxidizers, solvent and distillation systems, wet electrostatic precipitators, scrubbers and heat recovery systems. MEGTEC also provides specialized industrial process systems, coating lines and equipment. MEGTEC's suite of technologies for pollution abatement includes systems that control volatile organic compounds and air toxins, particulate, nitrogen oxides and acid gas air emissions from industrial processes. MEGTEC serves a diverse set of industrial end markets globally with a current emphasis on the chemical, pharmaceutical, energy storage, packaging, and automotive markets. MEGTEC's activity is dependent primarily on the capacity utilization of operating

industrial plants and an increased emphasis on environmental emissions globally across a broad range of industries and markets.

We acquired SPIG on July 1, 2016. It provides custom-engineered cooling systems, services and aftermarket products. SPIG's product offerings include air-cooled (dry) cooling systems, mechanical draft wet cooling towers and natural draft wet cooling hyperbolic towers. SPIG also provides end-to-end aftermarket services, including spare parts, upgrades/revamps for existing installations and remote monitoring. SPIG's comprehensive dry and wet cooling solutions and aftermarket products and services are primarily provided to the power generation industry, including natural gas-fired and renewable energy power plants, and downstream oil and gas, petrochemical and other industrial end markets in the Europe, the Middle East and the Americas. SPIG's activity is dependent primarily on global energy demand from utilities and other industrial plants, regulatory requirements, water scarcity and energy efficiency needs.

Beginning with the first quarter of 2017, Universal Acoustic & Emission Technologies, Inc. ("Universal"), which we acquired on January 11, 2017, will be added to the Industrial segment. We expect that our acquisition of Universal will complement the product and service offerings we are able to provide through our Industrial segment. Universal provides custom-engineered acoustic, emission and filtration solutions to the natural gas power generation, mid-stream natural gas pipeline, locomotive and general industrial end-markets. Universal's product offering includes gas turbine inlet and exhaust systems, custom silencers, filters and custom enclosures. Historically, almost all of Universal's activity has been in the United States. With the integration of Universal with the Industrial segment, we expect its business will grow globally with the benefit of B&W's global network of current and future customers and the evolving needs of noise abatement controls in the industrial market.

We see opportunities for growth in revenues in the Industrial segment relating to a variety of factors. Our new equipment customers purchase equipment as part of major capacity expansions, to replace existing equipment, or in response to regulatory initiatives. Additionally, our significant installed base provides a consistent and recurring aftermarket stream of parts, retrofits and services. Major investments in global chemical markets have strengthened demand for our industrial equipment, while tightening environmental and noise abatement regulations in the United States, China, India and other developing countries are creating new opportunities. We foresee long-term trends toward increased environmental and noise abatement controls for industrial manufacturers around the world. Together, the companies that comprise the Industrial segment are well-positioned to capitalize on opportunities in these markets.

Our Industrial segment generated revenues of $253.6 million , $183.7 million and $105.4 million in 2016 , 2015 and 2014 , respectively, which was 16.1% , 10.4% and 7.1% of our total revenues in those years, respectively.

Acquisitions

Since our spin-off, we have pursued a strategy to acquire businesses that meet our long-term growth and diversification objectives. Our acquisition focus is primarily on companies that would complement our Industrial segment. To date, we have completed two such acquisitions, which are summarized below:

On July 1, 2016, we completed the acquisition of SPIG. Based in Arona, Italy, SPIG is a global provider of custom-engineered comprehensive dry and wet cooling solutions and aftermarket services to the power generation industry including natural gas-fired and renewable energy power plants, as well as downstream oil and gas, petrochemical and other industrial end markets. See Note 4 to our consolidated and combined financial statements included in Item 8 for additional information.

On January 11, 2017, we acquired Universal for approximately $55 million in cash, funded primarily by borrowings under our United States revolving credit facility. Based in Wisconsin, Universal is a bolt-on acquisition for MEGTEC. Universal provides custom-engineered acoustic, emission and filtration solutions to the natural gas power generation, mid-stream natural gas pipeline, locomotive and general industrial end-markets. Universal's product offering includes gas turbine inlet and exhaust systems, custom silencers, filters and custom enclosures. See Note 30 to our consolidated and combined financial statements included in Item 8 for additional information.

Joint Ventures

We participate in the ownership of a variety of entities with third parties, primarily through corporations, limited liability companies and partnerships, which we refer to as "joint ventures." We enter into joint ventures primarily for specific market access and to enhance our manufacturing, design and global production operations as well as reduce operating and financial

risk profiles. We generally account for our investments in joint ventures under the equity method of accounting. Our unconsolidated joint ventures are described below.

- **Babcock & Wilcox Beijing Company, Ltd. ("BWBC")** We own equal interests in this entity with Beijing Jingcheng Machinery Electric Holding Company, Ltd. BWBC was formed in 1986 and is located in Beijing, China. Its main activities are the design, manufacture, production and sale of various power plant and industrial boilers. BWBC expands our markets internationally and provides additional manufacturing capacity to our boiler products.

- **Thermax Babcock & Wilcox Energy Solutions Private Limited ("TBWES")** In June 2010, one of our subsidiaries and Thermax Ltd., a boiler manufacturer based in India, formed a joint venture to build subcritical and highly efficient supercritical boilers and pulverizers for the Indian utility boiler market. We have licensed to TBWES our technology for subcritical boilers 300 MW and larger, highly efficient supercritical boilers and coal pulverizers. In 2013, TBWES finalized construction of a facility in India designed to produce parts for up to 3,000 MW of utility boiler capacity per year.

- **Other Project Related Ventures** From time to time, we partner with other companies to better meet the needs of our customers, which can result in project-related joint venture entities. Examples of this include BWM Ottumwa Environmental Partners, where we formed a joint venture with Burns & McDonnell Engineering Company, Inc., to engineer, procure, and construct environmental control systems for the Ottumwa Generating Station, a United States based project that was substantially completed in 2014. We also formed BWL Energy Ltd. with Lagan to complete the construction of the Teesside waste wood fired boiler project in the United Kingdom. This joint venture combines our expertise in the waste-to-energy power plant design, engineering, procurement and construction with our partner's civil construction capability to provide a full turnkey product to our customer.

- **Halley & Mellowes Pty. Ltd. ("HMA")** Diamond Power International, Inc., one of our wholly owned subsidiaries, owned an interest in this Australian company, which was formed in 1984. HMA manufactures, sells and services a wide range of capital plant equipment to a diverse range of industries including the mining, processing, materials handling, water management, power generation, and oil and gas industries. On December 22, 2016, we sold all of our joint venture interest in HMA for $18.0 million , resulting in a gain of $8.3 million .

Contracts

We execute our contracts through a variety of methods, including fixed-price, cost-plus, target price cost incentive, cost-reimbursable or some combination of these methods. Contracts are usually awarded through a competitive bid process. Factors that customers may consider include price, technical capabilities of equipment and personnel, plant or equipment availability, efficiency, safety record and reputation.

Fixed-price contracts are for a fixed amount to cover all costs and any profit element for a defined scope of work. Fixed-price contracts entail more risk to us because they require us to predetermine both the quantities of work to be performed and the costs associated with executing the work. For further specification see " *Risk Factors Related to Our Business – We are subject to risks associated with contractual pricing in our industry, including the risk that, if our actual costs exceed the costs we estimate on our fixed-price contracts, our profitability will decline, and we may suffer losses* " as detailed in Item 1A of this report.

We have contracts that extend beyond one year. Most of our long-term contracts have provisions for progress payments. We attempt to cover anticipated increases in labor, material and service costs of our long-term contracts either through an estimate of such changes, which is reflected in the original price, or through risk-sharing mechanisms, such as escalation or price adjustments for items such as labor and commodity prices.

We generally recognize our contract revenues and related costs on a percentage-of-completion basis. Accordingly, we review contract price and cost estimates regularly as the work progresses and reflect adjustments in profit proportionate to the percentage of completion in the period when we revise those estimates. To the extent that these adjustments result in a reduction or an elimination of previously reported profits with respect to a project, we would recognize a charge against current earnings, which could be material.

Our arrangements with customers frequently require us to provide letters of credit, bid and performance bonds or guarantees to secure bids or performance under contracts, which may involve significant amounts for contract security.

In the event of a contract deferral or cancellation, we generally would be entitled to recover costs incurred, settlement expenses and profit on work completed prior to deferral or termination. Significant or numerous cancellations could adversely affect our business, financial condition, results of operations and cash flows.

Other sales, such as parts and certain aftermarket service activities, are not in the form of long-term contracts, and we recognize revenues as goods are delivered and work is performed.

Backlog

Backlog represents the dollar amount of revenue we expect to recognize in the future from contracts awarded and in progress. Not all of our expected revenue from a contract award is recorded in backlog for a variety of reasons, including that some projects are awarded and completed within the same fiscal period.

Backlog is not a measure defined by generally accepted accounting principles. It is possible that our methodology for determining backlog may not be comparable to methods used by other companies. Backlog may not be indicative of future operating results, and projects in our backlog may be canceled, modified or otherwise altered by customers. Additionally, because we operate globally, our backlog is also affected by changes in foreign currencies.

We generally include expected revenue from contracts in our backlog when we receive written confirmation from our customers authorizing the performance of work and committing the customer to payment for work performed. Accordingly, we exclude from backlog orders or arrangements that have been awarded but that we have not been authorized to begin performance.

We do not include the value of our unconsolidated joint venture contracts in backlog. See Note 7 to the consolidated and combined financial statements included in this annual report for financial information on our equity method investments.

Our backlog at December 31, 2016 and 2015 was as follows:

(in millions)	December 31, 2016	December 31, 2015
Power segment	$ 615	$ 803
Renewable segment	1,241	1,458
Industrial segment	216	67
Total backlog	$ 2,072	$ 2,328

Of the December 31, 2016 backlog, we expect to recognize approximate revenues as follows:

(in millions)	2017	2018	Thereafter	Total
Power segment	$ 369	$ 94	$ 152	$ 615
Renewable segment	348	191	702	1,241
Industrial segment	172	40	3	216
	$ 889	$ 326	$ 858	$ 2,072

Foreign Operations

Our operations in Denmark provide comprehensive services to companies in the waste-to-energy and biomass energy sector of the power generation market, primarily in Europe. Our operations in Italy provide custom-engineered comprehensive dry and wet cooling solutions and aftermarket parts and services to the power generation industry including natural gas-fired and renewable energy power plants, as well as downstream oil and gas, petrochemical and other industrial end markets. Our operations in Scotland provide boiler cleaning technologies and systems (such as sootblowers). Our operations in Germany provide a variety of ash and material handling solutions, from completely dry bottom ash handling to fly ash and petroleum coke processing . Our Canadian operations serve the Canadian industrial power, oil production and electric utility markets. We also have manufacturing facilities in Mexico to serve global markets.

Our joint ventures in China and India primarily serve the power generation needs of their local domestic and other utility markets, but both joint ventures participate as manufacturing partners on certain of our foreign projects.

The functional currency of our foreign operating entities is not the United States dollar, and as a result, we are subject to exchange rate fluctuations that impact our financial position, results of operations and cash flows. For additional information on the geographic distribution of our revenues, see Note 5 to our consolidated and combined financial statements included in Item 8 of this annual report.

Customers

We provide our products and services to a diverse customer base that includes utilities and other power producers located around the world. We have no customers that individually accounted for more than 10% of our consolidated and combined revenues in the years ended December 31, 2016 , 2015 or 2014 .

Competition

With 150 years of experience, we have supplied highly engineered energy and environmental equipment in over 90 countries. We have a competitive advantage in our experience and technical capability to reliably convert a wide range of fuels to steam. Our strong, installed base around the globe also yields competitive advantages, although our markets are highly competitive and price sensitive. We compete with a number of domestic and foreign companies specializing in power generation, environmental, and cooling systems and services. Each segment's primary competitors are summarized as follows:

Power segment	Renewable segment	Industrial segment
GE	CNIM Group	*B&W SPIG primary competitors*
Doosan	Hitachi Zosen	Hamon, Enexio, Kelvion, Paharpur, Evapco, Sonder
Babcock Power	Martin	*B&W MEGTEC primary competitors*
Amec Foster Wheeler	Keppel Seghers	Durr, Dustex, CECO, Eisenmann
MH Power Systems	Valmet	*B&W Universal primary competitors*
	Andritz	Braden, CECO, Innova, Miratech

Across each of our segments, we also compete with a variety of engineering and construction companies related to installation of steam generating systems and environmental control equipment; specialized industrial equipment; and other suppliers of replacement parts, repair and alteration services and other services required to retrofit and maintain existing steam generating systems. The primary bases of competition are price, technical capabilities, quality, timeliness of performance, breadth of products and services and willingness to accept project risks.

Raw Materials and Suppliers

Our operations use raw materials such as carbon and alloy steels in various forms and components and accessories for assembly, which are available from numerous sources. We generally purchase these raw materials and components as needed for individual contracts. We do not depend on a single source of supply for any significant raw materials. Although shortages of some raw materials have existed from time to time, no serious shortage exists at the present time.

Employees

At December 31, 2016 , we had approximately 5,000 employees worldwide, not including 2,500 joint venture employees. Of our hourly employees, approximately 1,000 are union-affiliated, covered by ten union agreements related to active facilities in Canada, China, Denmark, Great Britain, Mexico, and United States. Most of our union agreements expire in 2017 or 2018, and we are actively negotiating new agreements. We consider our relationships with our employees and unions to be in good standing.

Patents and Licenses

We currently hold a large number of United States and foreign patents and have patent applications pending. We have acquired patents and technology licenses and granted technology licenses to others when we have considered it advantageous for us to do so. Although in the aggregate our patents and licenses are important to us, we do not regard any single patent or license or group of related patents or licenses as critical or essential to our business as a whole. In general, we depend on our technological capabilities and the application of know-how, rather than patents and licenses, in the conduct of our various businesses.

Research and Development Activities

Our research and development activities are related to the development and improvement of new and existing products and equipment, as well as conceptual and engineering evaluation for translation into practical applications. Research and development costs unrelated to specific contracts are expensed as incurred. Research and development expenses totaled $10.4 million , $16.5 million and $18.5 million in the years ended December 31, 2016 , 2015 and 2014 , respectively.

Permits and Licenses

We are required by various governmental and quasi-governmental agencies to obtain certain permits, licenses and certificates with respect to our operations. The kinds of permits, licenses and certificates required in our operations depend upon a number of factors. We are not aware of any material noncompliance and believe our operations and certifications are currently in compliance with all relevant permits, licenses and certifications.

Environmental

We have been identified as a potentially responsible party at various cleanup sites under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). CERCLA and other environmental laws can impose liability for the entire cost of cleanup on any of the potentially responsible parties, regardless of fault or the lawfulness of the original conduct. Generally, however, where there are multiple responsible parties, a final allocation of costs is made based on the amount and type of wastes disposed of by each party and the number of financially viable parties, although this may not be the case with respect to any particular site. We have not been determined to be a major contributor of wastes to any of these sites. On the basis of our relative contribution of waste to each site, we expect our share of the ultimate liability for the various sites will not have a material adverse effect on our combined financial condition, results of operations or cash flows in any given year.

Executive Officers of Registrant

For a listing of our executive officers, see Part III, Item 10 of this annual report, which information is incorporated herein by reference.

******* Cautionary Statement Concerning Forward-Looking Information *******

This annual report, including Management's Discussion and Analysis of Financial Condition and Results of Operations, contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. You should not place undue reliance on these statements. Statements that include the words "expect," "intend," "plan," "believe," "project," "forecast," "estimate," "may," "should," "anticipate" and similar statements of a future or forward-looking nature identify forward-looking statements.

These forward-looking statements address matters that involve risks and uncertainties and include statements that reflect the current views of our senior management with respect to our financial performance and future events with respect to our business and industry in general. There are or will be important factors that could cause our actual results to differ materially from those indicated in these statements. If one or more events related to these or other risks or uncertainties materialize, or if our underlying assumptions prove to be incorrect, actual results may differ materially from what we anticipate. Differences between actual results and any future performance suggested in our forward-looking statements could result from a variety of factors, including the following: the highly competitive nature of our businesses; general economic and business conditions, including changes in interest rates and currency exchange rates; general developments in the industries in which we are

involved; cancellations of and adjustments to backlog and the resulting impact from using backlog as an indicator of future earnings; our ability to perform projects on time and on budget, in accordance with the schedules and terms established by the applicable contracts with customers; changes in our effective tax rate and tax positions; our ability to maintain operational support for our information systems against service outages and data corruption, as well as protection against cyber-based network security breaches and theft of data; our ability to protect our intellectual property and renew licenses to use intellectual property of third parties; our use of the percentage-of-completion method of accounting; our ability to obtain and maintain sufficient financing to provide liquidity to meet our business objectives, surety bonds, letters of credit and similar financing; the risks associated with integrating businesses we acquire; our ability to successfully manage research and development projects and costs, including our efforts to successfully develop and commercialize new technologies and products; the operating risks normally incident to our lines of business, including professional liability, product liability, warranty and other claims against us; changes in, or our failure or inability to comply with, laws and government regulations; difficulties we may encounter in obtaining regulatory or other necessary permits or approvals; changes in, and liabilities relating to, existing or future environmental regulatory matters; our limited ability to influence and direct the operations of our joint ventures; potential violations of the Foreign Corrupt Practices Act; our ability to successfully compete with current and future competitors; the loss of key personnel and the continued availability of qualified personnel; our ability to negotiate and maintain good relationships with labor unions; changes in pension and medical expenses associated with our retirement benefit programs; social, political, competitive and economic situations in foreign countries where we do business or seek new business; the possibilities of war, other armed conflicts or terrorist attacks; and the other risks set forth under Part I, Item 1A "Risk Factors" in this annual report.

These factors are not necessarily all the factors that could affect us. We assume no obligation to revise or update any forward-looking statement included in this annual report for any reason, except as required by law.

Available Information

Our website address is *www.babcock.com* . We make available through the Investor Relations section of this website under "SEC Filings," free of charge, our annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, our proxy statement, statements of beneficial ownership of securities on Forms 3, 4 and 5 and amendments to those reports as soon as reasonably practicable after we electronically file those materials with, or furnish those materials to, the Securities and Exchange Commission (the "SEC"). You may read and copy any materials we file with the SEC at the SEC's Public Reference Room at 100 F Street, NE, Washington, DC 20549. You may obtain information regarding the Public Reference Room by calling the SEC at 1-800-SEC-0330. In addition, the SEC maintains a website at *www.sec.gov* that contains reports, proxy and annual reports, and other information regarding issuers that file electronically with the SEC. We have also posted on our website our: Corporate Governance Principles; Code of Business Conduct; Code of Ethics for our Chief Executive Officer and Senior Financial Officers; Board of Directors Conflicts of Interest Policies and Procedures; Management, Board Members and Independent Director Contact Information; By-laws; and charters for the Audit & Finance, Governance, Compensation and Safety & Security Committees of our Board.

Item 1A. Risk Factors

You should carefully consider each of the following risks and all of the other information contained in this annual report. Some of these risks relate principally to our spin-off from our former Parent, while others relate principally to our business and the industry in which we operate or to the securities markets generally and ownership of our common stock. If any of these risks develop into actual events, our business, financial condition, results of operations or cash flows could be materially adversely affected by any of these risks, and, as a result, the trading price of our common stock could decline.

Risks Relating to Our Industry and Our Business

We derive substantial revenues from electric power generating companies and other steam-using industries, with demand for our products and services depending on spending in these historically cyclical industries. Additionally, recent legislative and regulatory developments relating to clean air legislation are affecting industry plans for spending on coal-fired power plants within the United States and elsewhere.

The demand for power generation products and services depends primarily on the spending of electric power generating companies and other steam-using industries and expenditures by original equipment manufacturers. These expenditures are influenced by such factors as:

- prices for electricity, along with the cost of production and distribution;
- prices for natural resources such as coal and natural gas;
- demand for electricity and other end products of steam-generating facilities;
- availability of other sources of electricity or other end products;
- requirements of environmental legislation and regulations, including potential requirements applicable to carbon dioxide emissions;
- impact of potential regional, state, national and/or global requirements to significantly limit or reduce greenhouse gas emissions in the future;
- level of capacity utilization and associated operations and maintenance expenditures of power generating companies and other steam-using facilities;
- requirements for maintenance and upkeep at operating power plants and other steam-using facilities to combat the accumulated effects of wear and tear;
- ability of electric generating companies and other steam users to raise capital; and
- relative prices of fuels used in boilers, compared to prices for fuels used in gas turbines and other alternative forms of generation.

We estimate that 47% , 50% and 57% of our consolidated revenues in 2016, 2015 and 2014, respectively, was related to coal-fired power plants. A material decline in spending by electric power generating companies and other steam-using industries over a sustained period of time could materially and adversely affect the demand for our power generation products and services and, therefore, our financial condition, results of operations and cash flows. Coal-fired power plants have been scrutinized by environmental groups and government regulators over the emissions of potentially harmful pollutants. The recent economic environment and uncertainty concerning new environmental legislation or replacement rules or regulations in the United States and elsewhere has caused many of our major customers, principally electric utilities, to delay making substantial expenditures for new plants, as well as upgrades to existing power plants.

Demand for our products and services is vulnerable to economic downturns and industry conditions.

Demand for our products and services has been, and we expect that demand will continue to be, subject to significant fluctuations due to a variety of factors beyond our control, including economic and industry conditions. These factors include, but are not limited to: the cyclical nature of the industries we serve, inflation, geopolitical issues, the availability and cost of credit, volatile oil and natural gas prices, low business and consumer confidence, high unemployment and energy conservation measures.

Unfavorable economic conditions may lead customers to delay, curtail or cancel proposed or existing projects, which may decrease the overall demand for our products and services and adversely affect our results of operations.

In addition, our customers may find it more difficult to raise capital in the future due to limitations on the availability of credit, increases in interest rates and other factors affecting the federal, municipal and corporate credit markets. Also, our customers may demand more favorable pricing terms and find it increasingly difficult to timely pay invoices for our products and services, which would impact our future cash flows and liquidity. Inflation or significant changes in interest rates could reduce the demand for our products and services. Any inability to timely collect our invoices may lead to an increase in our accounts receivable and potentially to increased write-offs of uncollectible invoices. If the economy weakens, or customer spending declines, then our backlog, revenues, net income and overall financial condition could deteriorate.

Our backlog is subject to unexpected adjustments and cancellations and may not be a reliable indicator of future revenues or earnings.

There can be no assurance that the revenues projected in our backlog will be realized or, if realized, will result in profits. Because of project cancellations or changes in project scope and schedule, we cannot predict with certainty when or if backlog will be performed. In addition, even where a project proceeds as scheduled, it is possible that contracted parties may default and fail to pay amounts owed to us or poor project performance could increase the cost associated with a project. Delays, suspensions, cancellations, payment defaults, scope changes and poor project execution could materially reduce or eliminate the revenues and profits that we actually realize from projects in backlog.

Reductions in our backlog due to cancellation or modification by a customer or for other reasons may adversely affect, potentially to a material extent, the revenues and earnings we actually receive from contracts included in our backlog. Many of the contracts in our backlog provide for cancellation fees in the event customers cancel projects. These cancellation fees usually provide for reimbursement of our out-of-pocket costs, revenues for work performed prior to cancellation and a varying percentage of the profits we would have realized had the contract been completed. However, we typically have no contractual right upon cancellation to the total revenues reflected in our backlog. Projects may remain in our backlog for extended periods of time. If we experience significant project terminations, suspensions or scope adjustments to contracts reflected in our backlog, our financial condition, results of operations and cash flows may be adversely impacted.

We are subject to risks associated with contractual pricing in our industry, including the risk that, if our actual costs exceed the costs we estimate on our fixed-price contracts, our profitability will decline, and we may suffer losses .

We are engaged in a highly competitive industry, and we have priced a number of our contracts on a fixed-price basis. Our actual costs could exceed our projections, as was the case recently with a large contract in the Renewable segment. We attempt to cover the increased costs of anticipated changes in labor, material and service costs of long-term contracts, either through estimates of cost increases, which are reflected in the original contract price, or through price escalation clauses. Despite these attempts, however, the cost and gross profit we realize on a fixed-price contract could vary materially from the estimated amounts because of supplier, contractor and subcontractor performance, changes in job conditions, variations in labor and equipment productivity and increases in the cost of labor and raw materials, particularly steel, over the term of the contract. These variations and the risks generally inherent in our industry may result in actual revenues or costs being different from those we originally estimated and may result in reduced profitability or losses on projects. Some of these risks include:

- difficulties encountered on our large-scale projects related to the procurement of materials or due to schedule disruptions, equipment performance failures, engineering and design complexity, unforeseen site conditions, rejection clauses in customer contracts or other factors that may result in additional costs to us, reductions in revenue, claims or disputes;
- our inability to obtain compensation for additional work we perform or expenses we incur as a result of our customers providing deficient design or engineering information or equipment or materials;
- requirements to pay liquidated damages upon our failure to meet schedule or performance requirements of our contracts; and
- difficulties in engaging third-party subcontractors, equipment manufacturers or materials suppliers or failures by third-party subcontractors, equipment manufacturers or materials suppliers to perform could result in project delays and cause us to incur additional costs.

We are exposed to credit risk and may incur losses as a result of such exposure.

We conduct our business by obtaining orders that generate cash flows in the form of advances, project progress payments and final balances in accordance with the underlying contractual terms. We are thus exposed to potential losses resulting contractual counterparties' failure to meet their obligations. As a result, the failure by customers to meet their payment obligations, or a mere delay in making those payments, could reduce our liquidity and increase the need to resort to other sources of financing, with possible adverse effects on our business, financial condition, results of operations and cash flows.

In addition, the deterioration of economic conditions or negative trends in the credit markets could have a negative impact on relationships with customers and our ability to collect on trade receivables, with possible adverse effects on our business, financial condition, results of operations and cash flows.

Our use of the percentage-of-completion method of accounting could result in volatility in our results of operations.

We generally recognize revenues and profits under our long-term contracts on a percentage-of-completion basis. Accordingly, we review contract price and cost estimates regularly as the work progresses and reflect adjustments proportionate to the percentage of completion in income in the period when we revise those estimates. To the extent these adjustments result in a reduction or an elimination of previously reported profits with respect to a project, we would recognize a charge against current earnings, which could be material. Our current estimates of our contract costs and the profitability of our long-term projects, although reasonably reliable when made, could change as a result of the uncertainties associated with these types of contracts, and if adjustments to overall contract costs are significant, the reductions or reversals of previously recorded revenue and profits could be material in future periods.

If our co-venturers fail to perform their contractual obligations on a project or if we fail to coordinate effectively with our co-venturers, we could be exposed to legal liability, loss of reputation and reduced profit on the project.

We often perform projects jointly with third parties. For example, we enter into contracting consortia and other contractual arrangements to bid for and perform jointly on large projects. Success on these joint projects depends in part on whether our co-venturers fulfill their contractual obligations satisfactorily. If any one or more of these third parties fail to perform their contractual obligations satisfactorily, we may be required to make additional investments and provide added services in order to compensate for that failure. If we are unable to adequately address any such performance issues, then our customer may exercise its right to terminate a joint project, exposing us to legal liability, loss of reputation and reduced profit.

Our collaborative arrangements also involve risks that participating parties may disagree on business decisions and strategies. These disagreements could result in delays, additional costs and risks of litigation. Our inability to successfully maintain existing collaborative relationships or enter into new collaborative arrangements could have a material adverse effect on our results of operations.

We could be subject to changes in tax rates or tax law, adoption of new regulations or changing interpretations of existing law or exposure to additional tax liabilities in excess of accrued amounts.

We are subject to income taxes in the United States and numerous foreign jurisdictions. A change in tax laws, treaties or regulations, or their interpretation, in any country in which we operate could result in a higher tax rate on our earnings, which could have a material impact on our earnings and cash flows from operations. Recent proposals to alter the U.S. corporate income tax regime with respect to foreign earnings as well as proposals to lower the U.S. corporate income tax rate, if enacted could potentially impose United States tax on our unrepatriated foreign earnings and would require us to reduce our net deferred tax assets, with a corresponding material, one-time, non-cash increase in income tax expense.

In addition, significant judgment is required in determining our worldwide provision for income taxes. In the ordinary course of our business, there are many transactions and calculations where the ultimate tax determination is uncertain, and we are regularly subject to audit by tax authorities. Although we believe that our tax estimates and tax positions are reasonable, they could be materially affected by many factors including the final outcome of tax audits and related litigation, the introduction of new tax accounting standards, legislation, regulations and related interpretations, our global mix of earnings, the realizability of deferred tax assets and changes in uncertain tax positions. A significant increase in our tax rate could have a material adverse effect on our profitability and liquidity.

Our business could be negatively impacted by security threats, including physical and cybersecurity threats, and other disruptions.

We face various security threats, including cyber threats, threats to the physical security of our facilities and infrastructure, and threats from terrorist acts, as well as the potential for business disruptions associated with these threats. Although we utilize a combination of tailored and industry standard security measures and technology to monitor and mitigate these threats, we cannot guarantee that these measures and technology will be sufficient to prevent security threats from materializing.

We are increasingly dependent on information technology networks and systems, including the Internet, to process, transmit and store electronic and financial information, to manage and support a variety of business processes and activities and to comply with regulatory, legal and tax requirements. We have been, and will likely continue to be, subject to cyber-based attacks and other attempts to threaten our information technology systems and the software we sell. A cyber-based attack

could include attempts to gain unauthorized access to our proprietary information and attacks from malicious third parties using sophisticated, targeted methods to circumvent firewalls, encryption and other security defenses, including hacking, fraud, trickery or other forms of deception. If any of our significant information technology systems suffer severe damage, disruption, or shutdown and our business continuity plans do not effectively resolve the issues in a timely manner, the services we provide to customers, the value of our investment in research and development efforts and other intellectual property, our product sales, financial condition, results of operations and stock price may be materially and adversely affected, and we could experience delays in reporting our financial results. In addition, there is a risk of business interruption, litigation risks, and reputational damage from leakage of confidential information or the software we sell being compromised. The costs related to cyber or other security threats or disruptions may not be fully insured or indemnified by other means.

In order to address risks to our information systems, we continue to make investments in technologies and training of company personnel. From time to time we may replace and/or upgrade current financial, human resources and other information technology systems. These activities subject us to inherent costs and risks associated with replacing and updating these systems, including potential disruption of our internal control structure, substantial capital expenditures, demands on management time and other risks of delays or difficulties in transitioning to new systems or of integrating new systems into our current systems. Our systems implementations and upgrades may not result in productivity improvements at the levels anticipated, or at all. In addition, the implementation of new technology systems may cause disruptions in our business operations. Such disruption and any other information technology system disruptions, and our ability to mitigate those disruptions, if not anticipated and appropriately mitigated, could have a material adverse effect on our financial condition, results of operations and stock price.

We rely on intellectual property law and confidentiality agreements to protect our intellectual property. We also rely on intellectual property we license from third parties. Our failure to protect our intellectual property rights, or our inability to obtain or renew licenses to use intellectual property of third parties, could adversely affect our business.

Our success depends, in part, on our ability to protect our proprietary information and other intellectual property. Our intellectual property could be stolen, challenged, invalidated, circumvented or rendered unenforceable. In addition, effective intellectual property protection may be limited or unavailable in some foreign countries where we operate.

Our failure to protect our intellectual property rights may result in the loss of valuable technologies or adversely affect our competitive business position. We rely significantly on proprietary technology, information, processes and know-how that are not subject to patent or copyright protection. We seek to protect this information through trade secret or confidentiality agreements with our employees, consultants, subcontractors or other parties, as well as through other security measures. These agreements and security measures may be inadequate to deter or prevent misappropriation of our confidential information. In the event of an infringement of our intellectual property rights, a breach of a confidentiality agreement or divulgence of proprietary information, we may not have adequate legal remedies to protect our intellectual property. Litigation to determine the scope of intellectual property rights, even if ultimately successful, could be costly and could divert management's attention away from other aspects of our business. In addition, our trade secrets may otherwise become known or be independently developed by competitors.

In some instances, we have augmented our technology base by licensing the proprietary intellectual property of third parties. In the future, we may not be able to obtain necessary licenses on commercially reasonable terms, which could have a material adverse effect on our operations.

Maintaining adequate bonding and letter of credit capacity is necessary for us to successfully bid on and win various contracts.

In line with industry practice, we are often required to post standby letters of credit and surety bonds to support contractual obligations to customers as well as other obligations. These letters of credit and bonds generally indemnify customers should we fail to perform our obligations under the applicable contracts. If a letter of credit or bond is required for a particular project and we are unable to obtain it due to insufficient liquidity or other reasons, we will not be able to pursue that project. We utilize bonding facilities, but, as is typically the case, the issuance of bonds under each of those facilities is at the surety's sole discretion. Moreover, due to events that affect the insurance and bonding and credit markets generally, bonding and letters of credit may be more difficult to obtain in the future or may only be available at significant additional cost. There can be no assurance that letters of credit or bonds will continue to be available to us on reasonable terms. Our inability to obtain adequate letters of credit and bonding and, as a result, to bid on new work could have a material adverse effect on our business, financial condition and results of operations. As of December 31, 2016 , we had $ 351.8 million in letters of credit

and bank guarantees and $ 527.9 million in surety bonds outstanding. Of these amounts, $7.5 million of financial letters of credit and $89.1 million of performance letters of credit were outstanding under the United States credit agreement.

Our amended United States credit facility could restrict our operations.

The terms of our amended United States credit agreement impose various restrictions and covenants on us that could have adverse consequences, including limiting our:

- flexibility in planning for, or reacting to, changes in our business or economic, regulatory and industry conditions;
- ability to invest in joint ventures or acquire other companies;
- ability to sell assets;
- ability to pay dividends to our stockholders;
- ability to repurchase shares of our common stock; and
- ability to borrow additional funds.

In addition, our amended United States credit facility requires us to satisfy and maintain specified financial ratios. Our ability to meet those financial ratios can be affected by events beyond our control, and we cannot assure you that we will continue to meet the financial ratios.

During the covenant relief period under our amended United States credit facility, we are limited to $300.0 million of borrowings under that facility.

Our ability to comply with the covenants and restrictions contained in our amended United States credit facility may be affected by events beyond our control, including prevailing economic, financial and industry conditions. If market or other economic conditions deteriorate, our ability to comply with these covenants may be impaired. A breach of any of these covenants could result in an event of default under our amended United States credit facility, and we would not be able to access our credit facility for additional borrowings and letters of credit while any default exists. Upon the occurrence of such an event of default, all amounts outstanding under our amended United States credit facility could be declared to be immediately due and payable and all applicable commitments to extend further credit could be terminated. If indebtedness under our amended credit facility is accelerated, there can be no assurance that we will have sufficient assets to repay the indebtedness. The operating and financial restrictions and covenants in our amended credit facility and any future financing agreements may adversely affect our ability to finance future operations or capital needs or to engage in other business activities.

Our business strategy includes acquisitions to support our growth. Acquisitions of other businesses can create risks and uncertainties. Our amended United States credit facility significantly limits our ability to make acquisitions in at least the next twelve months.

We intend to pursue growth through the acquisition of businesses or assets that we believe will enable us to strengthen our existing businesses and expand into adjacent industries and regions. We may be unable to continue this growth strategy if we cannot identify suitable businesses or assets, reach agreement on potential strategic acquisitions on acceptable terms or for other reasons. In addition, the recent amendment to our United States credit facility significantly limits our ability to make acquisitions during at least the next twelve months. If we are unable to complete acquisitions or to successfully integrate and develop acquired businesses, our financial results could be materially and adversely affected. Moreover, we may incur asset impairment charges related to acquisitions that reduce our profitability.

Business acquisitions involve risks, including:

- difficulties relating to the assimilation of personnel, services and systems of an acquired business and the assimilation of marketing and other operational capabilities;
- challenges resulting from unanticipated changes in customer relationships after the acquisition;
- additional financial and accounting challenges and complexities in areas such as tax planning, treasury management, financial reporting and internal controls;
- assumption of liabilities of an acquired business, including liabilities that were unknown at the time the acquisition transaction was negotiated;
- diversion of management's attention from day-to-day operations;
- failure to realize anticipated benefits, such as cost savings and revenue enhancements;
- potentially substantial transaction costs associated with business combinations; and

- potential impairment of goodwill or other intangible assets resulting from the overpayment for an acquisition.

Acquisitions may be funded by the issuance of additional equity or debt financing, which may not be available on attractive terms, or at all. Our ability to secure such financing will depend in part on prevailing capital market conditions, as well as conditions in our business and operating results. Moreover, to the extent an acquisition transaction financed by non-equity consideration results in goodwill, it will reduce our tangible net worth, which might have an adverse effect on potential credit and bonding capacity.

Additionally, an acquisition may bring us into businesses we have not previously conducted and expose us to additional business risks that are different than those we have historically experienced. Any of these factors could affect our sales, financial condition, and results of operations.

Our business strategy includes development and commercialization of new technologies to support our growth, which requires significant investment and involves various risks and uncertainties. These new technologies may not achieve desired commercial or financial results.

Our future growth will depend, in part, on our ability to continue to innovate by developing and commercializing new product and service offerings. Investments in new technologies involve varying degrees of uncertainties and risk. Commercial success depends on many factors, including the levels of innovation, the development costs and the availability of capital resources to fund those costs, the levels of competition from others developing similar or other competing technologies, our ability to obtain or maintain government permits or certifications, our ability to license or purchase new technologies from third parties, the effectiveness of production, distribution and marketing efforts, and the costs to customers to deploy and provide support for the new technologies. We may not achieve significant revenues from new product and service investments for a number of years, if at all. Moreover, new products and services may not be profitable, and, even if they are profitable, our operating margins from new products and services may not be as high as the margins we have experienced historically. In addition, new technologies may not be patentable and, as a result, we may face increased competition.

Our operations are subject to operating risks, which could expose us to potentially significant professional liability, product liability, warranty and other claims. Our insurance coverage may be inadequate to cover all of our significant risks or our insurers may deny coverage of material losses we incur, which could adversely affect our profitability and overall financial condition.

We engineer, construct and perform services in large industrial facilities where accidents or system failures can have significant consequences. Risks inherent in our operations include:

- accidents resulting in injury or the loss of life or property;
- environmental or toxic tort claims, including delayed manifestation claims for personal injury or loss of life;
- pollution or other environmental mishaps;
- adverse weather conditions;
- mechanical failures;
- property losses;
- business interruption due to political action or other reasons; and
- labor stoppages.

Any accident or failure at a site where we have provided products or services could result in significant professional liability, product liability, warranty and other claims against us, regardless of whether our products or services caused the incident. We have been, and in the future we may be, named as defendants in lawsuits asserting large claims as a result of litigation arising from events such as those listed above.

We endeavor to identify and obtain in established markets insurance agreements to cover significant risks and liabilities. Insurance against some of the risks inherent in our operations is either unavailable or available only at rates or on terms that we consider uneconomical. Also, catastrophic events customarily result in decreased coverage limits, more limited coverage, additional exclusions in coverage, increased premium costs and increased deductibles and self-insured retentions. Risks that we have frequently found difficult to cost-effectively insure against include, but are not limited to, business interruption, property losses from wind, flood and earthquake events, war and confiscation or seizure of property in some areas of the world, pollution liability, liabilities related to occupational health exposures (including asbestos), the failure, misuse or

unavailability of our information systems, the failure of security measures designed to protect our information systems from security breaches, and liability related to risk of loss of our work in progress and customer-owned materials in our care, custody and control. Depending on competitive conditions and other factors, we endeavor to obtain contractual protection against uninsured risks from our customers. When obtained, such contractual indemnification protection may not be as broad as we desire or may not be supported by adequate insurance maintained by the customer. Such insurance or contractual indemnity protection may not be sufficient or effective under all circumstances or against all hazards to which we may be subject. A successful claim for which we are not insured or for which we are underinsured could have a material adverse effect on us. Additionally, disputes with insurance carriers over coverage may affect the timing of cash flows and, if litigation with the carrier becomes necessary, an outcome unfavorable to us may have a material adverse effect on our results of operations.

Our wholly owned captive insurance subsidiary provides workers' compensation, employer's liability, commercial general liability, professional liability and automotive liability insurance to support our operations. We may also have business reasons in the future to have our insurance subsidiary accept other risks which we cannot or do not wish to transfer to outside insurance companies. These risks may be considerable in any given year or cumulatively. Our insurance subsidiary has not provided significant amounts of insurance to unrelated parties. Claims as a result of our operations could adversely impact the ability of our insurance subsidiary to respond to all claims presented.

Additionally, upon the February 22, 2006 effectiveness of the settlement relating to the Chapter 11 proceedings involving several of our subsidiaries, most of our subsidiaries contributed substantial insurance rights to the asbestos personal injury trust, including rights to (1) certain pre-1979 primary and excess insurance coverages and (2) certain of our 1979-1986 excess insurance coverage. These insurance rights provided coverage for, among other things, asbestos and other personal injury claims, subject to the terms and conditions of the policies. The contribution of these insurance rights was made in exchange for the agreement on the part of the representatives of the asbestos claimants, including the representative of future claimants, to the entry of a permanent injunction, pursuant to Section 524(g) of the United States Bankruptcy Code, to channel to the asbestos trust all asbestos-related claims against our subsidiaries and former subsidiaries arising out of, resulting from or attributable to their operations, and the implementation of related releases and indemnification provisions protecting those subsidiaries and their affiliates from future liability for such claims. Although we are not aware of any significant, unresolved claims against our subsidiaries and former subsidiaries that are not subject to the channeling injunction and that relate to the periods during which such excess insurance coverage related, with the contribution of these insurance rights to the asbestos personal injury trust, it is possible that we could have underinsured or uninsured exposure for non-derivative asbestos claims or other personal injury or other claims that would have been insured under these coverages had the insurance rights not been contributed to the asbestos personal injury trust.

We are subject to government regulations that may adversely affect our future operations.

Many aspects of our operations and properties are affected by political developments and are subject to both domestic and foreign governmental regulations, including those relating to:

- constructing and manufacturing power generation products;
- currency conversions and repatriation;
- clean air and other environmental protection legislation;
- taxation of foreign earnings;
- transactions in or with foreign countries or officials; and
- use of local employees and suppliers.

In addition, a substantial portion of the demand for our products and services is from electric power generating companies and other steam-using customers. The demand for power generation products and services can be influenced by governmental legislation setting requirements for utilities related to operations, emissions and environmental impacts. The legislative process is unpredictable and includes a platform that continuously seeks to increase the restrictions on power producers. Potential legislation limiting emissions from power plants, including carbon dioxide, could affect our markets and the demand for our products and services related to power generation.

We cannot determine the extent to which our future operations and earnings may be affected by new legislation, new regulations or changes in existing regulations.

Our business and our customers' businesses are required to obtain, and to comply with, national, state and local government permits and approvals.

Our business and our customers' businesses are required to obtain, and to comply with, national, state and local government permits and approvals. Any of these permits or approvals may be subject to denial, revocation or modification under various circumstances. Failure to obtain or comply with the conditions of permits or approvals may adversely affect our operations by temporarily suspending our activities or curtailing our work and may subject us to penalties and other sanctions. Although existing licenses are routinely renewed by various regulators, renewal could be denied or jeopardized by various factors, including:

- failure to comply with environmental and safety laws and regulations or permit conditions;
- local community, political or other opposition;
- executive action; and
- legislative action.

In addition, if new environmental legislation or regulations are enacted or implemented, or existing laws or regulations are amended or are interpreted or enforced differently, we or our customers may be required to obtain additional operating permits or approvals. Our inability or our customers' inability to obtain, and to comply with, the permits and approvals required for our business could have a material adverse effect on us.

Our operations are subject to various environmental laws and legislation that may become more stringent in the future.

Our operations and properties are subject to a wide variety of increasingly complex and stringent foreign, federal, state and local environmental laws and regulations, including those governing discharges into the air and water, the handling and disposal of solid and hazardous wastes, the remediation of soil and groundwater contaminated by hazardous substances and the health and safety of employees. Sanctions for noncompliance may include revocation of permits, corrective action orders, administrative or civil penalties and criminal prosecution. Some environmental laws provide for strict, joint and several liability for remediation of spills and other releases of hazardous substances, as well as damage to natural resources. In addition, companies may be subject to claims alleging personal injury or property damage as a result of alleged exposure to hazardous substances. Such laws and regulations may also expose us to liability for the conduct of or conditions caused by others or for our acts that were in compliance with all applicable laws at the time such acts were performed.

We cannot predict all of the environmental requirements or circumstances that will exist in the future but anticipate that environmental control and protection standards will become increasingly stringent and costly. Based on our experience to date, we do not currently anticipate any material adverse effect on our business or financial condition as a result of future compliance with existing environmental laws and regulations. However, future events, such as changes in existing laws and regulations or their interpretation, more vigorous enforcement policies of regulatory agencies or stricter or different interpretations of existing laws and regulations, may require additional expenditures by us, which may be material. Accordingly, we can provide no assurance that we will not incur significant environmental compliance costs in the future.

Our operations involve the handling, transportation and disposal of hazardous materials, and environmental laws and regulations and civil liability for contamination of the environment or related personal injuries may result in increases in our operating costs and capital expenditures and decreases in our earnings and cash flows.

Our operations involve the handling, transportation and disposal of hazardous materials. Failure to properly handle these materials could pose a health risk to humans or wildlife and could cause personal injury and property damage (including environmental contamination). If an accident were to occur, its severity could be significantly affected by the volume of the materials and the speed of corrective action taken by emergency response personnel, as well as other factors beyond our control, such as weather and wind conditions. Actions taken in response to an accident could result in significant costs.

Governmental requirements relating to the protection of the environment, including solid waste management, air quality, water quality and cleanup of contaminated sites, have in the past had a substantial impact on our operations. These requirements are complex and subject to frequent change. In some cases, they can impose liability for the entire cost of cleanup on any responsible party without regard to negligence or fault and impose liability on us for the conduct of others or conditions others have caused, or for our acts that complied with all applicable requirements when we performed them. Our compliance with amended, new or more stringent requirements, stricter interpretations of existing requirements or the future discovery of contamination may require us to make material expenditures or subject us to liabilities that we currently do not

anticipate. Such expenditures and liabilities may adversely affect our business, financial condition, results of operations and cash flows. In addition, some of our operations and the operations of predecessor owners of some of our properties have exposed us to civil claims by third parties for liability resulting from alleged contamination of the environment or personal injuries caused by releases of hazardous substances into the environment.

In our contracts, we seek to protect ourselves from liability associated with accidents, but there can be no assurance that such contractual limitations on liability will be effective in all cases or that our or our customers' insurance will cover all the liabilities we have assumed under those contracts. The costs of defending against a claim arising out of a contamination incident or precautionary evacuation, and any damages awarded as a result of such a claim, could adversely affect our results of operations and financial condition.

We maintain insurance coverage as part of our overall risk management strategy and due to requirements to maintain specific coverage in our financing agreements and in many of our contracts. These policies do not protect us against all liabilities associated with accidents or for unrelated claims. In addition, comparable insurance may not continue to be available to us in the future at acceptable prices, or at all.

We could be adversely affected by violations of the United States Foreign Corrupt Practices Act, the UK Anti-Bribery Act or other anti-bribery laws.

The United States Foreign Corrupt Practices Act (the "FCPA") generally prohibits companies and their intermediaries from making improper payments to non-United States government officials. Our training program, audit process and policies mandate compliance with the FCPA, the UK Anti-Bribery Act (the "UK Act") and other anti-bribery laws. We operate in some parts of the world that have experienced governmental corruption to some degree, and, in some circumstances, strict compliance with anti-bribery laws may conflict with local customs and practices. If we are found to be liable for violations of the FCPA, the UK Act or other anti-bribery laws (either due to our own acts or our inadvertence, or due to the acts or inadvertence of others, including agents, promoters or employees of our joint ventures), we could suffer from civil and criminal penalties or other sanctions.

We conduct a portion of our operations through joint venture entities, over which we may have limited ability to influence.

We currently have equity interests in several significant joint ventures, which contributed $16.4 million , $(0.2) million and $8.7 million to equity in income (loss) of investees for the years ended December 31, 2016 , 2015 and 2014 , respectively, and may enter into additional joint venture arrangements in the future. Our influence over some of these entities may be limited. Even in those joint ventures over which we do exercise significant influence, we are often required to consider the interests of our joint venture partners in connection with major decisions concerning the operations of the joint ventures. In any case, differences in views among the joint venture participants may result in delayed decisions or disputes. We also cannot control the actions of our joint venture participants. We sometimes have joint and several liabilities with our joint venture partners under the applicable contracts for joint venture projects and we cannot be certain that our partners will be able to satisfy any potential liability that could arise. These factors could potentially harm the business and operations of a joint venture and, in turn, our business and operations.

Operating through joint ventures in which we are minority holders results in us having limited control over many decisions made with respect to business practices, projects and internal controls relating to projects. These joint ventures may not be subject to the same requirements regarding internal controls and internal control over financial reporting that we follow. As a result, internal control problems may arise with respect to the joint ventures that could adversely affect our ability to respond to requests or contractual obligations to customers or to meet the internal control requirements to which we are otherwise subject.

Our joint ventures located in countries outside of the United States are subject to various risks and uncertainties associated with emerging markets, including bribery and corruption, changes in laws, rules and regulations, fluctuations in demand, labor unrest, and the impact of regional and global business conditions generally. To the extent any of these factors has a material adverse impact on the joint venture or its future operations, our investment may become impaired. With respect to each joint venture, we, or our joint venture partner, may decide to change the strategic direction of the joint venture, which could adversely affect its sales, financial condition, and results of operations. In addition, our arrangements involving joint ventures may restrict us from gaining access to the cash flows or assets of these entities, including when we determine to exit a joint venture. In some cases, our joint ventures have governmentally imposed restrictions on their abilities to transfer funds

to us. At December 31, 2016 , our total investment in joint ventures was $98.7 million , which included $ 40.6 million related to a joint venture in India and $ 55.4 million related to a joint venture in China.

We may not be able to compete successfully against current and future competitors.

Some of our competitors or potential competitors have greater financial or other resources than we have and in some cases are government supported. Our operations may be adversely affected if our current competitors or new market entrants introduce new products or services with better features, performance, prices or other characteristics than those of our products and services. Furthermore, we operate in industries where capital investment is critical. We may not be able to obtain as much purchasing and borrowing leverage and access to capital for investment as other public companies, which may impair our ability to compete against competitors or potential competitors.

The loss of the services of one or more of our key personnel, or our failure to attract, assimilate and retain trained personnel in the future, could disrupt our operations and result in loss of revenues or profits.

Our success depends on the continued active participation of our executive officers and key operating personnel. The unexpected loss of the services of any one of these persons could adversely affect our operations.

Our operations require the services of employees having the technical training and experience necessary to obtain the proper operational results. As such, our operations depend, to a considerable extent, on the continuing availability of such personnel. If we should suffer any material loss of personnel to competitors, retirement or other reasons, or be unable to employ additional or replacement personnel with the requisite level of training and experience to adequately operate our business, our operations could be adversely affected. While we believe our wage rates are competitive and our relationships with our employees are satisfactory, a significant increase in the wages paid by other employers could result in a reduction in our workforce, increases in wage rates, or both. Additionally, we froze pension plan benefit accruals at the end of 2015, which could also result in incremental turnover in our workforce. If any of these events occurred for a significant period of time, our financial condition, results of operations and cash flows could be adversely impacted.

Negotiations with labor unions and possible work stoppages and other labor problems could divert management's attention and disrupt operations. In addition, new collective bargaining agreements or amendments to existing agreements could increase our labor costs and operating expenses.

A significant number of our employees are members of labor unions. If we are unable to negotiate acceptable new contracts with our unions from time to time, we could experience strikes or other work stoppages by the affected employees. If any such strikes or other work stoppages were to occur, we could experience a significant disruption of operations. In addition, negotiations with unions could divert management attention. New union contracts could result in increased operating costs, as a result of higher wages or benefit expenses, for both union and nonunion employees. If nonunion employees were to unionize, we could experience higher ongoing labor costs.

Pension and medical expenses associated with our retirement benefit plans may fluctuate significantly depending on a number of factors, and we may be required to contribute cash to meet underfunded pension obligations.

A substantial portion of our current and retired employee population is covered by pension and postretirement benefit plans, the costs and funding requirements of which depend on our various assumptions, including estimates of rates of return on benefit-related assets, discount rates for future payment obligations, rates of future cost growth, mortality assumptions and trends for future costs. Variances from these estimates could have a material adverse effect on us. Our policy to recognize these variances annually through mark to market accounting could result in volatility in our results of operations, which could be material. As of December 31, 2016 , our defined benefit pension and postretirement benefit plans were underfunded by approximately $300.8 million . In addition, certain of these postretirement benefit plans were collectively bargained, and our ability to curtail or change the benefits provided may be impacted by contractual provisions set forth in the relevant union agreements and other plan documents. We also participate in various multi-employer pension plans in the United States and Canada under union and industry agreements that generally provide defined benefits to employees covered by collective bargaining agreements. Absent an applicable exemption, a contributor to a United States multi-employer plan is liable, upon termination or withdrawal from a plan, for its proportionate share of the plan's underfunded vested liability. Funding requirements for benefit obligations of these multi-employer pension plans are subject to certain regulatory requirements, and we may be required to make cash contributions which may be material to one or more of these plans to satisfy certain

underfunded benefit obligations. See Note 18 to the consolidated and combined financial statements included in Item 8 in this annual report for additional information regarding our pension and postretirement benefit plan obligations.

Our international operations are subject to political, economic and other uncertainties not generally encountered in our domestic operations.

We derive a substantial portion of our revenues and equity in income of investees from international operations, and we intend to continue to expand our international operations and customer base as part of our growth strategy. Our revenues from sales to customers located outside of the United States represented approximately 46% , 41% and 37% of total revenues for the years ended December 31, 2016 , 2015 and 2014 , respectively. Operating in international markets requires significant resources and management attention and subjects us to political, economic and regulatory risks that are not generally encountered in our United States operations. These include:

- risks of war, terrorism and civil unrest;
- expropriation, confiscation or nationalization of our assets;
- renegotiation or nullification of our existing contracts;
- changing political conditions and changing laws and policies affecting trade and investment;
- overlap of different tax structures; and
- risk of changes in foreign currency exchange rates.

Various foreign jurisdictions have laws limiting the right and ability of foreign subsidiaries and joint ventures to pay dividends and remit earnings to affiliated companies. Our international operations sometimes face the additional risks of fluctuating currency values, hard currency shortages and controls of foreign currency exchange. If we continue to expand our business globally, our success will depend, in part, on our ability to anticipate and effectively manage these and other risks. These and other factors may have a material impact on our international operations or our business as a whole.

Natural disasters or other events beyond our control could adversely impact our business.

Natural disasters, such as earthquakes, tsunamis, hurricanes, floods, tornadoes, or other events could adversely impact demand for or supply of our products. In addition, natural disasters could also cause disruption to our facilities, systems or projects, which could interrupt operational processes and performance on our contracts and adversely impact our ability to manufacture our products and provide services and support to our customers. We operate facilities in areas of the world that are exposed to natural disasters, such as, but not limited to, hurricanes, floods and tornadoes.

War, other armed conflicts or terrorist attacks could have a material adverse effect on our business.

War, terrorist attacks and unrest have caused and may continue to cause instability in the world's financial and commercial markets and have significantly increased political and economic instability in some of the geographic areas in which we operate. Threats of war or other armed conflict may cause further disruption to financial and commercial markets. In addition, continued unrest could lead to acts of terrorism in the United States or elsewhere, and acts of terrorism could be directed against companies such as ours. Also, acts of terrorism and threats of armed conflicts in or around various areas in which we operate could limit or disrupt our markets and operations, including disruptions from evacuation of personnel, cancellation of contracts or the loss of personnel or assets. Armed conflicts, terrorism and their effects on us or our markets may significantly affect our business and results of operations in the future.

Regulations related to "conflict minerals" may force us to incur additional expenses, may make our supply chain more complex and may result in damage to our reputation with customers.

On August 22, 2012, under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the "Dodd-Frank Act"), the SEC adopted new requirements for companies that use minerals and metals, known as conflict minerals, in their products, whether or not these products are manufactured by third parties. Under these requirements, companies that are subject to the rules conduct due diligence and disclose and report whether or not such minerals originate from the Democratic Republic of Congo and adjoining countries. The implementation of these new requirements could adversely affect the sourcing, availability and pricing of minerals used in the manufacture of components incorporated in our products. In addition, we will incur additional costs to comply with the disclosure requirements, including costs related to determining the source of any of the relevant minerals and metals used in our products. Since our supply chain is complex, we may not be able to sufficiently verify the origins for these minerals and metals used in our products through the diligence procedures that

we implement, which may harm our reputation. In such event, we may also face difficulties in satisfying customers who require that the components of our products either may not originate from the Democratic Republic of Congo and adjoining countries or must be certified as conflict free.

Risks Relating to our 2015 Spin-Off from our Former Parent

We may be unable to achieve some or all of the benefits that we expect to achieve from our separation from BWC.

As an independent public company, we believe that we are able to more effectively focus on our operations and growth strategies than we could as a segment of BWC prior to the spin-off. However, following our separation from BWC in the spin-off, there is a risk that our results of operations and cash flows may be susceptible to greater volatility due to fluctuations in our business levels and other factors that may adversely affect our operating and financial performance. In addition, as a segment of BWC, we previously benefitted from BWC's financial resources. Because BWC's other operations will no longer be available to offset any volatility in our results of operations and cash flows and BWC's financial and other resources will no longer be available to us, we may not be able to achieve some or all of the benefits that we expect to achieve as an independent public company.

Our historical audited consolidated and combined financial information is not necessarily indicative of our future financial condition, future results of operations or future cash flows nor does it reflect what our financial condition, results of operations or cash flows would have been as an independent public company during the periods presented.

The historical audited consolidated and combined financial information included in this annual report for periods prior to July 1, 2015 does not necessarily reflect what our financial condition, results of operations or cash flows would have been as an independent public company during such periods and is not necessarily indicative of our future financial condition, future results of operations or future cash flows. This is primarily a result of the following factors:

- the historical audited consolidated and combined financial results reflect allocations of expenses for services historically provided by BWC, and those allocations may be different than the comparable expenses we would have incurred as an independent company;
- our cost of debt and other capitalization may be different from that reflected in our historical audited consolidated and combined financial statements;
- the historical audited consolidated and combined financial information does not reflect the changes that will occur in our cost structure, management, financing arrangements and business operations as a result of our separation from BWC, including the costs related to being an independent company; and
- the historical audited consolidated and combined financial information does not reflect the effects of some of the liabilities that have been assumed by B&W and does reflect the effects of some of the assets that have been transferred to, and liabilities that have been assumed by, BWC, including the assets and liabilities associated with BWC's Nuclear Energy segment, which were previously part of B&W and were transferred to BWC prior to the spin-off.

Please refer to "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in Part II, Item 7, and the consolidated and combined financial statements included in Item 8 of this annual report.

We are subject to continuing contingent liabilities of BWC following the spin-off.

As a result of the spin-off, there are several significant areas where the liabilities of BWC may become our obligations. For example, under the Internal Revenue Code of 1986, as amended (the "Code") and the related rules and regulations, each corporation that was a member of BWC consolidated tax reporting group during any taxable period or portion of any taxable period ending on or before the completion of the spin-off is jointly and severally liable for the federal income tax liability of the entire consolidated tax reporting group for that taxable period. We entered into a tax sharing agreement with BWC in connection with the spin-off that allocates the responsibility for prior period taxes of BWC consolidated tax reporting group between us and BWC and its subsidiaries. However, if BWC were unable to pay, we could be required to pay the entire amount of such taxes. Other provisions of law establish similar liability for other matters, including laws governing tax-qualified pension plans as well as other contingent liabilities. The other contingent liabilities include personal injury claims or environmental liabilities related to BWC's historical nuclear operations. For example, BWC has agreed to indemnify us for personal injury claims and environmental liabilities associated with radioactive materials related to the operation, remediation, and/or decommissioning of two former nuclear fuel processing facilities located in the Borough of Apollo and

Parks Township, Pennsylvania. To the extent insurance providers and third party indemnitors do not cover those liabilities, and BWC was unable to pay, we could be required to pay for them.

The spin-off could result in substantial tax liability.

The spin-off was conditioned on BWC's receipt of an opinion of counsel, in form and substance satisfactory to BWC, substantially to the effect that, for United States federal income tax purposes, the spin-off qualifies under Section 355 of the Code, and certain transactions related to the spin-off qualify under Sections 355 and/or 368 of the Code. The opinion relied on, among other things, various assumptions and representations as to factual matters made by BWC and us which, if inaccurate or incomplete in any material respect, would jeopardize the conclusions reached by such counsel in its opinion. The opinion is not binding on the United States Internal Revenue Service ("IRS") or the courts, and there can be no assurance that the IRS or the courts will not challenge the conclusions stated in the opinion or that any such challenge would not prevail.

We are not aware of any facts or circumstances that would cause the assumptions or representations that were relied on in the opinion to be inaccurate or incomplete in any material respect. If, notwithstanding receipt of the opinion, the spin-off were determined not to qualify under Section 355 of the Code, each United States holder of BWC common stock who received shares of our common stock in the spin-off would generally be treated as receiving a taxable distribution of property in an amount equal to the fair market value of the shares of our common stock received. In addition, if certain related preparatory transactions were to fail to qualify for tax-free treatment, they would be treated as taxable asset sales and/or distributions.

Under the terms of the tax sharing agreement we entered into in connection with the spin-off, we and BWC generally share responsibility for any taxes imposed on us or BWC and its subsidiaries in the event that the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment. However, if the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment because of actions or failures to act by us or BWC, we or BWC, respectively, would be responsible for all such taxes. If we are liable for taxes under the tax sharing agreement, that liability could have a material adverse effect on us.

Potential liabilities associated with obligations under the tax sharing agreement cannot be precisely quantified at this time.

Under the terms of the tax sharing agreement we entered into in connection with the spin-off, we are generally responsible for all taxes attributable to us or any of our subsidiaries, whether accruing before, on or after the date of the spin-off. We and BWC generally share responsibility for all taxes imposed on us or BWC and its subsidiaries in the event the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment. However, if the spin-off and/or certain related preparatory transactions were to fail to qualify for tax-free treatment because of actions or failures to act by us or BWC, we or BWC, respectively would be responsible for all such taxes. Our liabilities under the tax sharing agreement could have a material adverse effect on us. At this time, we cannot precisely quantify the amount of liabilities we may have under the tax sharing agreement and there can be no assurances as to their final amounts.

Under some circumstances, we could be liable for any resulting adverse tax consequences from engaging in significant strategic or capital raising transactions.

Even if the spin-off otherwise qualifies as a tax-free distribution under Section 355 of the Code, the spin-off and certain related transactions may result in significant United States federal income tax liabilities to us under Section 355(e) and other applicable provisions of the Code if 50% or more of BWC's stock or our stock (in each case, by vote or value) is treated as having been acquired, directly or indirectly, by one or more persons as part of a plan (or series of related transactions) that includes the spin-off. Any acquisitions of BWC stock or our stock (or similar acquisitions), or any understanding, arrangement or substantial negotiations regarding such an acquisition of BWC stock or our stock (or similar acquisitions), within two years before or after the spin-off are subject to special scrutiny. The process for determining whether an acquisition triggering those provisions has occurred is complex, inherently factual and subject to interpretation of the facts and circumstances of a particular case.

Under the terms of the tax sharing agreement we entered into in connection with the spin-off, BWC generally is liable for any such tax liabilities. However, we are required to indemnify BWC against any such tax liabilities that result from actions taken or failures to act by us. As a result of these rules and contractual provisions, we may be unable, within the two year period

following the spin, to engage in strategic or capital raising transactions that our stockholders might consider favorable, or to structure potential transactions in the manner most favorable to us, without certain adverse tax consequences.

Potential indemnification liabilities to BWC pursuant to the master separation agreement could materially adversely affect B&W.

The master separation agreement with BWC provides for, among other things, the principal corporate transactions required to effect the spin-off, certain conditions to the spin-off and provisions governing the relationship between B&W and BWC with respect to and resulting from the spin-off. Among other things, the master separation agreement provides for indemnification obligations designed to make B&W financially responsible for substantially all liabilities that may exist relating to our business activities, whether incurred prior to or after the spin-off, as well as those obligations of BWC assumed by us pursuant to the master separation agreement. If we are required to indemnify BWC under the circumstances set forth in the master separation agreement, we may be subject to substantial liabilities.

In connection with our separation from BWC, BWC has agreed to indemnify us for certain liabilities. However, there can be no assurance that the indemnity will be sufficient to insure us against the full amount of such liabilities, or that BWC's ability to satisfy its indemnification obligation will not be impaired in the future.

Pursuant to the master separation agreement, BWC has agreed to indemnify us for certain liabilities. However, third parties could seek to hold us responsible for any of the liabilities that BWC agreed to retain, and there can be no assurance that the indemnity from BWC will be sufficient to protect us against the full amount of such liabilities, or that BWC will be able to fully satisfy its indemnification obligations. Moreover, even if we ultimately succeed in recovering from BWC any amounts for which we are held liable, we may be temporarily required to bear these losses.

Several members of our board and management may have conflicts of interest because of their ownership of shares of common stock of BWC (now known as BWX Technologies, Inc.).

Several members of our board and management own shares of common stock of BWC and/or options to purchase common stock of BWC because of their current or prior relationships with BWC. In addition, six of the current members of our board of directors were members of the BWC board of directors. This share ownership by these six directors could create, or appear to create, potential conflicts of interest when our directors and executive officers are faced with decisions that could have different implications for B&W and BWC.

Risks Relating to Ownership of Our Common Stock

The market price and trading volume of our common stock may be volatile.

The market price of our common stock could fluctuate significantly in future periods due to a number of factors, many of which are beyond our control, including:

- fluctuations in our quarterly or annual earnings or those of other companies in our industry;
- failures of our operating results to meet the estimates of securities analysts or the expectations of our stockholders or changes by securities analysts in their estimates of our future earnings;
- announcements by us or our customers, suppliers or competitors;
- the depth and liquidity of the market for B&W common stock;
- changes in laws or regulations that adversely affect our industry or us;
- changes in accounting standards, policies, guidance, interpretations or principles;
- general economic, industry and stock market conditions;
- future sales of our common stock by our stockholders;
- future issuances of our common stock by us;
- our ability to pay dividends in the future; and
- the other factors described in these "Risk Factors" and other parts of this annual report.

Substantial sales of our common stock could cause our stock price to decline and issuances by us may dilute our common stockholders' ownership in B&W.

As of December 31, 2016 , we have an aggregate of approximately 48.7 million shares of common stock outstanding. Any sales of substantial amounts of our common stock could lower the market price of our common stock and impede our ability to raise capital through the issuance of equity securities. Further, if we were to issue additional equity securities to raise additional capital, our stockholders' ownership interests in B&W will be diluted and the value of our common stock may be reduced.

We do not currently pay regular dividends on our common stock, so holders of our common stock may not receive funds without selling their shares of our common stock.

We have no current intent to pay a regular dividend. Our board of directors will determine the payment of future dividends on our common stock, if any, and the amount of any dividends in light of applicable law, contractual restrictions limiting our ability to pay dividends, our earnings and cash flows, our capital requirements, our financial condition, and other factors our board of directors deems relevant. Accordingly, our stockholders may have to sell some or all of their shares of our common stock in order to generate cash flow from their investment.

Provisions in our corporate documents and Delaware law could delay or prevent a change in control of B&W, even if that change may be considered beneficial by some stockholders.

The existence of some provisions of our certificate of incorporation and bylaws and Delaware law could discourage, delay or prevent a change in control of B&W that a stockholder may consider favorable.

In addition, we are subject to Section 203 of the Delaware General Corporation Law, which may have an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging takeover attempts that might result in a premium over the market price for shares of our common stock.

We believe these provisions protect our stockholders from coercive or otherwise unfair takeover tactics by requiring potential acquirors to negotiate with our board of directors and by providing our board of directors with more time to assess any acquisition proposal, and are not intended to make B&W immune from takeovers. However, these provisions apply even if the offer may be considered beneficial by some stockholders and could delay or prevent an acquisition that our board of directors determines is not in the best interests of B&W and our stockholders.

We may issue preferred stock that could dilute the voting power or reduce the value of our common stock.

Our certificate of incorporation authorizes us to issue, without the approval of our stockholders, one or more classes or series of preferred stock having such designation, powers, preferences and relative, participating, optional and other special rights, including preferences over our common stock respecting dividends and distributions, as our board of directors generally may determine. The terms of one or more classes or series of preferred stock could dilute the voting power or reduce the value of our common stock. For example, we could grant holders of preferred stock the right to elect some number of our directors in all events or on the happening of specified events or the right to veto specified transactions. Similarly, the repurchase or redemption rights or liquidation preferences we could assign to holders of preferred stock could affect the residual value of the common stock.

Item 1B. Unresolved Staff Comments

None

Item 2. Properties

The following table provides the segment, location and general use of each of our principal properties that we own or lease at December 31, 2016 .

Business Segment and Location	Principal Use	Owned/Leased (Lease Expiration)
Power segment		
Barberton, Ohio	Administrative office / research and development	Owned (1)
Lancaster, Ohio	Manufacturing facility	Owned (1)
Copley, Ohio	Warehouse / service center	Owned (1)
Dumbarton, Scotland	Manufacturing facility	Owned
Guadalupe, NL, Mexico	Manufacturing facility	Leased (2024)
Cambridge, Ontario, Canada	Administrative office / warehouse	Leased (2018)
Jingshan, Hubei, China	Manufacturing facility	Owned
Ebensburg, Pennsylvania	Power generation	Owned (1)
Renewable segment		
Copenhagen, Denmark	Administrative office	Leased
Esbjerg, Denmark	Manufacturing facility / administrative office	Owned
Straubing, Germany	Manufacturing facility	Leased (2021)
Industrial segment		
De Pere, Wisconsin	Manufacturing facility / administrative office	Owned (1)
Arona, Italy	Administrative offices / research and development	Leased (2022)
San Diego, California	Administrative office	Leased (2017)
Shanghai, China	Manufacturing facility	Owned
Ding Xiang, Xin Zhou, Shan Xi, China	Manufacturing facility	Leased (2019/2020)
Corporate office		
Charlotte, North Carolina	Administrative office	Leased (2019)

(1) These properties are encumbered by liens under existing credit facilities.

As a result of our January 11, 2017 acquisition of Universal, we added two manufacturing facilities and an administrative office in Wisconsin and a manufacturing facility in San Luis Potosi, Mexico. We believe that our major properties are adequate for our present needs and, as supplemented by planned improvements and construction, expect them to remain adequate for the foreseeable future.

Item 3. Legal Proceedings

The information set forth under the heading "Litigation" in Note 20 to our consolidated and combined financial statements included in Item 8 is incorporated by reference into this Item 3.

Item 4. Mine Safety Disclosures

We own, manage and operate Ebensburg Power Company, an independent power company that produces alternative electrical energy. Ebensburg Power Company operates multiple coal refuse sites in Western Pennsylvania (collectively, the "Coal Refuse Sites"). At the Coal Refuse Sites, Ebensburg Power Company utilizes coal refuse from abandoned surface mine lands to produce energy. Beyond converting the coal refuse to energy, Ebensburg Power Company is also taking steps to reclaim the former surface mine lands to make the land and streams more attractive for wildlife and human uses.

The Coal Refuse Sites are subject to regulation by the Federal Mine Safety and Health Administration under the Federal Mine Safety and Health Act of 1977. Information concerning mine safety violations or other regulatory matters required by

Section 1503(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 and this Item is included in exhibit 95 to this annual report.

PART II

Item 5. Market for Registrant's Common Equity Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock is traded on the New York Stock Exchange under the symbol BW. High and low common stock prices in the quarterly periods after our spin-off transaction through December 31, 2016 were as follows:

	Share Price		Dividends
Quarter ended	**High**	**Low**	**Per Share**
June 30, 2015	$ 22.31	$ 17.12	$ —
September 30, 2015	$ 21.95	$ 16.40	$ —
December 31, 2015	$ 21.67	$ 15.86	$ —
March 31, 2016	$ 22.17	$ 17.95	$ —
June 30, 2016	$ 23.99	$ 14.32	$ —
September 30, 2016	$ 17.30	$ 14.27	$ —
December 31, 2016	$ 17.72	$ 12.90	$ —

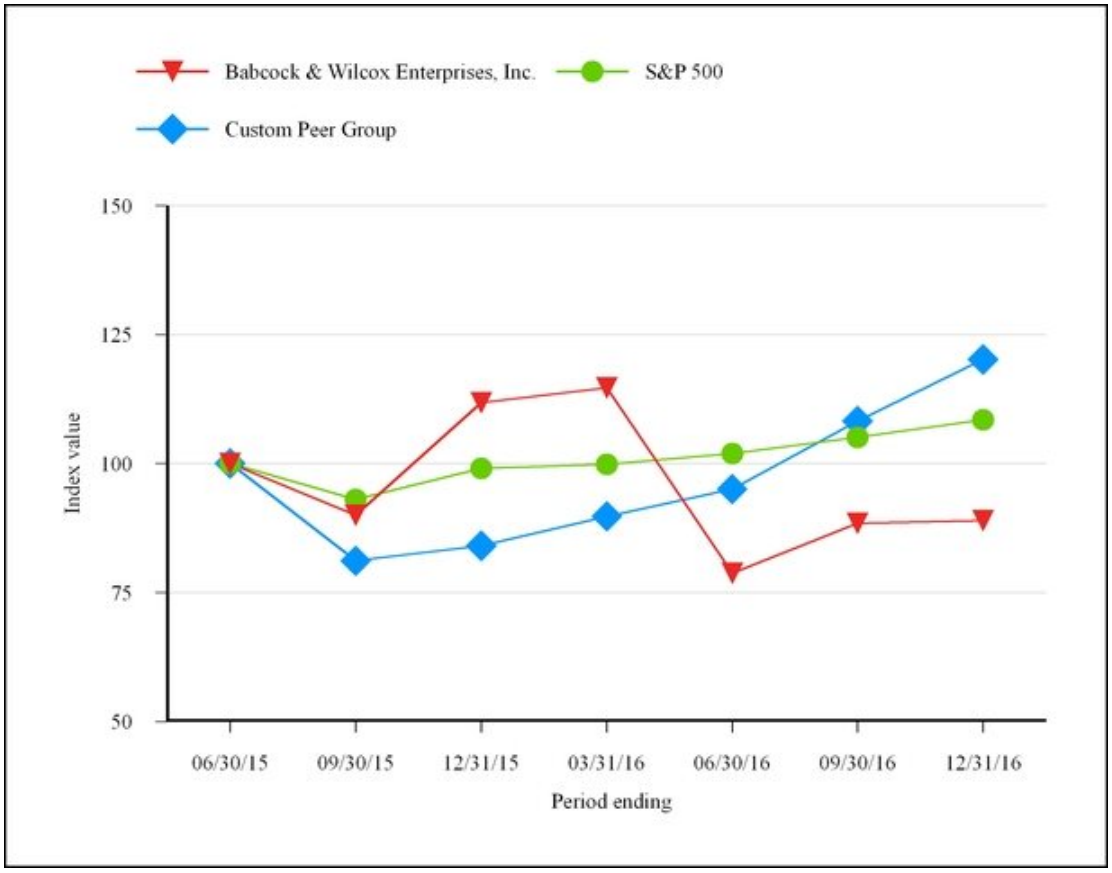
As of February 20, 2017 , there were approximately 1,866 record holders of our common stock.

Issuer Purchases of Equity Securities

Period	**Total number of shares purchased**	**Average price paid per share**	**Total number of shares purchased as part of publicly announced plans or programs**	**Approximate dollar value of shares that may yet be purchased under the plans or programs (in thousands) [1]**
October 1, 2016 - October 31, 2016	81	$ 15.99	—	$ 100,000
November 1, 2016 - November 30, 2016	181	$ 15.94	—	$ 100,000
December 1, 2016 - December 31, 2016	939	$ 15.26	—	$ 100,000
Total	1,201		—	

(1) On August 4, 2016, we announced that our board of directors authorized the repurchase of an indeterminate number of our shares of common stock in the open market at an aggregate market value of up to $100 million over the next twenty-four months. As of February 28, 2017 , we have not made any share repurchases under the August 4, 2016 share repurchase authorization.

The following graph provides a comparison of our cumulative total shareholder return through December 31, 2016 to the return of the S&P 500 and our custom peer group.



(1) Assumes initial investment of $100 on June 30, 2015.

The peer group used for the comparison above is comprised of the following companies:

Actuant Corp.	Crane Co.	Itron Inc.
AMETEK Inc.	Curtiss-Wright Corp.	MasTec Inc.
CECO Environmental Corp.	Dycom Industries Inc.	Primoris Services Corp.
Chart Industries Inc.	Flowserve Corp.	SPX Corp.
CIRCOR Int. Inc.	Harsco Corp.	
Covanta Holding Corp.	Idex Corp.	

Item 6. Selected Financial Data

	For the Years Ended				
(in thousands, except for per share amounts)	2016	2015	2014	2013	2012
Revenues	$ 1,578,263	$ 1,757,295	$ 1,486,029	$ 1,767,651	$ 1,992,899
Income (loss) from continuing operations	(115,082)	16,534	(11,890)	140,478	128,809
Net income attributable to Babcock & Wilcox Enterprises, Inc.	(115,649)	19,141	(26,528)	174,527	140,753
Basic earnings per common share:					
Income (loss) from continuing operations per common share	(2.31)	0.30	$ (0.23)	2.49	2.16
Net income attributable to Babcock & Wilcox Enterprises, Inc.	(2.31)	0.36	(0.49)	3.10	1.96
Total assets (as of year end)	$ 1,529,143	$ 1,663,045	$ 1,516,554	$ 1,290,228	$ 1,413,420

Our Power segment experienced a decline in sales volume in 2016 resulting from the decline in activity related to the coal-fired power and industrial steam generation markets in the United States. Because of our proactive restructuring activities during the summer of 2016 (discussed below), gross margins in the Power segment increased compared to 2015.

Our 2016 results were significantly impacted by the performance of an operating unit within our Renewable segment, which recorded $141.1 million in losses from changes in the estimated forecasted cost to complete renewable energy contracts in Europe.

Our Industrial segment benefited from the acquisition of SPIG during 2016, which contributed $96.3 million of revenue and $7.8 million of gross profit to the Industrial segment. On June 20, 2014, we purchased MEGTEC, which is also part of our Industrial segment. Our MEGTEC business generated revenues of $157.3 million , $183.7 million and $105.4 million and gross profit of $42.9 million , $54.8 million and $30.4 million in the years ended December 31, 2016 , 2015 and 2014 , respectively.

We sold all of our interest in our Australian joint venture, Halley & Mellowes Pty. Ltd., on December 22, 2016 for $18.0 million , resulting in a gain of $8.3 million .

We recognize actuarial gains (losses) related to our pension and postretirement benefit plans in earnings in the fourth quarter each year as a component of net periodic benefit cost. The effect of these adjustments for 2016 , 2015 , 2014 , 2013 and 2012 and on pre-tax income was a gain (loss) of $(24.1) million , $(40.2) million , $(101.3) million , $92.1 million and $(8.4) million , respectively.

In each of the annual periods from 2012 through 2015 , we recognized contract losses for additional estimated costs to complete our Power segment's Berlin Station project. This project experienced unforeseen worksite conditions and fuel specification issues that caused schedule delays, resulting in us filing suit against the customer in January 2014. The dispute was settled during the third quarter of 2015. The contract losses reduced pre-tax income (or increased pre-tax losses) from continuing operations by $9.6 million, $11.6 million, $35.6 million and $16.9 million in 2015 , 2014 , 2013 and 2012 , respectively.

Restructuring and spin-off transaction costs were $40.8 million , $14.9 million and $20.2 million in 2016 , 2015 , and 2014 , respectively. On June 28, 2016, we announced actions to restructure our power business in advance of significantly lower demand now projected for power generation from coal in the United States. The costs associated with this restructuring were $31.4 million in 2016 , and were primarily related to employee severance, non-cash impairment of the long-lived assets at B&W's one coal-fired power plant located in Ebensburg, Pennsylvania, costs associated with organizational realignment of personnel and processes and an increase in valuation allowances associated with our deferred tax assets. The 2016 restructuring activities are expected to allow our Power segment to continue to serve the power market and maintain gross margins, despite the expected decline in volume as a result of the lower projected demand in the US coal-fired power generation market. Subsequent to the June 30, 2015 spin-off transaction, we incurred $3.8 million and $3.3 million of spin-off related transaction costs, respectively.

In the year ended December 31, 2015 , we recognized a $14.6 million impairment charge, primarily related to research and development facilities and equipment dedicated to activities that were determined not to be commercially viable.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

OVERVIEW

In this annual report, unless the context otherwise indicates, "B&W," "we," "us" and "our" mean Babcock & Wilcox Enterprises, Inc. and its consolidated subsidiaries.

Our assessment of operating results is based on three reportable segments:

- *Power :* Focused on the supply of and aftermarket services for steam-generating, environmental, and auxiliary equipment for power generation and other industrial applications.
- *Renewable :* Focused on the supply of steam-generating systems, environmental and auxiliary equipment for the waste-to-energy and biomass power generation industries.
- *Industrial :* Focused on custom-engineered cooling, environmental, and other industrial equipment along with related aftermarket services.

Executive summary of results

We generally recognize revenues and related costs from long-term contracts on a percentage-of-completion basis. Accordingly, we review contract price and cost estimates regularly as work progresses and reflect adjustments in profit proportionate to the percentage of completion in the periods in which we revise estimates to complete the contract. To the extent that these adjustments result in a reduction of previously reported profits from a project, we recognize a charge against current earnings. Changes in the estimated results of our percentage-of-completion contracts are necessarily based on information available at the time that the estimates are made and are based on judgments that are inherently uncertain as they are predictive in nature. As with all estimates to complete used to measure contract revenue and costs, actual results can and do differ from our estimates made over time.

During 2016, we recorded a total of $141.1 million in losses from changes in the estimated revenues and costs to complete renewable energy contracts in Europe, of which $98.1 million were recorded in the fourth quarter of 2016. These 2016 losses include $35.8 million of anticipated liquidated damages that reduced revenue.

As we disclosed in prior reports, we incurred $30.9 million in charges (net of $15.0 million of a probable insurance recovery) due to changes in the estimated cost to complete a contract during the second and third quarters of 2016 related to one European renewable energy project. Additional changes in the fourth quarter of 2016 resulted in $19.4 million of additional charges on this project, and this project adversely impacted other European renewable energy projects due to the limited pool of internal and external resources available for these projects, such as engineering, procurement and construction resources, which in turn caused us to revise downward our estimates with respect to our other European renewable energy projects, including three other projects that became loss contracts. As of December 31, 2016, this project is approximately 88% complete. We continue to expect construction activities to be completed and the unit to be operational in early 2017, with remaining commissioning and turnover activities linked to the customer's operation of the facility through mid-2017.

The second project became a loss contract in the fourth quarter of 2016, resulting from a charge of $28.1 million in 2016 ($23.0 million in the fourth quarter). As of December 31, 2016, this second project was approximately 67% complete. We expect this second project to be completed in late-2017.

The third project became a loss contract in the fourth quarter, resulting from $30.1 million of the 2016 charges ($25.2 million in the fourth quarter of 2016). As of December 31, 2016, this third project was approximately 82% complete. We expect this third project to be completed in mid-2017.

The fourth project became a loss contract in the fourth quarter of 2016, resulting from $16.4 million of the 2016 charges ($16.2 million in the fourth quarter). As of December 31, 2016, this fourth project was approximately 61% complete. We expect this fourth project to be completed in 2018.

We recorded an aggregate of $14.2 million of additional charges in the fourth quarter of 2016 for changes in estimated costs to complete other renewable energy projects. The cumulative effect of the changes in estimates in the Renewable segment also resulted in $15.7 million of non-cash income tax expense from establishing valuation allowances on the deferred income tax assets.

We expect all of the renewable energy projects changes in estimates to negatively affect our 2017 results of operations by $27.9 million .

On June 28, 2016, we announced actions to restructure our business that serves the United States power generation market in advance of updated projections for domestic power generation from coal-fired power plants. The restructuring reduced the size of our organization supporting the United States coal power generation market by approximately 20% and reorganized how we support the power market by redesigning the work flow to provide an effective, flexible organization that can adapt to changing market conditions and demand. During the year, we also faced a decline in revenue from sales of our industrial steam generation products to non-utility customers. Economic uncertainties globally as well as domestic political uncertainty led to reduced industrial capital expenditure spending during the year, and in turn impacted revenue, which, as expected, was down 21.0% compared to 2015. Because of our proactive restructuring actions, we were able to improve our gross margin percentage even with the decline in revenue in the Power segment. Restructuring charges from these actions totaled $31.4 million , which included $14.1 million of severance and $14.9 million of non-cash impairment of the long-lived assets at B&W’s one coal-fired power plant. Also related to these restructuring activities, we recorded $13.1 million of non-cash income tax expense to increase valuation allowances on deferred income tax assets associated with our equity investment in a foreign joint venture and certain state net operating loss carryforwards.

Growth in the industrial segment was driven by the July 1, 2016 acquisition of SPIG S.p.A. ("SPIG") a global provider of custom-engineered cooling systems and services, for €152.4 million (or approximately $169 million) in cash, net of working capital adjustments. SPIG provides comprehensive dry and wet cooling solutions and aftermarket services to the power generation industry including natural gas-fired and renewable energy power plants, as well as downstream oil and gas, petrochemical and other industrial end markets. The acquisition of SPIG is consistent with our goal to grow and diversify our technology-based offerings with new products and services in the industrial markets that are complementary to our core businesses. In 2016, SPIG contributed $96.3 million of revenue and $7.8 million of gross profit to the Industrial segment. In 2017, we expect to realize revenue synergies from our newly combined resources. Industrial segment results were also impacted by lower spending activity in the United States market, which primarily affected our MEGTEC business where we have seen customers delaying investment in their manufacturing facilities. Improved bookings in the fourth quarter combined with a strengthening of industrial production indices suggest that United States industrial markets are showing signs of stabilizing.

On January 11, 2017, we acquired Universal Acoustic and Emission Technologies, Inc. ("Universal"), for approximately $55 million in cash. The acquisition will include post-closing adjustments related to differences in actual net indebtedness and transaction expenses compared to estimates. Universal provides custom-engineered acoustic, emission and filtration solutions to the natural gas power generation, mid-stream natural gas pipeline, locomotive and general industrial end-markets. Universal's product offering includes gas turbine inlet and exhaust systems, silencers, filters and enclosures. The acquisition of Universal is expected to add approximately $80 million of annual revenue to our Industrial segment and be complementary to the products offered in each of our business segments, but particularly to our core businesses in the industrial markets.

Year-over-year comparisons are also affected by the following items:

- Mark to market ("MTM") losses for our pension and other postretirement benefit plans were $24.1 million , $40.2 million and $101.3 million in 2016 , 2015 and 2014 , respectively. These losses are based on actual plan asset returns and changes in assumptions in the measurement of the related benefit plan liabilities, which are more fully described in Note 18 to the consolidated and combined financial statements included in Item 8 .

- We sold our interest in our Australian joint venture, Halley & Mellowes Pty. Ltd. ("HMA"), on December 22, 2016 for $18.0 million , resulting in a gain of $8.3 million . The gain on sale is classified in equity in income of investees in 2016.

- Restructuring costs totaled $37.0 million , $11.7 million and $20.2 million in 2016 , 2015 and 2014 , respectively, for a number of both completed and ongoing initiatives designed to phase in savings and make our products more competitive. Restructuring costs include accelerated depreciation and other activities related to manufacturing

facility consolidation and outsourcing as well as reductions in force, consulting and other costs. In addition to savings already realized, we expect to realize savings of approximately $15 million in 2017. The $11 million of expected costs to achieve these savings are primarily related to office reconfiguration, consulting and facility demolition and consolidation activities.

- Asset impairments in 2016 were $14.9 million , which were associated with impairment of the long-lived assets at B&W's one coal-fired power plant. The non-cash impairment charge is classified in restructuring costs in 2016.

- Asset impairments totaling $14.6 million were recognized in 2015 primarily related to research and development facilities and equipment dedicated to activities that were determined not to be commercially viable. The non-cash impairment charge is classified in loss on disposal of assets in 2015.

- The outcome of the Arkansas River Power Authority litigation in December 2016 resulted in a net $3.2 million reduction in the 2016 results of operations in our Power segment, which included a $4.2 million revenue reversal, a $2.3 million decrease in cost of operations and $1.3 million of legal costs (included in selling, general and administrative expenses ("SG&A")).

- Litigation settlement charges of $9.6 million were incurred in 2015, including $1.8 million of legal costs and a $7.8 million reversal of Power segment revenue associated with the release of an accrued claims receivable as part of the legal settlement related to the Berlin Station project.

- Spin-off transaction costs were $3.8 million and $3.3 million 2016 and 2015, respectively, primarily related to retention stock awards that had a one-year vesting period.

- SG&A includes the incremental costs of being a separate stand-alone public company, such as costs to create separate accounting, legal, senior management and tax teams. We incurred approximately $13.5 million and $8.5 million in 2016 and in the second half of 2015, respectively. Due to the scope and complexity of these activities, the amount and timing of these incremental expenses could vary and initial run rates could be slightly higher than the expected annual amounts incurred in 2016 and 2015. Prior to the spin-off, we received allocations from BWC that were included in our SG&A. These pre-spin allocations also included $2.7 million , and $5.3 million in 2015 and 2014 , related to the Nuclear Energy segment that was transferred to BWC at the time of the spin-off. The Nuclear Energy segment is treated as discontinued operations in our financial statements, but these related cost allocations remain in the SG&A expenses of our continuing operations.

- SG&A in 2016 included $2.4 million of acquisition and integration related costs associated with the acquisition and integration of SPIG during 2016 and the acquisition of Universal in early 2017.

- Intangible asset amortization expense from the SPIG acquisition in 2016 was $13.3 million , and we expect amortization of the SPIG intangible assets to result in approximately $8.9 million of expense in 2017. Intangible amortization is not allocated to the segment results.

Spin-Off Transaction

On June 8, 2015, the board of directors of The Babcock & Wilcox Company (now known as BWX Technologies, Inc.) ("BWC" or the "former Parent") approved the spin-off of B&W through the distribution of shares of B&W common stock to holders of BWC common stock. The distribution of B&W common stock was made on June 30, 2015, and consisted of one share of B&W common stock for every two shares of BWC common stock to holders of BWC common stock as of 5:00 p.m. New York City time on the record date, June 18, 2015. Cash was paid in lieu of any fractional shares of B&W common stock. On June 30, 2015, B&W became a separate publicly traded company, and BWC did not retain any ownership interest in B&W. We filed our Form 10 describing the spin-off with the Securities and Exchange Commission, which was declared effective on June 16, 2015. The spin-off is further described in Note 1 to the consolidated and combined financial statements included in Item 8 of this annual report.

Our segment and other operating results are described in more detail below.

RESULTS OF OPERATIONS – YEARS ENDED DECEMBER 31, 2016, 2015 and 2014

Consolidated and combined results of operations

(in thousands)	Year Ended December 31, 2016	2015	2014
REVENUES			
Power segment	$ 975,478	$ 1,234,997	$ 1,156,579
Renewable segment	349,172	338,603	224,032
Industrial segment	253,613	183,695	105,418
	$ 1,578,263	$ 1,757,295	$ 1,486,029
GROSS PROFIT			
Power segment	$ 233,550	$ 247,632	$ 237,491
Renewable segment	(68,109)	57,682	53,449
Industrial segment	50,726	54,826	30,400
Intangible asset amortization expense included in cost of operations	(15,842)	(7,676)	(7,501)
Mark to market loss included in cost of operations	(21,208)	(44,307)	(94,806)
	$ 179,117	$ 308,157	$ 219,033
Research and development costs	(10,406)	(16,543)	(18,483)
Gains (losses) on asset disposals and impairments, net	32	(14,597)	(1,752)
Selling, general and administrative expenses	(240,166)	(240,296)	(215,379)
Restructuring and spin-off transaction costs	(40,807)	(14,946)	(20,183)
Equity in income (loss) of investees	16,440	(242)	8,681
Intangible asset amortization expense in SG&A	(4,081)	(3,769)	(2,659)
Mark to market (loss) gain included in SG&A	(2,902)	4,097	(7,233)
Operating income (loss)	$ (102,773)	$ 21,861	$ (37,975)

The presentation of the components of our revenues and gross profit in the table above is consistent with the way our chief operating decision maker reviews the results of our operations and makes strategic decisions about our business.

2016 vs 2015 Consolidated and combined results

Revenues decreased 10.2% , or $179 million , to $1.58 billion in 2016 compared to $1.76 billion in 2015 due to a $259.5 million decrease in Power segment revenues, partially offset by increases in revenues of $10.6 million and $69.9 million in our Renewable and Industrial segments, respectively. The SPIG acquisition, which was completed on July 1, 2016, contributed revenues of $96.3 million in 2016 .

Gross profit decreased $129.0 million to $179.1 million in 2016 from $308.2 million in 2015 . Excluding the MTM charges shown above, gross profit decreased $152.1 million to $200.3 million in 2016 from $352.5 million in 2015 primarily due to the decline in our Renewable segment's project performance during 2016.

Operating income decreased $124.6 million to an operating loss of $102.8 million in 2016 compared to operating income of $21.9 million in 2015 . In addition to the gross profit decrease discussed above, the primary drivers of the decrease in our operating income in 2016 were a $25.9 million increase in restructuring charges primarily related to our Power segment restructuring in June 2016, partially offset by a $14.6 million decrease in loss on asset disposals and impairments compared to 2015 , $16.1 million lower mark to market charges compared to 2015 and a $8.3 million gain from the sale of all of our interest in our Australian joint venture in 2016 .

The performance drivers of each segment as well as other operating costs are discussed in more detail below.

2015 vs 2014 Consolidated and combined results

Revenues increased 18.3% , or $271.3 million , to $1.76 billion in 2015 compared to $1.49 billion in 2014 due primarily to increases in revenues from our Power, Renewable and Industrial segments of $78.4 million , $114.6 million and $78.3 million , respectively. The MEGTEC acquisition which was completed on June 20, 2014, contributed $183.7 million of revenues in 2015 compared to $105.4 million in 2014 .

Gross profit increased $89.1 million to $308.2 million in the year ended December 31, 2015 from $219.0 million in 2014 . Excluding the MTM charges shown above, gross profit increased $38.6 million to $352.5 million in 2015 from $313.8 million in 2014 primarily due to the inclusion of our MEGTEC business for a full year and increases in the volume of utility, industrial and renewable energy boiler projects in our Power and Renewable segments.

Operating income increased $59.8 million to $21.9 million in 2015 from an operating loss of $38.0 million in 2014 . Operating income includes significant charges for MTM, restructuring and spin-off transaction costs and asset impairments that are each illustrated above and described in more detail below. Excluding these items, 2015 operating income would have increased $5.6 million from 2014 primarily from the gross margin improvements described above partially offset by increases in selling, general and administrative increases from inclusion of a full year of our MEGTEC business and the incremental stand-alone costs to operate our business as an independent public entity since the spin-off. Operating income in 2015 also decreased due to a $8.9 million decrease in equity in income of investees described below.

Segment descriptions

Our operations are assessed based on three reportable segments, which changed beginning in the third quarter of 2016 with the acquisition of SPIG as described in Note 4 . Segment results for prior periods have been restated for comparative purposes.

- *Power :* Focused on the supply of and aftermarket services for steam-generating, environmental, and auxiliary equipment for power generation and other industrial applications.
- *Renewable :* Focused on the supply of steam-generating systems, environmental and auxiliary equipment for the waste-to-energy and biomass power generation industries.
- *Industrial :* Focused on custom-engineered cooling, environmental, and other industrial equipment along with related aftermarket services. Beginning in 2017, the Universal acquisition adds custom-engineered acoustic, emission and filtration solutions to the segment.

Power segment

Our Power segment focuses on the supply of and aftermarket services for steam-generating, environmental, and auxiliary equipment for power generation and other industrial applications. The segment provides a comprehensive mix of aftermarket products and services to support peak efficiency and availability of steam generating and associated environmental and auxiliary equipment, serving large steam generating utility and industrial customers globally. Our products and services include replacement parts, field technical services, retrofit and upgrade projects, fuel switching and repowering projects, construction and maintenance services, start-up and commissioning, training programs and plant operations and maintenance for our full complement of boiler, environmental and auxiliary equipment. Our auxiliary equipment includes boiler cleaning equipment and material handling equipment.

Our worldwide new build boiler and environmental products businesses serve large steam generating and industrial customers. The segment provides a full suite of product and service offerings including engineering, procurement, specialty manufacturing, construction and commissioning. The segment's boilers include utility boilers and industrial boilers fired with coal and natural gas. Our boiler products include advanced supercritical boilers, subcritical boilers, fluidized bed boilers, chemical recovery boilers, industrial power boilers, package boilers, heat recovery steam generators and waste heat boilers.

Our environmental systems offerings include air pollution control products and related equipment for the treatment of nitrogen oxides, sulfur dioxide, fine particulate, mercury, acid gases and other hazardous air emissions, including carbon dioxide capture and sequestration technologies, wet and dry flue gas desulfurization systems, catalytic and non-catalytic nitrogen oxides reduction systems, low nitrogen oxides burners and overfire air systems, fabric filter baghouses, wet and dry electrostatic precipitators, mercury control systems and dry sorbent injection for acid gas mitigation.

The segment also receives license fees and royalty payments through licensing agreements of our proprietary technologies.

While opportunities to increase revenues in the segment are limited, we are striving to grow margins by:

- selectively bidding projects in emerging international markets needing state-of-the-art technology for fossil power generation and environmental systems;
- growing sales of industrial steam generation products in the petrochemical and pulp & paper markets, such as heat recovery, natural gas and oil fired package boilers, due in part to lower fuel prices;
- continuing our strong service presence in support of our installed fleet of steam generation equipment and expand support of other OEM equipment; and
- lowering costs through a focus on operational efficiencies.

We focus our research dollars on improving our products for the markets we serve through: (i) cost reductions resulting in more competitive products in a highly competitive global market and margin improvement; (ii) reduced performance risk assuring our products meet our and our customers' expectations; and (iii) standards development and updates, which results in lower engineering hours consumed on projects and enables us to sublet engineering to low cost engineering centers of excellence.

Power segment results

	Year Ended December 31,			Year Ended December 31,		
(in thousands, except percentages)	2016	2015	$ Change	2015	2014	$ Change
Revenues	$ 975,478	$ 1,234,997	$ (259,519)	$ 1,234,997	$ 1,156,579	$ 78,418
Gross profit	233,550	247,632	(14,082)	247,632	237,491	10,141
% of revenues	23.9%	20.1%		20.1%	20.5%	

2016 vs 2015 results

Revenues decreased 21.0% , or $259.5 million , to $975.5 million in 2016 from $1.23 billion in 2015 . The decrease in the segment's revenues reflect the accelerated decline in activities in the United States coal-fired generation market and a decline in sales of our industrial steam generation products to non-utility customers in North America. These declines resulted in lower revenues in all of our Power segment product lines.

Gross profit decreased $14.1 million to $233.5 million in 2016 from $247.6 million in 2015 . While the 2016 decrease in gross profit was in-line with the 21.0% decrease in revenues, our Power segment's gross margin percentage improved in 2016 across all of our product lines as a result of the restructuring efforts in June 2016. Also contributing to the increase in our gross margin percentage is a $41.5 million increase in the gross profit contribution from construction projects in 2016 as a result of improved project performance. In 2015, gross profit was negatively impacted by a loss of $11.6 million on the Berlin Station project.

2015 vs 2014 results

Revenues increased 6.8% , or $78.4 million , to $1.23 billion in 2015 from $1.16 billion in 2014 . Revenues were higher than the prior year across all of our product lines, except for aftermarket parts, which declined by $28.9 million.

Gross profit increased $10.1 million to $247.6 million in 2015 from $237.5 million in 2014 , primarily due to a loss provision of $9.6 million on the Berlin Station project in 2015 as compared to a loss provision of $11.6 million in 2014 .

Renewable segment

Our Renewable segment provides steam-generating systems, environmental and auxiliary equipment for the waste-to-energy and biomass power generation industries, and plant operations and maintenance services for our full complement of systems and equipment. We deliver these products and services to a large base of customers primarily in Europe through our extensive network of technical support personnel and global sourcing capabilities. Our customers consist of traditional, renewable and carbon neutral power utility companies that require steam generation and environmental control technologies to enable beneficial use of municipal waste and biomass. This segment's activity is dependent on the demand for electricity and

ultimately the capacity utilization and associated operations and maintenance expenditures of waste-to-energy power generating companies and other industries that use steam to generate energy.

Globally, efforts to reduce the environmental impact of burning fossil fuels may create opportunities for us as existing generating capacity is replaced with cleaner technologies. We expect growth in backlog in the second half of 2017 and beyond, primarily from renewable waste-to-energy projects, as we continue to see numerous opportunities around the globe, although the rate of backlog growth is dependent on many external factors. We have elected to limit bidding any additional Renewable contracts that involve our European resources for at least the first six months of 2017 as we work through our existing contracts.

Renewable segment results

	Year Ended December 31,			Year Ended December 31,		
(in thousands, except percentages)	2016	2015	$ Change	2015	2014	$ Change
Revenues	$ 349,172	$ 338,603	$ 10,569	$ 338,603	$ 224,032	$ 114,571
Gross profit	(68,109)	57,682	(125,791)	57,682	53,449	4,233
% of revenues	(19.5)%	17.0%		17.0%	23.9%	

2016 vs 2015 results

Revenues increased 3.1% , or $10.6 million to $349.2 million in 2016 from $338.6 million in 2015 . The increase in revenue in 2016 is primarily attributable to an increase in the level of activity on our renewable energy contracts. Our operations and maintenance services also contributed $2.4 million more to the segment's revenues in 2016.

Gross profit decreased $125.8 million in 2016 from $57.7 million in 2015 to a loss of $68.1 million in 2016. The decrease is attributable to $141.1 million in losses from changes in the estimated forecasted cost to complete renewable energy contracts in Europe, partially offset by an increase in gross profit from our operations and maintenance services. During 2016, four of the segment's renewable energy projects became loss contracts. See additional details in Note 6 to the consolidated and combined financial statements included in Item 8 of this annual report.

2015 vs 2014 results

Revenues increased 51.1% , or $114.6 million , to $338.6 million in 2015 from $224.0 million in 2014 . This increase was primarily attributable to a significant increase in the level of activity on new renewable energy contracts.

Gross profit increased $4.2 million to $57.7 million in 2015 from $53.4 million in 2014 , primarily due to the increase in the number of renewable energy contracts during 2015.

Industrial segment

Through December 31, 2016, our Industrial segment was comprised of our MEGTEC and SPIG businesses. Beginning with the first quarter of 2017, Universal will be added to the Industrial segment. The segment is focused on custom-engineered cooling, environmental, noise abatement and industrial equipment along with related aftermarket services.

We acquired MEGTEC on June 20, 2014. Through MEGTEC, we provide environmental products and services to numerous industrial end markets. MEGTEC designs, engineers and manufactures products including oxidizers, solvent and distillation systems, wet electrostatic precipitators, scrubbers and heat recovery systems. MEGTEC also provides engineered products, such as specialized industrial process systems, coating lines and equipment. MEGTEC's suite of technologies for pollution abatement includes systems that control volatile organic compounds and air toxins, particulate, nitrogen oxides and acid gas air emissions from industrial processes. MEGTEC serves a diverse set of industrial end markets globally with a current emphasis on the chemical, pharmaceutical, energy storage, packaging, and automotive markets. MEGTEC's activity is dependent primarily on the capacity utilization of operating industrial plants and an increased emphasis on environmental emissions globally across a broad range of industries and markets.

We acquired SPIG on July 1, 2016. It provides custom-engineered cooling systems, services and aftermarket products. SPIG’s product offerings include air-cooled (dry) cooling systems, mechanical draft wet cooling towers and natural draft wet

cooling hyperbolic towers. SPIG also provides end-to-end aftermarket services, including spare parts, upgrades/revamps for existing installations and remote monitoring. SPIG's comprehensive dry and wet cooling solutions and aftermarket products and services are primarily provided to the power generation industry, including natural gas-fired and renewable energy power plants, and downstream oil and gas, petrochemical and other industrial end markets in the Europe, the Middle East and the Americas. SPIG's activity is dependent primarily on global energy demand from utilities and other industrial plants, regulatory requirements, water scarcity and energy efficiency needs.

We expect that our 2017 acquisition of Universal will complement the product and service offerings we are able to provide through our Industrial segment. Universal provides custom-engineered acoustic, emission and filtration solutions to the natural gas power generation, mid-stream natural gas pipeline, locomotive and general industrial end-markets. Universal's product offering includes gas turbine inlet and exhaust systems, custom silencers, filters and custom enclosures. Historically, almost all of Universal's activity has been in the United States. With the integration with the Industrial segment, we expect its business to grow globally with the benefit of B&W's global network of current and future customers and the needs of noise abatement controls for natural gas power generation, natural gas pipelines and other industrial markets.

We see opportunities for growth in revenues in the Industrial segment relating to a variety of factors. Our new equipment customers purchase equipment as part of major capacity expansions, to replace existing equipment, or in response to regulatory initiatives. Additionally, our significant installed base provides a consistent and recurring aftermarket stream of parts, retrofits and services. Major investments in global chemical markets have strengthened demand for our industrial equipment, while tightening environmental and noise abatement regulations in the United States, China, India and other developing countries are creating new opportunities. We foresee long-term trends toward increased environmental and noise abatement controls for industrial manufacturers around the world. Together, the companies that comprise the Industrial segment are well-positioned to capitalize on opportunities in these markets. Additionally, we will continue to seek acquisitions to expand our market presence and technology offerings in our Industrial segment.

Industrial segment results

	Year Ended December 31,			Year Ended December 31,		
(in thousands, except percentages)	2016	2015	$ Change	2015	2014	$ Change
Revenues	$ 253,613	$ 183,695	$ 69,918	$ 183,695	$ 105,418	$ 78,277
Gross profit	50,726	54,826	(4,100)	54,826	30,400	24,426
% of revenues	20.0%	29.8%		29.8%	28.8%	

2016 vs 2015 results

Revenues increased 38.1% , or $69.9 million , to $253.6 million in 2016 from $183.7 million in 2015 . The increase in revenues is primarily the result of our acquisition of SPIG on July 1, 2016, which contributed $96.3 million of revenue to the Industrial segment during the second half of 2016. Our MEGTEC business experienced a decline in revenues in 2016 across each of its product lines caused by the decline in demand in the United States. However, we believe the industrials market in the United States is showing signs of stabilizing.

Gross profit increased 7.5% , or $4.1 million , to $50.7 million in the year ended December 31, 2016, compared to $54.8 million in 2015 . The SPIG business contributed gross profit of $7.8 million in 2016 , which was partially offset by lower gross profit from MEGTEC in-line with the decrease in revenues during 2016. MEGTEC was able to improve its gross margin percentage in 2016 due to its mix of product revenues despite the overall decline in revenues and gross profit for the business. In addition, SPIG's gross margins have been historically lower than MEGTEC's, resulting in a decline in the 2016 gross margin percentage in the segment.

2015 vs 2014 results

The year-over-year comparison reflects twelve months of MEGTEC revenues and gross profit in 2015 compared to approximately six months in 2014 .

Revenues increased 74.3% , or $78.3 million , to $183.7 million in 2015 from $105.4 million in 2014 .

Gross profit increased 80.2% , or $24.4 million , to $54.8 million in the year ended December 31, 2015, compared to $30.4 million in 2014 . Gross profit in 2015 .

Selling, general and administrative expenses

SG&A increased $7.2 million to $247.1 million in 2016 from $240.0 million in 2015 due primarily to $5.1 million of acquisition and integration related costs related to the acquisitions of SPIG and Universal, $1.3 million of litigation expenses associated with the ARPA trial and the addition of $8.2 million of SG&A associated with SPIG. These increases in SG&A were partially offset by savings from our 2016 restructuring actions and reduced incentive compensation accruals.

SG&A increased $14.7 million to $240.0 million in 2015 from $225.3 million in 2014 . The increase in SG&A in 2015 is primarily attributable to $17.5 million of SG&A associated with MEGTEC compared to $8.8 million in 2014 (MEGTEC was acquired on June 20, 2014), and an $8.5 million increase in stand-alone operating costs, discussed further below. In 2015, corporate allocations from our former Parent were $2.6 million lower than they were in 2014, which is discussed further below.

The additional stand-alone operating costs to operate our business as an independent public company exceeded the pre-spin allocations of expenses from BWC related to areas that include, but are not limited to, litigation and other legal matters, insurance, compliance with the Sarbanes-Oxley Act and other corporate governance matters. We estimated that we would incur annual incremental expenses of $14 million to $16 million, of which we incurred approximately $13.5 million and $8.5 million in 2016 and in the second half of 2015, respectively, to replace both the services previously provided by BWC as well as other stand-alone costs, such as costs to create separate accounting, legal, senior management and tax functions. We incurred significantly less than our estimate in 2016 due to the reversal of incentive compensation and other targeted overhead expense reductions. Due to the scope and complexity of these activities, the amount and timing of these incremental costs could vary and initial run rates could be slightly higher than the expected annual amounts incurred in 2016 and 2015.

As discussed in Note 1 to the consolidated and combined financial statements included in Item 8, we distributed assets and liabilities totaling $47.8 million associated with our Nuclear Energy ("NE") segment to BWC in conjunction with the spin-off on June 30, 2015. We received corporate allocations from our former Parent which totaled $2.7 million and $5.3 million for the years ended December 31, 2015 and 2014 , respectively. Though these allocations related to our discontinued NE segment, they are included as part of selling, general and administrative expenses in the results from our continuing operations because allocations are not eligible for inclusion in discontinued operations.

Research and development costs

Research and development expenses relate to the development and improvement of new and existing products and equipment, as well as conceptual and engineering evaluation for translation into practical applications. These expenses were $10.4 million , $16.5 million and $18.5 million in 2016 , 2015 and 2014 , respectively. We continuously evaluate each research and development project and collaborate with our business teams to ensure that we believe we are developing technology and products that are currently desired by the market and will result in future sales. In 2017, we expect to continue the trend of a decrease in the amount of research and development expense.

Losses on asset disposal and impairment

We experienced losses on asset disposals and impairments totaling $14.6 million and $1.8 million in 2015 and 2014 , respectively. Losses on asset disposals and impairments in 2016 were primarily related to the $14.9 million non-cash impairment of the long-lived assets at B&W's one coal-fired power plant located in Ebensburg, Pennsylvania, which is classified separately in restructuring costs during 2016. The impairment charge recorded in 2015 was primarily related to research and development facilities and equipment dedicated to activities that were determined not to be commercially viable. The impairment charges recorded in 2014 were related to the cancellation of operations and maintenance services contracts.

Equity in income (loss) of investees

Our equity method investees include joint ventures in China and India, each of which manufactures boiler parts, and a joint venture in Australia that sells and services industrial equipment and other project-related joint ventures. We sold all of our interest in our Australian joint venture, HMA, on December 22, 2016 for $18.0 million , resulting in a gain of $8.3 million .

Our interest in HMA's income before the gain on sale in 2016 was $2.2 million , $3.1 million and $3.6 million in the years ended December 31, 2016, 2015 and 2014, respectively.

In May 2014 , we purchased the remaining outstanding equity of a joint venture coal-fired power plant in Ebensburg, Pennsylvania that was previously unconsolidated. Since that date, we have consolidated its results in our Power segment. Additionally, in the year ended December 31, 2014 , we recognized income from a United States environmental project joint venture. The United States environmental project was substantially completed in 2014 and did not contribute equity income in 2015 .

Equity in income from our unconsolidated joint ventures increased $16.7 million to $16.4 million of income in 2016 from a $0.2 million loss in 2015 , primarily due to the gain on the sale of our interest in our Australian joint venture discussed above and the performance of our joint venture in China.

Equity in income from our unconsolidated joint ventures decreased $8.9 million to a loss of $0.2 million in 2015 , as compared to income of $8.7 million in 2014 primarily due to adverse market conditions in China and Australia and start-up costs relating to a new manufacturing facility in India. Additionally, in 2014 , we recognized income from a United States environmental project joint venture that was substantially complete in 2014 and did not contribute equity income in 2015 .

Restructuring

2016 Restructuring activities

On June 28, 2016, we announced actions to restructure our power business in advance of significantly lower demand now projected for power generation from coal in the United States. The new organizational structure includes a redesigned work flow to provide an efficient, flexible organization that can adapt to the changing market conditions and volumes. The costs associated with the restructuring activities were $31.4 million in the year ended December 31, 2016 , and were primarily related to employee severance of $14.1 million and non-cash impairment of the long-lived assets at B&W's one coal-fired power plant located in Ebensburg, Pennsylvania of $14.9 million . Other costs associated with the restructuring of $2.4 million are related to organizational realignment of personnel and processes and an increase in valuation allowances associated with our deferred tax assets (see Note 10). The 2016 restructuring activities are expected to allow our business to continue to serve the power market and maintain gross margins, despite the expected decline in volume as a result of the lower projected demand in the US coal-fired power generation market. These restructuring actions are primarily in the Power segment. We expect additional restructuring charges during 2017 of up to $6 million primarily related to office reconfiguration, other facilities costs, consulting and other activities related to the June 28, 2016 restructuring.

Pre-2016 Restructuring activities

In 2014 , we started our current restructuring initiatives that included manufacturing facility consolidation and outsourcing as well as reductions in force, consulting and other costs. The total cost of these restructuring initiatives was approximately $50 million, of which we incurred $37.0 million and $11.7 million in 2016 and 2015 , respectively. Included in total restructuring costs are non-cash charges related to accelerated depreciation and impairment, which were $15.0 million and $6.7 million in the years ended December 31, 2016 and 2015 , respectively. We expect additional restructuring charges of up to $5 million primarily related to facility demolition and consolidation activities, which will take place during the first half of 2017.

Prior to contemplating the spin-off, beginning in 2012, our former Parent had also implemented restructuring activities to enhance competitiveness and to better position the combined company, BWC, for growth, improved profitability and to help offset increasingly competitive market conditions. These activities included operational and functional efficiency improvements, organizational design changes and manufacturing optimization that were substantially complete prior to the spin-off. A substantial part of these activities benefited us, primarily related to activities in 2014 . A total of $21.5 million of costs associated with these previous restructuring activities were recognized through June 30, 2015, including $2.1 million in 2014 . We have not recognized costs related to these prior restructuring activities since June 30, 2015.

Spin-off transaction costs

In the years ended December 31, 2016 and 2015 , we incurred $3.8 million and $3.8 million of costs directly related to the spin-off of B&W from BWC, respectively, primarily related to retention stock awards that had a one-year vesting period as of the June 30, 2015 date of the spin-off.

Mark to market adjustments for pension and other postretirement benefit plans

We recognize actuarial gains and losses for our pension and other postretirement benefit plans into earnings as a component of net periodic benefit cost, which affect both our cost of operations and SG&A. These MTM adjustments for our pension and other postretirement plans resulted in net losses of $24.1 million , $40.2 million and $101.3 million , in 2016 , 2015 and 2014 , respectively, and the effect on cost of operations and SG&A are detailed above and in Note 18 to the consolidated and combined financial statements included in Item 8 . The MTM loss in 2016 was primarily related to a decrease in the discount rate used to measure our pension plan liabilities and changes in the demographics of our pension plan participants, partially offset by actual return on assets that exceeded our expected return for the year. The MTM loss in 2016 was partially offset by a curtailment gain in one of our other postretirement benefit plans. We terminated the Babcock & Wilcox Retiree Medical Plan (the "Retiree OPEB plan") effective December 31, 2016. The Retiree OPEB plan was originally established to provide secondary medical insurance coverage for retirees that had reached the age of 65, up to a lifetime maximum cost. In exchange for terminating the Retiree OPEB plan, the participants had the option to enroll in a third-party health care exchange, which B&W agreed to contribute up to $750 a year for each of the next three years (beginning in 2017), provided the plan participant had not yet reached his or her lifetime maximum under the terminated Retiree OPEB plan. Based on the number of participants who did not enroll in the new benefit plan, we recognized a settlement gain of $7.2 million on December 31, 2016 (which is included as part of the MTM adjustment). The net MTM loss in 2015 was primarily related to actual return on assets that fell short of the expected return, offset by an increase in the discount rate used to measure our benefit plans liabilities. The MTM loss in 2014 was primarily related to a $46.9 million loss recognized on the adoption of a new mortality assumption and a decline in the discount rate, offset by actual return on assets that exceeded the expected return.

Provision for income taxes

	Year Ended December 31,		
(in thousands, except percentages)	2016	2015	2014
Income (loss) from continuing operations before provision for income taxes	$ (108,139)	$ 20,205	$ (36,618)
Income tax provision	6,943	3,671	(24,728)
Effective tax rate	(6.4)%	18.2%	67.5%

We operate in numerous countries that have statutory tax rates below that of the United States federal statutory rate of 35%. The most significant of these foreign operations are located in Canada, Denmark, Germany, Italy, Mexico, Sweden and the United Kingdom with effective tax rates ranging between 20% and approximately 30%. In addition, the jurisdictional mix of our income (loss) before tax can be significantly affected by MTM adjustments related to our pension and postretirement plans, which are primarily in the United States and the impact of discrete items.

In 2016, we had a pretax loss in the United States after MTM adjustments as well as an aggregate pretax loss in our foreign jurisdictions. In addition, some of the foreign losses were subject to a valuation allowance and therefore did not give rise to a tax benefit in 2016. Because the jurisdictional mix of our pretax loss was heavily skewed toward relatively low tax jurisdictions, a lower effective tax rate resulted. This low effective tax rate applied against our pretax loss was further reduced due to the impact of unfavorable discrete items recorded in 2016.

In 2015, the MTM adjustments resulted in a net loss in the United States, which was tax-effected at U.S. statutory tax rates. When these tax benefits, which are realized in a relatively high tax jurisdiction, are combined with the tax expense generated in foreign jurisdictions with relatively lower statutory tax rates, a low net effective tax rate resulted because we have income before the provision for income taxes.

In 2014, the MTM adjustments resulted in a net loss in the United States that was partially offset by earnings in foreign jurisdictions. Under these circumstances, the relatively higher U.S. statutory tax rate combined with the lower tax rates applicable in foreign jurisdictions resulted in a relatively high effective tax rate because we have a loss before the provision for income taxes.

Income (loss) before provision for income taxes generated in the United States and foreign locations for the years ended December 31, 2016 , 2015 and 2014 is presented in the table below.

	Year Ended December 31,		
(in thousands)	2016	2015	2014
United States	$ 1,280	$ (20,748)	$ (64,084)
Other than the United States	(109,419)	40,953	27,466
Income (loss) before provision for (benefit from) income taxes	(108,139)	20,205	(36,618)

As described above, in addition to jurisdictional mix of earnings and the impact of MTM adjustments, our income tax provision and our effective tax rate can also be affected by discrete items that do not occur in each period or jurisdiction and recurring items like foreign tax and research credits, nondeductible expenses and manufacturing tax benefits.

In 2016, we had net unfavorable discrete items of approximately $32.2 million. With a pretax loss in 2016, unfavorable discrete items decreased the effective tax rate by 29.8%. Our discrete items primarily consist of a $15.7 million increase in the valuation allowance against deferred tax assets related to one of our foreign businesses that incurred pretax losses in the current year, a $10.8 million increase in the valuation allowance against the deferred tax asset related to our equity investment in a foreign joint venture and a $5.1 million charge related to changes in state deferred taxes due to changes in tax rates and an increase in valuation allowances.

In 2015, we had net unfavorable discrete items of approximately $2.7 million, primarily related to revaluing our state deferred taxes, which increased the effective tax rate in 2015 by approximately 14%. The recurring items largely offset each other.

In 2014, we had net favorable discrete items of approximately $4.0 million primarily related to the receipt of a ruling from the United States Internal Revenue Service that enabled us to amend prior year United States income tax returns for 2010 to 2012 to exclude distributions of several of our foreign joint ventures from domestic taxable income. Because 2014 was a loss year, this benefit resulted in an increase to the effective tax rate of approximately 11%. In addition, the favorable impact of the foreign tax and research credits further increased our effective tax rate by approximately 8%.

Discrete items are dependent on future events that management is unable to reasonably forecast. Consequently, we cannot predict the amount or significance of such items on our effective tax rate in future periods.

LIQUIDITY AND CAPITAL RESOURCES

At December 31, 2016 , we had: unrestricted cash and cash equivalents of $95.9 million ; investments with a fair value of $18.0 million , primarily held by our captive insurance company; and restricted cash and cash equivalents of $27.8 million , of which $6.6 million was held in restricted foreign cash accounts and $21.2 million was held to meet reinsurance reserve requirements of our captive insurer in lieu of long-term investments.

Of our $95.9 million of unrestricted cash and cash equivalents at December 31, 2016 , approximately $94.4 million , or 98% , is held outside of the United States and relates to foreign operations, though it is primarily held in United States dollars to mitigate foreign exchange risk. In general, these resources are not available to fund our United States operations unless the funds are repatriated to the United States, which could expose us to taxes we presently have not accrued in our financial statements. We presently have no plans to repatriate these funds to the United States as the liquidity generated by our United States operations is sufficient to meet the cash requirements of our United States operations.

Our investment portfolio consists primarily of investments in highly liquid money market instruments. Our investments are classified as available-for-sale and are carried at fair value with unrealized gains and losses, net of tax, reported as a component of other comprehensive income (loss). Beginning in 2017, unrealized gains and losses, net of tax, will be reported

in our statement of operations each period as a result of a change in accounting principles required by GAAP. The change in accounting will be reflected prospectively in our financial statements.

We continue to explore long-term growth strategies across our segments through acquisitions to expand and complement our existing businesses. We expect to fund these opportunities by cash on hand, external financing (including debt), equity or some combination thereof. We expect cash and cash equivalents, cash flows from operations, and our borrowing capacity to be sufficient to meet our liquidity needs for at least twelve months from the date of this filing.

Cash and cash equivalents decreased by $269.3 million in 2016 . Our net cash provided by operations was $2.3 million in 2016 , compared to cash provided by operations of $170.4 million in 2015. The decrease in cash provided by operations was primarily attributable to $124.6 million less of operating income in 2016 resulting from the status of contracts in progress in our Renewable segment and $20.4 million of cash disbursements associated with our restructuring activities. Generally, we try to structure contract milestones to mirror our expected cash outflows over the course of the contract; however, the timing of milestone receipts can greatly affect our overall cash position. Our existing portfolio of Renewable contracts include milestone payments from our customers in advance of incurring the contract expenses, and as a result we are in an advance bill position on most of our Renewable contracts at December 31, 2016. Because of this advanced bill position, combined with the increase in expected costs to complete the Renewable loss contracts, we expect this business segment to use a significant amount of cash during 2017.

Our net cash used in investing activities increased by $135.0 million to $180.8 million in 2016 from $45.9 million in 2015 primarily due to our acquisition of SPIG on July 1, 2016 , and a $26.2 million contribution in April 2016 to increase our interest in TBWES, our joint venture in India. The equity contribution to our Thermax Babcock & Wilcox Energy Solutions Private Limited ("TBWES") joint venture was for the purpose of extinguishing the joint venture's high-interest third-party debt and avoiding the associated future interest cost. Capital expenditures in 2016 were $22.5 million , and we expect approximately the same level of capital expenditures in 2017.

Our net cash provided by (used for) financing activities was $(83.4) million in 2016 , compared to $53.6 million in 2015. Net cash used for financing activities in 2016 includes our repurchase of $78.4 million of our common stock during the year pursuant to our share repurchase program, and net payments of $4.8 million on our revolving credit facilities, which includes our repayment of $18.3 million of SPIG's revolving debt during the third quarter of 2016. The net cash provided by financing activities in the year ended December 31, 2015 includes $80.6 million of cash received from the former Parent in the spin-off transaction, partially offset by $24.3 million used to repurchase 1.3 million shares in the second half of 2015.

United States credit facility

On June 30, 2015, we obtained a credit agreement ("Credit Agreement") in connection with the spin-off transaction. The Credit Agreement provides for a senior secured revolving credit facility in an aggregate amount of up to $600 million, which is scheduled to mature on June 30, 2020. The proceeds of loans under the Credit Agreement are available for working capital needs and other general corporate purposes, and the full amount is available to support the issuance of letters of credit.

On February 24, 2017 , we entered into Amendment No. 2 to Credit Agreement (the “Amendment” and the Credit Agreement, as amended to date, the “Amended Credit Agreement”) to, among other things: (i) provide financial covenant relief by amending the definition of EBITDA (as defined in the Amended Credit Agreement) to exclude up to $98.1 million of losses for certain Renewable segment contracts for the year ended December 31, 2016; (ii) increase the maximum permitted leverage ratio to 3.50 to 1.00 during the covenant relief period; (iii) limit our ability to borrow under the Amended Credit Agreement during the covenant relief period to $300.0 million in the aggregate; (iv) increase the pricing for borrowings, letters of credit and commitment fees under the Amended Credit Agreement during the covenant relief period; (v) limit our ability to incur debt and liens during the covenant relief period; (vi) limit our ability to make acquisitions and investments in third parties during the covenant relief period; (vii) prohibit us from making dividends and stock repurchases during the covenant relief period; (viii) prohibit us from exercising the accordion described below during the covenant relief period; (ix) limit our financial letters of credit outstanding under the Amended Credit Agreement to $30.0 million during the covenant relief period; and (x) require us to reduce commitments under the Amended Credit Agreement with the proceeds of certain debt issuances and asset sales. The covenant relief period will end, at our election, when the conditions set forth in the Amendment are satisfied, but in no event earlier than the date on which we provide the compliance certificate for the fiscal quarter ending December 31, 2017.

Other than during the covenant relief period described above, the Amended Credit Agreement contains an accordion feature that allows us, subject to the satisfaction of certain conditions, including the receipt of increased commitments from existing lenders or new commitments from new lenders, to increase the amount of the commitments under the revolving credit facility in an aggregate amount not to exceed the sum of (i) $200 million plus (ii) an unlimited amount, so long as for any commitment increase under this subclause (ii) our senior secured leverage ratio (assuming the full amount of any commitment increase under this subclause (ii) is drawn) is equal to or less than 2.0 to 1.0 after giving pro forma effect thereto. During the covenant relief period described above, our ability to exercise the accordion feature will be prohibited.

The Amended Credit Agreement and our obligations under certain hedging agreements and cash management agreements with our lenders and their affiliates are (i) guaranteed by substantially all of our wholly owned domestic subsidiaries, but excluding our captive insurance subsidiary, and (ii) secured by first-priority liens on certain assets owned by us and the guarantors. The Amended Credit Agreement requires interest payments on revolving loans on a periodic basis until maturity. We may prepay all loans at any time without premium or penalty (other than customary LIBOR breakage costs), subject to notice requirements. The Amended Credit Agreement requires us to make certain prepayments on any outstanding revolving loans after receipt of cash proceeds from certain asset sales or other events, subject to certain exceptions and a right to reinvest such proceeds in certain circumstances. During the covenant relief period described above, such prepayments may require us to reduce the commitments under the Amended Credit Agreement by a corresponding amount of such prepayments. Following the covenant relief period described above, such prepayments will not require us to reduce the commitments under the Amended Credit Agreement.

Loans outstanding under the Amended Credit Agreement bear interest at our option at either (i) the LIBOR rate plus (a) during the covenant relief period described above, a margin of 2.50% per year, and (b) following the covenant relief period described above, a margin ranging from 1.375% to 1.875% per year, or (ii) the base rate (the highest of the Federal Funds rate plus 0.5%, the one month LIBOR rate plus 1.0%, or the administrative agent's prime rate) plus (a) during the covenant relief period described above, a margin of 1.50% per year, and (b) following the covenant relief period described above, a margin ranging from 0.375% to 0.875% per year. A commitment fee is charged on the unused portions of the revolving credit facility, and that fee (A) during the covenant relief period described above, is 0.50% per year, and (B) following the covenant relief period described above, varies between 0.25% and 0.35% per year. Additionally, (I) during the covenant relief period, a letter of credit fee of 2.50% per year is charged with respect to the amount of each financial letter of credit outstanding, and a letter of credit fee of 1.50% per year is charged with respect to the amount of each performance letter of credit outstanding, and (II) following the covenant relief period described above, a letter of credit fee of between 1.375% and 1.875% per year is charged with respect to the amount of each financial letter of credit outstanding, and a letter of credit fee of between 0.825% and 1.125% per year is charged with respect to the amount of each performance letter of credit outstanding. Following the covenant relief period described above, the applicable margin for loans, the commitment fee and the letter of credit fees set forth above vary quarterly based on our leverage ratio.

The Amended Credit Agreement includes financial covenants that are tested on a quarterly basis, based on the rolling four-quarter period that ends on the last day of each fiscal quarter. The maximum permitted leverage ratio as defined in the Amended Credit Agreement (i) is 3.50 to 1.00 during the covenant relief period described above and (ii) is 3.00 to 1.00 following the covenant relief period described above (which ratio may be increased to 3.25 to 1.00 for up to four consecutive fiscal quarters after a material acquisition). The minimum consolidated interest coverage ratio is 4.00 to 1.00 both during and following the covenant relief period described above. In addition, the Amended Credit Agreement contains various restrictive covenants, including with respect to debt, liens, investments, mergers, acquisitions, dividends, equity repurchases and asset sales. At December 31, 2016 , usage under the Amended Credit Agreement consisted of $9.8 million in borrowings at an effective interest rate of 4.125%, $7.5 million of financial letters of credit and $89.1 million of performance letters of credit. After giving effect to the maximum leverage ratio, we had $228.8 million available borrowing capacity based on trailing-twelve month EBITDA, as defined in our Amended Credit Agreement, at December 31, 2016 .

The Amended Credit Agreement generally includes customary events of default for a secured credit facility. If an event of default relating to bankruptcy or other insolvency events with respect to us occurs under the Amended Credit Agreement, all obligations will immediately become due and payable. If any other event of default exists, the lenders will be permitted to accelerate the maturity of the obligations outstanding. If any event of default occurs, the lenders are permitted to terminate their commitments thereunder and exercise other rights and remedies, including the commencement of foreclosure or other actions against the collateral. Additionally, if we are unable to make any of the representations and warranties in the Amended Credit Agreement, we will be unable to borrow funds or have letters of credit issued.

Universal acquisition

In order to purchase Universal on January 11, 2017, we borrowed $55 million under the United States credit facility in 2017. The acquisition did not materially change the level of bank guarantees, letters of credit or surety bonds that were outstanding at December 31, 2016 .

Foreign revolving credit facilities

Outside of the United States, we have unsecured revolving credit facilities in Turkey, China and India that are used to provide working capital to our operations in each country. The revolving credit facilities in Turkey and India are a result of the July 1, 2016 acquisition of SPIG. These three foreign revolving credit facilities allow us to borrow up to $15.7 million in aggregate, and each have a one year term. At December 31, 2016, we had $14.2 million in borrowings outstanding under these foreign revolving credit facilities at an effective weighted-average interest rate of 4.92%. If an event of default relating to bankruptcy or insolvency events was to occur, all obligations will become due and payable.

Letters of credit, bank guarantees and surety bonds

Certain subsidiaries have credit arrangements with various commercial banks and other financial institutions for the issuance of letters of credit and bank guarantees associated with contracting activity. The aggregate value of all such letters of credit and bank guarantees not secured by the United States credit facility as of December 31, 2016 and December 31, 2015 was $255.2 million and $193.1 million , respectively. The increase in 2016 is attributable to the July 1, 2016 acquisition of SPIG.

We have posted surety bonds to support contractual obligations to customers relating to certain projects. We utilize bonding facilities to support such obligations, but the issuance of bonds under those facilities is typically at the surety's discretion. Although there can be no assurance that we will maintain our surety bonding capacity, we believe our current capacity is more than adequate to support our existing project requirements for the next twelve months. In addition, these bonds generally indemnify customers should we fail to perform our obligations under the applicable contracts. We, and certain of our subsidiaries, have jointly executed general agreements of indemnity in favor of surety underwriters relating to surety bonds those underwriters issue in support of some of our contracting activity. As of December 31, 2016 , bonds issued and outstanding under these arrangements in support of contracts totaled approximately $ 527.9 million .

Long-term benefit obligations

Our unfunded pension and postretirement benefit obligations totaled $300.8 million at December 31, 2016 . These long-term liabilities are expected to require use of our resources to satisfy our future funding obligations. For the year ended December 31, 2016 , we made required contributions to our pension plans totaling $4.0 million and to our postretirement plans of $3.0 million . In 2017, we expect to make $19 million to $21 million of contributions to our benefit plans. See additional information on our long-term benefit obligations in Note 18 to our consolidated and combined financial statements included in Item 8 of this annual report.

Contractual obligations

Our cash requirements as of December 31, 2016 under current contractual obligations were as follows:

(in thousands)	Total	Less than 1 Year	1-3 Years	3-5 Years	After 5 Years
Operating lease payments	$ 13,189	$ 5,224	$ 6,266	$ 1,664	$ 35
US revolving credit facility	$ 9,800	$ —	$ 9,800	$ —	$ —
Foreign revolving credit facility	$ 14,241	$ 14,241	$ —	$ —	$ —

The table above excludes cash payments for self-insured claims, litigation and funding of our pension and postretirement benefit plans because we are uncertain as to the timing and amount of any associated cash payments that will be required. For example, expected pension contributions are subject to potential contributions that may be required in connection with acquisitions, dispositions or plan mergers. Also, estimated pension and other postretirement benefit payments are based on actuarial estimates using current assumptions for, among other things, discount rates, expected long-term rates of return on plan assets and health care costs. Additionally, the table above excludes deferred income taxes recorded on our balance sheets

because cash payments for income taxes are determined primarily on future taxable income. Our only long-term debt at December 31, 2016 was our $9.8 million United States revolving credit facility balance.

Our contingent commitments under letters of credit, bank guarantees and surety bonds outstanding at December 31, 2016 expire as follows (in thousands):

Total	Less than 1 Year	1-3 Years	3-5 Years	Thereafter
$913,248	$ 521,322	$ 326,674	$ 63,092	$ 2,160

We do not expect significant cash payments associated with the contingent commitments included in the table above because we expect to fulfill the performance commitments related to the underlying contracts.

Off-balance sheet arrangements

There were no significant off-balance sheet arrangements at December 31, 2016.

EFFECTS OF INFLATION AND CHANGING PRICES

Our financial statements are prepared in accordance with generally accepted accounting principles in the United States, using historical United States dollar accounting ("historical cost"). Statements based on historical cost, however, do not adequately reflect the cumulative effect of increasing costs and changes in the purchasing power of the United States dollar, especially during times of significant and continued inflation.

In order to minimize the negative impact of inflation on our operations, we attempt to cover the increased cost of anticipated changes in labor, material and service costs, either through an estimate of those changes, which we reflect in the original price, or through price escalation clauses in our contracts. However, there can be no assurance we will be able to cover all changes in cost using this strategy.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States. Preparing financial statements requires management to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenues and expenses. These estimates and assumptions are affected by management's application of accounting policies. We believe the following are our most critical accounting policies that we apply in the preparation of our financial statements. These policies require our most difficult, subjective and complex judgments, often as a result of the need to make estimates of matters that are inherently uncertain.

Contracts and revenue recognition

We determine the appropriate accounting method for each of our long-term contracts before work on the project begins. We generally recognize contract revenues and related costs on a percentage-of-completion ("POC") method for individual contracts or combinations of contracts based on a cost-to-cost method, as applicable to the product or activity involved. We recognize estimated contract revenues and resulting income based on costs incurred to date as a percentage of total estimated costs. Certain costs may be excluded from the cost-to-cost method of measuring progress, such as significant costs for materials and major third-party subcontractors, if it appears that such exclusion would result in a more meaningful measurement of actual contract progress and resulting periodic allocation of income. For all contracts, if a current estimate of total contract cost indicates a loss on a contract, the projected loss is recognized in full when determined. It is possible that current estimates could materially change for various reasons, including, but not limited to, fluctuations in forecasted labor productivity or steel and other raw material prices. We routinely review estimates related to our contracts, and revisions to profitability are reflected in the quarterly and annual earnings we report. For parts orders and certain aftermarket services activities, we recognize revenues as goods are delivered and work is performed.

In the years ended December 31, 2016 , 2015 and 2014 , we recognized net changes in estimates related to long-term contracts accounted for on the POC basis which increased (decreased) operating income by $(106.8) million , $0.4 million and $26.3 million , respectively. As of December 31, 2016, we have estimated the costs to complete all of our in-process contracts in order to estimate revenues in accordance with the percentage-of-completion method of accounting. However, it is possible that current estimates could change due to project performance or unforeseen events, which could result in adjustments to

overall contract costs. Variations from estimated contract performance could result in material adjustments to operating results for any fiscal quarter or year.

We recognize income from contract change orders or claims when formally agreed with the customer. We regularly assess the collectability of contract revenues and receivables from customers. We recognize accrued claims in contract revenues for extra work or changes in scope of work to the extent of costs incurred when we believe the following accounting criteria have been met:

a) The contract or other evidence provides a legal basis for the claim; or a legal opinion has been obtained, stating that under the circumstances there is a reasonable basis to support the claim.

b) Additional costs are caused by circumstances that were unforeseen at the contract date and are not the result of deficiencies in the contractor's performance.

c) Costs associated with the claim are identifiable or otherwise determinable and are reasonable in view of the work performed.

d) The evidence supporting the claim is objective and verifiable, not based on unsupported representations.

In our consolidated balance sheets, we had no accrued claims receivable at December 31, 2016 and $2.3 million of claims receivable at December 31, 2015 .

Business combinations

We account for acquisitions in accordance with FASB Topic *Business Combinations.* This topic requires us to estimate the fair value of assets acquired, liabilities assumed and interests transferred as a result of business combinations. It also provides disclosure requirements to assist users of the financial statements in evaluating the nature and financial effects of business combinations.

Several valuation methods are used to determine the fair value of the assets acquired and liabilities assumed. For intangible assets, we used the income method, which required us to forecast the expected future net cash flows for each intangible asset. These cash flows were then adjusted to present value by applying an appropriate discount rate that reflects the risk factors associated with the projected cash flows. Some of the more significant estimates and assumptions inherent in the income method include the amount and timing of projected future cash flows, the discount rate selected to measure the risks inherent in the future cash flows and the assessment of the asset's economic life and the competitive trends impacting the asset, including consideration of any technical, legal, regulatory or economic barriers to entry. Determining the useful life of an intangible asset also require judgment as different types of intangible assets will have different useful lives, or indefinite useful lives.

We accounted for the acquisitions of SPIG and MEGTEC using the acquisition method. All of the assets acquired and liabilities assumed were recognized at their fair value on the acquisition date. Any excess of the purchase price over the estimated fair values of the net assets acquired was recorded as goodwill. Acquisition-related costs were recorded as selling, general and administrative expenses in our condensed consolidated and combined financial statements.

Investments in unconsolidated affiliates

We use the equity method of accounting for affiliates in which our investment ownership ranges from 20% to 50%, unless significant economic or governance considerations indicate that we are unable to exert significant influence, in which case the cost method is used. The equity method is also used for affiliates in which our investment ownership is greater than 50% but we do not have a controlling interest. Currently, all of our material investments in affiliates that are not included in our consolidated and combined financial statements are recorded using the equity method. Our primary equity method investees include joint ventures in China, India and Australia. Affiliates in which our investment ownership is less than 20% and where we are unable to exert significant influence are carried at cost.

We assess our investments in unconsolidated affiliates for other-than-temporary-impairment when significant changes occur in the investee's business or our investment philosophy. Such changes might include a series of operating losses incurred by the investee that are deemed other than temporary, the inability of the investee to sustain an earnings capacity that would justify the carrying amount of the investment or a change in the strategic reasons that were important when we originally entered into the joint venture. If an other-than-temporary-impairment were to occur, we would measure our investment in the unconsolidated affiliate at fair value.

At December 31, 2016 , our total investment in equity method investees is $98.7 million , including a $40.6 million investment in a start-up venture in India, TBWES, that completed construction of its manufacturing facility intended primarily for new build coal boiler projects in India in 2014. While TBWES has not yet recorded a profit, we have determined that an other-than-temporary-impairment is not present based on the expected cash flows and strategy for TBWES. Continuing future losses or changes in the strategy of TBWES or other joint ventures could affect future assessments of other-than-temporary-impairment.

Pension and other postretirement benefit plans

We utilize actuarial and other assumptions in calculating the cost and benefit obligations of our pension and postretirement benefits. The assumptions utilized in the determination of our benefit cost and obligations include assumptions regarding discount rates, expected returns on plan assets, mortality and health care cost trends. The assumptions utilized represent our best estimates based on historical experience and other factors.

Actual experience that differs from these assumptions or future changes in assumptions will affect our recognized benefit obligations and related costs. We recognize net actuarial gains and losses into earnings in the fourth quarter of each year, or as interim remeasurements are required, as a component of net periodic benefit cost. Net actuarial gains and losses occur when actual experience differs from any of the various assumptions used to value our pension and postretirement benefit plans or when assumptions, which are revisited annually through our update of our actuarial valuations, change due to current market conditions or underlying demographic changes. The primary factors contributing to net actuarial gains and losses are changes in the discount rate used to value the obligations as of the measurement date each year, the difference between the actual and expected return on plan assets and changes in health care cost trends. The effect of changes in the discount rate and expected rate of return on plan assets in combination with the actual return on plan assets can result in significant changes in our estimated pension and postretirement benefit cost and our consolidated and combined financial condition.

In 2016, we changed our approach to setting the discount rate from a single equivalent discount rate to an alternative spot rate method. This change in estimate was applied prospectively in developing our annual discount rate, which resulted in $6.8 million lower interest and service cost in 2016. The impact of the change in estimate did not change our pension and other postretirement benefits liability as of December 31, 2016, because any change was completely offset in the net actuarial gain (loss) recorded in the annual mark to market adjustment. This new method was adopted because it more accurately applies each year’s spot rates to the projected cash flows.

In 2014, we adjusted our mortality assumption to reflect mortality improvements identified by the Society of Actuaries, adjusted for our experience. The impact of the change in this assumption caused a $46.9 million increase in our pension liability.

The following sensitivity analysis shows the impact of a 25 basis point change in the assumed discount rate and return on assets on our pension plan obligations and expense for the year ended December 31, 2016 :

(In millions)	0.25% increase	0.25% decrease
Discount rate :		
Effect on ongoing net periodic benefit cost(1)	$ (22.2)	$ 29.7
Effect on projected benefit obligation	(31.2)	32.5
Return on assets:		
Effect on ongoing net periodic benefit cost	$ (2.2)	$ 2.2

(1) *Excludes effect of annual MTM adjustment.*

A 25 basis point change in the assumed discount rate, return on assets and health care cost trend rate would have no meaningful impact on our other postretirement benefit plan obligations and expense for the year ended December 31, 2016 individually or in the aggregate, excluding the impact of any annual MTM adjustments we record annually.

Loss contingencies

We estimate liabilities for loss contingencies when it is probable that a liability has been incurred and the amount of loss is reasonably estimable. We provide disclosure when there is a reasonable possibility that the ultimate loss will exceed the recorded provision or if such probable loss is not reasonably estimable. We are currently involved in some significant litigation. See Note 20 to the consolidated and combined financial statements included in Item 8 for a discussion of this litigation. As disclosed, we have accrued estimates of the probable losses associated with these matters; however, these matters are typically resolved over long periods of time and are often difficult to estimate due to the possibility of multiple actions by third parties. Therefore, it is possible that future earnings could be affected by changes in our estimates related to these matters.

Goodwill and long-lived asset impairment

Each year, we evaluate goodwill at each reporting unit to assess recoverability, and impairments, if any, are recognized in earnings. We perform a qualitative analysis when we believe that there is sufficient excess fair value over carrying value based on our most recent quantitative assessment, adjusted for relevant facts and circumstances that could affect fair value. Deterioration in macroeconomic, industry and market conditions, cost factors, overall financial performance, share price decline or entity and reporting unit specific events could cause us to believe a qualitative test is no longer appropriate.

When we determine that it is appropriate to test goodwill for impairment utilizing a quantitative test, the first step of the test compares the fair value of a reporting unit to its carrying amount, including goodwill. We utilize both the income and market valuation approaches to provide inputs into the estimate of the fair value of our reporting units, which would be considered by market participants.

Under the income valuation approach, we employ a discounted cash flow model to estimate the fair value of each reporting unit. This model requires the use of significant estimates and assumptions regarding future revenues, costs, margins, capital expenditures, changes in working capital, terminal year growth rate and cost of capital. Our cash flow models are based on our forecasted results for the applicable reporting units. Actual results could differ materially from our projections. Some assumptions, such as future revenues, costs and changes in working capital are company driven and could be affected by a loss of one or more significant contracts or customers; failure to control costs on certain contracts; or a decline in demand based on changing economic, industry or regulatory conditions. Changes in external market conditions may affect certain other assumptions, such as the cost of capital. Market conditions can be volatile and are outside of our control.

Under the market valuation approach, we employ both the guideline publicly traded company method and the similar transactions method. The guideline publicly traded company method indicates the fair value of the equity of each reporting unit by comparing it to publicly traded companies in similar lines of business. The similar transactions method considers recent prices paid for business in our industry or related industries. After identifying and selecting guideline companies and similar transactions, we analyze their business and financial profiles for relative similarity. Factors such as size, growth, risk and profitability are analyzed and compared to each of our reporting units. Assumptions include the selection of our peer companies and use of market multiples, which could deteriorate or increase based on the profitability of our competitors and performance of their stock, which is often dependent on the performance of the stock market and general economy as a whole.

Adverse changes in these assumptions utilized within the first step of our impairment test could cause a reduction or elimination of excess fair value over carrying value, resulting in potential recognition of impairment. If the carrying amount of a reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of the impairment loss, if any. The second step compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill.

Our annual goodwill impairment assessment is performed on October 1 of each year (the "annual assessment" date). Our 2016 annual assessment for each of our five reporting units indicated that we had no impairment of goodwill. The fair value of our reporting units were all in excess of carrying value on the assessment date by at least 20%. The fair value of each reporting unit determined under Step 1 of the goodwill impairment test was based on a 50% weighting of a discounted cash flow analysis under the income approach using forward-looking projections of estimated future operating results, a 30% weighting of a guideline company methodology under the market approach using revenue and earnings before interest, taxes, depreciation and amortization (“EBITDA”) multiples, and a 20% weighting using the similar transactions methodology under the market approach using revenue and EBITDA multiples.

The goodwill impairment test associated with our MEGTEC reporting unit is the most sensitive to a change in future valuation assumptions. The reporting unit has $104.3 million of goodwill, which is unchanged since June 30, 2015. As of the annual assessment date in 2016 and 2015, the fair value of our MEGTEC reporting unit exceeded its carrying value by 22% and 48% , respectively. The change in headroom was attributable to a decrease in the estimated fair value of the reporting unit from $182.8 million to $163.8 million as of our annual assessment date in 2015 and 2016, respectively, and a $11.5 million increase in the carrying value of the reporting unit. Under both the income and market valuation approaches, the independently obtained fair value estimates decreased due to lower projected net sales and EBITDA. Similar to many industrial businesses, the 2016 reduction in MEGTEC reporting unit revenues has been the result of a decline in new equipment demand, primarily in the Americas market. However, management believes the industrials market is starting to show signs of stabilizing.

The Renewable segment's fourth quarter results caused us to evaluate whether its goodwill was impaired at December 31, 2016. The Renewable segment has $48.4 million of goodwill at December 31, 2016. We estimated the fair value of the reporting unit at that date under Step 1 of the goodwill impairment test using a discounted cash flow analysis under the income approach. We determined there were not any significant changes in the results of our market valuation approach since the annual assessment date. Based on the results of the Step 1 impairment test at December 31, 2016, we determined it was not more likely than not that the segment's goodwill is impaired because the fair value of the Renewable reporting unit significantly exceeded its carrying value. We also assessed whether there was any indication of goodwill impairment in our other four reporting units at December 31, 2016, and have concluded based on our qualitative assessment that it is not more likely than not that the fair value is less than the carrying value.

We carry our property, plant and equipment at depreciated cost, reduced by provisions to recognize economic impairment when we determine impairment has occurred. Property, plant and equipment amounts are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset, or asset group, may not be recoverable. An impairment loss would be recognized when the carrying amount of an asset exceeds the estimated undiscounted future cash flows expected to result from the use of the asset and its eventual disposition. The amount of the impairment loss to be recorded is calculated by the excess of the asset carrying value over its fair value. Fair value is generally determined using a discounted cash flow analysis. Our estimates of cash flow may differ from actual cash flow due to, among other things, technological changes, economic conditions or changes in operating performance. Any changes in such factors may negatively affect our business and result in future asset impairments.

In the year ended December 31, 2015 , we recognized a $14.6 million impairment charge primarily related to research and development facilities and equipment dedicated to activities that were determined not to be commercially viable. The impairment is included in losses on asset disposals and impairments, net in our consolidated and combined financial statements included in Item 8 of this annual report.

In the year ended December 31, 2016 , we recognized a $14.9 million impairment charge related primarily to the impairment of long-lived assets at B&W’s one coal-fired power plant located in Ebensburg, Pennsylvania. The impairment charge was determined as the difference between the fair value of the power plant's long-lived assets less the estimated cost to sell and the carrying value of the assets before recording the impairment charge.

The Renewable segment's fourth quarter results caused us to evaluate whether its long-lived assets were impaired. The Renewable segment is not an asset-intensive business, and at December 31, 2016 the segment had $55.3 million of noncurrent assets, $48.4 million of which was its goodwill balance. Based on our analysis, the estimated, undiscounted future cash flows exceed the carrying value of its long-lived assets, and accordingly we concluded there was no long-lived asset impairment at December 31, 2016.

Income taxes

Income tax expense for federal, foreign, state and local income taxes is calculated on pre-tax income based on current tax law and includes the cumulative effect of any changes in tax rates from those used previously in determining deferred tax assets and liabilities.We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. We assess deferred taxes and the adequacy of the valuation allowance on a quarterly basis. In the ordinary course of business there is inherent uncertainty in quantifying our income tax positions. We assess our income tax positions and record tax benefits for all years subject to examination based upon management's evaluation of the facts, circumstances, and information available at the reporting date. For those tax positions where it is more likely than not that a tax benefit will be

sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recognized in the consolidated and combined financial statements. We record interest and penalties (net of any applicable tax benefit) related to income taxes as a component of the provision for income taxes in our consolidated and combined statements of operations.

Warranty

We accrue estimated expense included in cost of operations on our consolidated and combined statements of operations to satisfy contractual warranty requirements when we recognize the associated revenues on the related contracts. In addition, we record specific provisions or reductions when we expect the actual warranty costs to significantly differ from the accrued estimates. Factors that impact our estimate of warranty costs include prior history of warranty claims and our estimates of future costs of materials and labor. Such changes could have a material effect on our consolidated and combined financial condition, results of operations and cash flows.

Item 7A. Quantitative and Qualitative Disclosures about Market Risk

Our exposure to market risk from changes in interest rates relates primarily to our cash equivalents and our investment portfolio, which primarily consists of investments in United States Government obligations and highly liquid money market instruments denominated in United States dollars. We are averse to principal loss and seek to ensure the safety and preservation of our invested funds by limiting default risk, market risk and reinvestment risk. Our investments are classified as available-for-sale.

We have no material future earnings or cash flow exposures from changes in interest rates on our long-term debt obligations. Our exposure to debt has been limited though December 31, 2016, but we financed $55 million of the January 11, 2017 purchase of Universal under our United Stated credit facility. Our United States credit facility has an interest rate that fluctuates with market rates, and as a result the fair value of debt has minimal exposure to fluctuations in interest rates.

We have operations in many foreign locations, and, as a result, our financial results could be significantly affected by factors such as changes in foreign currency exchange ("FX") rates or weak economic conditions in those foreign markets. Our primary foreign currency exposures are Danish kroner, Great British pound, Euro, Canadian dollar, and Chinese yuan. In order to manage the risks associated with FX rate fluctuations, we attempt to hedge those risks with FX derivative instruments. Historically, we have hedged those risks with FX forward contracts. We do not enter into speculative derivative positions.

Interest Rate Sensitivity

The following tables provide information about our financial instruments that are sensitive to changes in interest rates. The tables present principal cash flows and related weighted-average interest rates by expected maturity dates.

At December 31, 2016, Principal Amount by Expected Maturity

(in thousands, except percentages)	Years Ending December 31, 2017	2018 - 2022	Thereafter	Total	Fair Value at December 31, 2016
Investments	$ 16,841	$ —	$ 1,218	$ 18,059	$ 17,991
Average interest rate	0.81%	—%	—%	0.75%	
Revolving debt	$ 14,241	$ 9,800	$ —	$ 24,041	$ 23,973
Average interest rate	4.9%	4.1%	—%	4.6%	

At December 31, 2015, Principal Amount by Expected Maturity

(in thousands, except percentages)	Years Ending December 31, 2016	2017 - 2021	Thereafter	Total	Fair Value at December 31, 2015
Investments	$ 3,996	$ —	$ 1,172	$ 5,169	$ 5,089
Average interest rate	0.36%	—%	—%	0.28%	
Revolving debt	$ 2,005	$ —	$ —	$ 2,005	$ 2,014
Average interest rate	5.1%	—%	—%	5.1%	

Exchange Rate Sensitivity

The following table provides information about our FX forward contracts outstanding at December 31, 2016 and presents such information in United States dollar equivalents. The table presents notional amounts and related weighted-average FX rates by expected (contractual) maturity dates and constitutes a forward-looking statement. These notional amounts generally are used to calculate the contractual payments to be exchanged under the contract. The average contractual FX rates are expressed using market convention, which is dependent on the currencies being bought and sold under the forward contract.

Forward Contracts to Purchase Foreign Currencies in United States Dollars

(in thousands) Foreign currency	Year Ending December 31, 2017	Fair Value at December 31, 2016	Average Contractual Exchange Rate
Canadian dollar (selling Australian dollar)	$ 1,445	$ 56	1.0098
Chinese renminbi, onshore (selling Euro)	$ 3,892	$ 19	7.4644
Danish krone (selling Swedish krona)	$ 13,457	$ 107	1.3047
Danish krone	$ 18,693	$ (293)	6.8914
Euro (selling Canadian dollar)	$ 2,825	$ (9)	1.4369
Euro (selling British pound sterling)	$ 31,454	$ 3,425	0.7646
Euro	$ 23,600	$ (625)	1.0807
British pound sterling (selling Euro)	$ 1,260	$ (54)	0.8424
British pound sterling	$ 8,202	$ (203)	1.2605
Swedish krona (selling Danish krone)	$ 3,945	$ (75)	1.2836
Swedish krona	$ 1,036	$ 3	9.1660
U.S. dollar (selling Canadian dollar)	$ 17,560	$ 112	1.3397
U.S. dollar (selling Euro)	$ 16,018	$ 22	1.0518

(in thousands) Foreign currency	Year Ending December 31, 2018	Fair Value at December 31, 2016	Average Contractual Exchange Rate
Danish krone (selling Swedish krona)	$ 8,676	$ 257	1.3094
Danish krone	$ 6,552	$ (89)	6.7804
Euro (selling British pound sterling)	$ 1,629	$ 22	0.8550
Euro	$ 115	$ (7)	1.1360
Swedish krona (selling Danish krone)	$ 375	$ (7)	1.3064
U.S. dollar (selling Canadian dollar)	$ 1,818	$ 25	1.3233

(in thousands) Foreign currency	Year Ending December 31, 2019	Fair Value at December 31, 2016	Average Contractual Exchange Rate
Danish krone (selling Swedish krona)	$ 6,275	$ 362	1.3166
Danish krone	$ 8,590	$ (108)	6.5344

ITEM 8. Financial Statements and Supplemental Data

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Babcock & Wilcox Enterprises, Inc.:

We have audited the accompanying consolidated balance sheets of Babcock & Wilcox Enterprises, Inc. (the "Company") as of December 31, 2016 and 2015, and the related consolidated and combined statements of operations, comprehensive income (loss), stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2016. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated and combined financial statements present fairly, in all material respects, the financial position of Babcock & Wilcox Enterprises, Inc. as of December 31, 2016 and 2015, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2016, in conformity with accounting principles generally accepted in the United States of America.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of December 31, 2016, based on the criteria established in *Internal Control- Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 28, 2017, expressed an unqualified opinion on the Company’s internal control over financial reporting.

The Board of Directors of The Babcock & Wilcox Company (“BWC”) approved the spin-off of the Company through the distribution of common stock of the Company on June 30, 2015 to existing shareholders of BWC. See Note 1 to the consolidated and combined financial statements.

/S/ DELOITTE & TOUCHE LLP

Charlotte, North Carolina
February 28, 2017

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED AND COMBINED STATEMENTS OF OPERATIONS

(in thousands, except per share amounts)	Year Ended December 31, 2016	2015	2014
Revenues	$ 1,578,263	$ 1,757,295	$ 1,486,029
Costs and expenses:			
Cost of operations	1,399,146	1,449,138	1,266,996
Research and development costs	10,406	16,543	18,483
Losses (gains) on asset disposals and impairments, net	(32)	14,597	1,752
Selling, general and administrative expenses	247,149	239,968	225,271
Restructuring activities and spin-off transaction costs	40,807	14,946	20,183
Total costs and expenses	1,697,476	1,735,192	1,532,685
Equity in income (loss) of investees	16,440	(242)	8,681
Operating income (loss)	**(102,773)**	**21,861**	**(37,975)**
Other income (expense):			
Interest income	810	618	1,060
Interest expense	(3,796)	(1,059)	(492)
Other – net	(2,380)	(1,215)	789
Total other income (expense)	(5,366)	(1,656)	1,357
Income (loss) before income tax expense	**(108,139)**	**20,205**	**(36,618)**
Income tax expense (benefit)	6,943	3,671	(24,728)
Income (loss) from continuing operations	**(115,082)**	**16,534**	**(11,890)**
Income (loss) from discontinued operations, net of tax	—	2,803	(14,272)
Net income (loss)	(115,082)	19,337	(26,162)
Net income attributable to noncontrolling interest	(567)	(196)	(366)
Net income (loss) attributable to shareholders	**$ (115,649)**	**$ 19,141**	**$ (26,528)**
Amounts attributable to shareholders:			
Income (loss) from continuing operations	$ (115,649)	$ 16,338	$ (12,256)
Income (loss) from discontinued operations, net of tax	—	2,803	(14,272)
Net income (loss) attributable to shareholders	$ (115,649)	$ 19,141	$ (26,528)
Basic earnings (loss) per share - continuing operations	**$ (2.31)**	**$ 0.31**	**$ (0.23)**
Basic earnings per share - discontinued operations	—	0.05	(0.26)
Basic earnings (loss) per share	$ (2.31)	$ 0.36	$ (0.49)
Diluted earnings (loss) per share - continuing operations	**$ (2.31)**	**$ 0.30**	**$ (0.23)**
Diluted earnings per share - discontinued operations	—	0.06	(0.26)
Diluted earnings (loss) per share	$ (2.31)	$ 0.36	$ (0.49)
Shares used in the computation of earnings per share:			
Basic	50,129	53,487	54,239
Diluted	50,129	53,709	54,239

See accompanying notes to consolidated and combined financial statements.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED AND COMBINED STATEMENTS OF COMPREHENSIVE INCOME (LOSS)

(in thousands)	Year Ended December 31, 2016	2015	2014
Net income (loss)	$ (115,082)	$ 19,337	$ (26,162)
Other comprehensive income (loss):			
Currency translation adjustments	(24,494)	(19,459)	(26,895)
Derivative financial instruments:			
Unrealized gains (losses) on derivative financial instruments	2,208	282	(3,184)
Income taxes	162	(57)	(824)
Unrealized gains on derivative financial instruments, net of taxes	2,046	339	(2,360)
Derivative financial instrument (gains) losses reclassified into net income	(3,598)	1,557	2,169
Income taxes	(568)	424	559
Reclassification adjustment for (gains) losses included in net income, net of taxes	(3,030)	1,133	1,610
Benefit obligations:			
Unrealized gains (losses) on benefit obligations	12,202	462	2,719
Income taxes	4,510	(57)	(1,237)
Unrealized gains (losses) on benefit obligations, net of taxes	7,692	519	3,956
Amortization of benefit plan costs (benefits)	(254)	1,042	931
Income taxes	(404)	1,237	2,242
Amortization of benefit plan costs (benefits), net of taxes	150	(195)	(1,311)
Investments:			
Unrealized gains (losses) on investments	11	(65)	(2)
Income taxes	4	(16)	—
Unrealized gains (losses) on investments, net of taxes	7	(49)	(2)
Investment gains reclassified into net income	—	42	
Income taxes	—	15	—
Reclassification adjustments for losses included in net income, net of taxes	—	27	—
Other comprehensive income (loss)	(17,629)	(17,685)	(25,002)
Total comprehensive income (loss)	(132,711)	1,652	(51,164)
Comprehensive loss attributable to noncontrolling interest	(575)	(183)	(329)
Comprehensive income (loss) attributable to shareholders	**$ (133,286)**	**$ 1,469**	**$ (51,493)**

See accompanying notes to consolidated and combined financial statements.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED BALANCE SHEETS

(in thousands, except per share amount)	December 31, 2016	December 31, 2015
Cash and cash equivalents	$ 95,887	$ 365,192
Restricted cash and cash equivalents	27,770	37,144
Accounts receivable – trade, net	282,347	291,242
Accounts receivable – other	73,756	44,765
Contracts in progress	166,010	128,174
Inventories	85,807	90,119
Other current assets	45,957	21,548
Total current assets	777,534	978,184
Property, plant and equipment - gross	332,537	330,021
Accumulated depreciation	(198,900)	(184,304)
Net property, plant and equipment	133,637	145,717
Goodwill	267,395	201,069
Deferred income taxes	163,388	190,656
Investments in unconsolidated affiliates	98,682	92,196
Intangible assets	71,039	37,844
Other assets	17,468	17,379
Total assets	**$ 1,529,143**	**$ 1,663,045**
Revolving debt	$ 14,241	$ 2,005
Accounts payable	220,737	175,170
Accrued employee benefits	35,497	51,476
Advance billings on contracts	210,642	229,390
Accrued warranty expense	40,467	39,847
Other accrued liabilities	95,954	63,464
Total current liabilities	617,538	561,352
Accumulated postretirement benefit obligations	12,822	27,768
Pension liabilities	288,437	282,133
Other noncurrent liabilities	49,395	43,365
Total liabilities	**968,192**	**914,618**
Commitments and contingencies		
Stockholders' equity:		
Common stock, par value $0.01 per share, authorized 200,000 shares; issued 48,688 and 52,481 shares at December 31, 2016 and 2015, respectively	544	540
Capital in excess of par value	806,589	790,464
Treasury stock at cost, 5,592 and 1,376 shares at December 31, 2016 and December 31, 2015, respectively	(103,818)	(25,408)
Retained earnings (deficit)	(114,684)	965
Accumulated other comprehensive loss	(36,482)	(18,853)
Stockholders' equity attributable to shareholders	552,149	747,708
Noncontrolling interest	8,802	719
Total stockholders' equity	560,951	**748,427**
Total liabilities and stockholders' equity	**$ 1,529,143**	**$ 1,663,045**

See accompanying notes to consolidated and combined financial statements.

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED AND COMBINED STATEMENT OF STOCKHOLDERS' EQUITY

	Common Stock		Capital In Excess of Par Value	Treasury Stock	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Former Parent Investment	Noncontrolling Interest	Total Stockholders' Equity
	Shares	Par Value							
	(in thousands, except share and per share amounts)								
Balance December 31, 2013	—	$ —	$ —	$ —	$ —	$ 35,339	$ 489,381	$ 924	$ 525,644
Net income	—	—	—	—	—	—	(26,528)	366	(26,162)
Currency translation adjustments	—	—	—	—	—	(26,858)	—	(37)	(26,895)
Derivative financial instruments	—	—	—	—	—	(750)	—	—	(750)
Defined benefit obligations	—	—	—	—	—	2,645	—	—	2,645
Available-for-sale investments	—	—	—	—	—	(2)	—	—	(2)
Stock-based compensation	—	—	—	—	—	—	108	—	108
Dividends to noncontrolling interests	—	—	—	—	—	—	—	(226)	(226)
Net transfers from Parent	—	—	—	—	—	—	213,075	—	213,075
Balance December 31, 2014	—	$ —	$ —	$ —	$ —	$ 10,374	$ 676,036	$ 1,027	$ 687,437
Net income	—	$ —	$ —	$ —	$ 965	$ —	$ 18,176	$ 196	$ 19,337
Currency translation adjustments	—	—	—	—	—	(19,446)	—	(13)	(19,459)
Derivative financial instruments	—	—	—	—	—	1,472	—	—	1,472
Defined benefit obligations	—	—	—	—	—	324	—	—	324
Available-for-sale investments	—	—	—	—	—	(22)	—	—	(22)
Stock-based compensation	137	17	7,772	(1,143)	—	—	6	—	6,652
Repurchased shares	(1,376)	(14)		(24,265)		—	—	—	(24,279)
Dividends to noncontrolling interests	—	—	—	—	—	—	—	(491)	(491)
Net transfers from Parent	—	—	—	—	—	—	125,295	—	125,295
Distribution of Nuclear Energy segment to former Parent	—	—	—	—	—	(11,555)	(36,284)	—	(47,839)
Reclassification of former Parent investment to capital in excess of par value and common stock	53,720	537	782,692	—	—	—	(783,229)	—	—
Balance December 31, 2015	52,481	$ 540	$ 790,464	$ (25,408)	$ 965	$ (18,853)	$ —	$ 719	$ 748,427
Net income	—	$ —	$ —	$ —	$ (115,649)	$ —	$ —	$ 567	$ (115,082)
Currency translation adjustments	—	—	—	—	—	(24,494)	—	8	(24,486)
Derivative financial instruments	—	—	—	—	—	(984)	—	—	(984)
Defined benefit obligations	—	—	—	—	—	7,842	—	—	7,842
SPIG Acquisition	—	—	—	—	—	—	—	7,754	7,754
Available-for-sale investments	—	—	—	—	—	7	—	—	7
Stock-based compensation charges	423	46	16,125	(2,731)	—	—	—	—	13,440
Repurchased shares	(4,216)	(42)	—	(75,679)	—	—	—	—	(75,721)
Dividends to noncontrolling interests	—	—	—	—	—	—	—	(246)	(246)
December 31, 2016	48,688	$ 544	$ 806,589	$ (103,818)	$ (114,684)	$ (36,482)	$ —	$ 8,802	$ 560,951

BABCOCK & WILCOX ENTERPRISES, INC.
CONSOLIDATED AND COMBINED STATEMENTS OF CASH FLOWS

(in thousands)	Year Ended December 31, 2016	2015	2014
Cash flows from operating activities:			
Net income (loss)	$ (115,082)	$ 19,337	$ (26,162)
Non-cash items included in net income (loss):			
Depreciation and amortization	39,583	34,932	32,436
Debt issuance cost amortization	1,244	622	—
(Income) loss of equity method investees	(16,440)	242	8,743
Losses on asset disposals and impairments	14,938	16,881	5,989
Write-off of accrued claims receivable, net	—	7,832	—
Provision for (benefit from) deferred taxes	(9,000)	(32,121)	(42,023)
Recognition of losses for pension and postretirement plans	36,346	40,611	101,792
Stock-based compensation charges	16,129	7,773	(11)
Changes in assets and liabilities, net of effects of acquisition:			
Accounts receivable	58,915	(33,977)	(13,797)
Accrued insurance receivable	(15,000)	—	—
Contracts in progress and advance billings on contracts	(13,259)	62,971	(8,860)
Inventories	2,869	6,060	(99,192)
Income taxes	22,593	9,275	4,309
Accounts payable	4,542	17,863	10,123
Accrued and other current liabilities	25,110	11,464	9,660
Pension liabilities, accrued postretirement benefits and employee benefits	(46,973)	(2,336)	(17,259)
Other, net	(4,242)	2,970	10,028
Net cash from operating activities	**2,273**	**170,399**	**(24,224)**
Cash flows from investing activities:			
Decrease in restricted cash and cash equivalents	9,374	6,298	(5,646)
Purchase of property, plant and equipment	(22,450)	(35,397)	(15,475)
Acquisition of businesses, net of cash acquired	(144,780)	—	(127,705)
Proceeds from sale of equity method investment in a joint venture	17,995	—	—
Investment in equity method investees	(26,256)	(7,424)	(4,900)
Purchases of available-for-sale securities	(45,217)	(14,008)	(4,450)
Sales and maturities of available-for-sale securities	29,846	5,266	10,118
Other	646	(587)	(573)
Net cash from investing activities	**(180,842)**	**(45,852)**	**(148,631)**
Cash flows from financing activities:			
Borrowings under our U.S. revolving credit facility	205,600	—	—
Repayments of our U.S. revolving credit facility	(195,800)	—	—
Borrowings under our foreign revolving credit facilities	5,674	—	—
Repayments of our foreign revolving credit facilities	(20,248)	(1,080)	(4,538)
Payment of debt issuance costs	—	—	2,967
Net transfers from our former Parent	—	80,589	213,137
Repurchase of shares of our common stock	(78,410)	(25,408)	—
Other	(246)	(491)	100
Net cash from financing activities	**(83,430)**	**53,610**	**211,666**
Effects of exchange rate changes on cash	(7,306)	(6,407)	(12,573)
Cash flow from continuing operations	**(269,305)**	**171,750**	**26,238**
Cash flows from discontinued operations:			
Operating cash flows from discontinued operations, net	—	(25,194)	(191)
Investing cash flows from discontinued operations, net	—	(23)	(1,729)
Effects of exchange rate changes on cash	—	—	3,023
Net cash flows from discontinued operations	—	(25,217)	1,103

Net increase (decrease) in cash and equivalents	(269,305)	146,533	27,341
Cash and equivalents, beginning of period	365,192	218,659	191,318
Cash and equivalents, end of period	**$ 95,887**	**$ 365,192**	**$ 218,659**

See accompanying notes to consolidated and combined financial statements.

BABCOCK & WILCOX ENTERPRISES, INC.
NOTES TO CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS
DECEMBER 31, 2016

NOTE 1 – BASIS OF PRESENTATION

Babcock & Wilcox Enterprises, Inc. ("B&W", "we", "us" or "our") operates in three business segments and was wholly owned by The Babcock & Wilcox Company ("BWC" or the "former Parent") until June 30, 2015 when BWC distributed 100% of our outstanding common stock to the BWC shareholders through a tax-free spin-off transaction (the "spin-off"). BWC is now known as BWX Technologies, Inc.

We have presented our 2016 consolidated financial statements and our 2015 and 2014 consolidated and combined financial statements in United States dollars in accordance with accounting principles generally accepted in the United States ("GAAP"). We use the equity method to account for investments in entities that we do not control, but over which we have the ability to exercise significant influence. We generally refer to these entities as "joint ventures." We have eliminated all intercompany transactions and accounts. We present the notes to our financial statements on the basis of continuing operations, unless otherwise stated.

On June 8, 2015, BWC's board of directors approved the spin-off of B&W through the distribution of shares of B&W common stock to holders of BWC common stock (the "spin-off"). On June 30, 2015, B&W became a separate publicly-traded company, and BWC did not retain any ownership interest in B&W. On and prior to June 30, 2015 our operating results and cash flows consisted of The Power Generation Operations of BWC ("BW PGG"), which represented a combined reporting entity comprised of the assets and liabilities in managing and operating the Power Generation segment of BWC, combined with related captive insurance operations that were contributed in connection with the spin-off by BWC to B&W. In addition, BW PGG also included certain assets and liabilities of BWC's Nuclear Energy ("NE") segment that were transferred to BWC. We have treated the assets, liabilities, operating results and cash flows of the NE business as a discontinued operation in our consolidated and combined financial statements. See Note 26 for further information.

Through June 30, 2015, certain corporate and general and administrative expenses, including those related to executive management, tax, accounting, legal, information technology, treasury services, and certain employee benefits, have been allocated by BWC to us to reflect all costs of doing business related to these operations in the financial statements, including expenses incurred by related entities on our behalf. The majority of these allocations of management and support services costs are based on specific identification methods such as direct usage and level of effort. The remainder is allocated on the basis of a three-factor formula that considered proportional revenue generated, payroll and fixed assets. Management believes such allocations are reasonable. However, the associated expenses reflected in the accompanying consolidated and combined statements of operations may not be indicative of the actual expenses that would have been incurred had we been operating as an independent public company for the periods presented. Following the spin-off from BWC, we have been performing these functions using internal resources or purchased services, certain of which have been provided by BWC pursuant to a transition services agreement. Refer to Note 25 for a detailed description of transactions with other affiliates of BWC.

Our consolidated financial statements through December 31, 2016 exclude the results of Universal Acoustic & Emission Technologies, Inc. ("Universal"), which we acquired on January 11, 2017. See Note 30 to for additional information.

NOTE 2 - SIGNIFICANT ACCOUNTING POLICIES

Reportable segments

We operate in three reportable segments. Our reportable segments are as follows:

- *Power segment*: Focused on the supply of and aftermarket services for steam-generating, environmental, and auxiliary equipment for power generation and other industrial applications.
- *Renewable segment*: Focused on the supply of steam-generating systems, environmental and auxiliary equipment for the waste-to-energy and biomass power generation industries.
- *Industrial segment*: Focused on custom-engineered cooling, environmental, and other industrial equipment along with related aftermarket services.

For financial information about our segments see Note 5 to our consolidated and combined financial statements.

Use of estimates

We use estimates and assumptions to prepare our financial statements in conformity with GAAP. Some of our more significant estimates include our estimate of costs to complete long-term construction contracts, estimates of costs to be incurred to satisfy contractual warranty requirements, estimates of the value of acquired intangible assets and estimates we make in selecting assumptions related to the valuations of our pension and postretirement plans, including the selection of our discount rates, mortality and expected rates of return on our pension plan assets. These estimates and assumptions affect the amounts we report in our financial statements and accompanying notes. Our actual results could differ from these estimates. Variances could result in a material effect on our financial condition and results of operations in future periods.

Earnings per share

We have computed earnings per common share on the basis of the weighted average number of common shares, and, where dilutive, common share equivalents, outstanding during the indicated periods. We have a number of forms of stock-based compensation, including incentive and non-qualified stock options, restricted stock, restricted stock units, performance shares and performance units, subject to satisfaction of specific performance goals. We include the shares applicable to these plans in dilutive earnings per share when related performance criteria have been met.

Investments

Our investments, primarily highly liquid money market instruments, are classified as available-for-sale and are carried at fair value, with the unrealized gains and losses, net of tax, reported as a component of accumulated other comprehensive income (loss). We classify investments available for current operations in the consolidated balance sheets as current assets, while we classify investments held for long-term purposes as noncurrent assets. We adjust the amortized cost of debt securities for amortization of premiums and accretion of discounts to maturity. That amortization is included in interest income. We include realized gains and losses on our investments in other - net in our consolidated and combined statements of operations. The cost of securities sold is based on the specific identification method. We include interest on securities in interest income.

Foreign currency translation

We translate assets and liabilities of our foreign operations into United States dollars at current exchange rates, and we translate items in our statement of operations at average exchange rates for the periods presented. We record adjustments resulting from the translation of foreign currency financial statements as a component of accumulated other comprehensive income (loss). We report foreign currency transaction gains and losses in income. We have included in other - net transaction gains (losses) of $(5.4) million , $(0.1) million and $1.8 million in the years ended December 31, 2016 , 2015 and 2014 , respectively.

Contracts and revenue recognition

We generally recognize contract revenues and related costs on a percentage-of-completion method for individual contracts or combinations of contracts based on work performed, man hours or a cost-to-cost method, as applicable to the product or activity involved. We recognize estimated contract revenue and resulting income based on the measurement of the extent of progress completion as a percentage of the total project. Certain costs may be excluded from the cost-to-cost method of measuring progress, such as significant costs for materials and major third-party subcontractors, if it appears that such exclusion would result in a more meaningful measurement of actual contract progress and resulting periodic allocation of income. We include revenues and related costs so recorded, plus accumulated contract costs that exceed amounts invoiced to customers under the terms of the contracts, in contracts in progress. We include in advance billings on contracts billings that exceed accumulated contract costs and revenues and costs recognized under the percentage-of-completion method. Most long-term contracts contain provisions for progress payments. Our unbilled receivables do not contain an allowance for credit losses as we expect to invoice customers and collect all amounts for unbilled revenues. We review contract price and cost estimates periodically as the work progresses and reflect adjustments proportionate to the percentage-of-completion in income in the period when those estimates are revised. For all contracts, if a current estimate of total contract cost indicates a loss on a contract, the projected contract loss is recognized in full in the statement of operations and an accrual for the estimated loss on the uncompleted contract is included in other current liabilities in the balance sheet. In addition, when we determine that an uncompleted contract will not be completed on-time and the contract has liquidated damages provisions,

we recognize the estimated liquidated damages we will incur and record them as a reduction of revenue in the period the change in estimate occurs.

For contracts as to which we are unable to estimate the final profitability except to assure that no loss will ultimately be incurred, we recognize equal amounts of revenue and cost until the final results can be estimated more precisely. For these deferred profit recognition contracts, we recognize revenue and cost equally and only recognize gross margin when probable and reasonably estimable, which we generally determine to be when the contract is approximately 70% complete. We treat long-term construction contracts that contain such a level of risk and uncertainty that estimation of the final outcome is impractical, except to assure that no loss will be incurred, as deferred profit recognition contracts.

As of December 31, 2016 , we have estimated the costs to complete all of our in-process contracts in order to estimate revenues in accordance with the percentage-of-completion method of accounting. However, it is possible that current estimates could change due to unforeseen events, which could result in adjustments to overall contract costs. The risk on fixed-priced contracts is that revenue from the customer does not cover increases in our costs. It is possible that current estimates could materially change for various reasons, including, but not limited to, fluctuations in forecasted labor productivity or steel and other raw material prices. Increases in costs on our fixed-price contracts could have a material adverse impact on our consolidated financial condition, results of operations and cash flows. Alternatively, reductions in overall contract costs at completion could materially improve our consolidated financial condition, results of operations and cash flows. Variations from estimated contract performance could result in material adjustments to operating results for any fiscal quarter or year.

We recognize accrued claims in contract revenues for extra work or changes in scope of work to the extent of costs incurred when we believe the following accounting criteria have been met:

a) The contract or other evidence provides a legal basis for the claim; or a legal opinion has been obtained, stating that under the circumstances there is a reasonable basis to support the claim.
b) Additional costs are caused by circumstances that were unforeseen at the contract date and are not the result of deficiencies in the contractor's performance.
c) Costs associated with the claim are identifiable or otherwise determinable and are reasonable in view of the work performed.
d) The evidence supporting the claim is objective and verifiable, not based on unsupported representations.

Warranty expense

We accrue estimated expense included in cost of operations on our consolidated and combined statements of operations to satisfy contractual warranty requirements when we recognize the associated revenues on the related contracts. In addition, we record specific provisions or reductions where we expect the actual warranty costs to significantly differ from the accrued estimates. Such changes could have a material effect on our consolidated financial condition, results of operations and cash flows.

Research and development

Our research and development activities are related to the development and improvement of new and existing products, services and equipment. Research and development activities totaled $10.4 million , $16.5 million and $18.5 million in the years ended December 31, 2016 , 2015 and 2014 , respectively.

In the twelve months ended December 31, 2015, we recognized a $14.6 million impairment charge primarily related to research and development facilities and equipment dedicated to activities that were determined not to be commercially viable. The impairment is included in losses on asset disposals and impairments in the consolidated and combined statements of operations.

Pension plans and postretirement benefits

We sponsor various defined benefit pension and postretirement plans covering certain employees of our United States and international subsidiaries. We utilize actuarial valuations to calculate the cost and benefit obligations of our pension and postretirement benefits. The actuarial valuations utilize significant assumptions in the determination of our benefit cost and

obligations, including assumptions regarding discount rates, expected returns on plan assets, mortality and health care cost trends.

We determine our discount rate based on a review of published financial data and discussions with our actuary regarding rates of return on high-quality, fixed-income investments currently available and expected to be available during the period to maturity of our pension and postretirement plan obligations. In 2016, we changed our approach to developing the discount rate from a single equivalent discount rate to an alternative spot rate method. This new method was adopted because it more accurately applies each year's spot rates to the projected cash flows. This change in estimate was applied prospectively in developing our annual discount rate, which resulted in a lower interest and service cost during 2016.

In 2014, we adjusted our mortality assumption to reflect mortality improvements identified by the Society of Actuaries, adjusted for our experience. The impact of the change in this assumption caused a $46.9 million increase in our pension liability. The expected rate of return on plan assets assumption is based on capital market assumptions of the long-term expected returns for the investment mix of assets currently in the portfolio. The expected rate of return on plan assets is determined to be the weighted average of the nominal returns based on the weightings of the classes within the total asset portfolio. Expected health care cost trends represent expected annual rates of change in the cost of health care benefits and are estimated based on analysis of health care cost inflation.

The components of benefit cost related to service cost, interest cost, expected return on plan assets and prior service cost amortization are recorded on a quarterly basis based on actuarial assumptions. In the fourth quarter of each year, or as interim remeasurements are required, we recognize net actuarial gains and losses into earnings as a component of net periodic benefit cost (mark to market adjustment). Recognized net actuarial gains and losses consist primarily of our reported actuarial gains and losses and the difference between the actual return on plan assets and the expected return on plan assets.

We recognize the funded status of each plan as either an asset or a liability in the consolidated balance sheets. The funded status is the difference between the fair value of plan assets and the present value of its benefit obligation, determined on a plan-by-plan basis. See Note 18 for a detailed description of our plan assets.

Income taxes

Income tax expense for federal, foreign, state and local income taxes are calculated on pre-tax income based on current tax law and includes the cumulative effect of any changes in tax rates from those used previously in determining deferred tax assets and liabilities. We record a valuation allowance to reduce our deferred tax assets to the amount that is more likely than not to be realized. We assess deferred taxes and the adequacy of the valuation allowance on a quarterly basis. In the ordinary course of business there is inherent uncertainty in quantifying our income tax positions. We assess our income tax positions and record tax benefits for all years subject to examination based upon management's evaluation of the facts, circumstances and information available at the reporting date. For those tax positions where it is more likely than not that a tax benefit will be sustained, we have recorded the largest amount of tax benefit with a greater than 50% likelihood of being realized upon ultimate settlement with a taxing authority that has full knowledge of all relevant information. For those income tax positions where it is not more likely than not that a tax benefit will be sustained, no tax benefit has been recognized in the financial statements. We record interest and penalties (net of any applicable tax benefit) related to income taxes as a component of provision for income taxes on our consolidated and combined statements of operations.

Cash and cash equivalents and restricted cash

Our cash equivalents are highly liquid investments, with maturities of three months or less when we purchase them.

Trade accounts receivable and allowance for doubtful accounts

Our trade accounts receivable balance is stated at the amount owed by our customers, net of allowances for estimated uncollectible balances. We maintain allowances for doubtful accounts for estimated losses expected to result from the inability of our customers to make required payments. These estimates are based on management's evaluation of the ability of customers to make payments, with emphasis on historical remittance experience, known customer financial difficulties and the age of receivable balances. Accounts receivable are charged to the allowance when it is determined they are no longer collectible. Our allowance for doubtful accounts was $9.4 million and $6.3 million at December 31, 2016 and 2015, respectively. Amounts charged to selling, general and administrative expenses or deducted from the allowance were not significant to our statement of operations in the years ended December 31, 2016 , 2015 and 2014 .

Inventories

We carry our inventories at the lower of cost or market. We determine cost principally on the first-in, first-out basis, except for certain materials inventories of our Power segment, for which we use the last-in, first-out ("LIFO") method. We determined the cost of approximately 18% and 20% of our total inventories using the LIFO method at December 31, 2016 and 2015 , respectively, and our total LIFO reserve at December 31, 2016 and 2015 was approximately $7.0 million and $7.7 million , respectively. The components of inventories can be found in Note 13 .

Property, plant and equipment

We carry our property, plant and equipment at depreciated cost, less any impairment provisions. We depreciate our property, plant and equipment using the straight-line method over estimated economic useful lives of eight to 33 years for buildings and three to 28 years for machinery and equipment. Our depreciation expense was $19.7 million , $23.5 million and $22.3 million for the years ended December 31, 2016 , 2015 and 2014 , respectively. We expense the costs of maintenance, repairs and renewals that do not materially prolong the useful life of an asset as we incur them.

Investments in unconsolidated affiliates

We use the equity method of accounting for affiliates in which we are able to exert significant influence. Currently, substantially all of our material investments in affiliates that are not consolidated are recorded using the equity method. Affiliates in which our investment ownership is less than 20% and where we are unable to exert significant influence are carried at cost.

Goodwill

Goodwill represents the excess of the cost of our acquired businesses over the fair value of the net assets acquired. We perform testing of goodwill for impairment annually. We may elect to perform a qualitative test when we believe that there is sufficient excess fair value over carrying value based on our most recent quantitative assessment, adjusted for relevant events and circumstances that could affect fair value during the current year. If we conclude based on this assessment that it is more likely than not that the reporting unit is not impaired, we do not perform a quantitative impairment test. In all other circumstances, we utilize a two-step quantitative impairment test to identify potential goodwill impairment and measure the amount of any goodwill impairment. The first step of the test compares the fair value of a reporting unit with its carrying amount, including goodwill. If the carrying amount of a reporting unit exceeds its fair value, the second step of the goodwill impairment test is performed to measure the amount of the impairment loss, if any. The second step compares the implied fair value of the reporting unit's goodwill with the carrying amount of that goodwill.

Intangible assets

Intangible assets are recognized at fair value when acquired. Intangible assets with definite lives are amortized to operating expense using the straight-line method over their estimated useful lives and tested for impairment when events or changes in circumstances indicate that their carrying amounts may not be recoverable. Intangible assets with indefinite lives are not amortized and are subject to annual impairment testing. We may elect to perform a qualitative assessment when testing indefinite lived intangible assets for impairment to determine whether events or circumstances affecting significant inputs related to the most recent quantitative evaluation have occurred, indicating that it is more likely than not that the indefinite lived intangible asset is impaired. Otherwise, we test indefinite lived intangible assets for impairment by quantitatively determining the fair value of the indefinite lived intangible asset and comparing the fair value of the intangible asset to its carrying amount. If the carrying amount of the intangible asset exceeds its fair value, we recognize impairment for the amount of the difference.

Derivative financial instruments

Our global operations expose us to changes in foreign currency exchange ("FX") rates. We use derivative financial instruments, primarily FX forward contracts, to reduce the impact of changes in FX rates on our operating results. We use these instruments primarily to hedge our exposure associated with revenues or costs on our long-term contracts that are denominated in currencies other than our operating entities' functional currencies. We do not hold or issue derivative financial instruments for trading or other speculative purposes.

We enter into derivative financial instruments primarily as hedges of certain firm purchase and sale commitments denominated in foreign currencies. We record these contracts at fair value on our consolidated balance sheets and defer the related gains and losses in stockholders' equity as a component of accumulated other comprehensive income (loss) until the hedged item is recognized in earnings. Any ineffective portion of a derivative's change in fair value and any portion excluded from the assessment of effectiveness is immediately recognized in other – net on our consolidated and combined statements of operations. The gain or loss on a derivative instrument not designated as a hedging instrument is also immediately recognized in earnings. Gains and losses on derivative financial instruments that require immediate recognition are included as a component of other – net in our consolidated and combined statements of operations.

Self-insurance

We have a wholly owned insurance subsidiary that provides employer's liability, general and automotive liability and workers' compensation insurance and, from time to time, builder's risk insurance (within certain limits) to our companies. We may also, in the future, have this insurance subsidiary accept other risks that we cannot or do not wish to transfer to outside insurance companies. Included in other liabilities on our consolidated balance sheets are reserves for self-insurance totaling $24.1 million at each of the years ended December 31, 2016 and 2015 .

Loss contingencies

We estimate liabilities for loss contingencies when it is probable that a liability has been incurred and the amount of loss is reasonably estimable. We provide disclosure when there is a reasonable possibility that the ultimate loss will exceed the recorded provision or if such probable loss is not reasonably estimable. We are currently involved in some significant litigation, as discussed in Note 20 . Our losses are typically resolved over long periods of time and are often difficult to assess and estimate due to, among other reasons, the possibility of multiple actions by third parties; the attribution of damages, if any, among multiple defendants; plaintiffs, in most cases involving personal injury claims, do not specify the amount of damages claimed; the discovery process may take multiple years to complete; during the litigation process, it is common to have multiple complex unresolved procedural and substantive issues; the potential availability of insurance and indemnity coverages; the wide-ranging outcomes reached in similar cases, including the variety of damages awarded; the likelihood of settlements for *de minimus* amounts prior to trial; the likelihood of success at trial; and the likelihood of success on appeal. Consequently, it is possible future earnings could be affected by changes in our assessments of the probability that a loss has been incurred in a material pending litigation against us and/or changes in our estimates related to such matters.

Stock-based compensation

We expense stock-based compensation in accordance with Financial Accounting Standards Board ("FASB") Topic *Compensation – Stock C ompensation*. Under this topic, the fair value of equity-classified awards, such as restricted stock, performance shares and stock options, is determined on the date of grant and is not remeasured. The fair value of liability-classified awards, such as cash-settled stock appreciation rights, restricted stock units and performance units, is determined on the date of grant and is remeasured at the end of each reporting period through the date of settlement. Grant date fair values for restricted stock, restricted stock units, performance shares and performance units are determined using the closing price of our common stock on the date of grant. Grant date fair values for stock options and stock appreciation rights are determined using a Black-Scholes option-pricing model ("Black-Scholes"). For performance shares or units granted in the year ended December 31, 2016 that contain a Relative Total Shareholder Return vesting criteria, we utilize a Monte Carlo simulation to determine the grant date fair value, which determines the probability of satisfying the market condition included in the award. The determination of the fair value of a share-based payment award using an option-pricing model requires the input of significant assumptions, such as the expected life of the award and stock price volatility.

Under the provisions of this FASB topic, we recognize expense, net of an estimated forfeiture rate, for all share-based awards granted on a straight-line basis over the requisite service periods of the awards, which is generally equivalent to the vesting term. This topic requires compensation expense to be recognized, net of an estimate for forfeitures, such that compensation expense is recorded only for those awards expected to vest. We review the estimate for forfeitures periodically and record any adjustments deemed necessary for each reporting period. If our actual forfeiture rate is materially different from our estimate, the stock-based compensation expense could be significantly different from what we have recorded in the current period.

Additionally, this FASB topic amended FASB Topic *Statement of Cash Flows* , to require excess tax benefits to be reported as a financing cash flow, rather than as a reduction of taxes paid. These excess tax benefits result from tax deductions in excess of the cumulative compensation expense recognized for options exercised and other equity-classified awards.

See Note 9 for a further discussion of stock-based compensation.

Recently adopted accounting standards

During the year ended December 31, 2016 , we adopted ASU 2015-16, *Business Combinations (Topic 850), Simplifying the Accounting for Measurement-Period Adjustments* , which simplified the accounting for adjustments made to provisional amounts during the measurement period as part of a business combination. United States GAAP previously required the acquirer in a business combination retrospectively adjust the provisional amounts recognized at the acquisition date during a measurement period. With this new standard, retrospective adjustments to provisional purchase price allocations are no longer be required. In the accompanying consolidated and combined financial statements, adjustments to the provisional SPIG S.p.A. purchase price allocation at September 30, 2016 were reflected in the financial statements as of December 31, 2016.

On December 31, 2016 , we adopted ASU 2014-15, *Presentation of Financial Statements – Going Concern (Subtopic 205-40), Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* . With this new standard, we are required to determine every interim and annual period whether conditions or events exist that raise substantial doubt about our ability to continue as a going concern within one year after the date the financial statements are issued. If we indicate that it is probable B&W will not be able to meet its obligations as they become due within the assessment period, then we must evaluate whether it is probable that plans to mitigate those factors will alleviate that substantial doubt. Based on our going concern evaluation, we believe it is probable that B&W will be able to meet its obligations as they become due within one year after February 28, 2017.

NOTE 3 – EARNINGS PER SHARE

On June 30, 2015, 53,719,878 shares of our common stock were distributed to BWC shareholders to complete our spin-off transaction. The basic and diluted weighted average shares outstanding were based on the weighted average number of BWC common shares outstanding for the period ending June 30, 2015, adjusted for a distribution ratio of one share of B&W common stock for every two shares of BWC common stock.

The following table sets forth the computation of basic and diluted earnings per share of our common stock:

(in thousands, except per share amounts)	Year Ended December 31, 2016	2015	2014
Income (loss) from continuing operations	$ (115,649)	$ 16,338	$ (12,256)
Income (loss) from discontinued operations, net of tax	—	2,803	(14,272)
Net income (loss) attributable to shareholders	$ (115,649)	$ 19,141	$ (26,528)
Weighted average shares used to calculate basic earnings per share	50,129	53,487	54,239
Dilutive effect of stock options, restricted stock and performance shares [1]	—	222	—
Weighted average shares used to calculate diluted earnings per share	50,129	53,709	54,239
Basic earnings (loss) per share:			
Continuing operations	$ (2.31)	$ 0.31	$ (0.23)
Discontinued operations	—	0.05	(0.26)
Basic earnings (loss) per share	$ (2.31)	$ 0.36	$ (0.49)
Diluted earnings (loss) per share:			
Continuing operations	$ (2.31)	$ 0.30	$ (0.23)
Discontinued operations	—	0.06	(0.26)
Diluted earnings (loss) per share	$ (2.31)	$ 0.36	$ (0.49)

[1] Because we incurred a net loss in 2016, basic and diluted shares are the same. If we had net income in 2016, diluted shares would include an additional 0.5 million shares, and would exclude 3.4 million shares related to stock options because their effect would have been anti-dilutive. At December 31, 2015, we excluded from the diluted share calculation 1.3 million shares related to stock options, as their effect would have been anti-dilutive.

NOTE 4 – SPIG ACQUISITION

On July 1, 2016, we acquired all of the outstanding stock of SPIG S.p.A. ("SPIG") for €155 million (approximately $172.1 million) in an all-cash transaction, which was subject to post-closing adjustments. During September 2016, €2.6 million (approximately $2.9 million) of the transaction price was returned to B&W based on the difference between the actual working capital and pre-close estimates. Transaction costs included in the purchase price associated with closing the acquisition of SPIG on July 1, 2016 were approximately $0.3 million .

Based in Arona, Italy, SPIG is a global provider of custom-engineered comprehensive dry and wet cooling solutions and aftermarket services to the power generation industry including natural gas-fired and renewable energy power plants, as well as downstream oil and gas, petrochemical and other industrial end markets. The acquisition of SPIG is consistent with B&W's goal to grow and diversify its technology-based offerings with new products and services in the industrial markets that are complementary to our core businesses. In the year ended December 31, 2016 , SPIG contributed $96.3 million of revenue and $7.8 million of gross profit to the Industrial segment.

We accounted for the SPIG acquisition using the acquisition method. All of the assets acquired and liabilities assumed were recognized at their estimated fair value as of the acquisition date. Any excess of the purchase price over the estimated fair values of the net assets acquired was recorded as goodwill. Several valuation methods were used to determine the fair value of the assets acquired and liabilities assumed. For intangible assets, we used the income method, which required us to forecast the expected future net cash flows for each intangible asset. These cash flows were then adjusted to present value by applying an appropriate discount rate that reflects the risk factors associated with the projected cash flows. Some of the more significant estimates and assumptions inherent in the income method include the amount and timing of projected future cash flows, the discount rate selected to measure the risks inherent in the future cash flows and the assessment of the asset's economic life and the competitive trends impacting the asset, including consideration of any technical, legal, regulatory or

economic barriers to entry. Determining the useful life of an intangible asset also required judgment as different types of intangible assets will have different useful lives, or indefinite useful lives.

The allocation of the purchase price, based on the estimated fair value of assets acquired and liabilities assumed, is detailed below.

(in thousands)	Estimated Acquisition Date Fair Value
Cash	$ 25,994
Accounts receivable	58,843
Contracts in progress	61,155
Inventories	2,554
Other assets	7,341
Property, plant and equipment	6,104
Goodwill	72,401
Identifiable intangible assets	55,164
Deferred income tax assets	5,550
Revolving debt	(27,530)
Current liabilities	(56,323)
Advance billings on contracts	(15,226)
Other noncurrent liabilities	(379)
Deferred income tax liabilities	(17,120)
Noncontrolling interest in joint venture	(7,754)
Net acquisition cost	$ 170,774

We finalized the purchase price allocation as of December 31, 2016, which resulted in a $2.5 million increase in goodwill. The goodwill arising from the purchase price allocation of the SPIG acquisition is believed to be a result of the synergies created from combining its operations with B&W's, and the growth it can provide from its wide scope of engineered cooling and service offerings and customer base. None of this goodwill is expected to be deductible for tax purposes.

The intangible assets included above consist of the following (dollar amount in thousands):

(in thousands)	Estimated Fair Value	Weighted Average Estimated Useful Life (in Years)
Customer relationships	$ 12,217	9
Backlog	17,769	2
Trade names / trademarks	8,885	20
Technology	14,438	10
Non-compete agreements	1,666	3
Internally-developed software	189	3
Total amortizable intangible assets	$ 55,164	

The acquisition of SPIG added $13.3 million of intangible asset amortization expense during the year ended December 31, 2016. Amortization of intangible assets is not allocated to segment results.

Approximately $3.5 million of acquisition and integration related costs of SPIG was recorded as selling, general and administrative expenses in the consolidated and combined statement of operations for the year ended December 31, 2016, respectively.

The following unaudited pro forma financial information below represents our results of operations for years ended December 31, 2016 and 2015 had the SPIG acquisition occurred on January 1, 2015. The unaudited pro forma financial information below is not intended to represent or be indicative of our actual consolidated results had we completed the

acquisition at January 1, 2015. This information should not be taken as representative of our future consolidated results of operations.

	Year Ended December 31,	
(in thousands)	2016	2015
Revenues	$ 1,663,126	$ 1,941,987
Net income (loss) attributable to B&W	(111,500)	12,047
Basic earnings per common share	(2.22)	0.23
Diluted earnings per common share	(2.22)	0.22

The unaudited pro forma results included in the table above reflect the following pre-tax adjustments to our historical results:

- A net increase (decrease) in amortization expense related to timing of amortization of the fair value of identifiable intangible assets acquired of $6.5 million and $18.6 million in the years ended December 31, 2016 and 2015 , respectively.
- Elimination of the historical interest expense recognized by SPIG of $0.5 million and $0.7 million in the years ended ended December 31, 2016 and 2015 , respectively.
- Elimination of $3.5 million and $0.2 million in transaction related costs recognized in the years ended December 31, 2016 and 2015 , respectively.

NOTE 5 – SEGMENT REPORTING

Our operations are assessed based on three reportable segments, which changed beginning in the third quarter of 2016 with the purchase of SPIG as described in Note 4 . Segment results for prior periods have been restated for comparative purposes.

- *Power segment :* Focused on the supply of and aftermarket services for steam-generating, environmental, and auxiliary equipment for power generation and other industrial applications.
- *Renewable segment :* Focused on the supply of steam-generating systems, environmental and auxiliary equipment for the waste-to-energy and biomass power generation industries.
- *Industrial segment :* Focused on custom-engineered cooling, environmental, and other industrial equipment along with related aftermarket services.

An analysis of our operations by segment is as follows:

(in thousands)	Year Ended December 31, 2016	2015	2014
REVENUES			
Power segment			
Retrofits & continuous emissions monitoring systems	$ 392,854	$ 427,378	$ 323,623
New build utility and environmental	292,302	403,981	343,956
Aftermarket parts and field engineering services	292,535	304,923	349,398
Industrial steam generation	107,267	219,379	208,229
Eliminations	(109,480)	(120,664)	(68,627)
	975,478	1,234,997	1,156,579
Renewable segment			
Renewable new build and services	284,684	277,326	171,004
Operations and maintenance	65,814	63,437	57,977
Eliminations	(1,326)	(2,160)	(4,949)
	349,172	338,603	224,032
Industrial segment			
Industrial aftermarket parts and services	81,690	61,350	35,290
Environmental solutions	74,726	90,343	48,938
Cooling systems	73,797	—	—
Engineered products	23,400	32,002	21,190
	253,613	183,695	105,418
	$ 1,578,263	$ 1,757,295	$ 1,486,029

The segment information presented in the table above reflects the product line revenues that are reviewed by each segment's manager. These gross product line revenues exclude any eliminations of revenues generated from sales to other segments or to other product lines within the segment. The primary component of the Power segment elimination is revenue associated with construction serv ices.

(in thousands)	Year Ended December 31, 2016	2015	2014
GROSS PROFIT:			
Power segment	$ 233,550	$ 247,632	$ 237,491
Renewable segment	(68,109)	57,682	53,449
Industrial segment	50,726	54,826	30,400
Intangible asset amortization expense included in cost of operations	(15,842)	(7,676)	(7,501)
Mark to market loss included in cost of operations	(21,208)	(44,307)	(94,806)
	179,117	308,157	219,033
Selling, general and administrative expenses	(240,166)	(240,296)	(215,379)
Restructuring activities and spin-off transaction costs	(40,807)	(14,946)	(20,183)
Equity in income (loss) of investees	16,440	(242)	8,681
Research and development costs	(10,406)	(16,543)	(18,483)
Intangible asset amortization expense included in SG&A	(4,081)	(3,769)	(2,659)
Mark to market (loss) gain included in SG&A	(2,902)	4,097	(7,233)
Gains (losses) on asset disposals and impairments, net	32	(14,597)	(1,752)
Operating income (loss)	$ (102,773)	$ 21,861	$ (37,975)

(in thousands)	Year Ended December 31, 2016	2015	2014
DEPRECIATION AND AMORTIZATION			
Power segment	$ 11,231	$ 18,532	$ 21,561
Renewable segment	2,711	2,567	2,809
Industrial segment	19,073	10,345	8,066
Segment depreciation and amortization	33,015	31,444	32,436
Corporate	6,568	3,488	—
Total depreciation and amortization	$ 39,583	$ 34,932	$ 32,436

We do not separately identify or report our Company's asset by segment as the majority of our assets are shared by the Power and Renewable segments. Additionally, our chief operating decision maker does not consider assets by segment to be a critical measure by which performance is measured.

Information about our consolidated operations in different geographic areas

(in thousands)	Year Ended December 31, 2016	2015	2014
REVENUES [1]			
United States	$ 851,955	$ 1,034,653	$ 934,397
United Kingdom	201,221	126,285	61,972
Canada	74,629	134,276	136,382
Denmark	54,722	116,064	65,436
Vietnam	55,265	46,803	3,829
South Korea	44,660	4,358	14,149
Egypt	35,878	—	—
China	33,898	41,921	53,005
Germany	29,559	19,233	22,792
Sweden	24,809	18,302	29,786
Dominican Republic	21,366	82,916	27,399
Turkey	11,113	—	—
Thailand	8,051	4,606	8,113
Italy	7,862	4,671	3,540
India	6,856	13,108	5,070
Indonesia	6,723	1,730	5,324
Colombia	6,398	4,904	8,037
Finland	5,756	6,113	4,926
Australia	5,729	2,817	2,540
Aggregate of all other countries, each with less than $5 million in revenues	91,813	94,535	99,332
	$ 1,578,263	$ 1,757,295	$ 1,486,029

[1] We allocate geographic revenues based on the location of the customer's operations.

(in thousands)	Year Ended December 31, 2016	2015	2014
NET PROPERTY, PLANT AND EQUIPMENT			
United States	$ 75,368	$ 88,840	$ 82,209
Mexico	22,594	24,643	12,106
China	13,460	13,956	12,356
United Kingdom	6,337	8,070	8,638
Denmark	6,749	6,265	6,963
Aggregate of all other countries, each with less than $5 million of net property, plant and equipment	9,129	3,943	12,965
	$ 133,637	$ 145,717	$ 135,237

NOTE 6 – CONTRACTS AND REVENUE RECOGNITION

We generally recognize revenues and related costs from long-term contracts on a percentage-of-completion basis. Accordingly, we review contract price and cost estimates regularly as work progresses and reflect adjustments in profit proportionate to the percentage of completion in the periods in which we revise estimates to complete the contract. To the extent that these adjustments result in a reduction of previously reported profits from a project, we recognize a charge against current earnings. Changes in the estimated results of our percentage-of-completion contracts are necessarily based on information available at the time that the estimates are made and are based on judgments that are inherently uncertain as they are predictive in nature. As with all estimates to complete used to measure contract revenue and costs, actual results can and do differ from our estimates made over time.

In the years ended December 31, 2016 , 2015 and 2014 , we recognized changes in estimates related to long-term contracts accounted for on the percentage-of-completion basis, which are summarized as follows:

(in thousands)	Year Ended December 31, 2016	2015	2014
Increases in estimates for percentage-of-completion contracts	$ 42,368	$ 36,653	$ 50,565
Decreases in estimates for percentage-of-completion contracts	(149,169)	(36,235)	(24,234)
Net changes in estimates for percentage-of-completion contracts	**$ (106,801)**	**$ 418**	**$ 26,331**

During 2016, we recorded a total of $141.1 million in losses from changes in the estimated revenues and costs to complete renewable energy contracts in Europe, of which $98.1 million were recorded in the fourth quarter of 2016. These 2016 losses include $35.8 million of anticipated liquidated damages that reduced revenue.

As we disclosed in prior reports, we incurred $30.9 million in charges (net of $15.0 million of a probable insurance recovery) due to changes in the estimated cost to complete a contract during the second and third quarters of 2016 related to one European renewable energy project. Additional changes in the fourth quarter of 2016 resulted in $19.4 million of additional charges on this project, and this project adversely impacted other European renewable energy projects due to the limited pool of internal and external resources available for these projects, such as engineering, procurement and construction resources, which in turn caused us to revise downward our estimates with respect to our other European renewable energy projects, including three other projects that became loss contracts. As of December 31, 2016, this project is approximately 88% complete. We continue to expect construction activities to be completed and the unit to be operational in early 2017, with remaining commissioning and turnover activities linked to the customer's operation of the facility through mid-2017. Of the $50.3 million of 2016 charges related to this project, $6.4 million is included in "other accrued liabilities" in our consolidated balance sheet at December 31, 2016. At December 31, 2016, we have also recorded estimated liquidated damages of $3.4 million for this project.

The second project became a loss contract in the fourth quarter of 2016, resulting from a charge of $28.1 million in 2016 ($23.0 million in the fourth quarter). As of December 31, 2016, this second project was approximately 67% complete. We expect this second project to be completed in late-2017. Of the $28.1 million of charges in 2016 related to this second project, $5.1 million is included in "accrued other liabilities" in our consolidated balance sheet at December 31, 2016. At December 31, 2016, we have also recorded estimated liquidated damages of $8.0 million for this second project.

The third project became a loss contract in the fourth quarter of 2016, resulting from $30.1 million of the 2016 charges ($25.2 million in the fourth quarter). As of December 31, 2016, this third project was approximately 82% complete. We expect this third project to be completed in mid-2017. Of the $30.1 million of charges in 2016 related to this third project, $3.9 million is included in "accrued other liabilities" in our consolidated balance sheet at December 31, 2016. At December 31, 2016, we have also recorded estimated liquidated damages of $6.9 million for this third project.

The fourth project became a loss contract in the fourth quarter of 2016, resulting from $16.4 million of the 2016 charges ($16.2 million in the fourth quarter). As of December 31, 2016, this fourth project was approximately 61% complete. We expect this fourth project to be completed in 2018. Of the $16.4 million of charges in 2016 related to this fourth project, $1.6 million is included in "accrued other liabilities" in our consolidated balance sheet at December 31, 2016. At December 31, 2016, we have also recorded estimated liquidated damages of $8.4 million for this fourth project.

We recorded an aggregate of $14.2 million of additional charges in the fourth quarter of 2016 for changes in estimated costs to complete other renewable energy projects. While the charges did not result in any of these other projects becoming loss projects, we expect these changes in estimates to negatively affect our 2017 results of operations by $13.7 million . Accrued liquidated damages associated with these projects total $9.0 million at December 31, 2016.

During 2016, we determined it was probable that we would receive an insurance recovery of approximately $15.0 million for a portion of the losses on the first loss contract described above, which represents the full amount available under the insurance policy. Accordingly, we recognized the insurance recovery as a reduction in costs and recorded the insurance receivable in "accounts receivable - other" in the consolidated balance sheet at December 31, 2016 .

The following represent the components of our contracts in progress and advance billings on contracts included in our consolidated balance sheets:

	December 31,	
(in thousands)	2016	2015
Included in contracts in progress:		
Costs incurred less costs of revenue recognized	$ 96,210	$ 9,966
Revenues recognized less billings to customers	69,800	118,208
Contracts in progress	$ 166,010	$ 128,174
Included in advance billings on contracts:		
Billings to customers less revenues recognized	$ 199,480	$ 221,244
Costs of revenue recognized less cost incurred	11,162	8,146
Advance billings on contracts	$ 210,642	$ 229,390

The following amounts represent retainage on contracts:

	December 31,	
(in thousands)	2016	2015
Retainage expected to be collected within one year	$ 18,843	$ 24,906
Retainage expected to be collected after one year	4,583	5,329
Total retainage	$ 23,426	$ 30,235

We have included retainage expected to be collected in 2017 in "accounts receivable – trade, net." Retainage expected to be collected after one year are included in "other assets." Of the long-term retainage at December 31, 2016 , we anticipate collecting $3.2 million in 2018 and $0.9 million in 2019.

We had no accrued claims receivable balance in our consolidated balance sheets, at December 31, 2016 , and a $2.3 million accrued claims receivable balance at December 31, 2015 .

NOTE 7 – EQUITY METHOD INVESTMENTS

We have investments in entities that we account for using the equity method. Our equity method investees include joint ventures in China and India, each of which manufactures boiler parts, and a joint venture in Australia that sells and services industrial equipment and other project-related joint ventures.

We sold all of our interest in our Australian joint venture, Halley & Mellowes Pty. Ltd. ("HMA"), on December 22, 2016 for $18.0 million , resulting in a gain of $8.3 million .

In the year ended December 31, 2014 , we purchased the remaining outstanding equity of a coal-fired power plant that was previously an equity method investee. Additionally, in the year ended December 31, 2014 , we recognized income from a United States environmental project joint venture. The United States environmental project was substantially completed in 2014 and did not contribute equity income in 2015 .

Our investment in equity method investees was not significantly different from our underlying equity in net assets of those investees based on stated ownership percentages at December 31, 2016 . All of our investments in unconsolidated entities are included in our Power segment.

Our investment in equity method investees includes a $40.6 million investment in a start-up venture in India, Thermax Babcock & Wilcox Energy Solutions Private Limited ("TBWES"), that completed construction of its manufacturing facility intended primarily for new build coal boiler projects in India in 2014. While TBWES has not yet recorded a profit, we have determined that an other-than-temporary-impairment is not present based on the carrying value of its long-lived assets and expected future cash flows. Continuing future losses or changes in the strategy of TBWES or other joint ventures could affect future assessments of other-than-temporary-impairment.

The undistributed earnings of our equity method investees were $59.6 million and $63.4 million at December 31, 2016 and 2015 , respectively. Summarized below is consolidated balance sheet and statement of operations information for investments accounted for under the equity method:

	December 31,	
(in thousands)	2016	2015
Current assets	$ 335,577	$ 446,283
Noncurrent assets	126,958	168,411
Total assets	462,535	614,694
Current liabilities	231,150	314,390
Noncurrent liabilities	40,537	140,349
Owners' equity	190,848	159,955
Total liabilities and equity	$ 462,535	$ 614,694

	Year Ended December 31,		
(in thousands)	2016	2015	2014
Revenues	$ 488,101	$ 475,459	$ 645,481
Gross profit	76,986	69,021	85,378
Income before provision for income taxes	19,529	3,072	22,909
Provision for income taxes	3,715	4,500	6,159
Net income	$ 15,814	$ (1,428)	$ 16,750

The provision for income taxes is based on the tax laws and rates in the countries in which our investees operate. The taxation regimes vary not only by their nominal rates, but also by allowable deductions, credits and other benefits. For some of our United States investees, United States income taxes are the responsibility of the respective owners, which is primarily the reason for the provision for income taxes being low in relation to income before provision for income taxes.

Reconciliation of net income in the statement of operations of our investees to equity in income of investees in our consolidated and combined statements of operations is as follows:

	Year Ended December 31,		
(in thousands)	2016	2015	2014
Equity income based on stated ownership percentages	$ 7,898	$ (542)	$ 8,563
Gain on sale of our interest in HMA	8,324	—	—
All other adjustments due to amortization of basis differences, timing of GAAP adjustments and other adjustments	218	300	118
Equity in income of investees	$ 16,440	$ (242)	$ 8,681

Our transactions with unconsolidated affiliates were as follows:

	Year Ended December 31,		
(in thousands)	2016	2015	2014
Sales to	$ 17,220	$ 18,014	$ 70,566
Purchases from	32,490	45,397	5,623
Dividends received	12,160	20,830	17,407
Capital contributions [1]	26,256	7,424	4,900

[1] Capital contributions includes a $26.3 million contribution in April 2016 to increase our interest in TBWES, our joint venture in India, for the purpose of extinguishing the joint venture's high-interest third-party debt and avoiding the associated future interest cost (our joint venture partner contributed the same amount to TBWES).

Our accounts receivable-other includes receivables from these unconsolidated affiliates of $8.5 million and $7.9 million at December 31, 2016 and 2015 , respectively.

NOTE 8 – RESTRUCTURING ACTIVITIES AND SPIN-OFF TRANSACTION COSTS

2016 Restructuring activities

On June 28, 2016, we announced actions to restructure our power business in advance of significantly lower demand now projected for power generation from coal in the United States. The new organizational structure includes a redesigned work flow to provide an efficient, flexible organization that can adapt to the changing market conditions and volumes. The costs associated with the restructuring activities were $31.4 million in the year ended December 31, 2016 , and were primarily related to employee severance of $14.1 million and non-cash impairment of the long-lived assets at B&W's one coal-fired power plant located in Ebensburg, Pennsylvania of $14.9 million . Other costs associated with the restructuring of $2.4 million are related to organizational realignment of personnel and processes and an increase in valuation allowances associated with our deferred tax assets (see Note 10). The 2016 restructuring activities are expected to allow our business to continue to serve the power market and maintain gross margins, despite the expected decline in volume as a result of the lower projected demand in the US coal-fired power generation market. These restructuring actions are primarily in the Power segment. We expect additional restructuring charges during 2017 of up to $6 million primarily related to office reconfiguration, other facilities costs, consulting and other activities related to the June 28, 2016 restructuring.

Pre-2016 Restructuring activities

Previously announced restructuring initiatives intended to better position us for growth and profitability have primarily been related to facility consolidation and organizational efficiency initiatives. Theses costs were $5.6 million and $11.7 million during the year ended December 31, 2016 and 2015 , respectively. We expect additional restructuring charges of up to $5 million primarily related to facility demolition and consolidation activities, which will take place in during the first half of 2017. The full benefits of the pre-2016 restructuring activities may not be fully achieved based on the lower demand now projected in the coal-fired power generation market.

Restructuring liabilities

Restructuring liabilities are included in other accrued liabilities on our consolidated balance sheets. Activity related to the restructuring liabilities is as follows:

(in thousands)	Year Ended December 31, 2016	2015
Balance at beginning of period	$ 740	$ 5,086
Restructuring expense [1]	21,939	5,014
Payments	(20,426)	(9,360)
Balance at December 31	$ 2,253	$ 740

[1] Excludes charges for long-lived asset impairment of $15.0 million and $6.7 million for the years ended December 31, 2016 and 2015 , respectively. These non-cash charges did not impact the restructuring liability.

At December 31, 2016 and 2015 , the remaining restructuring liabilities relate to employee termination benefits.

Spin-off transaction costs

In the years ended December 31, 2016 and 2015 , we incurred $3.8 million and $3.3 million , respectively, of costs directly related to the spin-off from our former Parent. The costs were primarily attributable to employee retention awards.

NOTE 9 – STOCK-BASED COMPENSATION

2015 Long-Term Incentive Plan of Babcock & Wilcox Enterprises, Inc.

Prior to the spin-off, executive officers, key employees, members of the board of directors and consultants of B&W were eligible to participate in the 2010 Long-Term Incentive Plan of The Babcock & Wilcox Company (the "BWC Plan"). Effective June 30, 2015, executive officers, key employees, members of the board of directors and consultants of B&W are eligible to participate in the 2015 Long-Term Incentive Plan of Babcock & Wilcox Enterprises, Inc. (the "Plan"). The Plan permits grants of nonqualifed stock options, incentive stock options, appreciation rights, restricted stock, restricted stock units, performance shares, performance units, and cash incentive awards. The Plan was amended and restated in 2016 to increase the number of shares available for issuance by 2.5 million shares. The number of shares available for award grants under the Plan, as amended and restated, is 8.3 million , of which 3.3 million million remain available as of December 31, 2016.

In connection with the spin-off, outstanding stock options and restricted stock units granted under the BWC Plan prior to 2015 were replaced with both an adjusted BWC award and a new B&W stock award. These awards, when combined, had terms that were intended to preserve the values of the original awards. Outstanding performance share awards originally issued under the BWC Plan granted prior to 2015 were generally converted into unvested rights to receive the value of deemed target performance in unrestricted shares of a combination of BWC common stock and B&W common stock, determined by reference to the ratio of one share of B&W common stock being distributed for every two shares of BWC common stock in the spin-off, in each case with the same vesting terms as the original awards.

Company stock options

The fair value of each option grant was estimated at the date of grant using Black-Scholes, with the following weighted-average assumptions:

	Year Ended December 31, 2016	2015	2014
Risk-free interest rate	1.14%	1.38%	0.97%
Expected volatility	25%	28%	30%
Expected life of the option in years	3.95	3.96	3.76
Expected dividend yield	—%	—%	1.22%

The risk-free interest rate is based on the implied yield on a United States Treasury zero-coupon issue with a remaining term equal to the expected life of the option. The expected volatility is based on implied volatility from publicly traded options on our common stock, historical volatility of the price of our common stock and other factors. The expected life of the option is based on observed historical patterns. The expected dividend yield is based on the projected annual dividend payment per

share divided by the stock price at the date of grant. This amount is zero in 2016 and 2015 because we did not expect to pay dividends on the dates the 2016 and 2015 stock options were awarded.

The following table summarizes activity for our stock options the year ending December 31, 2016 :

(share data in thousands)	Number of Shares	Weighted-Average Exercise Price	Weighted-Average Remaining Contractual Term (in years)	Aggregate Intrinsic Value (in thousands)
Outstanding at beginning of period	2,360	$ 17.99		
Granted	599	19.03		
Exercised	(141)	16.33		
Cancelled/expired/forfeited	(166)	18.73		
Outstanding at end of period	2,652	$ 18.27	6.52	$ 521.3
Exercisable at end of period	1,269	$ 17.77	4.58	$ 521.3

The aggregate intrinsic value included in the table above represents the total pretax intrinsic value that would have been received by the option holders had all option holders exercised their options on December 31, 2016. The intrinsic value is calculated as the total number of option shares multiplied by the difference between the closing price of our common stock on the last trading day of the period and the exercise price of the options. This amount changes based on the price of our common stock.

The weighted-average fair value of the stock options granted in the years ended December 31, 2016 , 2015 and 2014 , was $4.03 , $4.80 and $7.03 , respectively.

During the years ended December 31, 2016 , 2015 and 2014 , the total intrinsic value of stock options exercised was $0.7 million , $2.3 million and $0.9 million , respectively. The actual tax benefits realized related to the stock options exercised during the year ended December 31, 2016 and 2015 were $0.3 million and not significant, respectively.

Company restricted stock units

Nonvested restricted stock units activity for the year ending December 31, 2016 were as follows:

(share data in thousands)	Number of Shares	Weighted-Average Grant Date Fair Value
Nonvested at beginning of period	999	$ 19.30
Granted	230	18.76
Vested	(407)	19.26
Cancelled/forfeited	(109)	19.29
Nonvested at end of period	712	$ 19.14

The actual tax benefits realized related to the restricted stock units vested during the year ended December 31, 2016 and 2015 were $2.7 million and $1.1 million , respectively.

Company performance-based restricted stock units

During 2016, we granted certain B&W employees performance-based restricted stock units ("PSUs") under the Plan, which include both performance and service conditions. PSU awards vest upon satisfying certain service requirements and B&W financial metrics established by the board of directors. The fair value of each PSU granted was estimated at the date of grant using a Monte Carlo methodology based on market prices and the following weighted-average assumptions:

	Year Ended December 31, 2016
Risk-free interest rate	0.96%
Expected volatility	25%
Expected life of the option in years	2.83
Expected dividend yield	—%

PSU activity for the year ending December 31, 2016 was as follows:

(share data in thousands)	Number of Shares	Weighted-Average Grant Date Fair Value
Nonvested at beginning of period	—	$ —
Granted	493	19.31
Vested	—	—
Cancelled/forfeited	(42)	19.56
Nonvested at end of period	451	$ 19.29

NOTE 10 – PROVISION FOR INCOME TAXES

We are subject to federal income tax in the United States and income tax of multiple state and international jurisdictions. We provide for income taxes based on the tax laws and rates in the jurisdictions in which we conduct our operations. These jurisdictions may have regimes of taxation that vary with respect to both nominal rates and the basis on which these rates are applied. This variation, along with the changes in our mix of income within these jurisdictions, can contribute to shifts in our effective tax rate from period to period.

We are currently under audit by various state and international authorities. With few exceptions, we do not have any returns under examination for years prior to 2010. The United States Internal Revenue Service has completed its examination of the 2010 through 2012 federal tax returns of BWC, and all matters arising from such examination have been resolved.

We apply the provisions of FASB Topic *Income Taxes* regarding the treatment of uncertain tax positions. A reconciliation of unrecognized tax benefits follows:

	Year Ended December 31,		
(in thousands)	2016	2015	2014
Balance at beginning of period	$ 1,141	$ 3,321	$ 1,190
Increases based on tax positions taken in the current year	178	88	213
Increases based on tax positions taken in the prior years	230	248	2,268
Decreases based on tax positions taken in the prior years	—	(1,161)	—
Decreases due to settlements with tax authorities	(665)	(1,355)	(350)
Decreases due to lapse of applicable statute of limitation	—	—	—
Balance at end of period	$ 884	$ 1,141	$ 3,321

Of the $0.9 million balance of unrecognized tax benefits at December 31, 2016, $0.8 million would reduce our effective tax rate if recognized.

We recognize interest and penalties related to unrecognized tax benefits in our provision for income taxes. During the year ended December 31, 2016, we recorded a decrease in our accruals of less than $0.2 million , resulting in recorded liabilities of approximately $0.1 million for the payment of tax-related interest and penalties. At December 31, 2015 and 2014, our recorded liabilities for the payment of tax-related interest and penalties totaled approximately $0.3 million for both years.

It is unlikely that our previously unrecognized tax benefits will change significantly in the next twelve months.

Deferred income taxes reflect the net tax effects of temporary differences between the financial and tax bases of assets and liabilities. Significant components of deferred tax assets and liabilities as of December 31, 2016 and 2015 were as follows:

	December 31,	
(in thousands)	2016	2015
Deferred tax assets:		
Pension liability	$ 105,426	$ 107,748
Accrued warranty expense	11,628	12,589
Accrued vacation pay	4,792	4,482
Accrued liabilities for self-insurance (including postretirement health care benefits)	6,596	14,280
Accrued liabilities for executive and employee incentive compensation	8,334	14,255
Investments in joint ventures and affiliated companies	10,742	14,100
Long-term contracts	10,318	6,963
Accrued Legal Fees	2,110	—
Inventory Reserve	2,445	2,621
Property, plant and equipment	1,587	—
Net operating loss carryforward	33,187	13,544
State tax net operating loss carryforward	15,372	14,409
Foreign tax credit carryforward	3,870	2,378
Other	8,589	6,585
Total deferred tax assets	224,996	213,954
Valuation allowance for deferred tax assets	(40,484)	(10,077)
Net, total deferred tax assets	184,512	203,877
Deferred tax liabilities:		
Long-term contracts	3,601	9,084
Intangibles	21,892	13,158
Property, plant and equipment	—	3,379
Undistributed foreign earnings	500	1,000
Goodwill	1,125	1,167
Other	2,885	1,317
Total deferred tax liabilities	30,003	29,105
Net deferred tax assets	$ 154,509	$ 174,772

At December 31, 2016, we had a valuation allowance of $40.5 million for deferred tax assets, which we expect may not be realized through carrybacks, future reversals of existing taxable temporary differences and estimates of future taxable income. We believe that our remaining deferred tax assets are more likely than not realizable through carrybacks, future reversals of existing taxable temporary differences and estimates of future taxable income. Any changes to our estimated valuation allowance could be material to our consolidated and combined financial statements. The following is an analysis of our valuation allowance for deferred tax assets:

(in thousands)	Beginning balance	Charges to costs and expenses	Charged to other accounts	Ending balance
Year Ended December 31, 2016	$ (10,077)	$ (29,307)	$ (1,100)	$ (40,484)
Year Ended December 31, 2015	(9,216)	(861)	—	(10,077)
Year Ended December 31, 2014	(6,980)	(2,236)	—	(9,216)

We operate in numerous countries that have statutory tax rates below that of the United States federal statutory rate of 35% . The most significant of these foreign operations are located in Canada, Denmark, Germany, Italy, Mexico, Sweden and the United Kingdom with effective tax rates ranging between 20% and approximately 30%. Income before the provision for income taxes was as follows:

	Year Ended December 31,		
(in thousands)	2016	2015	2014
United States	$ 1,280	$ (20,748)	$ (64,084)
Other than the United States	(109,419)	40,953	27,466
Income before provision for income taxes	$ (108,139)	$ 20,205	$ (36,618)

The provision for income taxes consisted of:

	Year Ended December 31,		
(in thousands)	2016	2015	2014
Current:			
United States – federal	$ 284	$ 24,084	$ 1,834
United States – state and local	(415)	3,458	1,544
Other than in the United States	4,504	8,250	13,917
Total current	4,373	35,792	17,295
Deferred:			
United States – Federal	11,512	(35,888)	(32,910)
United States – state and local	6,365	(111)	(572)
Other than in the United States	(15,307)	3,878	(8,541)
Total deferred (benefit) provision	2,570	(32,121)	(42,023)
Provision for income taxes	$ 6,943	$ 3,671	$ (24,728)

The following is a reconciliation of the U.S. statutory federal tax rate (35%) to the consolidated effective tax rate:

	Year Ended December 31,		
	2016	2015	2014
U.S. federal statutory (benefit) rate	35.0 %	35.0 %	35.0 %
State and local income taxes	(3.5)	13.8	4.1
Foreign rate differential	(12.8)	(13.1)	16.6
Tax credits	3.0	(14.7)	7.5
Dividends and deemed dividends from affiliates	(0.2)	1.7	5.7
Valuation allowances	(28.1)	4.3	(6.1)
Uncertain tax positions	0.3	(6.6)	(6.7)
Non-deductible expenses	(1.8)	2.4	(2.4)
Manufacturing deduction	—	(2.5)	11.6
Other	1.7	(2.1)	2.2
Effective tax rate	(6.4)%	18.2 %	67.5 %

We have foreign net operating loss benefits after tax of $23.8 million available to offset future taxable income in foreign jurisdictions. Of the foreign net operating loss benefits, $0.5 million is scheduled to expire in 2017 to 2027 . The remaining net operating loss benefits have unlimited lives. We are carrying a valuation allowance of $17.6 million against the deferred tax asset related to the foreign loss carryforwards.

In 2016, we generated a U.S. federal net operating loss resulting in an after tax benefit of $9.4 million . We expect to fully utilize this net operating loss either through carryback to our former Parent company's tax return or through carryover to future periods. The U.S. federal operating loss will not expire until 2037 . We have foreign tax credit carryovers of $3.9 million . Of this $3.9 million , $1.2 million will expire between 2022 and 2024 . The remaining amount of the foreign tax credit carryover was generated in the current year and will expire in 2027 . We have state net operating loss benefits after tax of $15.4 million available to offset future taxable income in various states. Our state net operating loss carryforwards begin to expire in the year 2017 . We are carrying a valuation allowance of $12.4 million against the deferred tax asset related to the state loss carryforwards.

We would be subject to withholding taxes as well as U.S. income tax if we were to distribute earnings from certain foreign subsidiaries. For the year ended December 31, 2016, the undistributed earnings of these subsidiaries were $278.7 million . Unrecognized deferred income tax liabilities, including withholding taxes, of approximately $33.6 million would be payable upon distribution of these earnings after taking into account any related foreign tax credits. We have provided tax of $0.5 million on earnings we intend to remit. All other earnings are considered permanently reinvested.

NOTE 11 – COMPREHENSIVE INCOME

Gains and losses deferred in accumulated other comprehensive income (loss) ("AOCI") are reclassified and recognized in the consolidated and combined statements of operations once they are realized. The changes in the components of AOCI, net of tax, for the years ended 2016 , 2015 and 2014 were as follows:

(in thousands)	Currency translation gain (loss)	Net unrealized gain (loss) on investments (net of tax)	Net unrealized gain (loss) on derivative instruments	Net unrecognized gain (loss) related to benefit plans (net of tax)	Total
Balance at December 31, 2013	$ 38,446	$ (20)	$ 627	$ (3,677)	$ 35,376
Other comprehensive income (loss) before reclassifications	(26,895)	(2)	(2,360)	3,956	(25,301)
Amounts reclassified from AOCI to net income (loss)	—	—	1,610	(1,311)	299
Net current-period other comprehensive income	(26,895)	(2)	(750)	2,645	(25,002)
Balance at December 31, 2014	11,551	(22)	(123)	(1,032)	10,374
Other comprehensive income (loss) before reclassifications	(19,459)	(49)	339	519	(18,650)
Amounts reclassified from AOCI to net income (loss)	—	27	1,133	(195)	965
Net transfers from parent	(11,585)	—	437	(394)	(11,542)
Net current-period other comprehensive income (loss)	(31,044)	(22)	1,909	(70)	(29,227)
Balance at December 31, 2015	(19,493)	(44)	1,786	(1,102)	(18,853)
Other comprehensive income (loss) before reclassifications	(24,494)	7	2,046	7,692	(14,749)
Amounts reclassified from AOCI to net income (loss)	—	—	(3,030)	150	(2,880)
Net current-period other comprehensive income (loss)	(24,494)	7	(984)	7,842	(17,629)
Balance at December 31, 2016	$ (43,987)	$ (37)	$ 802	$ 6,740	$ (36,482)

The amounts reclassified out of AOCI by component and the affected consolidated and combined statements of operations line items are as follows (in thousands):

AOCI Component	Line Items in the Consolidated and Combined Statements of Operations Affected by Reclassifications from AOCI	Year Ended December 31, 2016	2015	2014
Derivative financial instruments	Revenues	$ 4,624	$ 546	$ (53)
	Cost of operations	195	155	13
	Other-net	(1,221)	(24)	(6)
	Total before tax	3,598	677	(46)
	Provision for income taxes	568	149	(11)
	Net income (loss)	$ 3,030	$ 528	$ (35)
Amortization of prior service cost on benefit obligations	Cost of operations	$ 254	$ (1,475)	$ (457)
	Provision for income taxes	404	(1,168)	(183)
	Net income (loss)	$ (150)	$ (307)	$ (274)
Realized gain on investments	Other-net	$ —	$ (42)	$ —
	Provision for income taxes	—	(15)	—
	Net income (loss)	$ —	$ (27)	$ —

NOTE 12 – CASH AND CASH EQUIVALENTS

The components of cash and cash equivalents are as follows:

(in thousands)	December 31, 2016	December 31, 2015
Held by foreign entities	$ 94,415	$ 221,151
Held by United States entities	1,472	144,041
Cash and cash equivalents	$ 95,887	$ 365,192
Reinsurance reserve requirements	$ 21,189	$ 33,404
Restricted foreign accounts	6,581	3,740
Restricted cash and cash equivalents	$ 27,770	$ 37,144

NOTE 13 – INVENTORIES

The components of inventories are as follows:

(in thousands)	December 31, 2016	December 31, 2015
Raw materials and supplies	$ 61,630	$ 68,684
Work in progress	6,803	7,025
Finished goods	17,374	14,410
Total inventories	$ 85,807	$ 90,119

NOTE 14 – INTANGIBLE ASSETS

Our intangible assets are as follows:

(in thousands)	December 31, 2016	December 31, 2015
Definite-lived intangible assets		
Customer relationships	$ 47,892	$ 35,729
Unpatented technology	18,461	4,033
Patented technology	2,499	2,532
Tradename	18,774	9,909
Backlog	28,170	10,400
All other	7,430	7,504
Gross value of definite-lived intangible assets	123,225	70,107
Customer relationships amortization	(17,519)	(12,509)
Unpatented technology amortization	(2,864)	(1,471)
Patented technology amortization	(1,532)	(1,406)
Tradename amortization	(3,826)	(2,883)
Acquired backlog amortization	(21,776)	(10,400)
All other amortization	(5,974)	(4,899)
Accumulated amortization	(53,491)	(33,568)
Net definite-lived intangible assets	$ 69,734	$ 36,539
Indefinite-lived intangible assets:		
Trademarks and trade names	$ 1,305	$ 1,305
Total indefinite-lived intangible assets	$ 1,305	$ 1,305

The following summarizes the changes in the carrying amount of intangible assets:

	Twelve months ended	
(in thousands)	December 31, 2016	December 31, 2015
Balance at beginning of period	$ 37,844	$ 50,646
Business acquisitions and adjustments	55,438	500
Amortization expense	(19,923)	(11,445)
Currency translation adjustments and other	(2,320)	(1,857)
Balance at end of the period	$ 71,039	$ 37,844

The acquisition of SPIG increased our intangible asset amortization expense during the year ended December 31, 2016 by $13.3 million . Amortization of intangible assets is not allocated to segment results.

Estimated future intangible asset amortization expense, excluding any potential intangible asset amortization expense resulting from the January 11, 2017 acquisition of Universal, is as follows (in thousands):

Year ending	Amortization expense
December 31, 2017	$ 14,834
December 31, 2018	$ 10,208
December 31, 2019	$ 8,545
December 31, 2020	$ 7,293
December 31, 2021	$ 6,971
Thereafter	$ 21,883

NOTE 15 - GOODWILL

The following summarizes the changes in the carrying amount of goodwill:

(in thousands)	Power	Renewable	Industrial	Total
Balance at December 31, 2014	$ 48,755	$ 51,722	$ 108,800	$ 209,277
Purchase price adjustment - MEGTEC acquisition	—	—	(4,492)	(4,492)
Currency translation adjustments	(1,618)	(2,098)	—	(3,716)
Balance at December 31, 2015	$ 47,137	$ 49,624	$ 104,308	$ 201,069
Increase resulting from SPIG acquisition	—	—	69,862	69,862
Purchase price adjustment - SPIG acquisition	—	—	2,539	2,539
Currency translation adjustments	(917)	(1,189)	(3,969)	(6,075)
Balance at December 31, 2016	$ 46,220	$ 48,435	$ 172,740	$ 267,395

Our annual goodwill impairment assessment is performed on October 1 of each year (the "annual assessment" date). Our 2016 annual assessment for each of our five reporting units indicated that we had no impairment of goodwill. The fair value of our reporting units were all in excess of carrying value on the assessment date by at least 20%. The fair value of each reporting unit determined under Step 1 of the goodwill impairment test was based on a 50% weighting of a discounted cash flow analysis under the income approach using forward-looking projections of estimated future operating results, a 30% weighting of a guideline company methodology under the market approach using revenue and earnings before interest, taxes, depreciation and amortization (“EBITDA”) multiples, and a 20% weighting using the similar transactions methodology under the market approach using revenue and EBITDA multiples.

The goodwill impairment test associated with our MEGTEC reporting unit, which is included in our Industrial segment, is the most sensitive to a change in future valuation assumptions. The reporting unit has $104.3 million of goodwill, which is unchanged since June 30, 2015. As of the annual assessment date in 2016 and 2015, the fair value of our MEGTEC reporting unit exceeded its carrying value by 22% and 48% , respectively. The change in headroom was attributable to a decrease in the estimated fair value of the reporting unit from $182.8 million to $163.8 million as of our annual assessment date in 2015 and 2016, respectively, and a $11.5 million increase in the carrying value of the reporting unit. Under both the income and market valuation approaches, the independently obtained fair value estimates decreased due to lower projected net sales and EBITDA. Similar to many industrial businesses, the 2016 reduction in MEGTEC reporting unit revenues has been the result of a decline in new equipment demand, primarily in the Americas market. However, management believes the industrials market is starting to show signs of stabilizing.

The Renewable segment's fourth quarter results caused us to also evaluate whether its goodwill was impaired at December 31, 2016. The Renewable segment has $48.4 million of goodwill at December 31, 2016. We estimated the fair value of the reporting unit at that date under Step 1 of the goodwill impairment test. Based on the results of the Step 1 impairment test at December 31, 2016, we determined it was not more likely than not that the segment's goodwill is impaired because the fair value of the Renewable reporting unit significantly exceeded its carrying value. We also assessed whether there was any indication of goodwill impairment in our other four reporting units at December 31, 2016, and have concluded based on our qualitative assessment that it is not more likely than not that the fair value is less than the carrying value.

NOTE 16 - PROPERTY, PLANT & EQUIPMENT

Property, plant and equipment is stated at cost. The composition of our property, plant and equipment less accumulated depreciation is set forth below:

	December 31,	
(in thousands)	2016	2015
Land	$ 6,348	$ 7,460
Buildings	114,322	104,963
Machinery and equipment	189,489	181,064
Property under construction	22,378	36,534
	332,537	330,021
Less accumulated depreciation	198,900	184,304
Net property, plant and equipment	$ 133,637	$ 145,717

NOTE 17 – WARRANTY EXPENSE

Changes in the carrying amount of our accrued warranty expense are as follows:

	Year Ended December 31,		
(in thousands)	2016	2015	2014
Balance at beginning of period	$ 39,847	$ 37,735	$ 38,968
Additions	22,472	19,310	13,726
Expirations and other changes	(10,855)	(982)	(4,052)
Increases attributable to business combinations	918	—	4,693
Payments	(11,089)	(15,215)	(14,787)
Translation and other	(826)	(1,001)	(813)
Balance at end of period	$ 40,467	$ 39,847	$ 37,735

During the fourth quarter of 2016, we reduced accrued warranty expense by $2.3 million as a result of the outcome of the ARPA trial discussed further in Note 20 . Other decreases in accrued warranty expense were primarily related to improvements in warranty claims experience and lapses in contract warranty periods in our Power segment.

NOTE 18 – PENSION PLANS AND OTHER POSTRETIREMENT BENEFITS

We have historically provided defined benefit retirement benefits to domestic employees under the Retirement Plan for Employees of Babcock & Wilcox Commercial Operations (the "Company Plan"), a noncontributory plan. As of 2006, the Company Plan was closed to new salaried plan entrants. In October 2012, we notified employees that, effective December 31, 2015, benefit accruals for those salaried employees covered by, and continuing to accrue service and salary adjusted benefits under the Company Plan will cease. Furthermore, beginning on January 1, 2016, we will make service-based, cash contributions to a defined contribution plan for those employees impacted by the plan freeze.

Effective January 1, 2012, a defined contribution component was adopted applicable to Babcock & Wilcox Canada, Ltd. (the "Canadian Plans"). Any employee with less than two years of continuous service as of December 31, 2011 was required to enroll in the defined contribution component of the Canadian Plans as of January 1, 2012 or upon the completion of 6 months of continuous service, whichever is later. These and future employees will not be eligible to enroll in the defined benefit component of the Canadian Plans. Additionally, during the third quarter of 2014, benefit accruals under certain hourly Canadian pension plans were ceased with an effective date of January 1, 2015. This amendment to the Canadian Plans is reflected as a curtailment in 2014. As part of the spin-off transaction, we are splitting the Canadian defined benefit plans from BWC, but as of December 31, 2016, that split is not complete. We have not presented these plans as multi-employer plans because our portion is separately identifiable and we were able to assess the assets, liabilities and periodic expense in the same manner as if it were a separate plan in each period.

We do not provide retirement benefits to certain non-resident alien employees of foreign subsidiaries. Retirement benefits for salaried employees who accrue benefits in a defined benefit plan are based on final average compensation and years of service, while benefits for hourly paid employees are based on a flat benefit rate and years of service. Our funding policy is to fund the plans as recommended by the respective plan actuaries and in accordance with the Employee Retirement Income Security Act of 1974, as amended, or other applicable law. Funding provisions under the Pension Protection Act accelerate funding requirements to ensure full funding of benefits accrued.

We make available other benefits which include postretirement health care and life insurance benefits to certain salaried and union retirees based on their union contracts, and on a limited basis, to future retirees.

Obligations and funded status

	Pension Benefits Year Ended December 31,		Other Postretirement Benefits Year Ended December 31,	
(in thousands)	2016	2015	2016	2015
Change in benefit obligation:				
Benefit obligation at beginning of period	$ 1,205,163	$ 1,253,278	$ 31,889	$ 34,909
Service cost	1,680	13,677	23	24
Interest cost	40,875	49,501	897	1,143
Plan participants' contributions	—	156	574	276
Curtailments	266	—	—	—
Settlements	—	—	—	—
Transfers /Acquisition	—	15,992	—	234
Amendments	231	244	(10,801)	—
Actuarial loss (gain)	43,410	(47,098)	(7,162)	(296)
Loss (gain) due to transfer	3,641	(523)	—	—
Foreign currency exchange rate changes	(5,099)	(11,450)	50	(367)
Benefits paid	(78,447)	(68,614)	(3,563)	(4,034)
Benefit obligation at end of period	$ 1,211,720	$ 1,205,163	$ 11,907	$ 31,889
Change in plan assets:				
Fair value of plan assets at beginning of period	$ 923,030	$ 999,515	$ —	$ —
Actual return on plan assets	76,570	(19,623)	—	—
Employer contribution	3,986	8,711	2,989	3,758
Plan participants' contributions	—	156	574	276
Settlements	—	—	—	—
Transfers	2,744	13,974	—	—
Foreign currency exchange rate changes	(5,015)	(11,089)	—	—
Benefits paid	(78,447)	(68,614)	(3,563)	(4,034)
Fair value of plan assets at the end of period	922,868	923,030	—	—
Funded status	$ (288,852)	$ (282,133)	$ (11,907)	$ (31,889)
Amounts recognized in the balance sheet consist of:				
Accrued employee benefits	$ (1,099)	$ (1,927)	$ (1,722)	$ (4,620)
Accumulated postretirement benefit obligation	—	—	(10,185)	(27,269)
Pension liability	(287,753)	(281,711)	—	—
Prepaid pension	—	1,505	—	—
Accrued benefit liability, net	$ (288,852)	$ (282,133)	$ (11,907)	$ (31,889)
Amount recognized in accumulated comprehensive income (before taxes):				
Prior service cost (credit)	$ 432	$ 1,976	$ (10,801)	$ —
Supplemental information:				
Plans with accumulated benefit obligation in excess of plan assets				
Projected benefit obligation	$ 1,183,345	$ 1,175,511	$ —	$ —
Accumulated benefit obligation	$ 1,206,056	$ 1,172,591	$ 11,907	$ 31,889
Fair value of plan assets	$ 894,105	$ 891,873	$ —	$ —
Plans with plan assets in excess of accumulated benefit obligation				
Projected benefit obligation	$ 28,375	$ 29,652	$ —	$ —
Accumulated benefit obligation	$ 28,375	$ 29,652	$ —	$ —
Fair value of plan assets	$ 28,763	$ 31,157	$ —	$ —

Components of net periodic benefit cost (benefit) included in net income (loss) are as follows:

	Pension Benefits			Other Benefits		
(in thousands)	2016	2015	2014	2016	2015	2014
Service cost	$ 1,680	$ 13,677	$ 13,558	$ 23	$ 24	$ 18
Interest cost	40,875	49,501	51,181	897	1,143	1,087
Expected return on plan assets	(61,939)	(68,709)	(64,023)	—	—	—
Amortization of prior service cost	250	307	274	—	—	—
Recognized net actuarial loss (gain)	31,932	41,574	99,090	(7,822)	(1,364)	2,245
Net periodic benefit cost (benefit)	$ 12,798	$ 36,350	$ 100,080	$ (6,902)	$ (197)	$ 3,350

During 2016, we recorded adjustments to our benefit plan liabilities resulting from pension curtailment and settlement events. Lump sum payments from our Canadian pension plan during 2016 resulted in interim pension plan settlement charges totaling $1.2 million in 2016. Also, in May 2016, the closure of our West Point, Mississippi manufacturing facility resulted in a $1.8 million curtailment charge in our United States pension plan. These events also resulted in $27.5 million in interim MTM losses for these pension plans, the effects of which are reflected in "Recognized net actuarial loss" in the table above along with a $1.4 million loss for the annual MTM adjustment of our pension plans at December 31, 2016.

We terminated the Babcock & Wilcox Retiree Medical Plan (the "Retiree OPEB plan") effective December 31, 2016. The Retiree OPEB plan was originally established to provide secondary medical insurance coverage for retirees that had reached the age of 65, up to a lifetime maximum cost. The Retiree OPEB plan had no plan assets, no accumulated other comprehensive income balance and no active participants as of the termination date. In exchange for terminating the Retiree OPEB plan, the participants had the option to enroll in a third-party health care exchange, which B&W agreed to contribute up to $750 a year for each of the next three years (beginning in 2017), provided the plan participant had not yet reached their lifetime maximum under the terminated Retiree OPEB plan. Based on the number of participants who did not enroll in the new benefit plan, we recognized a settlement gain of $7.2 million on December 31, 2016. Based on the number of participants who did enroll in the new benefit plan, we recognized a curtailment gain of $10.8 million on December 31, 2016 for the actuarially determined difference in the liability for these participants in the Retiree OPEB plan and the new plan. The settlement gain is reported in the "Recognized net actuarial loss" in the table above, and the curtailment gain was deferred in accumulated other comprehensive income and will be recognized in 2017, 2018 and 2019.

Recognized net actuarial loss (gain) consists primarily of our reported actuarial loss (gain), curtailments and the difference between the actual return on plan assets and the expected return on plan assets. Total net mark to market adjustments for our pension and other postretirement benefit plans were losses of $24.1 million , $40.2 million and $101.3 million in the years ended December 31, 2016 , 2015 and 2014 , respectively. In 2016 , the mark to market adjustment reflects $25.0 million of charges related to the Company Plan, including a $24.1 million remeasurement of our West Point plan made in the second quarter. Other significant pension items include a $2.1 million increase of our Diamond Power United Kingdom plan liability in the fourth quarter, a $3.9 million year to date increase in our Canadian plans, primarily resulting from a $1.2 million plan settlement and $2.9 million remeasurement made in the second quarter. This was partially offset by a $6.6 million actuarial gain on our domestic Medical and Life Insurance plan. As discussed in Note 5 , we have excluded the recognized net actuarial loss from our reportable segments and such amount has been reflected in Note 5 as the mark to market adjustment in the reconciliation of reportable segment income (loss) to consolidated operating income (loss). The recognized net actuarial loss and the affected consolidated and combined statements of operations line items are as follows:

(in thousands)	2016	2015	2014
Cost of operations	$ 21,208	$ 44,307	$ 94,204
Selling, general and administrative expenses	2,902	(4,097)	7,233
Other-net	—	—	(102)
Total	$ 24,110	$ 40,210	$ 101,335

Additional information

In 2016 , we have recognized expense (income) in other comprehensive income (loss) as a component of net periodic benefit cost of approximately $0.3 million for our pension benefits. No expense (income) was recognized for other postretirement

benefits in 2016. In 2017, we do not expect to recognize any significant income or expense in other comprehensive income (loss) as a component of net periodic benefit cost or our pension benefits and other postretirement benefits. However, we expect to recognize a gain of approximately $3.6 million in our 2017 statement of operations related to the the reclassification from accumulated other comprehensive income of a portion of the Retiree OPEB curtailment gain discussed above.

Assumptions

	Pension Benefits		Other Benefits	
	2016	2015	2016	2015
Weighted average assumptions used to determine net periodic benefit obligations at December 31:				
Discount rate	4.13%	3.98%	3.66%	3.41%
Rate of compensation increase	2.40%	2.51%	—	—
Weighted average assumptions used to determine net periodic benefit cost for the years ended December 31:				
Discount rate	4.25%	3.99%	3.66%	3.40%
Expected return on plan assets	6.70%	6.98%	—%	—%
Rate of compensation increase	2.40%	2.56%	—%	—%

The expected rate of return on plan assets is based on the long-term expected returns for the investment mix of assets currently in the portfolio. In setting this rate, we use a building-block approach. Historic real return trends for the various asset classes in the plan's portfolio are combined with anticipated future market conditions to estimate the real rate of return for each asset class. These rates are then adjusted for anticipated future inflation to determine estimated nominal rates of return for each asset class. The expected rate of return on plan assets is determined to be the weighted average of the nominal returns based on the weightings of the asset classes within the total asset portfolio. We use an expected return on plan assets assumption of 6.89% for the majority of our pension plan assets (approximately 93% of our total pension assets at December 31, 2016).

	2016	2015
Assumed health care cost trend rates at December 31		
Health care cost trend rate assumed for next year	8.50%	8.50%
Rates to which the cost trend rate is assumed to decline (ultimate trend rate)	4.50%	4.50%
Year that the rate reaches ultimate trend rate	2024	2024

Investment goals

The overall investment strategy of the pension trusts is to achieve long-term growth of principal, while avoiding excessive risk and to minimize the probability of loss of principal over the long term. The specific investment goals that have been set for the pension trusts in the aggregate are (1) to ensure that plan liabilities are met when due and (2) to achieve an investment return on trust assets consistent with a reasonable level of risk.

Allocations to each asset class for both domestic and foreign plans are reviewed periodically and rebalanced, if appropriate, to assure the continued relevance of the goals, objectives and strategies. The pension trusts for both our domestic and foreign plans employ a professional investment advisor and a number of professional investment managers whose individual benchmarks are, in the aggregate, consistent with the plans' overall investment objectives. The goals of each investment manager are (1) to meet (in the case of passive accounts) or exceed (for actively managed accounts) the benchmark selected and agreed upon by the manager and the trust and (2) to display an overall level of risk in its portfolio that is consistent with the risk associated with the agreed upon benchmark.

The investment performance of total portfolios, as well as asset class components, is periodically measured against commonly accepted benchmarks, including the individual investment manager benchmarks. In evaluating investment manager performance, consideration is also given to personnel, strategy, research capabilities, organizational and business matters, adherence to discipline and other qualitative factors that may impact the ability to achieve desired investment results.

Domestic plans: We sponsor the Retirement Plan for Employees of Babcock & Wilcox Commercial Operations domestic defined benefit plan. The assets of this plan are commingled for investment purposes with the Company's other sponsored domestic defined benefit plans and held by the Trustee in The Babcock & Wilcox Company Master Trust (the "Master Trust"). For the years ended December 31, 2016 and 2015 , the investment return on domestic plan assets of the Master Trust (net of deductions for management fees) was approximately 9.0% and (1.9)% , respectively.

The following is a summary of the asset allocations for the Master Trust at December 31, 2016 and 2015 by asset category:

	2016	2015
Asset Category:		
Fixed Income (excluding United States Government Securities)	32%	33%
Commingled and Mutual Funds	38%	37%
United States Government Securities	20%	18%
Equity Securities	7%	7%
Partnerships with Security Holdings	—%	—%
Derivatives	1%	4%
Other	2%	1%

The target asset allocation for the domestic defined benefit plan is 55% fixed income and 45% equities.

Foreign plans: We sponsor various plans through certain of our foreign subsidiaries. These plans are the Canadian Plans and the Diamond Power Specialty Limited Retirement Benefits Plan (the "Diamond United Kingdom Plan").

The combined weighted average asset allocations of these plans at December 31, 2016 and 2015 by asset category were as follows:

	2016	2015
Asset Category:		
Equity Securities and Commingled Mutual Funds	44%	48%
Fixed Income	55%	51%
Other	1%	1%

The target allocation for 2016 for the foreign plans, by asset class, is as follows:

	Canadian Plans	Diamond UK Plan
Asset Class:		
U. S. Equity	27%	10%
Global Equity	23%	12%
Fixed Income	50%	78%

Fair value of plan assets

See Note 22 for a detailed description of fair value measurements and the hierarchy established for valuation inputs. The following is a summary of total investments for our plans measured at fair value at December 31, 2016 :

(in thousands)	12/31/2016	Level 1	Level 2
Fixed income	$ 321,847	$ —	$ 321,847
Equities	83,441	78,268	5,173
Commingled and mutual funds	349,348	4,609	344,739
U.S. government securities	156,599	156,599	—
Cash and accrued items	11,630	9,391	2,239
Total pension and other postretirement benefit assets	$ 922,865	$ 248,867	$ 673,998

The following is a summary of total investments for our plans measured at fair value at December 31, 2015 :

(in thousands)	12/31/2015	Level 1	Level 2
Fixed income	$ 347,269	$ —	$ 347,269
Equities	79,761	79,761	—
Commingled and mutual funds	330,216	—	330,216
U.S. government securities	155,975	155,975	—
Cash and accrued items	9,809	539	9,270
Total pension and other postretirement benefit assets	$ 923,030	$ 236,275	$ 686,755

The following is a summary of the changes in the Plans' Level 3 instruments measured on a recurring basis for the years ended December 31, 2016 and 2015 :

	Year ended December 31,	
(in thousands)	2016	2015
Balance at beginning of period	$ —	$ 51,108
Issuances and acquisitions	—	1,266
Dispositions	—	(53,417)
Realized gain	—	3,915
Unrealized gain	—	(2,872)
Balance at end of period	$ —	$ —

During 2015, our Level 3 instruments included assets with no market price but rather calculations of net asset values per share or its equivalent. When appropriate, we adjusted these net asset values for contributions and distributions, if any, made during the period beginning on the latest net asset value valuation date and ending on our measurement date. We also considered available market data, relevant index returns, preliminary estimates from our investees and other data obtained through research and consultation with third party advisors in determining the fair value of our Level 3 instruments. All of our Level 3 assets were transferred to our former Parent during the spin-off transaction.

Cash flows

(in thousands)	Domestic Plans		Foreign Plans	
	Pension Benefits	Other Benefits	Pension Benefits	Other Benefits
Expected employer contributions to trusts of defined benefit plans:				
2017	$ 14,607	$ 2,100	$ 3,127	$ 155
Expected benefit payments:				
2017	$ 68,492	$ 1,593	$ 2,769	$ 155
2018	69,965	1,459	2,835	155
2019	71,223	1,330	2,977	155
2020	72,267	859	3,050	157
2021	72,857	797	3,099	151
2022-2026	363,406	3,148	17,737	591

Defined contribution plans

We provide benefits under The B&W Thrift Plan (the "Thrift Plan"). The Thrift Plan generally provides for matching employer contributions of 50% of participants' contributions up to 6% of compensation. These matching employer contributions are typically made in cash. We also provide service-based cash contributions under the Thrift Plan to employees not accruing benefits under our defined benefit plans. Amounts charged to expense for employer contributions under the Thrift Plan totaled approximately $13.4 million , $8.9 million and $7.4 million in the years ended December 31, 2016 , 2015 and 2014 , respectively.

We also provide benefits under the MEGTEC Union Plan, a defined contribution plan. The total employer contribution expense for the Union plan was approximately $0.3 million , $0.3 million and $0.3 million in the years ended December 31, 2016 , 2015 and 2014 , respectively. Matching employer contributions are made in cash.

Effective December 31, 2016 , we merged the MEGTEC Non-union Plan and SPIG 401(k) defined contribution plans into the Thrift Plan. For the MEGTEC Non-union Plan, amounts charged to expense for our contributions were approximately $1.1 million , $1.1 million and $1.2 million in the years ended December 31, 2016 2015 and 2014 , respectively. Matching employer contributions are made in cash. The SPIG 401(k) plan contributions were also made in cash, and were not material to our consolidated financial statements in 2016.

Also, our salaried Canadian employees are provided with a defined contribution plan. As of and in the periods following January 1, 2012, we made cash, service-based contributions under this arrangement. The amount charged to expense for employer contributions was approximately $0.4 million , $0.1 million and $0.6 million in the years ended December 31, 2016 , 2015 and 2014 , respectively.

Multi-employer plans

One of our subsidiaries in the Power segment contributes to various multi-employer plans. The plans generally provide defined benefits to substantially all unionized workers in this subsidiary. The following table summarizes our contributions to multi-employer plans for the years covered by this report:

Pension Fund	EIN/PIN	Pension Protection Act Zone Status 2016	Pension Protection Act Zone Status 2015	FIP/RP Status Pending/ Implemented	Contributions 2016	Contributions 2015	Contributions 2014	Surcharge Imposed	Expiration Date Of Collective Bargaining Agreement
					(in millions)				
Boilermaker-Blacksmith National Pension Trust	48-6168020/ 001	Yellow	Yellow	Yes	$ 17.8	$ 20.3	$ 16.0	No	Described Below
All Other					3.2	4.6	4.6		
					$ 21.0	$ 24.9	$ 20.6		

Our collective bargaining agreements with the Boilermaker-Blacksmith National Pension Trust (the "Boilermaker Plan") is under a National Maintenance Agreement platform which is evergreen in terms of expiration. However, the agreement allows for termination by either party with a 90 -day written notice. Our contributions to the Boilermaker Plan constitute less than 5% of total contributions to the Boilermaker Plan. All other contributions expense for all periods included in this report represents multiple amounts to various plans that, individually, are deemed to be insignificant.

NOTE 19 – REVOLVING DEBT

The components of our revolving debt are comprised of separate revolving credit facilities in the following locations:

(in thousands)	December 31, 2016	December 31, 2015
United States	$ 9,800	$ —
Foreign	14,241	2,005
Total	$ 24,041	$ 2,005

United States credit facility

In connection with the spin-off, we entered into a credit agreement on May 11, 2015 (the "Credit Agreement"). The Credit Agreement provides for a senior secured revolving credit facility in an aggregate amount of up to $600 million, which is scheduled to mature on June 30, 2020. The proceeds of loans under the Credit Agreement are available for working capital needs, issuance of letters of credit and other general corporate purposes. The $9.8 million balance at December 31, 2016 is included in "other noncurrent liabilities" in our consolidated combined balance sheet.

On February 24, 2017 , we entered into Amendment No. 2 to Credit Agreement (the “Amendment” and the Credit Agreement, as amended to date, the “Amended Credit Agreement”) to, among other things: (i) provide financial covenant relief by amending the definition of EBITDA (as defined in the Amended Credit Agreement) to exclude up to $98.1 million of losses for certain Renewable segment contracts for the year ended December 31, 2016; (ii) increase the maximum permitted leverage ratio to 3.50 to 1.00 during the covenant relief period; (iii) limit our ability to borrow under the Amended Credit Agreement during the covenant relief period to $300.0 million in the aggregate; (iv) increase the pricing for borrowings, letters of credit and commitment fees under the Amended Credit Agreement during the covenant relief period; (v) limit our ability to incur debt and liens during the covenant relief period; (vi) limit our ability to make acquisitions and investments in third parties during the covenant relief period; (vii) prohibit us from making dividends and stock redemptions during the covenant relief period; (viii) prohibit us from exercising the accordion described below during the covenant relief period; (ix) limit our financial letters of credit outstanding under the Amended Credit Agreement to $30.0 million during the covenant relief period; and (x) require us to reduce commitments under the Amended Credit Agreement with the proceeds of certain debt issuances and asset sales. The covenant relief period will end, at our election, when the conditions set forth in the Amendment are satisfied, but in no event earlier than the date on which we provide the compliance certificate for the fiscal quarter ending December 31, 2017.

Other than during the covenant relief period described above, the Amended Credit Agreement contains an accordion feature that allows us, subject to the satisfaction of certain conditions, including the receipt of increased commitments from existing lenders or new commitments from new lenders, to increase the amount of the commitments under the revolving credit facility in an aggregate amount not to exceed the sum of (i) $200 million plus (ii) an unlimited amount, so long as for any commitment increase under this subclause (ii) our senior secured leverage ratio (assuming the full amount of any

commitment increase under this subclause (ii) is drawn) is equal to or less than 2.0 to 1.0 after giving pro forma effect thereto. During the covenant relief period described above, our ability to exercise the accordion feature will be prohibited.

The Amended Credit Agreement and our obligations under certain hedging agreements and cash management agreements with our lenders and their affiliates are (i) guaranteed by substantially all of our wholly owned domestic subsidiaries, but excluding our captive insurance subsidiary, and (ii) secured by first-priority liens on certain assets owned by us and the guarantors. The Amended Credit Agreement requires interest payments on revolving loans on a periodic basis until maturity. We may prepay all loans at any time without premium or penalty (other than customary LIBOR breakage costs), subject to notice requirements. The Amended Credit Agreement requires us to make certain prepayments on any outstanding revolving loans after receipt of cash proceeds from certain asset sales or other events, subject to certain exceptions and a right to reinvest such proceeds in certain circumstances. During the covenant relief period described above, such prepayments may require us to reduce the commitments under the Amended Credit Agreement by a corresponding amount of such prepayments. Following the covenant relief period described above, such prepayments will not require us to reduce the commitments under the Amended Credit Agreement.

Loans outstanding under the Amended Credit Agreement bear interest at our option at either (i) the LIBOR rate plus (a) during the covenant relief period described above, a margin of 2.50% per year, and (b) following the covenant relief period described above, a margin ranging from 1.375% to 1.875% per year, or (ii) the base rate (the highest of the Federal Funds rate plus 0.5%, the one month LIBOR rate plus 1.0%, or the administrative agent's prime rate) plus (a) during the covenant relief period described above, a margin of 1.50% per year, and (b) following the covenant relief period described above, a margin ranging from 0.375% to 0.875% per year. A commitment fee is charged on the unused portions of the revolving credit facility, and that fee (A) during the covenant relief period described above, is 0.50% per year, and (B) following the covenant relief period described above, varies between 0.25% and 0.35% per year. Additionally, (I) during the covenant relief period, a letter of credit fee of 2.50% per year is charged with respect to the amount of each financial letter of credit outstanding, and a letter of credit fee of 1.50% per year is charged with respect to the amount of each performance letter of credit outstanding, and (II) following the covenant relief period described above, a letter of credit fee of between 1.375% and 1.875% per year is charged with respect to the amount of each financial letter of credit outstanding, and a letter of credit fee of between 0.825% and 1.125% per year is charged with respect to the amount of each performance letter of credit outstanding. Following the covenant relief period described above, the applicable margin for loans, the commitment fee and the letter of credit fees set forth above vary quarterly based on our leverage ratio.

The Amended Credit Agreement includes financial covenants that are tested on a quarterly basis, based on the rolling four-quarter period that ends on the last day of each fiscal quarter. The maximum permitted leverage ratio (i) is 3.50 to 1.00 during the covenant relief period described above and (ii) is 3.00 to 1.00 following the covenant relief period described above (which ratio may be increased to 3.25 to 1.00 for up to four consecutive fiscal quarters after a material acquisition). The minimum consolidated interest coverage ratio is 4.00 to 1.00 both during and following the covenant relief period described above. In addition, the Amended Credit Agreement contains various restrictive covenants, including with respect to debt, liens, investments, mergers, acquisitions, dividends, equity repurchases and asset sales. At December 31, 2016 , usage under the Amended Credit Agreement consisted of $9.8 million in borrowings at an effective interest rate of 4.125% , $7.5 million of financial letters of credit and $89.1 million of performance letters of credit. After giving effect to the maximum leverage ratio, we had $228.8 million available borrowing capacity based on trailing-twelve month EBITDA, as defined in our Amended Credit Agreement, at December 31, 2016 .

The Amended Credit Agreement generally includes customary events of default for a secured credit facility. If an event of default relating to bankruptcy or other insolvency events with respect to us occurs under the Amended Credit Agreement, all obligations will immediately become due and payable. If any other event of default exists, the lenders will be permitted to accelerate the maturity of the obligations outstanding. If any event of default occurs, the lenders are permitted to terminate their commitments thereunder and exercise other rights and remedies, including the commencement of foreclosure or other actions against the collateral. Additionally, if we are unable to make any of the representations and warranties in the Amended Credit Agreement, we will be unable to borrow funds or have letters of credit issued.

Foreign revolving credit facilities

Outside of the United States, we have unsecured revolving credit facilities in Turkey, China and India that are used to provide working capital to our operations in each country. The revolving credit facilities in Turkey and India are a result of the July 1, 2016 acquisition of SPIG (see Note 4). These three foreign revolving credit facilities allow us to borrow up to $15.7 million in aggregate and each have a one year term. At December 31, 2016 , we had $14.2 million in borrowings outstanding under

these foreign revolving credit facilities at an effective weighted-average interest rate of 4.92% . If an event of default relating to bankruptcy or insolvency events was to occur, all obligations will become due and payable.

Letters of credit, bank guarantees and surety bonds

Certain subsidiaries have credit arrangements with various commercial banks and other financial institutions for the issuance of letters of credit and bank guarantees associated with contracting activity. The aggregate value of all such letters of credit and bank guarantees not secured by the United States credit facility as of December 31, 2016 and December 31, 2015 was $255.2 million and $193.1 million , respectively. The increase is attributable to the July 1, 2016 acquisition of SPIG.

We have posted surety bonds to support contractual obligations to customers relating to certain projects. We utilize bonding facilities to support such obligations, but the issuance of bonds under those facilities is typically at the surety's discretion. Although there can be no assurance that we will maintain our surety bonding capacity, we believe our current capacity is more than adequate to support our existing project requirements for the next twelve months. In addition, these bonds generally indemnify customers should we fail to perform our obligations under the applicable contracts. We, and certain of our subsidiaries, have jointly executed general agreements of indemnity in favor of surety underwriters relating to surety bonds those underwriters issue in support of some of our contracting activity. As of December 31, 2016 , bonds issued and outstanding under these arrangements in support of contracts totaled approximately $ 527.9 million .

Universal acquisition

In order to purchase Universal on January 11, 2017, we borrowed $55 million under the United States credit facility in 2017. The acquisition did not materially change the level of bank guarantees, letters of credit or surety bonds that were outstanding at December 31, 2016 .

NOTE 20 – CONTINGENCIES

Litigation

On February 28, 2014, the Arkansas River Power Authority ("ARPA") filed suit against Babcock & Wilcox Power Generation Group, Inc. (now known as The Babcock & Wilcox Company and referred to herein as “BW PGG”) in the United States District Court for the District of Colorado (Case No. 14-cv-00638-CMA-NYW) alleging breach of contract, negligence, fraud and other claims arising out of BW PGG's delivery of a circulating fluidized bed boiler and related equipment used in the Lamar Repowering Project pursuant to a 2005 contract.

A jury trial took place in mid-November 2016. Some of ARPA’s claims were dismissed by the judge during the trial. The jury’s verdict on the remaining claims was issued on November 21, 2016. The jury found in favor of B&W with respect to ARPA’s claims of fraudulent concealment and negligent misrepresentation and on one of ARPA’s claims of breach of contract. The jury found in favor of ARPA on the three remaining claims for breach of contract and awarded damages totaling $4.2 million, which exceeded the previous $2.3 million accrual we established in 2012 by $1.9 million.

ARPA has requested that pre-judgment interest of $4.1 million plus post-judgment interest at a rate of 0.77% compounded annually be added to the judgment, together with certain litigation costs. This request is pending before the court, and we believe that a substantial amount of interest and costs claimed by ARPA are without factual or legal support. Accordingly, we believe an award of some interest is possible, but that it is not probable that the amount claimed by ARPA will be awarded; therefore, we have not accrued any portion of interest in the consolidated financial statements. B&W has requested the court to modify the verdict and we will continue to evaluate options for appeal upon final ruling on the parties’ motions to modify the award of damages. We have posted a bond pending resolution of post-trial matters.

Other

Due to the nature of our business, we are, from time to time, involved in routine litigation or subject to disputes or claims related to our business activities, including, among other things: performance or warranty-related matters under our customer and supplier contracts and other business arrangements; and workers' compensation, premises liability and other claims. Based on our prior experience, we do not expect that any of these other litigation proceedings, disputes and claims will have a material adverse effect on our consolidated financial condition, results of operations or cash flows.

NOTE 21 – DERIVATIVE FINANCIAL INSTRUMENTS

We have designated all of our foreign currency exchange ("FX") forward contracts that qualify for hedge accounting as cash flow hedges. The hedged risk is the risk of changes in functional-currency-equivalent cash flows attributable to changes in FX spot rates of forecasted transactions related to long-term contracts. We exclude from our assessment of effectiveness the portion of the fair value of the FX forward contracts attributable to the difference between FX spot rates and FX forward rates. At December 31, 2016 and 2015 , we had deferred approximately $0.8 million and $1.8 million , respectively, of net gains on these derivative financial instruments in AOCI.

At December 31, 2016 , our derivative financial instruments consisted solely of FX forward contracts. The notional value of our FX forward contracts totaled $177.4 million at December 31, 2016 with maturities extending to November 2018. These instruments consist primarily of contracts to purchase or sell euros and British pounds sterling. We are exposed to credit-related losses in the event of nonperformance by counterparties to derivative financial instruments. We attempt to mitigate this risk by using major financial institutions with high credit ratings. The counterparties to all of our FX forward contracts are financial institutions party to our credit facility. Our hedge counterparties have the benefit of the same collateral arrangements and covenants as described under our United States credit facility.

The following tables summarize our derivative financial instruments:

	Asset and Liability Derivatives	
(in thousands)	December 31, 2016	December 31, 2015
Derivatives designated as hedges:		
Foreign exchange contracts:		
Location of FX forward contracts designated as hedges:		
Accounts receivable-other	$ 3,805	$ 1,545
Other assets	665	688
Accounts payable	1,012	17
Other liabilities	213	—
Derivatives not designated as hedges:		
Foreign exchange contracts:		
Location of FX forward contracts not designated as hedges:		
Accounts receivable-other	$ 105	$ 72
Accounts payable	403	101
Other liabilities	7	—

The effects of derivatives on our financial statements are outlined below:

(in thousands)	Year Ended December 31, 2016	2015
Derivatives designated as hedges:		
Cash flow hedges		
Foreign exchange contracts		
Amount of gain (loss) recognized in other comprehensive income	$ 2,208	$ 2,920
Effective portion of gain (loss) reclassified from AOCI into earnings by location:		
Revenues	4,624	546
Cost of operations	195	155
Other-net	(1,221)	(24)
Portion of gain (loss) recognized in income that is excluded from effectiveness testing by location:		
Other-net	4,518	252
Derivatives not designated as hedges:		
Forward contracts		
Gain (loss) recognized in income by location:		
Other-net	$ (872)	$ 206

NOTE 22 – FAIR VALUE MEASUREMENTS

The following table summarizes our financial assets and liabilities carried at fair value, all of which were valued from readily available prices or using inputs based upon quoted prices for similar instruments in active markets (known as "Level 1" and "Level 2" inputs, respectively, in the fair value hierarchy established by the FASB Topic *Fair Value Measurements and Disclosures*).

(in thousands) **Available-for-sale securities**	December 31, 2016	Level 1	Level 2	Level 3
Commercial paper	$ 6,734	$ —	$ 6,734	$ —
Certificates of deposit	2,251	—	2,251	—
Mutual funds	1,152	—	1,152	—
Corporate bonds	750	750	—	—
U.S. Government and agency securities	7,104	7,104	—	—
Total fair value of available-for-sale securities	$ 17,991	$ 7,854	$ 10,137	$ —

The following is a summary of our available-for-sale securities at fair value at December 31, 2015.

(in thousands) **Available-for-sale securities**	December 31, 2015	Level 1	Level 2	Level 3
Commercial paper	$ 3,996	$ —	$ 3,996	$ —
Mutual funds	1,093	—	1,093	—
Total fair value of available-for-sale securities	$ 5,089	$ —	$ 5,089	$ —

Derivatives	December 31, 2016	December 31, 2015
Forward contracts to purchase/sell foreign currencies	$2,940	$2,186

Available-for-sale securities

We estimate the fair value of available-for-sale securities based on quoted market prices. Our investments in available-for-sale securities are presented in "other assets" on our consolidated balance sheets.

Derivatives

Derivative assets and liabilities currently consist of FX forward contracts. Where applicable, the value of these derivative assets and liabilities is computed by discounting the projected future cash flow amounts to present value using market-based observable inputs, including FX forward and spot rates, interest rates and counterparty performance risk adjustments.

Other financial instruments

We used the following methods and assumptions in estimating our fair value disclosures for our other financial instruments:

- *Cash and cash equivalents and restricted cash and cash equivalents* . The carrying amounts that we have reported in the accompanying consolidated balance sheets for cash and cash equivalents and restricted cash and cash equivalents approximate their fair values due to their highly liquid nature.
- *Revolving debt* . We base the fair values of debt instruments on quoted market prices. Where quoted prices are not available, we base the fair values on the present value of future cash flows discounted at estimated borrowing rates for similar debt instruments or on estimated prices based on current yields for debt issues of similar quality and terms. The fair value of our debt instruments approximated their carrying value at December 31, 2016 and December 31, 2015 .

Non-recurring fair value measurements

The purchase price allocation associated with the July 1, 2016 SPIG acquisition required significant fair value measurements using unobservable inputs ("Level 3" inputs as defined in the fair value hierarchy established by FASB Topic *Fair Value Measurements and Disclosures*). The fair value of the acquired intangible assets was determined using the income approach (see Note 4).

NOTE 23 – SHARE REPURCHASES

On August 4, 2015, we announced that our board of directors authorized the repurchase of an indeterminate number of our shares of common stock in the open market at an aggregate market value of up to $100 million . We repurchased 1.3 million shares of our common stock for $24.3 million during the year ended December 31, 2015 , and 1.6 million shares of our common stock for $75.7 million during the year ended December 31, 2016 , which completed this program.

On August 4, 2016, we announced that our board of directors authorized the repurchase of an indeterminate number of our shares of common stock in the open market at an aggregate market value of up to $100 million over the succeeding twenty-four months. As of December 31, 2016 , we have not made any share repurchases under the August 4, 2016 share repurchase authorization.

Any shares purchased that were not part of our publicly announced plan are related to repurchases of common stock pursuant to the provisions of employee benefit plans that permit the repurchase of shares to satisfy statutory tax withholding obligations.

NOTE 24 – SUPPLEMENTAL CASH FLOW INFORMATION

During the twelve -months ended December 31, 2016 , 2015 and 2014, we paid the following for income taxes:

(in thousands)	2016	2015	2014
Income taxes (net of refunds)	$ 10,781	$ 15,008	$ 7,951

During the twelve -months ended December 31, 2016 , 2015 and 2014, we recognized the following non-cash activity in our consolidated and combined financial statements:

(in thousands)	2016	2015	2014
Accrued capital expenditures in accounts payable	$ 2,751	$ 568	$ 1,680

NOTE 25 – RELATED PARTY TRANSACTIONS

Prior to June 30, 2015, we were a party to transactions with our former Parent and its subsidiaries in the normal course of operations. After the spin-off, we no longer consider the former Parent to be a related party. Transactions with our former Parent prior to the spin-off included the following:

	Year Ended December 31,	
(in thousands)	2015	2014
Sales to our former Parent	$ 911	$ 5,896
Corporate administrative expenses	35,343	73,329

Guarantees

Our former Parent had outstanding performance guarantees for various projects executed by us in the normal course of business. As of April 21, 2016, these guarantees had all been terminated.

Net transfers from former Parent

Net transfers from former Parent represent the change in our former Parent's historical investment in us. It primarily includes the net effect of cost allocations from transactions with our former Parent, sales to our former Parent, and the net transfers of cash and assets to our former Parent prior to the spin-off. After the spin-off transaction on June 30, 2015, there have been no significant transfers to or from our former Parent. These transactions included the following:

	Year Ended December 31,	
(in thousands)	2015	2014
Sales to former Parent	$ 911	$ 5,896
Corporate administrative expenses	35,343	73,329
Income tax allocation	11,872	3,378
Acquisition of business, net of cash acquired	—	127,704
Cash pooling and general financing activities	(91,015)	14,261
Cash contribution received at spin-off	125,300	—
Net transfer from former Parent per statement of cash flows	$ 80,589	$ 213,137
Non-cash items:		
Net transfer of assets and liabilities	$ 44,706	$ (62)
Distribution of Nuclear Energy segment	$ (47,839)	$ —
Net transfer from former Parent per statement of shareholders' equity	$ 77,456	$ 213,075

NOTE 26 – DISCONTINUED OPERATIONS

We distributed assets and liabilities totaling $47.8 million associated with the NE segment to BWC in conjunction with the spin-off. We received corporate allocations from our former Parent as described in Note 1 , which totaled $2.7 million , and $5.3 million for the years ended December 31, 2015 and 2014 , respectively. Though these allocations relate to our

discontinued NE segment, they are included as part of continuing operations because allocations are not eligible for inclusion in discontinued operations.

The following table presents selected financial information regarding the results of operations of our former NE segment through June 30, 2015, the date it was discontinued:

(in thousands)	Six Months Ended June 30, 2015	Twelve Months Ended December 31, 2014
Revenues	$ 53,064	$ 103,690
Income (loss) before income tax expense	3,358	(19,072)
Income tax expense (benefit)	555	(4,800)
Income (loss) from discontinued operations, net of tax	$ 2,803	$ (14,272)

NOTE 27 – OPERATING LEASES

Future minimum payments required under operating leases that have initial or remaining noncancellable lease terms in excess of one year at December 31, 2016 are as follows (in thousands):

Fiscal Year Ending December 31, 2016	Amount
2017	$ 5,224
2018	$ 3,833
2019	$ 2,433
2020	$ 1,239
2021	$ 425
Thereafter	$ 35

Total rental expense for the years ended December 31, 2016 , 2015 and 2014 , was $8.3 million , $13.5 million and $6.9 million , respectively. These expense amounts include contingent rentals and are net of sublease income, neither of which is material.

NOTE 28 - QUARTERLY FINANCIAL DATA

The following tables set forth selected unaudited quarterly financial information for the years ended December 31, 2016 and 2015 :

(in thousands, except per share amounts)	Year Ended December 31, 2016 Quarter Ended			
	March 31, 2016	June 30, 2016	Sept. 30, 2016	Dec. 31, 2016
Revenues	$ 404,116	$ 383,208	$ 410,955	$ 379,984
Gross profit	$ 80,156	$ 26,052	$ 73,757	$ (848)
Operating income (loss) [1]	$ 17,266	$ (72,585)	$ 11,133	$ (58,587)
Equity in income (loss) of investees	$ 2,676	$ (616)	$ 2,827	$ 11,553
Net income (loss) attributable to shareholders	$ 10,507	$ (63,490)	$ 8,894	$ (71,560)
Earnings per common share				
Basic				
Continuing	$ 0.20	$ (1.25)	$ 0.18	$ (1.47)
Discontinued	$ —	$ —	$ —	$ —
Diluted				
Continuing	$ 0.20	$ (1.25)	$ 0.18	$ (1.47)
Discontinued	$ —	$ —	$ —	$ —

[1] Includes equity in income of investees.

(in thousands, except per share amounts)	Year Ended December 31, 2015 Quarter Ended			
	March 31, 2015	June 30, 2015	Sept. 30, 2015	Dec. 31, 2015
Revenues	$ 397,155	$ 437,485	$ 419,977	$ 502,678
Gross profit	$ 83,397	$ 81,884	$ 77,922	$ 64,954
Operating income (loss) [1]	$ 17,343	$ 4,859	$ 9,632	$ (9,973)
Equity in income (loss) of investees	$ (2,071)	$ 967	$ 1,047	$ (185)
Net income (loss) attributable to shareholders	$ 12,689	$ 5,487	$ 6,169	$ (5,204)
Earnings per common share				
Basic				
Continuing	$ 0.21	$ 0.08	$ 0.11	$ (0.10)
Discontinued	$ 0.03	$ 0.02	$ —	$ —
Diluted				
Continuing	$ 0.21	$ 0.08	$ 0.11	$ (0.10)
Discontinued	$ 0.03	$ 0.02	$ —	$ —

[1] Includes equity in income of investees.

We recognize actuarial gains and losses for our pension and postretirement benefit plans into earnings at least annually (on December 31) as a component of net periodic benefit cost. During 2016, we had interim mark to market adjustments related to plan settlements and a plan curtailment. The effect of the interim mark to market adjustments on pre-tax income in the quarters ended June 30, 2016 and September 30, 2016, was a pre-tax charge of $30.0 million and $0.5 million , respectively. In the quarter ended December 31, 2016, we recognized a pre-tax gain of $6.4 million related to net mark to market adjustments for all of our benefit plans. Mark to market adjustments for the quarter and year ended December 31, 2015 resulted in a $40.2 million pre-tax loss.

In the second and fourth quarters of 2016, we recognized significant losses related to changes in the estimate of the forecasted cost to complete renewable energy contracts, which are more fully described in Note 6 to the consolidated and combined financial statements.

NOTE 29 – NEW ACCOUNTING STANDARDS

New accounting standards that could affect our financial statements in the future are summarized as follows:

In January 2016, the FASB issued Accounting Standards Update ("ASU") No. 2016-1, *Financial Instruments-Overall: Recognition and Measurement of Financial Assets and Financial Liabilities* . The new accounting standard is effective for us beginning in 2018, but early adoption is permitted. The new accounting standard requires investments such as available-for-sale securities to be measured at fair value through earnings each reporting period as opposed to changes in fair value being reported in other comprehensive income. We do not expect the new accounting standard to have a significant impact on our financial results when adopted.

In February 2016, the FASB issued ASU 2016-02, *Leases* (Topic 842). With adoption of this standard, lessees will have to recognize almost all leases as a right-of-use asset and a lease liability on their balance sheet. For income statement purposes, the FASB retained a dual model, requiring leases to be classified as either operating or finance. Classification will be based on criteria that are similar to those applied in current lease accounting, but without explicit bright lines. The new accounting standard is effective for us beginning in 2019. We do not expect the new accounting standard to have a significant impact on our financial results when adopted.

In March 2016, the FASB issued ASU 2016-08, *Revenue from Contracts with Customers (Topic 606): Principal versus Agent Considerations (Reporting Revenue Gross versus Net)* . The FASB amended its new revenue recognition guidance on determining whether an entity is a principal or an agent in an arrangement (i.e., whether it should report revenue gross or net). In addition, the FASB voted to propose eight technical corrections related to the revenue standard, the majority of which involve consequential amendments to other accounting topics affected by the revenue standard. In addition to ASU 2016-08, the FASB issued ASU 2016-11, *Revenue Recognition (Topic 605)* and *Derivatives and Hedging (Topic 815): Rescission of SEC Guidance Because of Accounting Standards Updates 2014-09 and 2014-16 Pursuant to Staff Announcements at the*

March 3, 2016 EITF Meeting . This update finalized the guidance in the new revenue standards regarding collectability, noncash consideration, presentation of sales tax and transition for customer contracts. The new accounting standards associated with revenue recognition are effective for us beginning in 2018. We are currently assessing the impact that adopting this new accounting standard will have on our financial statements.

In March 2016, the FASB issued ASU No. 2016-09, *Compensation – Stock Compensation (Topic 718)* . The new standard identifies areas for simplification involving several aspects of accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, an option to recognize gross stock compensation expense with actual forfeitures recognized as they occur, as well as certain classifications on the statement of cash flows. The new accounting standard is effective for us beginning in 2017. We do not expect the new accounting standard to have a significant impact on our financial results when adopted.

NOTE 30 - SUBSEQUENT EVENTS

On January 11, 2017, we acquired Universal, for approximately $55 million in cash, funded primarily by borrowings under our United States revolving credit facility. The acquisition will include post-closing adjustments related to differences in actual net indebtedness and transaction expenses compared to pre-close estimates. We expect these adjustments will be made before the end of the first quarter of 2017. We plan to account for the Universal acquisition using the acquisition method, whereby all of the assets acquired and liabilities assumed will be recognized at their fair value on the acquisition date, with any excess of the purchase price over the estimated fair value recorded as goodwill. Purchase price allocation adjustments associated with the Universal acquisition are expected to be finalized during the first half of 2017.

Universal provides custom-engineered acoustic, emission and filtration solutions to the natural gas power generation, mid-stream natural gas pipeline, locomotive and general industrial end-markets. Universal's product offering includes gas turbine inlet and exhaust systems, silencers, filters and enclosures, and Universal's annual sales were approximately $80 million for the year ended December 31, 2016 . They employ approximately 460 people, mainly in the U.S. and Mexico. The acquisition of Universal is consistent with B&W's goal to grow and diversify its technology-based offerings with new products and services in the industrial markets that are complementary to our core businesses.

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

None

Item 9A. CONTROLS AND PROCEDURES

Disclosure Controls and Procedures

As of the end of the period covered by this annual report, we carried out an evaluation, under the supervision and with the participation of our management, including our principal executive and financial officers, of the effectiveness of the design and operation of our disclosure controls and procedures (as that term is defined in Rules 13a-15(e) and 15d-15(e) adopted by the SEC under the Securities Exchange Act of 1934, as amended (the "Exchange Act")). Our disclosure controls and procedures were developed through a process in which our management applied its judgment in assessing the costs and benefits of such controls and procedures, which, by their nature, can provide only reasonable assurance regarding the control objectives. You should note that the design of any system of disclosure controls and procedures is based in part upon various assumptions about the likelihood of future events, and we cannot assure you that any design will succeed in achieving its stated goals under all potential future conditions, regardless of how remote. Based on the evaluation referred to above, management of B&W concluded that as of December 31, 2016 the design and operation of our disclosure controls and procedures are effective to provide reasonable assurance that information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC and such information is accumulated and communicated to management, including its principal executives and principal financial officers or persons performing similar functions, as appropriate to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

B&W's management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended). Our internal control over financial reporting includes, among other things, policies and procedures for conducting business, information systems for processing transactions and an internal audit department. Mechanisms are in place to monitor the effectiveness of our internal control over financial reporting and actions are taken to remediate identified internal control deficiencies. Our procedures for financial reporting include the involvement of senior management, our Audit and Finance Committee and our staff of financial and legal professionals. Our financial reporting process and associated internal controls were designed to provide reasonable assurance to management and the Board of Directors regarding the reliability of financial reporting and the preparation of our consolidated financial statements for external reporting in accordance with accounting principles generally accepted in the United States of America.

Management, with the participation of our principal executive and financial officers, assessed the effectiveness of our internal control over financial reporting as of December 31, 2016. Management based its assessment on criteria established in Internal Control–Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework). Because of its inherent limitations, a system of internal control over financial reporting can provide only reasonable assurance as to its effectiveness, and may not prevent or detect misstatements. Further, because of changing conditions, effectiveness of internal control over financial reporting may vary over time. Based on our assessment, management has concluded that B&W's internal control over financial reporting was effective at the reasonable assurance level described above as of December 31, 2016.

On July 1, 2016, we acquired SPIG S.p.A. See Note 4 – SPIG acquisition of our consolidated financial statements for additional information. SPIG represented approximately 9% of our consolidated total assets at December 31, 2016 and approximately 6% of our consolidated revenues for the period from July 1, 2016 through December 31, 2016. As permitted by the Securities and Exchange Commission, management has elected to exclude SPIG S.p.A. from its assessment of internal control over financial reporting as of December 31, 2016.

The effectiveness of our internal control over financial reporting as of December 31, 2016 has been audited by Deloitte & Touche LLP, the independent registered public accounting firm who also audited our consolidated financial statements included in this Annual Report on Form 10-K. Deloitte & Touche LLP’s report on our internal control over financial reporting is included in this Annual Report on Form 10-K.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Stockholders of Babcock & Wilcox Enterprises, Inc.:

We have audited the internal control over financial reporting of Babcock & Wilcox Enterprises, Inc. (the "Company") as of December 31, 2016, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. As described in Management's Report on Internal Control Over Financial Reporting, management excluded from its assessment the internal control over financial reporting at SPIG S.p.A., which was acquired on July 1, 2016 and whose financial statements constitute 9% of total assets and 6% of revenues of the consolidated financial statement amounts as of and for the year ended December 31, 2016. Accordingly, our audit did not include the internal control over financial reporting at SPIG S.p.A. The Company's management is responsible 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 Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel 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 the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2016, based on the criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated and combined financial statements as of and for the year ended December 31, 2016 of the Company and our report dated February 28, 2017, which report expressed an unqualified opinion on those financial statements and includes an explanatory paragraph related to the completion of the spin-off of the Company effective June 30, 2015 by The Babcock and Wilcox Company.

/S/ DELOITTE & TOUCHE LLP

Charlotte, North Carolina
February 28, 2017

Changes in Internal Control Over Financial Reporting

Other than explained below, no change occurred in our internal control over financial reporting during the quarter ended December 31, 2016 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

On July 1, 2016, we acquired SPIG S.p.A. As permitted by the Securities and Exchange Commission, management has elected to exclude SPIG S.p.A. from its assessment of internal control over financial reporting as of December 31, 2016. Our integration of SPIG S.p.A.'s processes and systems could cause changes to our internal controls over financial reporting in future periods.

Item 9B. OTHER INFORMATION

Amended credit agreement

On June 30, 2015, we obtained a credit agreement, dated as of May 11, 2015 ("Credit Agreement"), among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as administrative agent, and the other lenders party thereto, in connection with the spin-off of Babcock & Wilcox Enterprises, Inc. from The Babcock & Wilcox Company (now known as BWX Technologies, Inc.). The Credit Agreement provides for a senior secured revolving credit facility in an aggregate amount of up to $600 million, which is scheduled to mature on June 30, 2020. The proceeds of loans under the Credit Agreement are available for working capital needs and other general corporate purposes, and the full amount is available to support the issuance of letters of credit.

On February 24, 2017 , we entered into Amendment No. 2 to Credit Agreement (the “Amendment” and the Credit Agreement, as amended to date, the “Amended Credit Agreement”) to, among other things: (i) provide financial covenant relief by amending the definition of EBITDA (as defined in the Amended Credit Agreement) to exclude up to $98.1 million of losses for certain Renewable segment contracts for the year ended December 31, 2016; (ii) increase the maximum permitted leverage ratio to 3.50 to 1.00 during the covenant relief period; (iii) limit our ability to borrow under the Amended Credit Agreement during the covenant relief period to $300.0 million in the aggregate; (iv) increase the pricing for borrowings, letters of credit and commitment fees under the Amended Credit Agreement during the covenant relief period; (v) limit our ability to incur debt and liens during the covenant relief period; (vi) limit our ability to make acquisitions and investments in third parties during the covenant relief period; (vii) prohibit us from making dividends and stock redemptions during the covenant relief period; (viii) prohibit us from exercising the accordion described below during the covenant relief period; (ix) limit our financial letters of credit outstanding under the Amended Credit Agreement to $30.0 million during the covenant relief period; and (x) require us to reduce commitments under the Amended Credit Agreement with the proceeds of certain debt issuances and asset sales. The covenant relief period will end, at our election, when the conditions set forth in the Amendment are satisfied, but in no event earlier than the date on which we provide the compliance certificate for the fiscal quarter ending December 31, 2017.

Other than during the covenant relief period described above, the Amended Credit Agreement contains an accordion feature that allows us, subject to the satisfaction of certain conditions, including the receipt of increased commitments from existing lenders or new commitments from new lenders, to increase the amount of the commitments under the revolving credit facility in an aggregate amount not to exceed the sum of (i) $200 million plus (ii) an unlimited amount, so long as for any commitment increase under this subclause (ii) our senior secured leverage ratio (assuming the full amount of any commitment increase under this subclause (ii) is drawn) is equal to or less than 2.0 to 1.0 after giving pro forma effect thereto. During the covenant relief period described above, our ability to exercise the accordion feature will be prohibited.

The Amended Credit Agreement and our obligations under certain hedging agreements and cash management agreements with our lenders and their affiliates are (i) guaranteed by substantially all of our wholly owned domestic subsidiaries, but excluding our captive insurance subsidiary, and (ii) secured by first-priority liens on certain assets owned by us and the guarantors. The Amended Credit Agreement requires interest payments on revolving loans on a periodic basis until maturity. We may prepay all loans at any time without premium or penalty (other than customary LIBOR breakage costs), subject to notice requirements. The Amended Credit Agreement requires us to make certain prepayments on any outstanding revolving loans after receipt of cash proceeds from certain asset sales or other events, subject to certain exceptions and a right to reinvest such proceeds in certain circumstances. During the covenant relief period described above, such prepayments may require us to reduce the commitments under the Amended Credit Agreement by a corresponding amount of such

prepayments. Following the covenant relief period described above, such prepayments will not require us to reduce the commitments under the Amended Credit Agreement.

Loans outstanding under the Amended Credit Agreement bear interest at our option at either (i) the LIBOR rate plus (a) during the covenant relief period described above, a margin of 2.50% per year, and (b) following the covenant relief period described above, a margin ranging from 1.375% to 1.875% per year, or (ii) the base rate (the highest of the Federal Funds rate plus 0.5%, the one month LIBOR rate plus 1.0%, or the administrative agent's prime rate) plus (a) during the covenant relief period described above, a margin of 1.50% per year, and (b) following the covenant relief period described above, a margin ranging from 0.375% to 0.875% per year. A commitment fee is charged on the unused portions of the revolving credit facility, and that fee (A) during the covenant relief period described above, is 0.50% per year, and (B) following the covenant relief period described above, varies between 0.25% and 0.35% per year. Additionally, (I) during the covenant relief period, a letter of credit fee of 2.50% per year is charged with respect to the amount of each financial letter of credit outstanding, and a letter of credit fee of 1.50% per year is charged with respect to the amount of each performance letter of credit outstanding, and (II) following the covenant relief period described above, a letter of credit fee of between 1.375% and 1.875% per year is charged with respect to the amount of each financial letter of credit outstanding, and a letter of credit fee of between 0.825% and 1.125% per year is charged with respect to the amount of each performance letter of credit outstanding. Following the covenant relief period described above, the applicable margin for loans, the commitment fee and the letter of credit fees set forth above vary quarterly based on our leverage ratio.

The Amended Credit Agreement includes financial covenants that are tested on a quarterly basis, based on the rolling four-quarter period that ends on the last day of each fiscal quarter. The maximum permitted leverage ratio (i) is 3.50 to 1.00 during the covenant relief period described above and (ii) is 3.00 to 1.00 following the covenant relief period described above (which ratio may be increased to 3.25 to 1.00 for up to four consecutive fiscal quarters after a material acquisition). The minimum consolidated interest coverage ratio is 4.00 to 1.00 both during and following the covenant relief period described above. In addition, the Amended Credit Agreement contains various restrictive covenants, including with respect to debt, liens, investments, mergers, acquisitions, dividends, equity repurchases and asset sales. At December 31, 2016 , usage under the Amended Credit Agreement consisted of $9.8 million in borrowings at an effective interest rate of 4.125% , $7.5 million of financial letters of credit and $89.1 million of performance letters of credit. After giving effect to the maximum leverage ratio, we had $228.8 million available borrowing capacity based on trailing-twelve month EBITDA, as defined in our Amended Credit Agreement, at December 31, 2016 .

The Amended Credit Agreement generally includes customary events of default for a secured credit facility. If an event of default relating to bankruptcy or other insolvency events with respect to us occurs under the Amended Credit Agreement, all obligations will immediately become due and payable. If any other event of default exists, the lenders will be permitted to accelerate the maturity of the obligations outstanding. If any event of default occurs, the lenders are permitted to terminate their commitments thereunder and exercise other rights and remedies, including the commencement of foreclosure or other actions against the collateral. Additionally, if we are unable to make any of the representations and warranties in the Amended Credit Agreement, we will be unable to borrow funds or have letters of credit issued.

Certain of the lenders under the Amended Credit Agreement (and their respective subsidiaries or affiliates) have in the past provided, are currently providing or may in the future provide, investment banking, cash management, underwriting, lending, commercial banking, trust, leasing services, foreign exchange and other advisory services to, or engage in transactions with, us and our subsidiaries or affiliates. These parties have received, and may in the future receive, customary compensation from us and our subsidiaries or affiliates, for such services.

The foregoing description of the Amended Credit Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended Credit Agreement, a copy of which is filed as Exhibit 10.27 to this Annual Report on Form 10-K and incorporated by reference herein.

PART III

Item 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this item with respect to directors is incorporated by reference to the material appearing under the heading "Election of Directors" in the Proxy Statement for our 2017 Annual Meeting of Stockholders. The information required by this item with respect to compliance with section 16(a) of the Securities and Exchange Act of 1934, as amended, is incorporated by reference to the material appearing under the heading "Section 16(a) Beneficial Ownership Compliance" in

the Proxy Statement for our 2017 Annual Meeting of Stockholders. The information required by this item with respect to the Audit Committee and Audit and Finance Committee financial experts is incorporated by reference to the material appearing in the "Director Independence" and "Audit and Finance Committee" sections under the heading "Corporate Governance – Board of Directors and Its Committees" in the Proxy Statement for our 2017 Annual Meeting of Stockholders.

We have adopted a Code of Business Conduct for our employees and directors, including, specifically, our chief executive officer, our chief financial officer, our chief accounting officer, and our other executive officers. Our code satisfies the requirements for a "code of ethics" within the meaning of SEC rules. A copy of the code is posted on our web site, www.babcock.com under "Investor Relations – Corporate Governance – Highlights." We intend to disclose promptly on our website any amendments to, or waivers of, the code covering our chief executive officer, chief financial officer and chief accounting officer.

EXECUTIVE OFFICERS

Our executive officers and their ages as of February 20, 2017 , are as follows:

Name	Age	Position
Jenny L. Apker	59	Senior Vice President and Chief Financial Officer
Mark A. Carano	47	Senior Vice President, Corporate Development and Industrial Finance
E. James Ferland	50	Chairman and Chief Executive Officer
Elias Gedeon	57	Senior Vice President and Chief Business Development Officer
J. André Hall	51	Senior Vice President, General Counsel and Corporate Secretary
Daniel W. Hoehn	38	Vice President, Controller and Chief Accounting Officer
Mark S. Low	60	Senior Vice President, Power
Jimmy B. Morgan	48	Senior Vice President, Renewable
James J. Muckley	58	Senior Vice President, Operations
Francesco Racheli	44	Senior Vice President, Babcock & Wilcox SPIG
Kenneth Zak	58	Senior Vice President, Babcock & Wilcox MEGTEC

Jenny L. Apker serves as our Senior Vice President and Chief Financial Officer. Prior to the spin-off, Ms. Apker served as Vice President, Treasurer and Investor Relations of BWC since August 2012 and, prior to that time, served as Vice President and Treasurer since joining BWC in June 2010. Previously, Ms. Apker served as Vice President and Treasurer with Dex One Corporation (formerly R.H. Donnelley Corporation), a marketing services company, from May 2003 until June 2010.

Mark A. Carano serves as our Senior Vice President, Corporate Development and Industrial Finance. Prior to the spin-off, Mr. Carano served as Senior Vice President and Chief Corporate Development Officer of BWC since August 2013. Prior to joining BWC in June 2013, Mr. Carano served as a Managing Director in the Investment Banking Group of Bank of America Merrill Lynch since 2006. Mr. Carano also previously held positions with the Investment Banking Group of Deutsche Bank.

E. James Ferland serves as our Chairman and Chief Executive Officer. Prior to the spin-off, Mr. Ferland was President and Chief Executive Officer of BWC since April 2012. Prior to joining BWC, Mr. Ferland served as President of the Americas division for Westinghouse Electric Company, LLC, a nuclear energy company and group company of Toshiba Corporation, from 2010 through March 2012. From 2007 to 2010, Mr. Ferland worked for PNM Resources, Inc., a holding company of utilities providing electricity and energy products and services, where he held positions as Senior Vice President of Utility Operations and Senior Vice President of Energy Resources. Previously, Mr. Ferland held various senior management and engineering positions at Westinghouse Electric Company, Louisiana Energy Services/URENCO, Duke Engineering and Services, Carolina Power & Light and General Dynamics. Mr. Ferland has also served on the board of directors of Actuant Corporation since August 2014.

Elias Gedeon serves as our Senior Vice President and Chief Business Development Officer. Prior to the spin-off, Mr. Gedeon served as Senior Vice President and Chief Business Development Officer of BWC since May 2014. Mr. Gedeon has more than 30 years of experience in the power generation industry and has held various sales, operations and P&L leadership positions in the U.S. and overseas. He joined BWC from Alstom Power, Inc., a subsidiary of energy and transport manufacturer Alstom, where he served as Vice President, Global Sales and Marketing - Boiler Group since 2009 and

previously as Vice President of Sales, Americas. Prior to joining Alstom, Mr. Gedeon served in sales and operations roles of increasing responsibility with Foster Wheeler Power Group, Inc., including Executive Vice President, Global Sales & Marketing.

J. André Hall serves as our Senior Vice President, General Counsel and Corporate Secretary. Prior to the spin-off, Mr. Hall served as Assistant General Counsel, Transactions and Compliance of BWC since August 2013. Prior to joining BWC, Mr. Hall served in various roles of increasing responsibility with Goodrich Corporation, an aerospace manufacturing company, most recently as Vice President of Business Conduct and Chief Ethics Officer from October 2009 until July 2012 when it was acquired by United Technologies Corporation. For the five years prior to becoming Chief Ethics Officer, Mr. Hall served as the segment general counsel for one of Goodrich Corporation's multi-billion dollar operating segments.

Daniel W. Hoehn serves as our Vice President, Controller and Chief Accounting Officer. Mr. Hoehn joined BWC in March 2015. Formerly, Mr. Hoehn was Vice President and Controller at Chiquita Brands International, Inc., a producer and distributor of bananas and other produce, responsible for financial reporting for Chiquita's operations across three continents. From 2010 to 2013, he was Assistant Corporate Controller, after serving as Manager, Financial Reporting, from 2007 to 2010. Prior to joining Chiquita, Mr. Hoehn was a senior manager in the audit practice at KPMG, LLP.

Mark S. Low serves as our Senior Vice President, Power. From July 2015 to June 2016, he served as Senior Vice President, Global Services. Prior to the spinoff, Mr. Low was Vice President and General Manager of BWC's Global Services Division from 2013 to March 2015. Previously, from 2012 to 2013, he was Vice President and General Manager of BWC's Environmental Products and Services Division, responsible for all aspects of our environmental products and services business. From 2007 to 2012, he served as BWC's Vice President, Service Projects, in which he led all technical and commercial aspects of our service projects business including project management, forecasting, costing, cost forecasting, and warranty resolution.

Jimmy B. Morgan serves as our Senior Vice President, Renewable since December 2016. He is responsible for the company's renewable energy business, including its Babcock & Wilcox Volund subsidiary and Babcock & Wilcox's operations and maintenance services businesses. From August 2016 to December 2016, he served as Senior Vice President, Operations. He was Vice President, Operations from May 2016 to August 2016 and was Vice President and General Manager of Babcock & Wilcox Construction Co., Inc. from February 2016 to May 2016. Before joining Babcock & Wilcox, he was President for Allied Technical Resources, Inc., a technical staffing company, from September 2013 to January 2016. Previous positions included serving as Chief Operating Officer with BHI Energy, Vice President of Installation and Modification Services with Westinghouse Electric Company, and as Managing Director for AREVA T&D. He began is career with Duke Energy.

James J. Muckley has served as our Senior Vice President, Operations since December 2016 and is responsible for the Company's manufacturing operations, Global Project Management, Quality and Environmental, Health, Safety & Security functions. He is also responsible for Babcock & Wilcox Construction Co., LLC. From June 2016 to December 2016, he was Vice President, Global Parts and Field Engineering Services in the Company's Power segment. Prior to that, he was Vice President, Parts from January 2016 to May 2016, General Manager, Replacement Parts from November 2012 to December 2015, and Operations/Alliance Manager, Replacement Parts from March 2002 to October 2012.

Francesco Racheli serves as our Senior Vice President, Babcock & Wilcox SPIG, a leading provider of cooling systems worldwide that we acquired on July 1, 2016. Prior to the acquisition, Mr. Racheli was CEO of SPIG S.p.A., a position he held from 2014 until joining the company in 2016. From 2009 to 2014, he served as CEO of Finder Group, a global pump manufacturer for the energy and oil and gas industries. Formerly, Mr. Racheli spent 12 years with General Electric Corporation in various management roles in Europe and the United States.

Kenneth Zak serves as our Senior Vice-President, Babcock & Wilcox MEGTEC. From June 2016 to December 2016, he served as Senior Vice President, Industrial, and from July 2015 to June 2016 as Senior Vice President, Industrial Environmental. From December 2012 through June 2015, Mr. Zak served as the Senior Vice President for Business Operations for MEGTEC where he was responsible for MEGTEC's Environmental Solutions business worldwide as well as sales and business development for the Engineered Products business. Previously, from 2003 to 2012, Mr. Zak was Vice President of the Industrial & Environmental Products Group for MEGTEC, responsible for business teams in the Americas and Asia and drove strategy deployment activities and annual improvement priorities on a global basis. Mr. Zak also previously held business development and marketing positions at W. R. Grace & Co. and Owens-Corning Fiberglass.

Item 11. EXECUTIVE COMPENSATION

The information required by this item is incorporated by reference to the material appearing under the headings "Compensation Discussion and Analysis," "Compensation of Directors," "Compensation of Executive Officers," "Compensation Committee Interlocks and Insider Participation" and "Compensation Committee Report" in the Proxy Statement for our 2017 Annual Meeting of Stockholders.

Item 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The following table provides information on our equity compensation plans as of December 31, 2016:

Equity Compensation Plan Information

Plan Category:		Equity compensation plans approved by security holders
Number of securities to be issued upon exercise of outstanding options and rights		3,847,090
Weighted-average exercise price of outstanding options and rights	$	18.55
Number of securities remaining available for future issuance		3,281,394

The other information required by this item is incorporated by reference to the material appearing under the headings "Security Ownership of Directors and Executive Officers" and "Security Ownership of Certain Beneficial Owners" in the Proxy Statement for our 2017 Annual Meeting of Stockholders.

Item 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information required by this item is incorporated by reference to the material appearing under the headings "Corporate Governance – Director Independence" and "Certain Relationships and Related Transactions" in the Proxy Statement for our 2017 Annual Meeting of Stockholders.

Item 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this item is incorporated by reference to the material appearing under the heading "Ratification of Appointment of Independent Registered Public Accounting Firm for Year Ending December 31, 2016 " in the Proxy Statement for our 2017 Annual Meeting of Stockholders.

PART IV

Item 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES

The following documents are filed as part of this Annual Report or incorporated by reference:

1. **CONSOLIDATED AND COMBINED FINANCIAL STATEMENTS**

Report of Independent Registered Public Accounting Firm

Consolidated Balance Sheets as of December 31, 2016 and 2015

Consolidated and Combined Statements of Operations for the Years Ended December 31, 2016, 2015 and 2014

Consolidated and Combined Statements of Comprehensive Income for the Years Ended December 31, 2016, 2015 and 2014

Consolidated and Combined Statements of Stockholders' Equity for the Years Ended December 31, 2016, 2015 and 2014

Consolidated and Combined Statements of Cash Flows for the Years Ended December 31, 2016, 2015 and 2014

Notes to Consolidated and Combined Financial Statements for the Years Ended December 31, 2016, 2015 and 2014

2. **CONSOLIDATED AND COMBINED FINANCIAL STATEMENT SCHEDULES**

All schedules for which provision is made of the applicable regulations of the SEC have been omitted because they are not required under the relevant instructions or because the required information is included in the financial statements or the related footnotes contained in this report.

3. **EXHIBITS**

Exhibit Number	Description
2.1*	Master Separation Agreement, dated as of June 8, 2015, between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 2.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
3.1	Amended and Restated Certificate of Incorporation (incorporated by reference to Exhibit 3.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
3.2	Amended and Restated Bylaws (incorporated by reference to Exhibit 3.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.1	Tax Sharing Agreement, dated as of June 8, 2015, by and between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.2	Employee Matters Agreement, dated as of June 8, 2015, by and between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.3	Transition Services Agreement, dated as of June 8, 2015, between The Babcock & Wilcox Company, as service provider, and Babcock & Wilcox Enterprises, Inc., as service receiver (incorporated by reference to Exhibit 10.3 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.4	Transition Services Agreement, dated as of June 8, 2015, between Babcock & Wilcox Enterprises, Inc., as service provider, and The Babcock & Wilcox Company, as service receiver (incorporated by reference to Exhibit 10.4 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.5	Assumption and Loss Allocation Agreement, dated as of June 19, 2015, by and among ACE American Insurance Company and the Ace Affiliates (as defined therein), Babcock & Wilcox Enterprises, Inc. and The Babcock & Wilcox Company (incorporated by reference to Exhibit 10.5 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.6	Reinsurance Novation and Assumption Agreement, dated as of June 19, 2015, by and among ACE American Insurance Company and the Ace Affiliates (as defined therein), Creole Insurance Company and Dampkraft Insurance Company (incorporated by reference to Exhibit 10.6 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))

10.7	Novation and Assumption Agreement, dated as of June 19, 2015, by and among The Babcock & Wilcox Company, Babcock & Wilcox Enterprises, Inc., Dampkraft Insurance Company and Creole Insurance Company (incorporated by reference to Exhibit 10.7 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.8†	Amended and Restated 2015 Long-Term Incentive Plan of Babcock & Wilcox Enterprises, Inc. (incorporated by reference to the Babcock & Wilcox Enterprises, Inc. current Report on Form 8-K filed May 6, 2016 (File No. 001-36876))
10.9†	Babcock & Wilcox Enterprises, Inc. Executive Incentive Compensation Plan (incorporated by reference to Exhibit 10.9 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.10†	Babcock & Wilcox Enterprises, Inc. Management Incentive Compensation Plan (incorporated by reference to Exhibit 10.10 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.11†	Supplemental Executive Retirement Plan of Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.11 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.12†	Babcock & Wilcox Enterprises, Inc. Defined Contribution Restoration Plan (incorporated by reference to Exhibit 10.12 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.13	Intellectual Property Agreement, dated as of June 26, 2015, between Babcock & Wilcox Power Generation Group, Inc. and BWXT Foreign Holdings, LLC (incorporated by reference to Exhibit 10.13 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.14	Intellectual Property Agreement, dated as of June 27, 2015, between Babcock & Wilcox Technology, Inc. and Babcock & Wilcox Investment Company (incorporated by reference to Exhibit 10.14 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.15	Intellectual Property Agreement, dated as of May 29, 2015, between Babcock & Wilcox Canada Ltd. and B&W PGG Canada Corp. (incorporated by reference to Exhibit 10.15 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.16	Intellectual Property Agreement, dated as of May 29, 2015, between Babcock & Wilcox mPower, Inc. and Babcock & Wilcox Power Generation Group, Inc. (incorporated by reference to Exhibit 10.16 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.17	Intellectual Property Agreement, dated as of June 26, 2015, between The Babcock & Wilcox Company and Babcock & Wilcox Enterprises, Inc. (incorporated by reference to Exhibit 10.17 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))

10.18	Credit Agreement, dated as of May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the borrower, Bank of America, N.A., as Administrative Agent, and the Other Lenders Party Thereto (incorporated by reference to Exhibit 10.18 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2015 (File No. 001-36876))
10.19†	Form of Change-in-Control Agreement, by and between Babcock & Wilcox Enterprises, Inc. and certain officers for officers elected prior to August 4, 2016 (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2016 (File No. 001-36876))
10.20†	Form of Restricted Stock Grant Agreement (Spin-off Award) (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 (File No. 001-36876))
10.21†	Form of Restricted Stock Units Grant Agreement (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 (File No. 001-36876))
10.22†	Form of Stock Option Grant Agreement (incorporated by reference to Exhibit 10.3 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2015 (File No. 001-36876))
10.23†	Form of Performance Restricted Stock Unit Agreement (incorporated by reference to Exhibit 10.23 to the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2016 (File No. 001-36876))
10.24	Form of Director and Officer Indemnification Agreement (incorporated by reference to Exhibit 10.24 to the Babcock & Wilcox Enterprises, Inc. Annual Report on Form 10-K for the year ended December 31, 2016 (File No. 001-36876))
10.25†	Form of Change-in-Control Agreement, by and between Babcock & Wilcox Enterprises, Inc. and certain officers for officers elected on or after August 4, 2016 (incorporated by reference to Exhibit 10.2 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended September 30, 2016 (File No. 001-36876))
10.26	Amendment No. 1 dated June 10, 2016 to Credit Agreement, dated May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the Borrower, Bank of America, N.A., as Administrative Agent, and the other Lenders party thereto (incorporated by reference to Exhibit 10.1 to the Babcock & Wilcox Enterprises, Inc. Quarterly Report on Form 10-Q for the quarter ended June 30, 2016 (File No. 001-36876))
10.27	Amendment No. 2 dated February 24, 2017 to Credit Agreement, dated May 11, 2015, among Babcock & Wilcox Enterprises, Inc., as the Borrower, Bank of America, N.A., as Administrative Agent, and the other Lenders party thereto.
21.1	Significant Subsidiaries of the Registrant
23.1	Consent of Deloitte & Touche LLP
31.1	Rule 13a-14(a)/15d-14(a) certification of Chief Executive Officer
31.2	Rule 13a-14(a)/15d-14(a) certification of Chief Financial Officer

32.1	Section 1350 certification of Chief Executive Officer
32.2	Section 1350 certification of Chief Financial Officer
95	Mine Safety Disclosure
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

* Certain schedules and exhibits to this agreement have been omitted pursuant to Item 601(b)(2) of Regulation S-K. A copy of any omitted schedule and/or exhibit will be furnished to the SEC upon request.

† Management contract or compensatory plan or arrangement.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

BABCOCK & WILCOX ENTERPRISES, INC.

/s/ E. James Ferland

February 28, 2017 By: E. James Ferland
Chairman and Chief Executive Officer

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

Signature	Title
/s/ E. James Ferland E. James Ferland	Chairman and Chief Executive Officer (Principal Executive Officer)
/s/ Jenny L. Apker Jenny L. Apker	Senior Vice President and Chief Financial Officer (Principal Financial Officer and Duly Authorized Representative)
/s/ Daniel W. Hoehn Daniel W. Hoehn	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer and Duly Authorized Representative)
/s/ Thomas A. Christopher Thomas A. Christopher	Director
/s/ Cynthia S. Dubin Cynthia S. Dubin	Director
/s/ Brian K. Ferraioli Brian K. Ferraioli	Director
/s/ Stephen G. Hanks Stephen G. Hanks	Director
/s/ Anne R. Pramaggiore Anne R. Pramaggiore	Director
/s/ Larry L. Weyers Larry L. Weyers	Director

February 28, 2017

EXHIBIT 10.27

AMENDMENT NO. 2 TO CREDIT AGREEMENT

This **AMENDMENT NO. 2 TO CREDIT AGREEMENT** (this " Amendment ") dated as of February 24, 2017, is among **BABCOCK & WILCOX ENTERPRISES, INC.** , a Delaware corporation (the " Borrower "), **BANK OF AMERICA, N.A.** , in its capacity as administrative agent for the Lenders (as defined in the Credit Agreement described below) (in such capacity, the " Administrative Agent "), and each of the Lenders party hereto, and, for purposes of Section 4 hereof, acknowledged and agreed by certain Subsidiaries of the Borrower, as Guarantors.

W I T N E S S E T H:

WHEREAS , the Borrower, the Administrative Agent and the Lenders have entered into that certain Credit Agreement dated as of May 11, 2015 (as amended by Amendment No. 1 to Credit Agreement, dated as of June 10, 2016 and as from time to time further amended, supplemented, restated, amended and restated or otherwise modified, the " Credit Agreement "; capitalized terms used in this Amendment not otherwise defined herein shall have the respective meanings given thereto in the Credit Agreement), pursuant to which the Lenders have provided a revolving credit facility to the Borrower; and

WHEREAS , the Borrower has requested that the Administrative Agent and the Lenders agree to certain amendments to the Credit Agreement as set forth herein, and the Administrative Agent and the Lenders signatory hereto are willing to effect such amendments on the terms and conditions contained in this Amendment.

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

1. **Amendment to the Credit Agreement** . The Credit Agreement is, effective as of the Amendment No. 2 Effective Date (as defined below), hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text), each as set forth in the pages of a conformed copy of the Credit Agreement attached as Annex A hereto.

2. **Effectiveness; Conditions Precedent** . The amendments contained herein shall only be effective upon the satisfaction or waiver of each of the following conditions precedent (the date of satisfaction or waiver, the " Amendment No. 2 Effective Date "):

(a) the Administrative Agent shall have received each of the following documents or instruments in form and substance reasonably acceptable to the Administrative Agent:

(i) counterparts of this Amendment executed by the Loan Parties and the Required Lenders; and

(ii) such documentation and other information as has been reasonably requested by the Administrative Agent at least two Business Days prior to the date hereof with respect to the Loan Parties in connection with this Amendment;

(b) the Administrative Agent shall have received (i) the income statement of the Borrower and its Subsidiaries, on a consolidated basis, for the Fiscal Year ended 2016 and (ii) financial projections prepared by management of the Borrower consisting of (A) a balance sheet for the Borrower and its Subsidiaries, on a consolidated basis, for the Fiscal Year ending December 31, 2017, forecasted by each Fiscal Quarter therein, (B) income statements for the Borrower and its

Subsidiaries, on a consolidated basis, for (I) the Fiscal Year ending December 31, 2017, forecasted by each Fiscal Quarter therein and (II) the Fiscal Year ending December 31, 2018, as a whole, (C) liquidity and Revolving Credit Facility utilization for each month in the Fiscal Year ending December 31, 2017; and

(c) all accrued reasonable out-of-pocket costs and expenses of MLPFS and the Administrative Agent (including the reasonable fees and expenses of counsel (including each local counsel) for the Administrative Agent) shall have been paid to the extent that the Borrower has received an invoice therefor (with reasonable and customary supporting documentation) at least two Business Days prior to the Amendment No. 2 Effective Date (without prejudice to any post-closing settlement of such fees, costs and expenses to the extent not so invoiced), and all fees pursuant to the engagement letter agreement dated as of February 10, 2017, by and between the Borrower and MLPFS shall have been paid.

3. **Representations and Warranties** . In order to induce the Administrative Agent and the Lenders to enter into this Amendment, the Borrower represents and warrants to the Administrative Agent and the Lenders as follows:

(a) that both immediately prior and immediately after giving effect to this Amendment, no Default exists

(b) the representations and warranties contained in Credit Agreement (as amended hereby) are true and correct in all material respects on and as of the date hereof (except to the extent that such representations and warranties (i) specifically refer to an earlier date, in which case they shall be true and correct in all material respects as of such earlier date and (ii) contain a materiality or Material Adverse Effect qualifier, in which case such representations and warranties shall be true and correct in all respects);

(c) the execution, delivery and performance by the Borrower and the other Loan Parties of this Amendment and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate, limited liability company or partnership action, including the consent of shareholders, partners and members where required and do not require the consent of, authorization by, approval of, notice to, or filing or registration with, any Governmental Authority or any other Person in order to be effective and enforceable;

(d) this Amendment has been duly executed and delivered on behalf of the Borrower and the other Loan Parties; and

(e) this Amendment constitutes a legal, valid and binding obligation of the Borrower and the other Loan Parties enforceable against the Borrower and the other Loan Parties in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, Debtor Relief Laws or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity.

4. **Reaffirmation** . By its execution hereof, each Loan Party hereby expressly (a) consents to the amendments and modifications to the Credit Agreement effected hereby, (b) confirms and agrees that, notwithstanding the effectiveness of this Amendment, each Loan Document to which it is a party is, and the obligations of such Loan Party contained in the Credit Agreement, if any, or in any other Loan Documents to which it is a party (in each case, as amended and modified by this Amendment), are and shall continue to be, in full force and effect and are hereby ratified and confirmed in all respects, (c) affirms that each of the Liens and security interests granted by such Loan Party in or pursuant to the Loan Documents are valid and

subsisting and (d) agrees that this Amendment shall in no manner impair or otherwise adversely affect any of the Liens and security interests granted in or pursuant to the Loan Documents.

5. **Entire Agreement** . This Amendment, the Credit Agreement (including giving effect to the amendment set forth in Section 1 above), and the other Loan Documents (collectively, the " Relevant Documents "), sets forth the entire understanding and agreement of the parties hereto in relation to the subject matter hereof and supersedes any prior negotiations and agreements among the parties relating to such subject matter. No promise, condition, representation or warranty, express or implied, not set forth in the Relevant Documents shall bind any party hereto, and no such party has relied on any such promise, condition, representation or warranty. Each of the parties hereto acknowledges that, except as otherwise expressly stated in the Relevant Documents, no representations, warranties or commitments, express or implied, have been made by any party to any other party in relation to the subject matter hereof or thereof. None of the terms or conditions of this Amendment may be changed, modified, waived or canceled orally or otherwise, except in writing and in accordance with Section 10.01 of the Credit Agreement.

6. **Full Force and Effect of Credit Agreement** . This Amendment is a Loan Document. Except as expressly modified hereby, all terms and provisions of the Credit Agreement and all other Loan Documents remain in full force and effect and nothing contained in this Amendment shall in any way impair the validity or enforceability of the Credit Agreement or the Loan Documents, or alter, waive, annul, vary, affect, or impair any provisions, conditions, or covenants contained therein or any rights, powers, or remedies granted therein.

7. **Counterparts; Effectiveness** . This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Except as provided in Section 2 above, this Amendment shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Amendment by facsimile or other electronic imaging means (*e.g.* , "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Amendment.

8. **Governing Law; Jurisdiction; Waiver of Jury Trial** . THIS AMENDMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AMENDMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK. Sections 10.04 , 10.14 and 10.15 of the Credit Agreement are hereby incorporated by herein by this reference.

9. **Severability** . If any provision of this Amendment is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Amendment shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10. **References** . All references to the "Credit Agreement" (or the defined term "Agreement" meaning the Credit Agreement) in the Loan Documents shall mean the Credit Agreement giving effect to the amendments contained in this Amendment.

11. **Successors and Assigns** . This Amendment shall be binding upon the Borrower, the Lenders and the Administrative Agent and their respective successors and assigns, and shall inure to the benefit of the

Borrower, the Lenders and the Administrative Agent and the respective successors and assigns of the Borrower, the Lenders and the Administrative Agent.

[Signature pages follow.]

IN WITNESS WHEREOF , the parties hereto have caused this instrument to be made, executed and delivered by their duly authorized officers as of the day and year first above written.

BABCOCK & WILCOX ENTERPRISES, INC.

By: /s/ Jenny L. Apker Name: Jenny L. Apker
Title: Senior Vice President, Chief Financial Officer and Treasurer

Acknowledged and Agreed for purposes of Section 4 of the Amendment:

GUARANTORS: BABCOCK & WILCOX HOLDINGS, INC.
AMERICON EQUIPMENT SERVICES, INC. AMERICON, LLC
BABCOCK & WILCOX CONSTRUCTION CO., LLC
BABCOCK & WILCOX EBENSBURG POWER, LLC BABCOCK & WILCOX EQUITY INVESTMENTS, LLC
BABCOCK & WILCOX INDIA HOLDINGS, INC.
BABCOCK & WILCOX INTERNATIONAL, INC. BABCOCK & WILCOX INTERNATIONAL SALES AND
SERVICE CORPORATION
BABCOCK & WILCOX TECHNOLOGY, LLC DELTA POWER SERVICES, LLC
DIAMOND OPERATING CO., INC.
DIAMOND POWER AUSTRALIA HOLDINGS, INC. DIAMOND POWER CHINA HOLDINGS, INC.
DIAMOND POWER EQUITY INVESTMENTS, INC. DIAMOND POWER INTERNATIONAL, LLC
DPS ANSON, LLC
DPS BERLIN, LLC DPS CADILLAC, LLC DPS FLORIDA, LLC DPS GREGORY, LLC
DPS MECKLENBURG, LLC DPS PIEDMONT, LLC
EBENSBURG ENERGY, LLC
EBENSBURG INVESTORS LIMITED PARTNERSHIP EBENSBURG POWER COMPANY
O&M HOLDING COMPANY
PALM BEACH RESOURCE RECOVERY CORPORATION
POWER SYSTEMS OPERATIONS, INC. REVLOC RECLAMATION SERVICE, INC.
SOFCO – EFS HOLDINGS LLC
BABCOCK & WILCOX MEGTEC HOLDINGS, INC. BABCOCK & WILCOX MEGTEC, LLC
MEGTEC SYSTEMS AUSTRALIA INC.
MEGTEC INDIA HOLDINGS, LLC
MEGTEC ENERGY & ENVIRONMENTAL, LLC MEGTEC TURBOSONIC TECHNOLOGIES, INC.
MTS ASIA, INC.

By: /s/ Mark A. Carano Name: Mark A. Carano
Title: Treasurer

THE BABCOCK & WILCOX COMPANY

By: /s/ Jenny L. Apker Name: Jenny L. Apker
Title: Vice President, Treasurer and Investor Relations

BABCOCK & WILCOX UNIVERSAL, INC. UNIVERSAL SILENCER PROPERTIES I, LLC UNIVERSAL SILENCER PROPERTIES II, LLC UNIVERSAL SILENCER PROPERTIES III, LLC UNIVERSAL SILENCER MEXICO, LLC UNIVERSAL SILENCER MEXICO II, LLC UNIVERSAL AET HOLDINGS, LLC UNIVERSAL CAPITAL, LLC OJIBWAY ENCLOSURE SYSTEMS, LLC

By: /s/ Mark A. Carano Name: Mark A. Carano
Title: Vice President and Treasurer

BABCOCK & WILCOX SPIG, INC.

By: /s/ Stephanie Sulpy Name: Stephanie Sulpy
Title: Secretary

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

By: /s/ Bridgett J. Manduk Mowry Name: Bridgett J. Manduk Mowry
Title: Vice President

BANK OF AMERICA, N.A. , as a Lender and a Swing Line Lender

By: /s/ Patrick N. Martin Name: Patrick N. Martin
Title: Managing Director

BNP PARIBAS , as a Lender

By: /s/ Jamie Dilion Name: Jamie Dilion
Title: Managing Director

By: /s/ Mary-Ann Wong Name: Mary-Ann Wong
Title: Vice President

JPMORGAN CHASE BANK, N.A. , as a Lender

By: /s/ Matthew N. Tugwell Name: Matthew N. Tugwell
Title: Executive Director

WELLS FARGO BANK, NATIONAL ASSOCIATION , as a Lender

By: /s/ Mark B. Felker Name: Mark B. Felker
Title: Manager Director

UNICREDIT BANK AG, NEW YORK BRANCH , as a Lender

By: /s/ Julien Tizorin Name: Julien Tizorin
Title: Director

By: /s/ Ken Hamilton Name: Ken Hamilton
Title: Managing Director

TD BANK, N.A. , as a Lender

By: /s/ Craig Welch Name: Craig Welch
Title: Senior Vice President

COMPASS BANK DBA BBVA COMPASS , as a
Lender

By: /s/ Aaron Loyd Name: Aaron Loyd
Title: Vice President

U.S. BANK NATIONAL ASSOCIATION , as a
Lender

By: /s/ Jonathan F. Lindvall Name: Jonathan F. Lindvall
Title: Senior Vice President

THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. , as a Lender

By: /s/ Maria F. Maia Name: Maria F. Maia
Title: Director

CITIZENS BANK OF PENNSYLVANIA , as a Lender

By: /s/ Jeffrey Mills Name: Jeffrey Mills
Title: Vice President

BRANCH BANKING AND TRUST COMPANY , as a Lender

By: /s/ Kelly Attayek Name: Kelly Attayek
Title: Assistant Vice President

THE NORTHERN TRUST COMPANY , as a Lender

By: /s/ John C. Canty Name: John C. Canty
Title: Senior Vice President

THE BANK OF NOVA SCOTIA , as a Lender

By: /s/ Mauricio Saishio Name: Mauricio Saishio
Title: Director

PNC BANK, NATIONAL ASSOCIATION , as a
Lender

By: /s/ Nicholas Fernandez Name: Nicholas Fernandez
Title: Vice President

WHITNEY BANK, as a Lender

By: /s/ Eric Luttrell Name: Eric Luttrell
Title: Senior Vice President

ANNEX A TO
AMENDMENT NO. 2

Published CUSIP Number: 056147AA1
Revolving Credit CUSIP Number: 05614TAB9

CREDIT AGREEMENT

dated as of May 11, 2015
(as amended through Amendment No. 2, dated as of February 24, 2017)

among

BABCOCK & WILCOX ENTERPRISES, INC.,
as the Borrower,

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

and

The Other Lenders Party Hereto

BNP PARIBAS, JPMORGAN CHASE BANK, N.A.,
WELLS FARGO BANK, NATIONAL ASSOCIATION and
CR DIT AGRICOLE CORPORATE AND INVESTMENT BANK,
as Co-Syndication Agents

BRANCH BANKING AND TRUST COMPANY, CITIZENS BANK OF PENNSYLVANIA, COMPASS BANK,
TD BANK, N.A.,
THE BANK OF TOKYO-MITSUBISHI UFJ, LTD. and
U.S. BANK NATIONAL ASSOCIATION,
as Co-Documentation Agents

MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, BNP PARIBAS SECURITIES CORP., J.P. MORGAN SECURITIES LLC,

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CREDIT AGREEMENT

This CREDIT AGREEMENT is entered into as of May 11, 2015, among BABCOCK & WILCOX ENTERPRISES, INC., a Delaware corporation, as the borrower hereunder (the " Borrower "), each lender from time to time party hereto (collectively, the " Lenders " and individually, a " Lender "), and BANK OF AMERICA, N.A., as Administrative Agent, Swing Line Lender and an L/C Issuer.

The Borrower has requested that the Lenders provide a revolving credit facility, and the Lenders are willing to do so on the terms and conditions set forth herein.

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

ARTICLE I.
DEFINITIONS AND ACCOUNTING TERMS

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

" Acquired Entity " means a Person to be acquired, or whose assets are to be acquired, in an Acquisition.

" Acquisition " means, by way of any single transaction or a series of related transactions, the acquisition of all or substantially all of (a) the assets of an Acquired Entity, (b) the assets constituting what is known to the Borrower to be all or substantially all of the business of a division, branch or other unit operation of an Acquired Entity, or (c) the Stock and Stock Equivalents (other than director's qualifying shares and the like, as may be required by applicable Requirements of Law) of, an Acquired Entity.

" Additional Lender " has the meaning specified in Section 2.14(b) .

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

" Administrative Agent's Office " means the Administrative Agent's address and, as appropriate, account as set forth on Schedule 10.02 , or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

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

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

" Affiliate Agreements " means, collectively, the agreements listed on Schedule 1.01(a) hereto.

" Aggregate Commitments " means the Commitments of all the Lenders.

" Agreement " means this Credit Agreement.

" Alternative Currency " means, with respect to any Letter of Credit, those currencies (other than Dollars) that are approved by the L/C Issuer issuing such Letters of Credit in accordance with Section 1.06 .

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

" Alternative Currency Sublimit " means an amount equal to the lesser of the Revolving Credit Facility and $300,000,000. The Alternative Currency Sublimit is part of, and not in addition to, the Revolving Credit Facility.

"Amendment No. 2" means that certain Amendment No. 2 dated as of the Amendment No. 2 Effective Date by and among the Loan Parties, the Administrative Agent and the Lenders party thereto.

"Amendment No. 2 Effective Date" means February 24, 2017, the date on which the conditions precedent to the effectiveness of Amendment No. 2 were satisfied.

" Anti-Corruption Laws " means all laws, rules and regulations of any jurisdiction applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977 and the UK Bribery Act 2010.

" Applicable Percentage " means, with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility represented by such Lender's Commitment at such time, subject to adjustment as provided in Section 2.16 . If the Commitment of each Lender to make Loans and the obligation of each L/C Issuer to make L/C Credit Extensions have been terminated pursuant to Section 8.02 or if the Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most recently in effect, giving effect to any subsequent assignments. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

" Applicable Rate " means the following percentages per annum, based upon **(a) at any time other than during the Relief Period,** the Leverage Ratio as set forth in the most recent Compliance Certificate received by the Administrative Agent pursuant to Section 6.01(c) **and (b) at any time during the Relief Period, Pricing Level 4** :

Applicable Rate					
Pricing Level	**Leverage Ratio**	**Commitment Fee**	**Eurocurrency Rate / Financial Letter of Credit Fees**	**Base Rate**	**Performance Letter of Credit Fees / Commercial Letter of Credit Fees**
1	Less than 1.00 to 1.00	0.25%	1.375%	0.375%	0.825%
2	Greater than or equal to 1.00 to 1.00, but less than 2.00 to 1.00	0.30%	1.625%	0.625%	0.975%
3	Greater than or equal to 2.00 to 1.00	0.35%	1.875%	0.875%	1.125%
4	**N/A**	**0.50%**	**2.50%**	**1.50%**	**1.50%**

~~Any~~ **At any time other than during the Relief Period, any** increase or decrease in the Applicable Rate resulting from a change in the Leverage Ratio shall become effective as of the first Business Day immediately following the date a Compliance Certificate is delivered pursuant to Section 6.01(c) ; provided that if a Compliance Certificate is not delivered when due in accordance with such Section, then, upon the request of the Required Lenders, Pricing Level 3 shall apply as of the first Business Day after the date on which such Compliance Certificate was required to have been delivered and shall remain in effect until the date on which such Compliance Certificate is delivered. **Upon the occurrence of the Relief Period Termination Date, the Applicable Margin as of the first Business Day after such occurrence shall be based on the Leverage Ratio set forth in the Compliance Certificate most recently delivered on or prior to the Relief Period Termination Date pursuant to Section 6.01(c).** The Applicable Rate in effect from the Closing Date through the date of delivery of the Compliance Certificate for the first full fiscal quarter of the Borrower after the fiscal quarter in which the Closing Date occurs shall be determined based upon Pricing Level 1.

Notwithstanding anything to the contrary contained in this definition, the determination of the Applicable Rate for any period shall be subject to the provisions of Section 2.10(b) .

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

" Arranger " means MLPFS, BNP Paribas Securities Corp., J.P. Morgan Securities LLC, Wells Fargo Securities, LLC and CrØdit Agricole Corporate and Investment Bank, each in its capacity as a joint lead arranger and joint book manager.

" Asset Sale " has the meaning specified in Section 7.04 .

" Assignment and Assumption " means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 10.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E-1 or any other form (including electronic documentation generated by use of an electronic platform) approved by the Administrative Agent.

" Availability Period " means the period from and including the Closing Date to the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Commitments pursuant to Section 2.06 , and (c)

the date of termination of the Commitment of each Lender to make Loans and of the obligation of the L/C Issuers to make L/C Credit Extensions pursuant to Section 8.02 .

"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.

" Bank of America " means Bank of America, N.A. and its successors.

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

" Base Rate Loan " means a Loan that bears interest based on the Base Rate. All Base Rate Loans shall be denominated in Dollars.

" Borrower " has the meaning specified in the introductory paragraphs hereto.

" Borrower Materials " has the meaning specified in Section 6.01 .

" Borrower's Accountants " means Deloitte & Touche LLP or another firm of independent nationally recognized public accountants.

Borrowing or a Swing Line Borrowing, as the context may require.

" Borrowing " means a Revolving Credit

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

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

(b) if such day relates to any determination of the Spot Rate pursuant to this Agreement, means any such day on which banks are open for foreign exchange business in the principal financial center of the country of the relevant Alternative Currency for which the Spot Rate is being determined.

" BWC " means The Babcock & Wilcox Company, a Delaware corporation, and (as of the date hereof, and prior to the Spinoff) the direct or indirect owner of 100% of the equity interests of the Borrower.

" BWPGG " means Babcock & Wilcox Power Generation Group, Inc., a Delaware corporation. " Capital Lease " means, with respect to any Person, any lease of (or other arrangement conveying the right to use) property by such Person as lessee that would be accounted for as a capital lease on a balance sheet of such Person prepared in conformity with GAAP.

" Capital Lease Obligations " means, with respect to any Person, the capitalized amount of all obligations of such Person or any of its Subsidiaries under Capital Leases, as determined on a consolidated basis in conformity with GAAP.

" Captive Insurance Subsidiaries " means, collectively or individually as of any date of determination, those regulated Subsidiaries of the Borrower primarily engaged in the business of providing insurance and insurance-related services to the Borrower, its other Subsidiaries and certain other Persons.

" Cash Collateralize " means to pledge and deposit with or deliver directly to an L/C Issuer or to the Administrative Agent, for the benefit of the Administrative Agent, any L/C Issuer or any Lender (including the Swing Line Lender), as the context may indicate, as collateral for L/C Obligations, Obligations in respect of Swing Line Loans, or obligations of Lenders to fund participations in respect of either thereof (as the context may require), cash or deposit account balances or, if the L/C Issuer or Swing Line Lender benefitting from such collateral shall agree in its sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to (a) the Administrative Agent (but only if the Administrative Agent is a party to such Cash Collateral arrangement) and (b) the applicable L/C Issuer or the Swing Line Lender (as applicable). " Cash Collateral " shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

" Cash Collateralized Letter of Credit " has the meaning specified in Section 2.03(o) .

" Cash Equivalents " means (a) securities issued or fully guaranteed or insured by the United States government or any agency thereof, (b) certificates of deposit, eurodollar time deposits, overnight bank deposits and bankers' acceptances of (i) any commercial bank organized under the laws of the United States, any state thereof, the District of Columbia, any foreign bank, or any branch or agency of any of the foregoing, in each case if such bank has a minimum rating at the time of investment of A-3 by S&P or P-3 by Moody's, or (ii) any Lender or any branch or agency of any Lender, (c) commercial paper, (d) municipal issued debt securities, including notes and bonds, (e) (i) shares of any money market fund that has net assets of not less than $500,000,000 and satisfies the requirements of rule 2a-7 under the Investment Company Act of 1940 and (ii) shares of any offshore money market fund that has net assets of not less than $500,000,000 and a $1 net asset mandate, (f) fully collateralized repurchase agreements, (g) demand deposit accounts and (h) obligations issued or guaranteed by the government or by a governmental agency of Canada, Japan, Australia, Switzerland or a country belonging to the European Union; provided , however , that (i) all obligations of the type specified in clauses (c) or (d) above shall have a minimum rating of A-1 or AAA by S&P or P-1 or Aaa by Moody's, in each case at the time of acquisition thereof, (ii) the country credit rating of any country issuing or guaranteeing (or whose governmental agency issues or guarantees) any obligation of the type specified in clause (h) above shall be AA or higher by S&P or an equivalent rating or higher by another generally recognized rating agency providing country credit ratings and (iii) the maturities of all obligations of the type described in clause (b) or (h) above shall not exceed one year from the date of acquisition thereof.

" Cash Interest Expense " means, with respect to any Person for any period, the Interest Expense of such Person for such period less , to the extent included in the calculation of Interest Expense of such Person

for such period, (a) the amount of debt discount and debt issuance costs amortized, (b) charges relating to write-ups or write-downs in the book or carrying value of existing Financial Covenant Debt and (c) interest payable in evidences of Indebtedness or by addition to the principal of the related Indebtedness.

" Cash Management Agreement " means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card, electronic funds transfer and other cash management arrangements in the ordinary course of business of the Borrower and its Subsidiaries, but excluding any such agreement providing for overdraft services or financing that may remain outstanding for more than three Business Days.

" Cash Management Bank " means (a) any Person that, at the time it enters into a Cash Management Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Cash Management Agreement, and (b) any Person that is a party to a Cash Management Agreement at the time it or its relevant Affiliate becomes a Lender (whether on the Closing Date or at a later date pursuant to Section 10.06), in its capacity as a party to such Cash Management Agreement.

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

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

(a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, but excluding (i) any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan and (ii) underwriters in the course of their distribution of Voting Stock in an underwritten registered public offering provided such underwriters shall not hold such Stock for longer than five Business Days) becomes the "beneficial owner" (as defined in Rules
13d-3 and 13d-5 under the Securities Exchange Act of 1934), directly or indirectly, of more than
30% of the equity securities of the Borrower entitled to vote for members of the board of directors or equivalent governing body of the Borrower on a fully-diluted basis; or

(b) during any period of twelve consecutive calendar months, a majority of the members of the board of directors or other equivalent governing body of the Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period, (ii) whose election or nomination to that board or equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (iii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clauses (i) and (ii) above constituting at the time of such election or nomination at least a majority of that board or equivalent governing body; provided that individuals who are elected or appointed as members of the board of directors or other equivalent governing

body in connection with the Spinoff (to the extent consistent with the Form 10 Transactions) shall, from and after the date the Spinoff is consummated, be deemed to be members of the board of directors or equivalent governing body pursuant to clause (i) above.

" Closing Date " means the first date all the conditions precedent in Section 4.02 are satisfied or waived in accordance with Section 10.01 .

" Code " means the Internal Revenue Code of 1986.

" Collateral " means, collectively, the Pledged Interests and all other personal and real property of the Borrower, any Guarantor or any other Person in which the Administrative Agent or any Secured Party is granted a Lien under any Security Instrument as security for all or any portion of the Obligations or any other obligation arising under any Loan Document.

" Collateral Agreement " means the Pledge and Security Agreement dated as of the Closing Date by the Borrower and the Guarantors to the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit G .

" Commitment " means, as to each Lender, its obligation to (a) make Revolving Credit Loans to the Borrower pursuant to Section 2.01 , (b) purchase participations in L/C Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the Dollar amount set forth opposite such Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

" Commitment Letter " means that certain commitment letter dated as of April 7, 2015 by and among the Borrower, BWPGG, the Arrangers, Bank of America, BNP Paribas, JPMorgan Chase Bank, N.A., Wells Fargo Bank, National Association and CrØdit Agricole Corporate and Investment Bank.

"Commitment Reduction Amount" means (a) with respect to any reduction of the Revolving Credit Facility required by Section 2.06(b) related to a Prepayment Event under clause (a) of the definition thereof, the Net Cash Proceeds of such event required to be utilized pursuant to Section 2.05(b) to make such a prepayment (including any amount that may be retained by the Borrower pursuant to Section 2.05(d)(iv)) and (b) with respect to each Commitment Reduction Event, an amount equal to 50% of the aggregate principal amount of the incurrence of Indebtedness giving rise to such Commitment Reduction Event.

"Commitment Reduction Event" means the issuance or other incurrence by the Borrower or any of its Subsidiaries during the Relief Period of any unsecured Indebtedness pursuant to either (a) Section 7.01(i) in an aggregate principal amount outstanding in excess of $25,000,000 or (b) Section 7.01(o), in each case other than any such Indebtedness that constitutes Subordinated Debt.

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

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

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

" Connection Income Taxes " means Other Connection Taxes that are imposed on or measured by net income (however denominated) or that are franchise Taxes or branch profits Taxes.

" Consolidated Net Income " means, for any period, the net income (or loss) of the Borrower and its Subsidiaries for such period determined on a consolidated basis in accordance with GAAP.

" Consolidated Tangible Assets " means, as of any date of determination, the difference of (a) the consolidated total assets of the Borrower and its Subsidiaries as of such date, determined in accordance with GAAP, minus (b) all Intangible Assets of the Borrower and its Subsidiaries on a consolidated basis as of such date.

" Consortium " means any joint venture, consortium or other similar arrangement that is not a separate legal entity entered into by the Borrower or any of its Subsidiaries and one or more third parties, provided that no Loan Party shall, whether pursuant to the Constituent Documents of such joint venture or otherwise, be under any Contractual Obligation to make Investments or incur Guaranty Obligations after the Closing Date, or, if later, at the time of, or at any time after, the initial formation of such joint venture, consortium or similar arrangement that would be in violation of any provision of this Agreement.

" Constituent Documents " means, with respect to any Person, (a) the articles of incorporation, certificate of incorporation or certificate of formation (or the equivalent organizational documents) of such Person and (b) the bylaws, partnership agreement or operating agreement (or the equivalent governing documents) of such Person.

" Contaminant " means any material, substance or waste that is classified, regulated or otherwise characterized under any Environmental Law as hazardous, toxic, a contaminant or a pollutant or by other words of similar meaning or regulatory effect, including any petroleum or petroleum derived substance or waste, asbestos and polychlorinated biphenyls.

" Contractual Obligation " of any Person means any obligation, agreement, undertaking or similar provision of any Security issued by such Person or of any agreement, undertaking, contract, lease, indenture, mortgage, deed of trust or other instrument (excluding the Loan Documents) to which such Person is a party or by which it or any of its property is bound.

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

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

" Customary Permitted Liens " means, with respect to any Person, any of the following Liens:

(a) Liens with respect to the payment of taxes, assessments or governmental charges in each case that are not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent

required by GAAP and, in the case of Mortgaged Property, there is no material risk of forfeiture of such property;

(b) Liens of landlords arising by statute or lease contracts entered into in the ordinary course, inchoate, statutory or construction liens and liens of suppliers, mechanics, carriers, materialmen, warehousemen, producers, operators or workmen and other liens imposed by law created in the ordinary course of business for amounts not yet due or that are being contested in good faith by appropriate proceedings and with respect to which adequate reserves or other appropriate provisions are being maintained to the extent required by GAAP;

(c) liens, pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance or other types of social security benefits, taxes, assessments, statutory obligations or other similar charges or to secure the performance of bids, tenders, sales, leases, contracts (other than for the repayment of borrowed money) or in connection with surety, appeal, customs or performance bonds or other similar instruments;

(d) encumbrances arising by reason of zoning restrictions, easements, licenses, reservations, covenants, rights-of-way, utility easements, building restrictions and other similar encumbrances on the use of Real Property not materially detracting from the value of such Real Property and not materially interfering with the ordinary conduct of the business conducted at such Real Property;

(e) encumbrances arising under leases or subleases of Real Property that do not, individually or in the aggregate, materially detract from the value of such Real Property or materially interfere with the ordinary conduct of the business conducted at such Real Property;

(f) financing statements with respect to a lessor's rights in and to personal property leased to such Person in the ordinary course of such Person's business;

(g) liens, pledges or deposits relating to escrows established in connection with the purchase or sale of property otherwise permitted hereunder and the amounts secured thereby shall not exceed the aggregate consideration in connection with such purchase or sale (whether established for an adjustment in purchase price or liabilities, to secure indemnities, or otherwise);

(h) bankers' Liens, rights of setoff and other similar Liens existing solely with respect to cash and Cash Equivalents on deposit in one or more accounts maintained by the Borrower or a Subsidiary, in each case granted in the ordinary course of business in favor of the bank or banks with which such accounts are maintained, securing amounts owing to such bank with respect to cash management and operating account arrangements, including those involving pooled accounts and netting arrangements; provided that, unless such Liens are non-consensual and arise by operation of law, in no case shall any such Liens secure (either directly or indirectly) the repayment of any Indebtedness; and

(i) options, put and call arrangements, rights of first refusal and similar rights (i) relating to Investments in Subsidiaries, Joint Ventures and Consortiums or (ii) provided for in contracts or agreements entered into in the ordinary course of business.

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

" Default " means any event or condition that constitutes an Event of Default or that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

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

" Defaulting Lender " means, subject to Section 2.16(b) , any Lender that (a) has failed to (i) fund all or any portion of its Loans within three Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any L/C Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swing Line Loans) within three Business Days of the date when due, (b) has notified the Borrower, the Administrative Agent, any L/C Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, ~~or~~ (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity **or (iii) become the subject of a Bail-In Action** ; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.16(b)) as of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Borrower, each L/C Issuer, the Swing Line Lender and each other Lender promptly following such determination.

" Designated Jurisdiction " means any country or territory to the extent that such country or territory itself is, or whose government is, at the time of determination, the subject of any Sanction.

" Disqualified Stock " means with respect to any Person, any Stock that, by its terms (or by the terms of any Security into which it is convertible or for which it is exchangeable), or upon the happening of any event, matures or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is exchangeable for Indebtedness of such Person, or is redeemable at the option of the holder thereof, in whole or in part, on or prior to the Maturity Date.

" Disregarded Entity " means any Person that is disregarded as an entity separate from its owner for U.S. federal income tax purposes.

" Dollar " and " $ " mean lawful money of the United States.

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

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

" EBITDA " means, for any period,

(a) Consolidated Net Income for such period;

plus

(b) the sum of, in each case to the extent deducted in the calculation of **(or, in the case of clause (vii), otherwise reducing)** such Consolidated Net Income but without duplication,

(i) any provision for income taxes, (ii) Interest Expense,

(iii) depreciation expense,

(iv) amortization of intangibles or financing or acquisition costs,

(v) any aggregate net loss from the sale, exchange or other disposition of business units by the Borrower or its Subsidiaries, ~~and~~

(vi) all other non-cash charges (including impairment of intangible assets and goodwill) and non-cash losses for such period (excluding any non-cash item to the extent it represents an accrual of, or reserve for, cash disbursements for any period ending prior to the Maturity Date); **and**

(vii) for any period that includes the fiscal quarter ended December 31, 2016, the actual costs, expenses, losses and/or reductions in Consolidated Net Income experienced by the Borrower and its Subsidiaries in connection with the Vllund Projects in an aggregate amount not to exceed $98,100,000;

provided , that, to the extent that all or any portion of the income or gains of any Person is deducted pursuant to any of clauses (c)(iv) and (v) below for a given period, any amounts set forth in any of the preceding clauses (b)(i) through (b)(~~vi~~ **vii**) that are attributable to such Person shall not be included for purposes of this clause (b) for such period,

minus

(c) the sum of, in each case to the extent included in the calculation of such Consolidated Net Income but without duplication,

(i) any credit for income tax, (ii) non-cash interest income,

(iii) any other non-cash gains or other items which have been added in determining Consolidated Net Income (other than any such gain or other item that has been deducted in determining EBITDA for a prior period),

(iv) the income of any Subsidiary or Joint Venture to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by such Subsidiary or Joint Venture, as applicable, of that income is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, statute, rule or governmental regulation applicable to such Subsidiary or Joint Venture, as applicable,

(v) the income of any Person (other than a Subsidiary) in which any other Person (other than the Borrower or a Wholly-Owned Subsidiary or any director holding qualifying shares in accordance with applicable law) has an interest, except to the extent of the amount of dividends or other distributions or transfers or loans actually paid to the Borrower or a Wholly-Owned Subsidiary by such Person during such period, and

(vi) any aggregate net gains from the sale, exchange or other disposition of business units by the Borrower or any of its Subsidiaries out of the ordinary course of business.

For any period of measurement that includes any Permitted Acquisition or any sale, exchange or disposition of any Subsidiary or business unit of the Borrower or any Subsidiary, EBITDA (and the relevant elements thereof) shall be computed on a *pro forma* basis for each such transaction as if it occurred on the first day of the period of measurement thereof, so long as the Borrower provides to the Administrative Agent reconciliations and other detailed information relating to adjustments to the relevant financial statements (including copies of financial statements of the acquired Person or assets in any Permitted Acquisition) used in computing EBITDA (and the relevant elements thereof) sufficient to demonstrate such *pro forma* calculations in reasonable detail.

"EEA Financial Institution" means (a) any credit institution or investment firm 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 financial 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.

" Eligible Assignee " means any Person that meets the requirements to be an assignee under Section 10.06(b)(iii) and (v) (subject to such consents, if any, as may be required under Section 10.06(b)(iii)).

" Eligible Line of Business " means the businesses and activities engaged in by the Borrower and its Subsidiaries on the Closing Date, any other businesses or activities reasonably related or incidental thereto

and any other businesses that, when taken together with the existing businesses of the Borrower and its Subsidiaries, are immaterial with respect to the assets and liabilities of the Borrower and its Subsidiaries, taken as a whole.

" Employee Benefit Plan " means any "employee benefit plan" as defined in Section 3(3) of ERISA which is sponsored, maintained or contributed to by, or required to be contributed to by, the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates or was sponsored, maintained or contributed to by, or required to be contributed to by, the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates with respect to liabilities for which the Borrower, any such Subsidiary, any such Guarantor or any of their respective ERISA Affiliates could be liable under the Code or ERISA.

" Environmental Laws " means all applicable Requirements of Law now or hereafter in effect and as amended or supplemented from time to time, relating to pollution or the regulation and protection of human health, safety, the environment or natural resources, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 *et seq.*); the Hazardous Material Transportation Act, as amended (49 U.S.C. § 1801 *et seq.*); the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. § 136 *et seq.*); the Resource Conservation and Recovery Act, as amended (42 U.S.C. § 6901 *et seq.*); the Toxic Substance Control Act, as amended (15 U.S.C. § 2601 *et seq.*); the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); the Occupational Safety and Health Act, as amended (29 U.S.C. § 651 *et seq.*); the Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et seq.*); and each of their state and local counterparts or equivalents.

" Environmental Liabilities and Costs " means, with respect to any Person, all liabilities, obligations, responsibilities, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute and arising under any Environmental Law, Permit, order or agreement with any Governmental Authority or other Person, in each case relating to and resulting from the past, present or future operations of, or ownership of property by, such Person or any of its Subsidiaries.

" Environmental Lien " means any Lien in favor of any Governmental Authority pursuant to any Environmental Law.

" ERISA " means the Employee Retirement Income Security Act of 1974.

" ERISA Affiliate " means any trade or business (whether or not incorporated) under common control or treated as a single employer with the Borrower, any of its Subsidiaries or any Guarantor within the meaning of Section 414(b), (c), (m) or (o) of the Code. Any former ERISA Affiliate of the Borrower, any of its Subsidiaries or any Guarantor shall continue to be considered an ERISA Affiliate of the Borrower, such Subsidiary or such Guarantor within the meaning of this definition solely with respect to the period such entity was an ERISA Affiliate of the Borrower, such Subsidiary or such Guarantor and with respect to liabilities arising after such period for which the Borrower, such Subsidiary or such Guarantor could be liable under the Code or ERISA.

" ERISA Event " means (a) a reportable event described in Section 4043(b) or 4043(c) of ERISA with respect to a Title IV Plan, (b) the withdrawal of the Borrower, any of its Subsidiaries, any Guarantor or

any ERISA Affiliate from a Title IV Plan subject to Section 4063 or Section 4064 of ERISA during a plan year in which any such entity was a "substantial employer" (as defined in Section 4001(a)(2) of ERISA) or the termination of any such Title IV Plan resulting, in either case, in a material liability to any such entity, (c) the "complete or partial withdrawal" (within the meaning of Sections 4203 and 4205 of ERISA) of the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate from any Multiemployer Plan where the Withdrawal Liability is reasonably expected to exceed $1,000,000 (individually or in the aggregate), (d) notice of reorganization, insolvency, intent to terminate or termination of a Multiemployer Plan is received by the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate, (e) the filing of a notice of intent to terminate a Title IV Plan under Section 4041(c) of ERISA or the treatment of a plan amendment as a termination under Section 4041(e) of ERISA, where such termination constitutes a "distress termination" under Section 4041(c) of ERISA, (f) the institution of proceedings to terminate a Title IV Plan by the PBGC, (g) the failure to make any required contribution to a Title IV Plan or Multiemployer Plan or to meet the minimum funding standard of Sections 430 and 431 of the Code (in either case, whether or not waived), (h) the imposition of a Lien with respect to any employee pension plan under the provisions of the Code that relate to such plans or ERISA on the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate, (i) any other event or condition that might reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, (j) the imposition of liability on the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section
4212(c) of ERISA, (k) the occurrence of an act or omission which would reasonably be expected to give rise to the imposition on the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section
409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any "employee pension plan" (within
the meaning of Section 3(2) of ERISA), or (l) receipt from the IRS of notice of the failure of any employee pension plan that is intended to be qualified under Section 401(a) of the Code so to qualify under Section
401(a) of the Code, or the failure of any trust forming part of any such employee pension plan to qualify for
exemption from taxation under Section 501(a) of the Code.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

" Eurocurrency Rate " means:

(a) for any Interest Period with respect to a Eurocurrency Rate Loan, the rate per annum equal to (i) the London Interbank Offered Rate (" LIBOR "), as published by Bloomberg (or other commercially available source providing quotations of LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or (ii) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in Same Day Funds in the approximate amount of the Eurocurrency Rate Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two London Banking Days prior to the commencement of such Interest Period; and

(b) for any interest calculation of the Eurocurrency Rate with respect to a Base Rate Loan on any date, the rate per annum equal to (i) LIBOR, at approximately 11:00 a.m., London time determined two London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one month commencing that day or (ii) if such published rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in Same Day Funds in the approximate amount of the Base Rate Loan being made or maintained and with a term equal to one month would be offered by Bank of America's London Branch to major banks in the London interbank eurodollar market at their request at the date and time of determination.

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

" Eurocurrency Rate Loan " means a Revolving Credit Loan that bears interest at a rate based on clause (a) of the definition of "Eurocurrency Rate."

" Event of Default " has the meaning specified in Section 8.01 .

" Excluded Domestic Subsidiary " means any direct or indirect Subsidiary of a Loan Party that is directly or indirectly owned (in whole or in part) by any Foreign Subsidiary of a Loan Party.

" Excluded Swap Obligation " means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guaranty of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guaranty thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Ex change Act (determined after giving effect to any "keepwell, support or other agreement" for the benefit of such Guarantor and any and all guarantees of such Guarantor's Swap Obligations by other Loan Parties) at the time the Guaranty of such Guarantor, or a grant by such Guarantor of a security interest, becomes effective with respect to such Swap Obligation. 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 Guaranty or security interest is or becomes excluded in accordance with the first sentence of this definition.

" Excluded Taxes " means any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender or L/C Issuer, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender or L/C Issuer (as applicable) with respect to an applicable interest in a Loan or Commitment or otherwise under a Loan Document pursuant to a law in effect on the date on which (i) such Lender or L/C Issuer (as applicable) acquires such interest in the Loan or Commitment or becomes a party to this Agreement (other than pursuant to an assignment request by the Borrower under Section 10.13) or (ii) such Lender or L/C Issuer (as applicable) changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(b) , amounts with respect to such Taxes were payable either to such Lender's or L/C Issuer's (as applicable) assignor immediately before such Lender or L/C Issuer (as applicable) became a party hereto or

to such Lender or L/C Issuer (as applicable) immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(f) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

" Execution Date " means the first date on which all the conditions precedent in Section 4.01 are satisfied or waived in accordance with Section 10.01 .

" Existing Credit Agreement " means that certain Second Amended and Restated Credit Agreement dated as of June 24, 2014 by and among BWC, as the borrower, Bank of America, as the administrative agent, and the lenders from time to time party thereto.

" Extended Letter of Credit " has the meaning specified in Section 2.03(a)(ii) .

" Fair Market Value " means the value that would be paid by a willing buyer to an unaffiliated willing seller in a transaction not involving distress or necessity of either party; provided that, for any determination of Fair Market Value in connection with an Asset Sale to be made pursuant to Section 7.04(i) in which the Fair Market Value of the properties disposed of in such Asset Sale exceeds $25,000,000, the Borrower shall provide evidence reasonably satisfactory to the Administrative Agent with respect to the calculation of such Fair Market Value.

" FASB ASC " means the Accounting Standards Codification of the Financial Accounting Standards Board.

" FATCA " means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any intergovernmental agreements that implement or modify the foregoing (together with any Requirement of Law implementing such agreements).

" Federal Funds Rate " means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the immediately preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to Bank of America on such day on such transactions as determined by the Administrative Agent.

" Fee Letters " means each of (a) the fee letter dated as of April 7, 2015 by and among the Borrower, BWPGG, the Arrangers, Bank of America, BNP Paribas, JPMorgan Chase Bank, N.A., Wells Fargo Bank, National Association and CrØdit Agricole Corporate and Investment Bank, (b) the fee letter dated as of April 7, 2015by and among the Borrower, BWPGG, Bank of America and MLPFS, (c) the fee letter dated as of April 7, 2015 by and among the Borrower, BWPGG, BNP Paribas and BNP Paribas Securities Corp., (d) the fee letter dated as of April 7, 2015 by and among the Borrower, BWPGG, JPMorgan Chase Bank, N.A. and J.P. Morgan Securities LLC, (e) the fee letter dated as of April 7, 2015 by and among the Borrower, BWPGG, Wells Fargo Bank, National Association and Wells Fargo Securities, LLC and (f) the fee letter dated as of April 7, 2015 by and among the Borrower, BWPGG and CrØdit Agricole Corporate and Investment Bank.

" Financial Covenant Debt " of any Person means, without duplication, Indebtedness of the type specified in clauses (a), (b), (c), (d), (e), (f), (g) and (h) of the definition of "Indebtedness". For the avoidance of doubt, the term "Financial Covenant Debt" shall not include (a) reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees and (b) Indebtedness of the Borrower or any Subsidiary of the Borrower that is owed to the Borrower or any Subsidiary of the Borrower.

" Financial Letter of Credit " means any standby Letter of Credit that is not a Performance Letter of Credit.

" First-Tier Foreign Subsidiary " mean a Foreign Subsidiary all or any portion of whose Stock is owned directly by the Borrower or a Domestic Subsidiary that is a Guarantor.

" Fiscal Quarter " means the fiscal quarter of the Borrower ending on March 31, June 30, September 30 or December 31 of the applicable calendar year, as applicable.

" Fiscal Year " means the fiscal year of the Borrower, which is the same as the calendar year.

"Flood Requirement Standards" means, with respect to any parcel of owned Real Property to be subject to a Mortgage, (a) the delivery to the Administrative Agent of a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each such parcel of owned real property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the applicable Loan Party relating to such parcel of owned Real Property), (b) maintenance, if available, of fully paid flood hazard insurance on all such owned Real Property that is located in a special flood hazard area from such providers and on such terms and in such amounts as required by Flood Disaster Protection Act, The National Flood Insurance Reform Act of 1994 or as otherwise reasonably required by the Administrative Agent and (c) delivery to the Administrative Agent of evidence of such compliance in form and substance reasonably acceptable to the Administrative Agent.

" Foreign Lender " means a Lender that is not a U.S. Person.

" Foreign Subsidiary " means any Subsidiary that is organized under the laws of a jurisdiction other than the United States, a State thereof or the District of Columbia.

" Foreign Subsidiary Reorganization " means the transfer (whether by Asset Sale, dividend, distribution, contribution, merger or otherwise), in a series of transactions, of the Stock and Stock Equivalents of certain Foreign Subsidiaries and Investments owned, directly or indirectly, by the Borrower among the Borrower and its Subsidiaries; provided that:

(a) both before and after giving effect thereto, no Default shall have occurred and be continuing;

(b) all of the Stock and Stock Equivalents of such Foreign Subsidiaries and Investments owned, directly or indirectly, by the Borrower on the Closing Date shall be owned, directly or indirectly, by the Borrower upon the completion thereof (other than any such Stock, Stock Equivalents or Investments that are retired or replaced);

(c) any Stock, Stock Equivalents or Investments issued or made in connection therewith, to the extent replacing Stock, Stock Equivalents or Investments previously owned, directly or indirectly, by the

Borrower on the Closing Date shall be owned, directly or indirectly, by the Borrower upon the completion thereof;

(d) after giving effect thereto, the Borrower shall be in compliance with Section 6.22 (including, without limitation, by pledging any Pledged Interests issued by any First Tier Foreign Subsidiary owned by any Loan Party)

(f) in connection therewith, no assets owned by any Loan Party that is a party to the Collateral Agreement, other than Stock and Stock Equivalents of Foreign Subsidiaries, shall be transferred to any Person that is not a Loan Party that is a party to the Collateral Agreement; provided that the foregoing shall not prohibit Investments otherwise permitted by a provision of Section 7.03 other than Section 7.03(k) .

" Form 10 " means the Form 10 (together with any exhibits thereto) filed with the SEC relating to the Spinoff.

" Form 10 Transactions " means the individual transactions entered into in connection with the Spinoff on substantially the same terms as set forth in the Form 10 (with non-material changes or other additional non-material transactions, steps or terms that are not adverse to any material interest of the Lenders being considered to be "on substantially the same terms"); provided that any amendments, additions, or other modifications to the Form 10 are made in accordance with Section 7.10 .

" FRB " means the Board of Governors of the Federal Reserve System of the United States.

" Fronting Exposure " means, at any time there is a Defaulting Lender, (a) with respect to each L/C Issuer, such Defaulting Lender's Applicable Percentage of the outstanding L/C Obligations with respect to Letters of Credit issued by such L/C Issuer, other than L/C Obligations as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swing Line Lender, such Defaulting Lender's Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender's participation obligation has been reallocated to other Lenders or Cash Collateralized in accordance with the terms hereof.

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

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

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

" Guarantors " means, collectively, each Wholly-Owned Domestic Subsidiary of the Borrower listed on Schedule 1.01(b) hereto, and each other Person that is or becomes a party to the Guaranty (including by

execution of a Joinder Agreement pursuant to Section 6.22), but expressly excludes all Captive Insurance Subsidiaries and all Excluded Domestic Subsidiaries.

" Guaranty " means the Guaranty Agreement dated as of the Closing Date made by the Borrower (solely with respect to Obligations in the nature of Secured Cash Management Agreements and Secured Hedge Agreements) and by the Guarantors in favor of the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit F , and any Joinder Agreement with respect thereto.

" Guaranty Obligation " means, as applied to any Person, without duplication, any direct or indirect liability, contingent or otherwise, of such Person with respect to any Indebtedness of another Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee of such Indebtedness that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof, including (a) the direct or indirect guaranty, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of Indebtedness of another Person and (b) any liability of such Person for Indebtedness of another Person through any agreement (contingent or otherwise) (i) to purchase, repurchase or otherwise acquire such Indebtedness or any security therefor, or to provide funds for the payment or discharge of such Indebtedness (whether in the form of a loan, advance, stock purchase, capital contribution or otherwise), (ii) to maintain the solvency or any balance sheet item, level of income or financial condition of another Person, (iii) to make take-or-pay or similar payments, regardless of non-performance by any other party or parties to an agreement, (iv) to purchase, sell or lease (as lessor or lessee) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness or to assure the holder of such Indebtedness against loss or (v) to supply funds to, or in any other manner invest in, such other Person (including to pay for property or services irrespective of whether such property is received or such services are rendered), if (and only if) in the case of any agreement described under clause (b)(i), (ii), (iii), (iv) or (v) above the primary purpose or intent thereof is to provide assurance to the obligee of Indebtedness of any other Person that such Indebtedness will be paid or discharged, or that any agreement relating thereto will be complied with, or that any holder of such Indebtedness will be protected (in whole or in part) against loss in respect thereof. The amount of any Guaranty Obligation shall be equal to the amount of the Indebtedness so guaranteed or otherwise supported or, if such amount is not stated or otherwise determinable, the maximum reasonable anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. For the avoidance of doubt, the term "Guaranty Obligation" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

" Hedge Bank " means (a) any Person that, at the time it enters into a Secured Swap Contract, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Secured Swap Contract, and (b) any Person that is a party to a Secured Swap Contract at the time it or its relevant Affiliate becomes a Lender (whether on the Closing Date or at a later date pursuant to Section 10.06), in its capacity as a party to such Secured Swap Contract.

" Immaterial Subsidiary " means any Subsidiary of the Borrower that, together with its Subsidiaries, (a) contributed less than $3,000,000 to the EBITDA of the Borrower and its Subsidiaries during the most recently-ended four-quarter period of the Borrower (taken as a single period) and (b) as of any date of determination has assets with an aggregate net book value of $3,000,000 or less.

" Increase Effective Date " has the meaning specified in Section 2.14(c) .

" Indebtedness " of any Person means, without duplication, (a) all indebtedness of such Person for borrowed money, (b) all obligations of such Person evidenced by promissory notes, bonds, debentures or similar instruments, (c) all matured reimbursement obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees, and other similar obligations, (d) all other obligations with respect to letters of credit, bankers' acceptances, surety bonds, performance bonds, bank guarantees and other similar obligations, whether or not matured, other than unmatured or undrawn, as applicable, obligations with respect to Performance Guarantees, (e) all indebtedness for the deferred purchase price of property or services, other than trade payables incurred in the ordinary course of business that are not overdue by more than ninety days or are being disputed in good faith, (f) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement (other than operating leases) with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (g) all Capital Lease Obligations of such Person, (h) all Guaranty Obligations of such Person, (i) all obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any Stock or Stock Equivalents of such Person, valued, in the case of redeemable preferred stock, at the greater of its voluntary liquidation preference and its involuntary liquidation preference plus accrued and unpaid dividends, (j) net payments that such Person would have to make in the event of an early termination as determined on the date Indebtedness of such Person is being determined in respect of Swap Contracts of such Person and (k) all Indebtedness of the type referred to above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien upon or in property (including accounts and general intangibles) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, but limited to the value of the property owned by such Person securing such Indebtedness. For the avoidance of doubt, the term "Indebtedness" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

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

" Indemnitees " has the meaning specified in Section 10.04(b) .

" Information " has the meaning specified in Section 10.07 .

" Information Memorandum " means the Confidential Information Memorandum, dated June 2014, in respect of the credit facilities provided under this Agreement.

" Intangible Assets " means assets that are considered to be intangible assets under GAAP, including customer lists, goodwill, computer software, copyrights, trade names, trademarks, patents, franchises and licenses.

" Intellectual Property Security Agreement " has the meaning given to such term in the Collateral Agreement.

" Intercompany Subordinated Debt Payment" means any payment or prepayment, whether required or optional, of principal, interest or other charges on or with respect to any Subordinated Debt of the Borrower or any Subsidiary of the Borrower, so long as (a) such Subordinated Debt is owed to the Borrower or a Subsidiary of the Borrower and (b) no Event of Default under Sections 8.01(a) , (b) or (f) shall have occurred and be continuing.

" Interest Coverage Ratio " means, with respect to the Borrower and its Subsidiaries as of any day, the ratio of (a) EBITDA for the Borrower and its Subsidiaries for the last four full Fiscal Quarters ending on or prior to such day for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered to (b) the Cash Interest Expense of the Borrower and its Subsidiaries for the last four full Fiscal Quarters ending on or prior to such day for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered.

" Interest Expense " means, for any Person for any period, total interest expense of such Person and its Subsidiaries for such period, as determined on a consolidated basis in conformity with GAAP and including, in any event (without duplication for any period or any amount included in any prior period), (a) net costs under Interest Rate Contracts for such period, (b) any commitment fee (including, in the case of the Borrower or any of its Subsidiaries, the commitment fees hereunder) accrued, accreted or paid by such Person during such period, (c) any fees and other obligations (other than reimbursement obligations) with respect to letters of credit (including, in respect of the Borrower or any of its Subsidiaries, the Letter of Credit Fees) and bankers' acceptances (whether or not matured) accrued, accreted or paid by such Person for such period and (d) the fronting fee with respect to each Letter of Credit. For purposes of the foregoing, interest expense shall (i) be determined after giving effect to any net payments made or received by the Borrower or any Subsidiary with respect to interest rate Swap Contracts, (ii) exclude interest expense accrued, accreted or paid by the Borrower or any Subsidiary of the Borrower to the Borrower or any Subsidiary of the Borrower and (iii) exclude credits to interest expense resulting from capitalization of interest related to amounts that would be reflected as additions to property, plant or equipment on a consolidated balance sheet of the Borrower and its Subsidiaries prepared in conformity with GAAP.

" Interest Payment Date " means, (a) as to any Loan other than a Base Rate Loan, the last day of each Interest Period applicable to such Loan and the Maturity Date; provided , however , that if any Interest Period for a Eurocurrency Rate Loan exceeds three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; and (b) as to any Base Rate Loan (including a Swing Line Loan), the last Business Day of each March, June, September and December and the Maturity Date.

" Interest Period " means, as to each Eurocurrency Rate Loan, the period commencing on the date such Eurocurrency Rate Loan is disbursed or converted to or continued as a Eurocurrency Rate Loan and ending on the date one, two, three or six months thereafter (in each case, subject to availability), as selected by the Borrower in its Committed Loan Notice or such other period that is twelve months or less requested by the Borrower and consented to by all the Lenders; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(c) no Interest Period shall extend beyond the Maturity Date.

" Interest Rate Contracts " means all interest rate swap agreements, interest rate cap agreements, interest rate collar agreements and interest rate insurance.

" Investment " means, as to any Person, (a) any purchase or similar acquisition by such Person of (i) any Security issued by, (ii) a beneficial interest in any Security issued by, or (iii) any other equity ownership interest in, any other Person, (b) any purchase by such Person of all or substantially all of the assets of a business conducted by any other Person, or all or substantially all of the assets constituting what is known to the Borrower to be the business of a division, branch or other unit operation of any other Person, (c) any loan, advance (other than deposits with financial institutions available for withdrawal on demand, prepaid expenses, accounts receivable and similar items made or incurred in the ordinary course of business) or capital contribution by such Person to any other Person, including all Indebtedness of any other Person to such Person arising from a sale of property by such Person other than in the ordinary course of its business and (d) any Guaranty Obligation incurred by such Person in respect of Indebtedness of any other Person. For the avoidance of doubt, the term "Investment" shall not include reimbursement or other obligations with respect to unmatured or undrawn, as applicable, Performance Guarantees.

" Inventory " has the meaning specified in the Collateral Agreement.

" IRS " means the United States Internal Revenue Service.

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

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

" Joinder Agreement " means a joinder agreement, in form and substance satisfactory to the Administrative Agent, with respect to the Guaranty or any Security Instrument.

" Joint Venture " means any Person (a) in which the Borrower, directly or indirectly, owns any Stock and Stock Equivalents of such Person and (b) that is not a Subsidiary of the Borrower, provided that (i) the Administrative Agent, on behalf of the Secured Parties, has a valid, perfected, first priority security interest in the Stock and Stock Equivalents in such joint venture owned directly by any Loan Party except where (x) the Constituent Documents of such joint venture prohibit such a security interest to be granted to the Administrative Agent or (y) such joint venture has incurred Non-Recourse Indebtedness the terms of which either (A) require security interests in such Stock and Stock Equivalents to be granted to secure such Non-Recourse Indebtedness or (B) prohibit such a security interest to be granted to the Administrative Agent, and (ii) no Loan Party shall, whether pursuant to the Constituent Documents of such joint venture or otherwise, be under any Contractual Obligation to make Investments or incur Guaranty Obligations after the Closing Date, or, if later, at the time of, or at any time after, the initial formation of such joint venture, that would be in violation of any provision of this Agreement.

" Landlord Lien Waiver " means a lien waiver signed by a landlord in such form as is reasonably satisfactory to the Administrative Agent.

" L/C Advance " means, with respect to each Lender, such Lender's funding of its participation in any L/C Borrowing in accordance with its Applicable Percentage. All L/C Advances shall be denominated in Dollars.

" L/C Borrowing " means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing. All L/C Borrowings shall be denominated in Dollars.

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

" L/C Issuer " means Bank of America, each other Lender that is listed on the signature pages hereto as an "L/C Issuer" and any other Lender that becomes an L/C Issuer in accordance with Section 2.03(l) hereof, each in its respective capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder (whether pursuant to Section 2.03(l) , 2.03(m) , 9.06 , 10.06 or otherwise), but excluding any Lender that resigns or is removed as an L/C Issuer pursuant to the terms hereof (except to the extent such Person has continuing rights and/or obligations with respect to Letters of Credit after such resignation or removal). References to the L/C Issuer herein shall, as the context may indicate (including with respect to any particular Letter of Credit, L/C Credit Extension, L/C Borrowing or L/C Obligations), mean the applicable L/C Issuer, each L/C Issuer, any L/C Issuer, or all L/C Issuers.

" L/C Issuer Sublimit " means with respect to each L/C Issuer, such amount as may be separately agreed between such L/C Issuer and the Borrower from time to time (with specific notice of such amount, and any change thereto, with respect to each L/C Issuer being promptly communicated to the Administrative Agent), provided that the L/C Issuer Sublimit with respect to any Person that ceases to be an L/C Issuer for any reason pursuant to the terms hereof shall be $0 (subject to the Letters of Credit of such Person remaining outstanding in accordance with the provisions hereof).

" L/C Obligations " means, as at any date of determination, the aggregate amount available to be drawn under all outstanding Letters of Credit plus the aggregate of all Unreimbursed Amounts, including all L/C Borrowings. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08 . For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn. The L/ C Obligations of (a) any Lender at any time shall be its Applicable Percentage of the total L/C Obligations at such time, and (b) any particular L/C Issuer at any time shall mean the L/C Obligations allocable to Letters of Credit issued by such L/C Issuer.

" Lender " has the meaning specified in the introductory paragraphs hereto and, unless the context requires otherwise, includes the Swing Line Lender.

" Lending Office " means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower and the Administrative Agent, which office may include any Affiliate of such Lender or any domestic or foreign branch of such Lender or such Affiliate. Unless the context otherwise requires each reference to a Lender shall include its applicable Lending Office.

" Letter of Credit " means any letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder, and includes all letters of credit issued under the Existing Credit Agreement that are outstanding on the Closing Date and issued for the account of a Permitted L/C Party, which shall in each case be deemed to have been issued hereunder. A Letter of Credit may be a commercial letter of credit or a standby letter of credit, and a standby Letter of Credit may be a Performance Letter of Credit or a Financial Letter of Credit.

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

" Letter of Credit Expiration Date " means the day that is 30 days prior to the Maturity Date (or, if such day is not a Business Day, the immediately preceding Business Day).

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

" Leverage Ratio " means, with respect to the Borrower and its Subsidiaries as of any day, the ratio of (a) Financial Covenant Debt of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP as of such day to (b) EBITDA for the Borrower and its Subsidiaries for the last four full Fiscal Quarters ending on or prior to such day for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered.

" Leverage Ratio Increase " has the meaning specified in Section 7.16(b) .

" Lien " means any mortgage, deed of trust, pledge, hypothecation, collateral assignment, charge, deposit arrangement, encumbrance, lien (statutory or other), security interest or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever intended to assure payment of any Indebtedness or the performance of any other obligation, including any conditional sale or other title retention agreement, the interest of a lessor under a Capital Lease and any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any effective financing statement under the UCC or comparable law of any jurisdiction naming the owner of the asset to which such Lien relates as debtor.

" Loan " means an extension of credit by a Lender to the Borrower under Article II in the form of a Revolving Credit Loan or a Swing Line Loan.

" Loan Documents " means this Agreement, each Note, the Guaranty, each Security Instrument, each Joinder Agreement, each Committed Loan Notice, each Issuer Document, each Fee Letter, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.03 or 2.15 of this Agreement and all other instruments and documents heretofore or hereafter executed or delivered to or in favor of the Administrative Agent, any Lender or any L/C Issuer in connection with the Loans made, Letters of Credit issued and transactions contemplated by this Agreement.

" Loan Parties " means, collectively, the Borrower, each Guarantor and any other Person (other than a Lender) providing Collateral pursuant to any Security Instrument.

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

" Material Acquisition " means a Permitted Acquisition in which the sum of the cash consideration paid (including for the repayment and retirement of outstanding Indebtedness) plus any Indebtedness assumed equals or exceeds $100,000,000.

" Material Adverse Effect " means (a) a material adverse change in, or a material adverse effect upon, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole; (b) a material impairment of the rights and remedies of the Administrative Agent or any Lender under any Loan Document or of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse

effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party.

" Material Intellectual Property " has the meaning specified in the Collateral Agreement.

" Material Real Property " means, any parcel of real property located in the United States and owned by any Loan Party that has a Fair Market Value in excess of $3,000,000; provided that, upon request of the Borrower, the Administrative Agent may agree in its sole discretion to exclude from this definition any parcel of real property (and/or the buildings and contents therein) that is located in a special flood hazard area as designated by any federal Governmental Authority.

" Material Subsidiary " means, as of any date of determination, any Subsidiary of the Borrower that (a) has assets that represent more than 10% of the consolidated GAAP value of the assets of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, as of such date or (b) contributed more than 10% of the EBITDA of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, during the most recently-ended four-quarter period of the Borrower (taken as a single period), or (c) with respect to any new Person acquired or created by the Borrower, (i) would have contributed more than 10% of the EBITDA of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, on a *pro forma* basis as of the last day of the most recently ended four-quarter period of the Borrower (taken as a single period) or (ii) held more than 10% of the consolidated GAAP value of the assets of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, as of such date, or (d) owns, directly or indirectly, Stock or Stock Equivalents in one or more other Subsidiaries of the Borrower that, when aggregated with such Subsidiary, (i) contributed more than 10% of the EBITDA of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, during the most recently ended four-quarter period of the Borrower (taken as single period) or (ii) held more than 10% of the consolidated GAAP value of the assets of the Borrower and its Subsidiaries, inclusive of the subject Subsidiary, as of such date.

" Maturity Date " means the fifth anniversary of the Closing Date; provided that if such date is not a Business Day, the Maturity Date shall be the next preceding Business Day.

" Minimum Collateral Amount " means, at any time, (i) with respect to Cash Collateral consisting of cash or deposit account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 100% of the Fronting Exposure of each L/C Issuer with respect to Letters of Credit issued by such L/C Issuer and outstanding at such time and (ii) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of Section 2.15(a)(i) or (a)(ii) , an amount equal to 100% of the Outstanding Amount of all LC Obligations.

"MIRE Event" means any increase, extension or renewal of any Commitment (including pursuant to Section 2.14), or the addition of any new commitment hereunder.

" MLPFS " means Merrill Lynch, Pierce, Fenner & Smith Incorporated.

" Moody's " means Moody's Investors Service, Inc. and any successor thereto.

" Mortgagee Policies " has the meaning specified in Section 4.02(a)(iii)(B) .

" Mortgaged Properties " mean, initially, (a) each parcel of Real Property and the improvements thereto specified on Schedule 4.02(a)(iii) (except to the extent the Administrative Agent agrees, as provided in such definition, between the Execution Date and the Closing Date to exclude any such parcel (and/or the buildings and contents therein) from the definition of Material Real Property) and (b) shall include each

other parcel of Material Real Property and improvements thereto with respect to which a Mortgage is granted pursuant to Section 6.23 .

" Mortgages " mean the fee or leasehold mortgages or deeds of trust, assignments of leases and rents and other security documents (including any such document delivered in connection with the Existing Credit Agreement and remaining in place in connection with this Agreement) granting a Lien on any Mortgaged Property to secure the Obligations, each in form and substance reasonably satisfactory to the Administrative Agent, as the same may be amended, supplemented, replaced or otherwise modified from time to time in accordance with this Agreement.

" Multiemployer Plan " means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate has any obligation or liability, contingent or otherwise.

" Net Cash Proceeds " means:

(a) with respect to any Asset Sale by, or Recovery Event of, the Borrower or any of its Subsidiaries, the excess, if any, of (i) the sum of cash and Cash Equivalents received in connection with such transaction (including any cash or Cash Equivalents received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by the applicable asset and that is required to be repaid in connection with such transaction (other than Indebtedness under the Loan Documents), (B) the reasonable out-of-pocket expenses incurred by the Borrower or such Subsidiary in connection with such transaction and (C) Taxes actually paid or withheld or reasonably expected to be paid or withheld within the twenty-four month period following the date of the relevant transaction (and Tax distributions or payments under a Tax sharing agreement with respect thereto) in connection with such Asset Sale or Recovery Event (including any Taxes paid or withheld or reasonably expected to be paid or withheld within the twenty-four month period following the date of the relevant transaction as a result of any gain recognized in connection therewith or any repatriation of the resulting cash or Cash Equivalents to the United States); provided that, if the amount of any estimated taxes pursuant to subclause (C) exceeds the amount of taxes actually required to be paid in cash in respect of such Asset Sale or Recovery Event, the aggregate amount of such excess shall constitute Net Cash Proceeds; and

(b) with respect to the incurrence or issuance of any Indebtedness by the Borrower or any of its Subsidiaries, the excess of (i) the sum of the cash and Cash Equivalents received in connection with such transaction over (ii) the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses and Taxes, incurred by the Borrower or such Subsidiary in connection therewith.

" Non-Cash Consideration " means the Fair Market Value of non-cash consideration received by the Borrower or a Subsidiary in connection with an Asset Sale less the amount of cash or Cash Equivalents received in connection with a subsequent sale of or collection on such Non-Cash Consideration.

" Non-Recourse Indebtedness " means Indebtedness of a Joint Venture or Subsidiary of the Borrower (in each case that is not a Loan Party) (a) that, if it is incurred by a Subsidiary of the Borrower, is on terms and conditions reasonably satisfactory to the Administrative Agent, (b) that is not, in whole or in part, Indebtedness of any Loan Party (and for which no Loan Party has created, maintained or assumed any Guaranty Obligation) and for which no holder thereof has or could have upon the occurrence of any contingency, any recourse against any Loan Party or the assets thereof (other than (i) the Stock or Stock

Equivalents issued by the Joint Venture or Subsidiary that is primarily obligated on such Indebtedness that are owned by a Loan Party and (ii) a requirement that a Loan Party make an Investment of equity in such Joint Venture in connection with the terms of such Indebtedness), (c) owing to an unaffiliated third-party (which for the avoidance of doubt does not include the Borrower, any Subsidiary thereof, any other Loan Party, any Joint Venture (or owner of any interest therein) and any Affiliate of any of them) and (d) the source of repayment for which is expressly limited to (i) the assets or cash flows of such Subsidiary or Joint Venture and (ii) the Stock and Stock Equivalents of such Subsidiary or Joint Venture securing such Indebtedness in compliance with the provisions of clause (b) above.

" Note " means a promissory note made by the Borrower in favor of a Lender evidencing Revolving Credit Loans or Swing Line Loans, as the case may be, made by such Lender, substantially in the form of Exhibit C .

" Obligations " means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party (and, with respect to Secured Cash Management Agreements and Secured Hedge Agreements only, any Subsidiary of the Borrower) arising under any Loan Document or otherwise with respect to any Loan, Letter of Credit, Secured Cash Management Agreement or Secured Hedge Agreement, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest and fees that accrue after the commencement by or against any Loan Party (or any Subsidiary of the Borrower solely with respect to Secured Cash Management Agreements and Secured Hedge Agreements) of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding; provided that the Obligations shall exclude any Excluded Swap Obligations.

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

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

" Other Taxes " means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 10.13).

" Outstanding Amount " means (a) with respect to Revolving Credit Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Revolving Credit Loans occurring on such date; (b) with respect to Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of such Swing Line Loans occurring on such date; and (c) with respect to any L/C Obligations on any date, the Dollar Equivalent amount of the aggregate outstanding amount of such L/C Obligations on such date after giving effect to any L/C Credit Extension occurring on such date and any other changes in the aggregate amount of the L/C Obligations as of such date, including as a result of any reimbursements by the Borrower of Unreimbursed Amounts.

" Overnight Rate " means, for any day, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent, the L/C Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation.

" Participant " has the meaning specified in Section 10.06(d) .

" Participant Register " has the meaning specified in Section 10.06(d) .

" PBGC " means the Pension Benefit Guaranty Corporation or any successor thereto.

" Performance Guarantee " of any Person means (a) any letter of credit, bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support only trade payables or nonfinancial performance obligations of such Person, (b) any letter of credit, bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of such Person to support any letter of credit, bankers acceptance, surety bond, performance bond, bank guarantee or other similar obligation issued for the account of a Subsidiary, a Joint Venture or a Consortium of such Person to support only trade payables or non-financial performance obligations of such Subsidiary, Joint Venture or Consortium, and (c) any parent company guarantee or other direct or indirect liability, contingent or otherwise, of such Person with respect to trade payables or non-financial performance obligations of a Subsidiary, a Joint Venture or a Consortium of such Person, if the purpose of such Person in incurring such liability is to provide assurance to the obligee that such contractual obligation will be performed, or that any agreement relating thereto will be complied with.

" Performance Letter of Credit " means (a) a standby Letter of Credit issued to secure ordinary course performance obligations in connection with project engineering, procurement, construction, maintenance and other similar projects (including projects about to be commenced) or bids for prospective project engineering, procurement, construction, maintenance and other similar projects, and (b) a standby Letter of Credit issued to back a bank guarantee, surety bond, performance bond or other similar obligation in each case issued to support ordinary course performance obligations in connection with project engineering, procurement, construction, maintenance and other similar projects (including projects about to be commenced) or bids for prospective project engineering, procurement, construction, maintenance and other similar projects.

" Permit " means any permit, approval, authorization, license, variance or permission required from a Governmental Authority under any applicable Requirements of Law.

" Permitted Acquisition " means, the Acquisition of an Acquired Entity; provided that:

(a) such Acquisition was approved by the board of directors of such Acquired Entity; (b) the Acquired Entity shall be in an Eligible

Line of Business;

(c) the Borrower and its Subsidiaries shall comply with Sections 6.22 and 6.23 , as applicable, within the time periods set forth in such Sections;

(d) at the time of such transaction:

(i) both before and after giving effect thereto, no Default shall have occurred and be continuing;

(ii) the Borrower would be in compliance with the Leverage Ratio set forth in Section 7.16(b) as of the last day of the most recently completed four Fiscal Quarter period ended prior to such transaction for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered, after giving *pro forma* effect to such transaction and to any other event occurring after such period as to which *pro forma* recalculation is appropriate as if such transaction had occurred as of the first day of such period (assuming, for purposes of *pro forma* compliance with Section 7.16(b) , that the maximum Leverage Ratio permitted at the time by such Section was in fact 0.25 to 1.00 more restrictive than the Leverage Ratio actually provided for in such Section at such time); provided that if such Acquisition is a Material Acquisition with respect to which the Borrower is effectuating a Leverage Ratio Increase, then the Leverage Ratio required to be satisfied pursuant to this clause (ii) shall be determined as if such Leverage Ratio Increase was in effect as of the last day of the four Fiscal Quarter period being utilized for such measurement; and

(iii) if the purchase price for such Acquisition is in excess of $50,000,000, the Borrower shall have delivered (prior to or simultaneously with the closing of such Acquisition) a certificate of a Responsible Officer, certifying as to the foregoing and containing reasonably detailed calculations in support thereof, in form and substance reasonably satisfactory to the Administrative Agent; and

(e) if (i) the Borrower is a party to such transaction, it shall be a surviving entity thereof and shall continue as the Borrower hereunder, and (ii) if any party to any such transaction is a Guarantor, the surviving entity of such transaction shall either be a Guarantor or become a Guarantor pursuant to Section 6.22 .

" Permitted L/C Party " means (a) the Borrower, (b) any Subsidiary of the Borrower, (c) any Joint Venture and (d) any Consortium.

" Person " means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

" Platform " has the meaning specified in Section 6.01 .

" Pledged Interests " means (a) the Stock and Stock Equivalents of each of the existing or hereafter organized or acquired direct Domestic Subsidiaries of a Loan Party; and (b) 65% of the Voting Stock (or if the relevant Person shall own less than 65% of such Voting Stock, then 100% of the Voting Stock owned by such Person) and 100% of the nonvoting Stock and Stock Equivalents of each existing or hereafter organized or acquired First-Tier Foreign Subsidiary; provided that Pledged Interests shall not include any Stock or Stock Equivalents in (i) any Captive Insurance Subsidiary, (ii) any Joint Venture to the extent that the Constituent Documents of such Joint Venture prohibit such a security interest to be granted to the Administrative Agent, or (iii) any Subsidiary that is not a Loan Party or any Joint Venture to the extent that such Joint Venture or Subsidiary has incurred Non-Recourse Indebtedness the terms of which either (A) require security interests in such Stock and Stock Equivalents to be granted to secure such Non-Recourse Indebtedness or (B) prohibit such a security interest to be granted to the Administrative Agent; provided , further , that the Pledged Interests (x) shall not include, in the aggregate, more than 65% of the "stock entitled to vote" (within the meaning of Treasury Regulation Section 1.956-2(c)(2)) of any Foreign Subsidiary of any Person (taking into account any stock of such Foreign Subsidiary that may be deemed to be pledged for U.S. federal income tax purposes as a result of a pledge of Stock or Stock Equivalents in a Disregarded Entity), (y) shall not include any Stock or Stock Equivalents of a Foreign Subsidiary owned by any Person other than the Borrower or a Guarantor, and (z) shall not include any Stock or Stock Equivalents of any Excluded Domestic Subsidiary.

" Prepayment Event " means:

(a) (i) any Asset Sale (other than an Asset Sale permitted by any of Section 7.04(a) , (b) , (c) , (e) , (f) , (g) , (h) , (j) , (k) or (l)), (ii) any sale and leaseback transaction (whether or not permitted by Section 7.13) resulting in aggregate Net Cash Proceeds in excess of $3,000,000 for any single transaction or a series of related transactions or (iii) any Recovery Event; or

(b) the incurrence by the Borrower or any of its Subsidiaries of any Indebtedness, other than Indebtedness permitted under Section 7.01 .

" Projections " means those financial projections prepared by management of the Borrower consisting of balance sheets, income statements and cashflow statements of the Borrower and its Subsidiaries (giving effect to the Spinoff and the related transactions) covering the Fiscal Years ending in 2015 through 2019, inclusive, delivered to the Administrative Agent by the Borrower.

" Public Lender " has the meaning specified in Section 6.01 .

" Rabbi Trust " means a "rabbi trust" or other similar arrangement established by the Borrower or any of its Subsidiaries to hold assets in connection with an employee benefit plan or arrangement.

" Real Property " means all Mortgaged Property and all other real property owned or leased from time to time by any Loan Party or any of its Subsidiaries.

" Recipient " means the Administrative Agent, any Lender or any L/C Issuer.

" Recovery Event " shall mean any settlement of or payment in respect of any property or casualty insurance claim or any taking or condemnation proceeding relating to any asset of the Borrower or any Subsidiary resulting in aggregate Net Cash Proceeds in excess of $3,000,000 for any single transaction or a series of related transactions.

" Register " has the meaning specified in Section 10.06(c) .

" Related Parties " means, with respect to any Person, such Person's Affiliates and the partners, directors, officers, employees, agents, trustees, administrators, managers, advisors and representatives of such Person and of such Person's Affiliates.

" Release " means, with respect to any Person, any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration, in each case, of any Contaminant into the indoor or outdoor environment or into or out of any property owned by such Person, including the movement of Contaminants through or in the air, soil, surface water, ground water or property and, in each case, in violation of Environmental Law.

"Relief Period" means the period commencing on the Amendment No. 2 Effective Date and terminating on the Relief Period Termination Date. For the avoidance of doubt, only one Relief Period may occur during the term of this Agreement, and no Relief Period may be in effect after the first date on which the Relief Period Termination Date occurs.

"Relief Period Sublimit" means the lesser of (a) $300,000,000 and (b) the Revolvi ng Credit Facility. The Relief Period Sublimit is part of, and not in addition to, the Revolving Credit Facility.

"Relief Period Termination Date" means the date, which may be no earlier than the date of delivery of the Compliance Certificate for the fiscal quarter of the Borrower ending December 31, 2017, on which the Borrower has made a written request for the termination of the Relief Period, and has attached thereto a certification (including reasonably detailed calculations with respect thereto) demonstrating that (a) the Leverage Ratio (calculated as of the last day of the most recent Fiscal Quarter ending on or prior to such day for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered) is not greater than 2.25 to 1.00 and (b) the Interest Coverage Ratio (calculated as of the last day of the most recent Fiscal Quarter ending on or prior to such day for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have been delivered) is not less than 4.00 to 1.00.

" Remainco Credit Facilities " means the senior secured credit facilities to be entered into by (a) BWC on or about the Execution Date and (b) certain of its Subsidiaries (other than the Borrower and its Subsidiaries) on or about the Closing Date.

" Remedial Action " means all actions required by any applicable Requirement of Law to (a) clean up, remove, treat or in any other way address any Contaminant in the indoor or outdoor environment, (b) prevent the Release or threat of Release or minimize the further Release so that a Contaminant does not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment or (c) perform pre remedial studies and investigations and post remedial monitoring and care.

" Request for Credit Extension " means (a) with respect to a Borrowing, conversion or continuation of Revolving Credit Loans, a Committed Loan Notice, (b) with respect to an L/C Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

" Required Lenders " means, as of any date of determination, Lenders holding more than 50% of the sum of (a) the Total Outstandings (with the aggregate amount of each Lender's risk participatio n and funded participation in L/C Obligations and Swing Line Loans being deemed "held" by such Lender for purposes of this definition) and (b) the unused Aggregate Commitments. The Commitment of, and the portion of the Total Outstandings held or deemed held by, any Defaulting Lender shall be excluded for purposes of making a determination of Required Lenders; provided that the amount of any participation in any Swing Line Loan and any Unreimbursed Amounts that such Defaulting Lender has failed to fund that have not been reallocated to and funded by another Lender shall be deemed to be held by the Lender that is the Swing Line Lender or applicable L/C Issuer, as the case may be, in making such determination.

" Requirement of Law " means, with respect to any Person, the common law and all federal, state, local and foreign laws, rules and regulations, orders, judgments, decrees and other determinations of any Governmental Authority or arbitrator, applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

" Responsible Officer " means the chief executive officer, president, chief financial officer, treasurer or controller of a Loan Party and, solely for purposes of notices given for Credit Extensions, amendments to Letters of Credit, and continuations and conversions of Loans, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent (which such notice shall include a specimen signature and incumbency confirmation reasonably satisfactory to the Administrative Agent). Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

" Restricted Payment " means (a) any dividend, distribution or any other payment whether direct or indirect, on account of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries now or hereafter outstanding, except a dividend payable solely in Stock or Stock Equivalents (other than Disqualified Stock) or a dividend or distribution payable solely to the Borrower or one or more Guarantors, (b) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries now or hereafter outstanding other than one payable solely to the Borrower or one or more Guarantors and (c) any payment or prepayment of principal, premium (if any), interest, fees (including fees to obtain any waiver or consent in connection with any Indebtedness) or other charges on, or redemption, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Subordinated Debt of the Borrower or any other Loan Party, other than any Intercompany Subordinated Debt Payment or any required payment, prepayment, redemption, retirement, purchases or other payments, in each case to the extent permitted to be made by the terms of such Subordinated Debt.

" Revaluation Date " means, with respect to any Letter of Credit, each of the following: (a) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (b) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof (solely with respect to the increased amount), (c) each date of any payment by an L/C Issuer under any Letter of Credit denominated in an Alternative Currency, (d) in the case of Letters of Credit denominated in an Alternative Currency and outstanding as of the Closing Date under the Existing Credit Agreement for the account of a Permitted L/C Party, the Closing Date, and (e) such additional dates as the Administrative Agent or the applicable L/C Issuer shall determine or the Required Lenders shall require.

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

" Revolving Credit Exposure " means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender's participation in L/C Obligations and Swing Line Loans at such time.

" Revolving Credit Facility " means, at any time, the aggregate amount of the Lenders' Commitments at such time. As of the Closing Date, the aggregate amount of the Lenders' Commitments shall equal $600,000,000.

" Revolving Credit Increase " has the meaning specified in Section 2.14(a) .

" Revolving Credit Increase Lender " has the meaning specified in Section 2.14(d)(ii) .

" Revolving Credit Loan " has the meaning specified in Section 2.01 .

" S&P " means Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc. and any successor thereto.

" Same Day Funds " means (a) with respect to disbursements and payments in Dollars, immediately available funds, and (b) with respect to disbursements and payments in an Alternative Currency, same day or other funds as may be determined by the Administrative Agent or the applicable L/C Issuer, as the case may be, to be customary in the place of disbursement or payment for the settlement of international banking transactions in the relevant Alternative Currency.

" Sanction(s) " means any sanction or trade embargo imposed, administered or enforced at the time of determination by the United States Government (including without limitation, OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions authority exercising jurisdiction, the violation of which constitutes a violation of the law of the United States or, as to any Subsidiary that is organized under the laws of any non-United States jurisdiction, the law of that jurisdiction.

" SEC " means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

" Secured Cash Management Agreement " means any Cash Management Agreement that is entered into by and between or among the Borrower and/or any (or one or more) Subsidiary of the Borrower and any Cash Management Bank.

" Secured Hedge Agreement " means any Secured Swap Contract that is entered into by and between or among the Borrower and/or any (or one or more) Subsidiary of the Borrower and any Hedge Bank.

~~" Secured Swap Contracts " means all Swap Contracts entered into by the Borrower and/or any (or one or more) Subsidiary of the Borrower designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices.~~

" Secured Parties " means, collectively, the Administrative Agent, the Lenders, each L/C Issuer, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 9.05 , and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Security Instruments.

"Secured Swap Contracts" means all Swap Contracts entered into by the Borrower and/or any (or one or more) Subsidiary of the Borrower designed to alter the risks of any Person arising from fluctuations in interest rates, currency values or commodity prices.

" Security " means any Stock, Stock Equivalent, voting trust certificate, bond, debenture, promissory note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, or any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

" Security Instruments " means, collectively, the Collateral Agreement, the Mortgages, each Intellectual Property Security Agreement, and all other agreements (including Joinder Agreements, control agreements, supplements, collateral assignments and similar agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which the Borrower, any Subsidiary or other Person (other than a Lender) shall grant or convey to the Administrative Agent (for the benefit of the Secured Parties) a Lien in, or any other Person shall acknowledge any such Lien in, property as security for all or any portion of the Obligations or any other obligation under any Loan Document.

" Senior Secured Leverage Ratio " means, with respect to the Borrower and its Subsidiaries as of any day, the ratio of (a) all Financial Covenant Debt of the Borrower and its Subsidiaries determined on a consolidated basis in accordance with GAAP as of such day that is secured by a consensual Lien on any asset of the Borrower or any of its Subsidiaries to (b) EBITDA for the Borrower and its Subsidiaries for the

last four full Fiscal Quarters ending on or prior to such day for which the financial statements and certificates required by Section 6.01(a) or 6.01(b) have most recently been delivered.

" Solvent " means, with respect to any Person, that the value of the assets of such Person (both at fair value and present fair saleable value) is, on the date of determination, greater than the total amount of liabilities (including contingent and unliquidated liabilities) of such Person as of such date and that, as of such date, such Person is able to pay all liabilities of such Person as such liabilities are expected to mature and does not have unreasonably small capital for its then current business activities. In computing the amount of contingent or unliquidated liabilities at any time, such liabilities shall be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

" Spinoff " means the distribution of 100% of the issued and outstanding Stock of the Borrower to the shareholders of BWC, to occur on or after the Closing Date, the result of which is that immediately thereafter 100% of the Stock of the Borrower shall be owned directly by the shareholders of BWC immediately prior to such Restricted Payment.

" Spot Rate " for a currency means the rate determined by the applicable L/C Issuer, with notice thereof to the Administrative Agent, to be the rate quoted by the Person acting in such capacity as the spot rate for the purchase by such Person of such currency with another currency through its principal foreign exchange trading office at approximately 11:00 a.m. on the date two Business Days prior to the date as of which the foreign exchange computation is made; provided that the applicable L/C Issuer may obtain such spot rate from another financial institution designated by such L/C Issuer if the Person acting in such capacity does not have as of the date of determination a spot buying rate for any such currency; and provided further that such L/C Issuer may use such spot rate quoted on the date as of which the foreign exchange computation is made in the case of any Letter of Credit denominated in an Alternative Currency.

" Stock " means shares of capital stock (whether denominated as common stock or preferred stock), partnership or membership interests, equity participations or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or similar business entity, whether voting or non-voting.

" Stock Equivalents " means all securities convertible into or exchangeable for Stock and all warrants, options or other rights to purchase or subscribe for any Stock, whether or not presently convertible, exchangeable or exercisable.

" Subordinated Debt " means Indebtedness of the Borrower or any of its Subsidiaries that is, by its terms, expressly subordinated to the prior payment of any of the Obligations pursuant to subordination terms and conditions reasonably satisfactory to the Administrative Agent. The terms of any Subordinated Debt may permit Intercompany Subordinated Debt Payments.

" Subsidiary " of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person; provided that any reference herein or in any other Loan Document to a "Subsidiary" of the Borrower shall exclude any Person whose financial statements are not consolidated with the financial statements of the Borrower in accordance with GAAP. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

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

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

" Swing Line Borrowing " means a borrowing of a Swing Line Loan pursuant to Section 2.04 .

" Swing Line Lender " means Bank of America in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

" Swing Line Loan " has the meaning specified in Section 2.04(a) .

" Swing Line Loan Notice " means a notice of a Swing Line Borrowing pursuant to Section 2.04(b) , which, if in writing, shall be substantially in the form of Exhibit B or such other form as approved by the Administrative Agent (including any form on an electronic platform or electronic transmission system as shall be approved by the Administrative Agent), appropriately completed and signed by a Responsible Officer of the Borrower.

" Swing Line Sublimit " means an amount equal to the lesser of (a) $25,000,000 and (b) the Revolving Credit Facility. The Swing Line Sublimit is part of, and not in addition to, the Revolving Credit Facility.

" Tax Affiliate " means, with respect to any Person, (a) any Subsidiary of such Person, and (b) any Affiliate of such Person with which such Person files or is eligible to file consolidated U.S. federal income tax returns or consolidated, combined, unitary or similar tax returns for state, local or foreign tax purposes.

" Tax Return " has the meaning specified in Section 5.08 .

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

" Title IV Plan " means an "employee pension benefit plan" (as defined by Section 3(2) of ERISA), other than a Multiemployer Plan, covered by Title IV of ERISA and to which the Borrower, any of its Subsidiaries, any Guarantor or any ERISA Affiliate has any obligation or liability (contingent or otherwise).

" Total Credit Exposure " means, as to any Lender at any time, the unused Commitments and the Revolving Credit Exposure held by such Lender at such time.

" Total Outstandings " means the aggregate Outstanding Amount of all Loans and all L/C Obligations.

" Type " means, with respect to a Loan, its character as a Base Rate Loan or a Eurocurrency Rate Loan.

" UCC " has the meaning specified in the Collateral Agreement.

" UCP " means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce (" ICC ") Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

" United States " and " U.S. " mean the United States of America.

" Unreimbursed Amount " has the meaning specified in Section 2.03(c)(i) .

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

" U.S. Tax Compliance Certificate " has the meaning specified in Section 3.01(f)(ii)(B)(III) .

"Vølund Projects" means projects related to the manufacture, construction, maintenance and operation of renewable energy plants in the United Kingdom, Denmark, Sweden and other Scandinavian countries by Babcock & Wilcox Vllund A/S, an indirect Subsidiary of the Borrower, and/or one or more Subsidiaries or affiliates of Babcock & Wilcox Vllund A/S.

" Voting Stock " means Stock of any Person having ordinary power to vote in the election of members of the board of directors, managers, trustees or similar controlling Persons, of such Person (irrespective of whether, at the time, Stock of any other class or classes of such entity shall have or might have voting power by reason of the happening of any contingency).

" Wholly-Owned " means, in respect of any Subsidiary of any Person, a circumstance where all of the Stock of such Subsidiary (other than director's qualifying shares, and the like, as may be required by applicable law) is owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries thereof.

" Withdrawal Liability " means, with respect to the Borrower, any of its Subsidiaries or any Guarantor, the aggregate liability incurred (whether or not assessed) with respect to all Multiemployer Plans pursuant to Section 4201 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.

1.02 Other Interpretive Provisions . With reference to this Agreement and each other Loan Document, unless otherwise specified herein or in such other Loan Document:

(a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words " include ," " includes " and " including " shall be deemed to be followed by the phrase "without limitation." The word " will " shall be construed to have the same meaning and effect as the word " shall ." Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Constituent Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) the words " hereto ," " herein ," " hereof " and " hereunder ," and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (v) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, and (vi) the words " asset " and " property " shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

(b) In the computation of periods of time from a specified date to a later specified date, the word " from " means " from and including ;" the words "to" and " until " each mean " to but excluding ;" and the word " through " means " to and including ."

(c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.

1.03 Accounting Terms .

(a) Generally . All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect from time to time, applied in a manner consistent with that used in preparing the audited financial statements for the Fiscal Year ended December 31, 2014, except as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of the Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.

(b) Changes in GAAP . If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that , until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Without limiting the foregoing, leases (including leases entered into or renewed after the

Closing Date) shall be classified and accounted for (and the interest component thereof calculated) on a basis consistent with that reflected in the audited financial statements for the Fiscal Year ended December 31, 2014 for all purposes of this Agreement, notwithstanding any change in GAAP relating thereto, unless the parties hereto shall enter into a mutually acceptable amendment addressing such changes, as provided for above.

(c) Consolidation of Variable Interest Entities . All references herein to consolidated financial statements of the Borrower and its Subsidiaries or to the determination of any amount for the Borrower and its Subsidiaries on a consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Borrower is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.

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

1.05 Exchange Rates; Currency Equivalents.

(a) The applicable L/C Issuer shall determine the Spot Rates (and notify the Administrative Agent of the same) as of each Revaluation Date to be used for calculating Dollar Equivalent amounts of L/C Credit Extensions and Outstanding Amounts denominated in Alternative Currencies. Such Spot Rates shall become effective as of such Revaluation Date and shall be the Spot Rates employed in converting any amounts between the applicable currencies until the next Revaluation Date to occur. Except for purposes of financial statements delivered by Loan Parties hereunder or calculating financial covenants hereunder or except as otherwise provided herein, the applicable amount of any currency (other than Dollars) for purposes of the Loan Documents shall be such Dollar Equivalent amount as so determined by the Administrative Agent or the applicable L/C Issuer, as applicable.

(b) Wherever in this Agreement in connection with the issuance, amendment or extension of a Letter of Credit, an amount, such as a required minimum or multiple amount, is expressed in Dollars, but such Letter of Credit is denominated in an Alternative Currency, such amount shall be the relevant Alternative Currency Equivalent of such Dollar amount (rounded to the nearest unit of such Alternative Currency, with 0.5 of a unit being rounded upward), as determined by the Administrative Agent or the applicable L/C Issuer, as the case may be.

1.06 Alternative Currencies.

(a) The Borrower may from time to time request that one or more L/C Issuers issue and maintain Letters of Credit denominated in a currency other than Dollars. Any such request shall be subject to the approval of the L/C Issuer that will be issuing Letters of Credit in such currency.

(b) Any such request shall be made by the Borrower to one or more L/C Issuers not later than 11:00 a.m., ten Business Days prior to the date of the desired issuance of a Letter of Credit in such currency (or such other time or date as may be agreed by any such L/C Issuer, in its sole discretion).

(c) If any L/C Issuer consents to the issuance of Letters of Credit in such requested currency, such L/C Issuer shall so notify the Borrower and the Administrative Agent, and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of

Credit issuances by each such approving L/C Issuer (but not by any L/C Issuer not approving such currency).

(d) Prior to the Closing Date, each L/C Issuer may agree, or may have agreed under the Existing Credit Agreement, with the Borrower to issue Letters of Credit in particular currencies (other than Dollars) immediately upon, and at all times after, the Closing Date, or under the Existing Credit Agreement, and each L/C Issuer and the Borrower shall notify the Administrative Agent (if not already notified pursuant to the Existing Credit Agreement) of the currencies (other than Dollars) approved by such L/C Issuer prior to or on the Closing Date.

1.07 Times of Day; Rates.

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

(b) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of "Eurocurrency Rate" or with respect to any comparable or successor rate thereto.

1.08 Letter of Credit Amounts. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Dollar Equivalent of the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the Dollar Equivalent of the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

ARTICLE II.
THE COMMITMENTS AND CREDIT EXTENSIONS

2.01 Revolving Credit Loans. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans to the Borrower in Dollars (each such loan, a " Revolving Credit Loan ") from time to time, on any Business Day during the Availability Period, in an aggregate amount not to exceed at any time outstanding the amount of such Lender's Commitment; provided, however, that after giving effect to any Revolving Credit Borrowing, (i) the Total Outstandings shall not exceed the Revolving Credit Facility, ~~and~~ (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Commitment **and (iii) during the Relief Period, the aggregate outstanding principal amount of Revolving Credit Loans shall not exceed the Relief Period Sublimit** . Within the limits of each Lender's Commitment, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.01 , prepay under Section 2.05 , and reborrow under this Section 2.01 . Revolving Credit Loans may be Base Rate Loans or Eurocurrency Rate Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Revolving Credit Borrowing, each conversion of Revolving Credit Loans from one Type to the other, and each continuation of Eurocurrency Rate Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by (A) telephone or (B) a Committed Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Administrative Agent of a Committed Loan Notice. Each such notice must be received by the

Administrative Agent not later than 1:00 p.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurocurrency Rate Loans or of any conversion of Eurocurrency Rate Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans; provided that if the Borrower wishes to request Eurocurrency Rate Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period," the applicable notice must be received by the Administrative Agent not later than 1:00 p.m. four Business Days prior to the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them. Not later than 1:00 p.m., three Business Days before the requested date of such Borrowing, conversion or continuation of Eurocurrency Rate Loans having an Interest period other than one, two, three or six months in duration as provided in the definition of "Interest Period", the Administrative Agent shall notify the Borrower (which notice may be by telephone) whether or not the requested Interest Period has been consented to by all the Lenders. Each Borrowing of, conversion to or continuation of Eurocurrency Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof. Except as provided in Sections 2.03(c) and 2.04(c) , each Revolving Credit Borrowing of or conversion to Base Rate Loans shall be in a principal amount of
$500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice shall specify (i) whether the Borrower is requesting a Revolving Credit Borrowing, a conversion of Revolving Credit Loans from one Type to the other, or a continuation of Eurocurrency Rate Loans, (ii) the requested date of the Revolving Credit Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Revolving Credit Loans to be borrowed, converted or continued, (iv) the Type of Revolving Credit Loans to be borrowed or to which existing Revolving Credit Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Revolving Credit Loan in a Committed Loan Notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Revolving Credit Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurocurrency Rate Loans. If the Borrower requests a Borrowing of, conversion to, or continuation of Eurocurrency Rate Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month. Notwithstanding anything to the contrary herein, a Swing Line Loan may not be converted to a Eurocurrency Rate Loan.

(b) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the Revolving Credit Loans, and if no timely notice of a conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans as described in Section 2.02(a) . In the case of a Revolving Credit Borrowing, each Lender shall make the amount of its Revolving
Credit Loan available to the Administrative Agent in Same Day Funds at the Administrative Agent's Office not later than (i) 1:00 p.m. on the Business Day specified in the applicable Committed Loan Notice so long as such Committed Loan Notice was received prior to the Business Day specified for such Revolving Credit Borrowing in such Committed Loan Notice and (ii) 3:00 p.m. in the case of any Revolving Credit Borrowing requested in a Committed Loan Notice that was received on the same Business Day as the Business Day specified for such Revolving Credit Borrowing in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 4.03 (and, if such Borrowing is the initial Credit Extension, Section 4.02), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrower on the books of Bank of America with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided , however , that if, on the date a

Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are L/C Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first , shall be applied to the payment in full of any such L/C Borrowings, and second , shall be made available to the Borrower as provided above.

(c) Except as otherwise provided herein, a Eurocurrency Rate Loan may be continued or converted only on the last day of an Interest Period for such Eurocurrency Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurocurrency Rate Loans without the consent of the Required Lenders.

(d) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurocurrency Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in Bank of America's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) After giving effect to all Revolving Credit Borrowings, all conversions of Revolving Credit Loans from one Type to the other, and all continuations of Revolving Credit Loans as the same Type, there shall not be more than five Interest Periods in effect in respect of the Revolving Credit Facility.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment .

(i) Subject to the terms and conditions set forth herein, (A) each L/C Issuer agrees, in reliance upon the agreements of the Lenders set forth in this Section 2.03 , (1) from time to time on any Business Day during the period from the Closing Date until the Letter of Credit Expiration Date, to issue Letters of Credit denominated in Dollars or in one or more Alternative Currencies applicable to such L/C Issuer for the account of any Permitted L/C Party, and to amend or extend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drawings under the Letters of Credit; and (B) the Lenders severally agree to participate in Letters of Credit issued for the account of any Permitted L/C Party and any drawings thereunder; provided that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (v) the Total Outstandings shall not exceed the Revolving Credit Facility, (w) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Commitment, (x) the Outstanding Amount of the L/C Obligations in Alternative Currencies shall not exceed the Alternative Currency Sublimit, (y) the aggregate Outstanding Amount of all Financial Letters of Credit and commercial letters of credit **at any time** shall not exceed **(i) other than during the Relief Period,**
$150,000,000 **and (ii) during the Relief Period, $30,000,000** and (z) the Outstanding Amount of
L/C Obligations of any L/C Issuer shall not exceed the L/C Issuer Sublimit of such L/C Issuer. Each request by the Borrower or a Permitted L/C Party for the issuance or amendment of a Letter of
Credit shall be deemed to be a representation by the Borrower that the L/C Credit Extension so
requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrower may, during the foregoing period listed in subclause (A)(1) of this Section, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed. For the avoidance of doubt, all Letters of Credit outstanding under the Existing Credit Agreement as of the Closing Date for the account of a Permitted L/C Party shall in each case be deemed to have been Letters of Credit issued

pursuant hereto, and from and after the Closing Date shall be subject to and governed by the terms and conditions hereof.

(ii) No L/C Issuer shall issue any Letter of Credit if the expiry date of such requested Letter of Credit would occur after the date that is seven Business Days prior to the Maturity Date (each such issued Letter of Credit, an " Extended Letter of Credit ") unless the applicable L/C Issuer has approved such later expiry date, it being acknowledged and agreed that each such Extended Letter of Credit shall be Cash Collateralized in accordance with Section 6.26 .

(iii) No L/C Issuer shall be under any obligation to issue any Letter of Credit if:

(A) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such L/C Issuer from issuing the Letter of Credit, or any Requirement of Law applicable to such L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such L/C Issuer shall prohibit, or request that such L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such the L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such L/C Issuer in good faith deems material to it;

(B) the issuance of the Letter of Credit would violate one or more policies of such L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by such L/C Issuer, the Letter of Credit is in an initial stated amount less than $100,000, in the case of a commercial Letter of Credit, or
$500,000, in the case of a standby Letter of Credit;

(D) except as otherwise agreed by such L/C Issuer, the Letter of Credit is to be denominated in a currency other than Dollars or an Alternative Currency applicable to such L/C Issuer;

(E) such L/C Issuer does not, as of the issuance date of such requested Letter of Credit, issue Letters of Credit in the requested currency; or

(F) any Lender is at that time a Defaulting Lender, unless such L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such L/C Issuer (in its sole discretion) with the Borrower or such Lender to eliminate such L/C Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.16(a)(iv)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other L/C Obligations as to which such L/C Issuer has actual or potential Fronting Exposure, as it may elect in its sole discretion.

(iv) No L/C Issuer shall amend any Letter of Credit if such L/C Issuer would not be permitted at such time to issue the Letter of Credit in its amended form under the terms hereof.

(v) No L/C Issuer shall be under any obligation to amend any Letter of Credit if (A)
such L/C Issuer would have no obligation at such time to issue the Letter of Credit in its amended

form under the terms hereof, or (B) the beneficiary of the Letter of Credit does not accept the proposed amendment to the Letter of Credit.

(vi) Each L/C Issuer shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each L/C Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article IX with respect to any acts taken or omissions suffered by such L/C Issuer in connection with Letters of Credit issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article IX included the L/C Issuers with respect to such acts or omissions, and (B) as additionally provided herein with respect to the L/C Issuers or any of them.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit.

(i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower delivered to the applicable L/C Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower or the applicable Permitted L/C Party. Such Letter of Credit Application may be sent by facsimile, by United States mail, by overnight courier, by electronic transmission using the system provided by the applicable L/C Issuer, by personal delivery or by any other means acceptable to such L/C Issuer. Such Letter of Credit Application must be received by the L/C Issuer and the Administrative Agent not later than 11:00 a.m. at least two Business Days (or such later date and time as the Administrative Agent and the L/C Issuer may agree in a particular instance in their sole discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day unless otherwise permitted by such L/C Issuer); (B) the amount and currency thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; (G) whether such requested Letter of Credit is a Performance Letter of Credit, a Financial Letter of Credit or a commercial Letter of Credit; (H) the Permitted L/C Party for whom such Letter of Credit is to be issued; and (I) such other matters as the L/C Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day unless otherwise permitted by such L/C Issuer); (C) the nature of the proposed amendment; and (D) such other matters as the L/C Issuer may reasonably require. Additionally, the Borrower shall furnish to the L/C Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the L/C Issuer or the Administrative Agent may reasonably require.

(ii) Promptly after receipt of any Letter of Credit Application, the applicable L/C Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the Borrower and, if not, the L/C Issuer will provide the Administrative Agent with a copy thereof. Unless the L/C Issuer has received written notice from any Lender, the Administrative Agent or any Loan

Party, at least one Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article IV shall not then be satisfied, then, subject to the terms and conditions hereof, the L/C Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Permitted L/C Party or enter into the applicable amendment, as the case may be, in each case in accordance with the L/C Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of the Applicable Percentage of such Lender times the amount of such Letter of Credit.

(iii) If the Borrower or any Permitted L/C Party so requests in any applicable Letter of Credit Application, the applicable L/C Issuer may, in its sole discretion, agree to issue a Letter of Credit that has automatic extension provisions (each, an " Auto-Extension Letter of Credit "); provided that any such Auto-Extension Letter of Credit must permit the L/C Issuer to prevent any such extension at least once prior to the then applicable expiration date of such Letter of Credit (without giving effect to the next ensuing extension thereof) by giving prior notice to the beneficiary thereof not later than a day (the " Non-Extension Notice Date ") to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the L/C Issuer, the Borrower shall not be required to make a specific request to the L/C Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the L/C Issuer to permit such extensions of such Letter of Credit; provided that if any such extension results in any such Letter of Credit becoming an Extended Letter of Credit the Borrower shall provide Cash Collateral therefor in accordance with Section 6.26 ; provided , however , that the L/C Issuer shall not permit any such extension if (A) the L/C Issuer has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof (by reason of the provisions of clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is seven Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Lender or the Borrower that one or more of the applicable conditions specified in Section 4.03 is not then satisfied, and in each such case directing the L/C Issuer not to permit such extension.

(v) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the L/C Issuer will also deliver to the Borrower and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations .

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing under such Letter of Credit, the applicable L/C Issuer shall notify the Borrower and the Administrative Agent thereof. In the case of any draw under a Letter of Credit denominated in an Alternative Currency, the L/C Issuer shall notify the Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. The Borrower agrees to pay to the L/C Issuer of any Letter of Credit that has been drawn upon the amount of all draws thereunder, in Dollars (or the Dollar Equivalent of such payment if such payment was made in an Alternative Currency), no later than (x) the Business Day on which the L/C Issuer has provided notice thereof to the Borrower if such notice has been provided prior to 11:00 a.m. on such

Business Day, or (y) no later than 10:00 a.m. on the next succeeding Business Day after the Borrower receives such notice from such L/C Issuer if such notice is not received prior to 11:00 a.m. on such day (each such date, an " Honor Date "), and such L/C Issuer shall provide prompt notice to the Administrative Agent of such reimbursement. If the Borrower fails to so reimburse the applicable L/C Issuer by such time, such L/C Issuer shall promptly notify the Administrative Agent of the Honor Date and the amount of the unreimbursed drawing (expressed in Dollars in the amount of the Dollar Equivalent thereof in the case of a Letter of Credit denominated in an Alternative Currency) (the " Unreimbursed Amount "), and the Administrative Agent shall provide such notice, along with the amount of such Lender's Applicable Percentage thereof, to each Lender. In such event, the Borrower shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.02 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Commitments and the conditions set forth in Section 4.03 (other than the delivery of a Committed Loan Notice). Any notice given by any L/C Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

(ii) Each Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) for the account of the L/C Issuer, in Dollars, at the Administrative Agent's Office for Dollar-denominated payments in an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 1:00 p.m. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii) , each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the L/C Issuer in Dollars.

(iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 4.03 cannot be satisfied or for any other reason, the Borrower shall be deemed to have incurred from the L/C Issuer an L/C Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which L/C Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Lender's payment to the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such L/C Borrowing and shall constitute an L/C Advance from such Lender in satisfaction of its participation obligation under this Section 2.03 .

(iv) Until each Lender funds its Revolving Credit Loan or L/C Advance pursuant to this Section 2.03(c) to reimburse the applicable L/C Issuer for any amount drawn under any Letter of Credit, interest in respect of such Lender's Applicable Percentage of such amount shall be solely for the account of the applicable L/C Issuer.

(v) Each Lender's obligation to make Revolving Credit Loans or L/C Advances to reimburse the L/C Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c) , shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against any L/C Issuer, the Borrower, any Subsidiary or any other Person for any reason

whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided , however , that each Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.03(c) is subject to the conditions set forth in Section 4.03 (other than delivery by the Borrower of a Committed Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of the Borrower to reimburse the applicable L/C Issuer for the amount of any payment made by the L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to the Administrative Agent for the account of any L/C Issuer any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii) , then, without limiting the other provisions of this Agreement, the applicable L/C Issuer shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the L/C Issuer at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the L/C Issuer in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of the applicable L/C Issuer submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

(d) Repayment of Participations .

(i) At any time after the L/C Issuer has made a payment under any Letter of Credit and has received from any Lender such Lender's L/C Advance in respect of such payment in accordance with Section 2.03(c) , if the Administrative Agent receives for the account of the L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrower or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Lender its Applicable Percentage thereof in Dollars and in the same funds as those received by the Administrative Agent.

(ii) If any payment received by the Administrative Agent for the account of the L/C Issuer pursuant to Section 2.03(c)(i) is required to be returned under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the L/C Issuer in its discretion), each Lender shall pay to the Administrative Agent for the account of the L/C Issuer its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned by such Lender, at a rate per annum equal to the applicable Overnight Rate from time to time in effect. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Obligations Absolute . The obligation of the Borrower to reimburse the applicable L/C Issuer for each drawing under each Letter of Credit and, without duplication, to repay each L/C Borrowing shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document;

(ii) the existence of any claim, counterclaim, setoff, defense or other right that the Borrower or any Subsidiary may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the L/C Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;

(iv) waiver by the L/C Issuer of any requirement that exists for the L/C Issuer's protection and not the protection of the Borrower or any waiver by the L/C Issuer which does not in fact materially prejudice the Borrower;

(v) any payment made by the L/C Issuer in respect of an otherwise complying item presented after the date specified as the expiration date of, or the date by which documents must be received under such Letter of Credit if presentation after such date is authorized by the UCC, the ISP or the UCP, as applicable;

(vi) any payment by the L/C Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit; or any payment made by the L/C Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law;

(vii) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to the Borrower or any Subsidiary or in the relevant currency markets generally; or

(viii) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subsidiary.

The Borrower shall promptly examine a copy of each Letter of Credit and each amendment thereto that is delivered to it and, in the event of any claim of noncompliance with the Borrower's instructions or other irregularity, the Borrower will immediately notify the L/C Issuer. The Borrower shall be conclusively deemed to have waived any such claim against the L/C Issuer and its correspondents unless such notice is given as aforesaid, but only to the extent not prohibited by any applicable Requirement of Law.

(f) Role of L/C Issuer . Each Lender and the Borrower agree that, in paying any drawing under a Letter of Credit, no L/C Issuer shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or

willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. The Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided , however , that this assumption is not intended to, and shall not, preclude the Borrower's pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of the L/C Issuers, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of any L/C Issuer shall be liable or responsible for any of the matters described in clauses (i) through (viii) of Section 2.03(e) ; provided , however , that anything in such clauses to the contrary notwithstanding, the Borrower may have a claim against the applicable L/C Issuer, and the applicable L/C Issuer may be liable to the Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by the Borrower which the Borrower proves were caused by the L/C Issuer's willful misconduct or gross negligence or the L/C Issuer's willful failure to pay under any Letter of Credit after the presentation to it by the beneficiary of a sight draft and certificate(s) strictly complying with the terms and conditions of a Letter of Credit. In furtherance and not in limitation of the foregoing, each L/C Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, and no L/C Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. The applicable L/C Issuer may send a Letter of Credit or conduct any communication to or from the beneficiary via the Society for Worldwide Interbank Financial Telecommunication (" **SWIFT** ") message or overnight courier, or any other commercially reasonable means of communicating with a beneficiary.

(g) Applicability of ISP and UCP; Limitation of Liability . Unless otherwise expressly agreed by the applicable L/C Issuer and the Borrower when a Letter of Credit is issued, (i) the rules of the ISP shall apply to each standby Letter of Credit, and (ii) the rules of the UCP shall apply to each commercial Letter of Credit. Notwithstanding the foregoing, no L/C Issuer shall be responsible to the Borrower or any other Permitted L/C Party for, and no L/C Issuer's rights and remedies against the Borrower or any other Permitted L/C Party shall be impaired by, any action or inaction of such L/C Issuer required or permitted under any law, order, or practice that is required or permitted to be applied to any Letter of Credit or this Agreement, including any Requirement of Law or any order of a jurisdiction where the applicable L/C Issuer or the beneficiary is located, the practice stated in the ISP or UCP, as applicable, or in the decisions, opinions, practice statements, or official commentary of the ICC Banking Commission, the Bankers Association for Finance and Trade - International Financial Services Association (BAFT-IFSA), or the Institute of International Banking Law & Practice, whether or not any Letter of Credit chooses such law or practice.

(h) Letter of Credit Fees . The Borrower shall pay to the Administrative Agent for the account of each Lender (subject to Section 2.16) in accordance with its Applicable Percentage, in Dollars, a Letter of Credit fee (the " Letter of Credit Fee ") (i) for each commercial Letter of Credit equal to the Applicable Rate for commercial Letters of Credit times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit, and (ii) for each standby Letter of Credit equal to the Applicable Rate for such type (Financial Letter of Credit or Performance Letter of Credit) of such Letter of Credit times the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit. For purposes of computing the Dollar Equivalent of the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08 . Letter of Credit Fees shall be (i) due and payable on the tenth Business Day after the last Business Day of each March, June, September and December, commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand and (ii) computed on a quarterly

basis in arrears. If there is any change in the Applicable Rate during any quarter, the Dollar Equivalent of the daily amount available to be drawn under each Letter of Credit shall be computed and multiplied by the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect. Notwithstanding anything to the contrary contained herein, upon the request of the Required Lenders, while any Event of Default exists, all Letter of Credit Fees shall accrue at the Default Rate.

(i) Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer . The Borrower shall pay directly to the applicable L/C Issuer for its own account, in Dollars, a fronting fee (i) with respect to each commercial Letter of Credit, at a rate separately agreed to between the Borrower and such L/C Issuer, computed on the Dollar Equivalent of the amount of such Letter of Credit, and payable upon the issuance thereof, (ii) with respect to any amendment of a commercial Letter of Credit increasing the amount of such Letter of Credit, at a rate separately agreed between the Borrower and such L/C Issuer, computed on the Dollar Equivalent of the amount of such increase, and payable upon the effectiveness of such amendment, and (iii) with respect to each standby Letter of Credit, at the rate per annum specified in the applicable Fee Letter or otherwise agreed between such L/C Issuer and the Borrower, computed on the Dollar Equivalent of the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee with respect to standby Letters of Credit shall be due and payable on the tenth Business Day after the last Business Day of each March, June, September and December in respect of the then-ended quarterly period (or portion thereof, in the case of the first payment), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Letter of Credit Expiration Date and thereafter on demand. Such fronting fee with respect to commercial Letters of Credit shall be due and payable as provided in subparts (i) and (ii) above. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.08 . In addition, the Borrower shall pay directly to the applicable L/C Issuer for its own account, in Dollars, the customary issuance, presentation, amendment and other processing fees, and other standard costs and charges, of the L/C Issuer relating to letters of credit as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.

(j) Conflict with Issuer Documents . In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

(k) Letters of Credit Issued for Permitted L/C Parties . Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, is for the account of, or the applicant therefor is, a Permitted L/C Party other than the Borrower, the Borrower shall be obligated to reimburse the L/C Issuer hereunder for any and all drawings under such Letter of Credit. The Borrower hereby acknowledges that the issuance of Letters of Credit for the account, or upon the application, of Permitted L/C Parties other than the Borrower inures to the benefit of the Borrower, and that the Borrower's business derives substantial benefits from the businesses of such Permitted L/C Parties.

(l) Additional L/C Issuers . In addition to Bank of America and each L/C Issuer listed on the signature pages hereto as an "L/C Issuer," the Borrower may from time to time, with notice to the Lenders and the consent of the Administrative Agent and the applicable Lender being so appointed, appoint additional Lenders to be L/C Issuers hereunder, provided that the total number of L/C Issuers at any time shall not exceed six Lenders (or such larger number of additional Lenders as the Administrative Agent may agree to permit from time to time). Upon the appointment of a Lender as an L/C Issuer hereunder such Person shall become vested with all of the rights, powers, privileges and duties of an L/C Issuer hereunder.

(m) Removal of L/C Issuers . The Borrower may at any time remove Bank of America or any L/C Issuer that is appointed pursuant to subpart (l) above, if either such Person is at such time a Defaulting Lender or such Person consents to such removal; provided that (i) such removal shall be made upon not less

than 30 days' prior written notice to such L/C Issuer and the Administrative Agent (or such shorter time as such L/C Issuer shall agree) and (ii) such removed L/C Issuer shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by such L/C Issuer and outstanding as of the effective date of its removal as L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Revolving Credit Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Without limiting the foregoing, upon the removal of a Lender as an L/C Issuer hereunder, the Borrower may, or at the request of such removed L/C Issuer the Borrower shall use commercially reasonable efforts to, arrange for one or more of the other L/C Issuers to issue Letters of Credit hereunder in substitution for the Letters of Credit, if any, issued by such removed L/C Issuer and outstanding at the time of such removal, or make other arrangements satisfactory to the removed L/C Issuer to effectively cause another L/C Issuer to assume the obligations of the removed L/C Issuer with respect to any such Letters of Credit.

(n) Reporting of Letter of Credit Information and L/C Issuer Sublimit . At any time that there is more than one L/C Issuer, then on (i) the last Business Day of each calendar month, and (ii) each date that an L/C Credit Extension occurs with respect to any Letter of Credit, each L/C Issuer (or, in the case of part (ii), the applicable L/C Issuer) shall deliver to the Administrative Agent a report setting forth in form and detail reasonably satisfactory to the Administrative Agent information with respect to each Letter of Credit issued by such L/C Issuer that is outstanding hereunder, including any auto-renewal or termination of auto-renewal provisions in such Letter of Credit. In addition, each L/C Issuer shall provide notice to the Administrative Agent of its L/C Issuer Sublimit, or any change thereto, promptly upon it becoming an L/C Issuer or making any change to its L/C Issuer Sublimit. No failure on the part of any L/C Issuer to provide such information pursuant to this Section 2.03(n) shall limit the obligation of the Borrower or any Lender hereunder with respect to its reimbursement and participation obligations, respectively, pursuant to this Section 2.03 .

(o) Cash Collateralized Letters of Credit . If the Borrower has fully Cash Collateralized the applicable L/C Issuer with respect to any Extended Letter of Credit issued by such L/C Issuer in accordance with Section 6.26 and the Borrower and the applicable L/C Issuer have made arrangements between them with respect to the pricing and fees associated therewith (each such Extended Letter of Credit a " Cash Collateralized Letter of Credit "), then on the day that is 95 days (or such shorter period of time permitted by such L/C Issuer) after the date of notice to the Administrative Agent thereof by the applicable L/C Issuer (so long as such Cash Collateral has remained in place for the entirety of such 95-day (or applicable shorter) period), and for so long as such Cash Collateral remains in place (i) such Cash Collateralized Letter of Credit shall cease to be a "Letter of Credit" hereunder, (ii) such Cash Collateralized Letter of Credit shall not constitute utilization of the Revolving Credit Facility, (iii) no Lender shall have any further obligation to fund participations, L/C Borrowings or Revolving Credit Loans to reimburse any drawing under any such Cash Collateralized Letter of Credit, (iv) no Letter of Credit Fee shall be due or payable to the Lenders, or any of them, hereunder with respect to such Cash Collateralized Letter of Credit, and (v) any fronting fee, issuance fee or other fee with respect to such Cash Collateralized Letter of Credit shall be as agreed separately between the Borrower and such L/C Issuer.

2.04 Swing Line Loans.

(a) The Swing Line . Subject to the terms and conditions set forth herein, the Swing Line Lender, in reliance upon the agreements of the other Lenders set forth in this Section 2.04 , may in its sole discretion make loans in Dollars (each such loan, a " Swing Line Loan ") to the Borrower from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans,

when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving Credit Loans and L/C Obligations of the Lender acting as Swing Line Lender, may exceed the amount of such Lender's Commitment; provided that after giving effect to any Swing Line Loan, (i) the Total Outstandings shall not exceed the Revolving Credit Facility at such time and (ii) the Revolving Credit Exposure of any Lender shall not exceed such Lender's Commitment; provided further that the Borrower shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits, and subject to the other terms and conditions hereof, the Borrower may borrow under this Section 2.04 , prepay under Section 2.05 , and reborrow under this Section 2.04 . Each Swing Line Loan shall be a Base Rate Loan. Immediately upon the making of a Swing Line Loan, each Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Lender's Applicable Percentage times the amount of such Swing Line Loan.

(b) Borrowing Procedures . Each Swing Line Borrowing shall be made upon the Borrower's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by (A) telephone or (B) by a Swing Line Loan Notice; provided that any telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a Swing Line Loan Notice. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than
1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $100,000, and (ii) the requested borrowing date, which shall be a Business Day. Promptly
after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has
also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Lender) prior to
2:00 p.m. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the first proviso to the first sentence of
Section 2.04(a) , or (B) that one or more of the applicable conditions specified in Article IV is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender will, not later than 3:00 p.m. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line
Loan available to the Borrower.

(c) Refinancing of Swing Line Loans .

(i) The Swing Line Lender at any time in its sole and absolute discretion may request, on behalf of the Borrower (which hereby irrevocably authorizes the Swing Line Lender to so request on its behalf), that each Lender make a Base Rate Loan in an amount equal to such Lender's Applicable Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02 , without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Revolving Credit Facility and the conditions set forth in Section
4.03 . The Swing Line Lender shall furnish the Borrower with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office for Dollar-denominated payments not later than 1:00 p.m. on the day specified in such Committed Loan Notice, whereupon,

subject to Section 2.04(c)(ii) , each Lender that so makes funds available shall be deemed to have made a Base Rate Loan to the Borrower in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i) , the request for Base Rate Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Lenders fund its risk participation in the relevant Swing Line Loan and each Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i) , the Swing Line Lender shall be entitled to recover from such Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate from time to time in effect, plus any administrative, processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. If such Lender pays such amount (with interest and fees as aforesaid), the amount so paid shall constitute such Lender's Revolving Credit Loan included in the relevant Revolving Credit Borrowing or funded participation in the relevant Swing Line Loan, as the case may be. A certificate of the Swing Line Lender submitted to any Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any setoff, counterclaim, recoupment, defense or other right which such Lender may have against the Swing Line Lender, the Borrower or any other Person for any reason whatsoever, (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided , however , that each Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 4.03 . No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrower to repay Swing Line Loans, together with interest as provided herein.

(d) Repayment of Participations .

(i) At any time after any Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by the Swing Line Lender.

(ii) If any payment received by the Swing Line Lender in respect of principal or interest on any Swing Line Loan is required to be returned by the Swing Line Lender under any of the circumstances described in Section 10.05 (including pursuant to any settlement entered into by the Swing Line Lender in its discretion), each Lender shall pay to the Swing Line Lender its Applicable Percentage thereof on demand of the Administrative Agent, plus interest thereon from the date of such demand to the date such amount is returned, at a rate per annum equal to the applicable Overnight Rate. The Administrative Agent will make such demand upon the request of

the Swing Line Lender. The obligations of the Lenders under this clause shall survive the payment in full of the Obligations and the termination of this Agreement.

(e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrower for interest on the Swing Line Loans. Until each Lender funds its Base Rate Loan or risk participation pursuant to this Section 2.04 to refinance such Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.

(f) Payments Directly to Swing Line Lender. The Borrower shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

2.05 Prepayments.

(a) Optional. The Borrower may, upon notice to the Administrative Agent, at any time or from time to time voluntarily prepay Revolving Credit Loans in whole or in part without premium or penalty; provided that (i) such notice must be in a form acceptable to the Administrative Agent and be received by the Administrative Agent not later than 11:00 a.m. (A) three Business Days prior to any date of prepayment of Eurocurrency Rate Loans, and (B) on the date of prepayment of Base Rate Loans; (ii) any prepayment of Eurocurrency Rate Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (iii) any prepayment of Base Rate Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if Eurocurrency Rate Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the Revolving Credit Facility). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a Eurocurrency Rate Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.16, each such prepayment shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(i) The Borrower may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent), at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (i) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 p.m. on the date of the prepayment, and (ii) any such prepayment shall be in a minimum principal amount of $100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

(i) In the event, and on each occasion, that any Net Cash Proceeds are received by or on behalf of the Borrower or any of its Subsidiaries in respect of any Prepayment Event, the Borrower shall, within five Business Days after such Net Cash Proceeds are received (or, in the case of a Prepayment Event described in clause (b) of the definition of the term "Prepayment Event", on or before the next succeeding Business Day following the occurrence of such Prepayment Event), prepay Revolving Credit Loans in an aggregate amount equal to 100% of the

amount of such Net Cash Proceeds (such mandatory prepayments to be applied as set forth in clause (ii) below); provided that, in the case of any event described in clause (a) of the definition of the term " Prepayment Event ", so long as no Default shall have occurred and be continuing and notice of the intent to utilize the reinvestment provisions of this proviso is provided to the Administrative Agent prior to the date such prepayment would otherwise be required to be made, if the Borrower and/or any of its Subsidiaries invests (or commits to invest) the Net Cash Proceeds from such event (or a portion thereof) within 365 days after receipt of such Net Cash Proceeds in assets used or useful in the business of the Borrower and its Subsidiaries, then no prepayment shall be required pursuant to this paragraph in respect of such Net Cash Proceeds from such Prepayment Event (or the applicable portion of such Net Cash Proceeds, if applicable, with any balance required to be utilized to prepay the Loans in accordance with this provision) except to the extent of any such Net Cash Proceeds therefrom that have not been so invested (or committed to be invested) by the end of such 365-day period (or if committed to be so invested within such 365-day period, have not been so invested within 18 months after the date of receipt of such Net Cash Proceeds), at which time a prepayment shall be required in an amount equal to such Net Cash Proceeds that have not been so invested.

(ii) Each prepayment of Revolving Credit Loans pursuant to Section 2.05(b)(i) shall be applied to the Revolving Credit Facility (without permanent reduction of the Commitments **except as provided in Section 2.06(a)(ii)**) in the manner set forth in clause (iv) of this Section
2.05(b) .

(iii) If **(A) the Administrative Agent notifies the Borrower at any time during the Relief Period that the aggregate outstanding principal amount of Revolving Credit Loans exceeds the Relief Period Sublimit in effect at such time, then, within two Business Days after receipt of such notice, the Borrower shall prepay Revolving Credit Loans in an aggregate amount sufficient to reduce such outstanding principal amount of Revolving Credit Loans as of such date of payment to an amount not to exceed the Relief Period Sublimit then in effect, or (B)** the Administrative Agent notifies the Borrower at any time that the Total Outstandings at such time exceed the Revolving Credit Facility in effect at such time, then, within two Business Days after receipt of such notice, the Borrower shall prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount sufficient to reduce such Outstanding Amount as of such date of payment to an amount not to exceed the Revolving Credit Facility then in effect; provided , however , that the Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this Section 2.05(b)(iii) unless, after the prepayment in full of the Revolving Credit Loans, the Total Outstandings exceed the Revolving Credit Facility then in effect. The Administrative Agent may, at any time and from time to time after the initial deposit of such Cash Collateral, request that additional Cash Collateral be provided in order to protect against the results of further exchange rate fluctuations.

(iv) Except as otherwise provided in Section 2.16 , prepayments of the Revolving Credit Facility made pursuant to this Section 2.05(b) , first , shall be applied ratably to the L/C Borrowings and the Swing Line Loans, second , shall be applied ratably to the outstanding Revolving Credit Loans, and, third , shall be used to Cash Collateralize the remaining L/C Obligations in full; and, in the case of prepayments of the Revolving Credit Facility required pursuant to clause (i) of this Section 2.05(b) , the amount remaining, if any, after the prepayment in full of all L/C Borrowings, Swing Line Loans and Revolving Credit Loans outstanding at such time and the Cash Collateralization of the remaining L/C Obligations in full may be retained by the Borrower for use in the ordinary course of its business. Upon the drawing of any Letter of Credit

that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the applicable L/C Issuer or the applicable Lenders, as applicable.

(v) Notwithstanding anything to the contrary contained in any other provision of this Section 2.05(b) , to the extent any mandatory prepayment required pursuant to Section 2.05(b)(i) (without giving effect to this Section 2.05(b)(v)) is attributable to a Prepayment Event by a Foreign Subsidiary of the Borrower or an Excluded Domestic Subsidiary, no such prepayment (or a portion thereof) shall be required to be made if either (A) such prepayment (or portion thereof, or dividend or distribution to facilitate such prepayment) shall, at the time it is required to be made, be prohibited by applicable Requirement of Law (including by reason of financial assistance, corporate benefit, restrictions on upstreaming or transfer of cash intra group and the fiduciary and statutory duties of the directors of relevant Subsidiaries), provided that the Borrower and its Subsidiaries shall make commercially reasonable efforts with respect to such Requirement of Law to permit such prepayment (or portion thereof, or dividend or distribution to facilitate such prepayment) in accordance therewith (it being understood that such efforts shall not require (x) any expenditure in excess of a nominal amount of funds or (y) modifications to the organizational or tax structure of the Borrower and its Subsidiaries to permit such prepayment (or portion thereof, or dividend or distribution to facilitate such prepayment)), or (B) a Restricted Payment or other distribution is reasonably necessary (notwithstanding the Loan Parties' commercially reasonable efforts to make such mandatory prepayment without making such Restricted Payment or other distribution) in connection with such prepayment (or portion thereof) and the Borrower determines in good faith that the Borrower or any Subsidiary would incur a material liability in respect of Taxes (including any withholding tax) in connection with making such Restricted Payment or other distribution (outside of any taxes applicable to such Prepayment Event that both (x) are deducted in calculating the Net Cash Proceeds thereof and (y) would be incurred even if no such Restricted Payment or other distribution were made). Notwithstanding anything in the preceding sentence to the contrary, in the event the limitations or restrictions described therein cease to apply to any prepayment (or portion thereof, or dividend or distribution to facilitate such prepayment) required under Section 2.05(b)(i) , the Borrower shall make such prepayment in an amount equal to the lesser of (x) the amount of such prepayment previously required to have been made without having given effect to such limitations or restrictions and (y) the amount of cash and Cash Equivalents on hand at such time, in each case, less the amount by which the Net Cash Proceeds from the Prepayment Event were previously used for the permanent repayment of Indebtedness (including any reductions in commitments related thereto).

2.06 Termination or Reduction of Commitments .

(a) Reductions.

(i) ~~(a)~~ Optional . The Borrower may, upon notice to the Administrative Agent, terminate the Revolving Credit Facility, or from time to time permanently reduce the Revolving Credit Facility; provided that (a) any such notice shall be received by the Administrative Agent not later than 11:00 a.m. five Business Days prior to the date of termination or reduction, (b) any such partial reduction shall be in an aggregate amount of $10,000,000 or any whole multiple of
$1,000,000 in excess thereof, (c) the Borrower shall not terminate or reduce the Revolving Credit
Facility if, after giving effect thereto and to any concurrent prepayments hereunder, the Total
Outstandings would exceed the Revolving Credit Facility, and (d) if, after giving effect to any

reduction of the Revolving Credit Facility, the Alternative Currency Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Credit Facility, such Sublimit shall be automatically reduced by the amount of such excess. Except as provided in the preceding sentence, the amount of any such Revolving Credit Facility reduction shall not be applied to the Alternative Currency Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower.

(ii) Mandatory. In the event, and on each occasion, that during the Relief Period either (A) a prepayment is required to be made pursuant to Section 2.05(b) as a result of a Prepayment Event described in clause (a) of the definition thereof (after giving effect to any reinvestment period, and regardless of whether the Borrower is permitted to retain any or all of such Net Cash Proceeds thereof pursuant to the application of Section 2.05(b)(iv)) or (B) a Commitment Reduction Event occurs, the Borrower shall, on or prior to the Business Day such prepayment is (or would be) required to be made or such Commitment Reduction Event occurs, give notice thereof, and of the Commitment Reduction Amount with respect thereto, to the Administrative Agent. Promptly (and in any event not later than the next succeeding Business Day) after receiving such notice, the Administrative Agent shall reduce the Revolving Credit Facility by an amount equal to such Commitment Reduction Amount. In connection with each such reduction, the Borrower shall be required to prepay Revolving Credit Loans and, if the Revolving Credit Loans are paid in full, Cash Collateralize Letters of Credit to the extent that any such reduction of the Revolving Credit Facility would result in the Total Outstandings exceeding the Revolving Credit Facility (as so reduced), including any costs or expenses pursuant to Section 3.05. If, after giving effect to any such reduction of the Revolving Credit Facility, the Alternative Currency Sublimit, the Relief Period Sublimit or the Swing Line Sublimit exceeds the amount of the Revolving Credit Facility, such sublimit shall be automatically reduced by the amount of such excess. Except as provided in the preceding sentence, the amount of any such Revolving Credit Facility reduction shall not be applied to the Alternative Currency Sublimit, the Relief Period Sublimit or the Swing Line Sublimit unless otherwise specified by the Borrower.

(b) Application of Commitment Reductions; Payment of Fees .

(i) The Administrative Agent will promptly notify the Lenders of any notice of **(or mandatory)** termination or reduction of the Revolving Credit Facility. Any reduction of the Revolving Credit Facility shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees in respect of the Revolving Credit Facility accrued until the effective date of any termination of the Revolving Credit Facility shall be paid on the effective date of such termination.

(ii) Notwithstanding anything to the contrary contained herein, a notice of termination of the Aggregate Commitments and the prepayment in full of the Loans in connection therewith may state that such notice is conditioned upon the effectiveness of other credit facilities, and if any notice so states it may be revoked by the Borrower by notice to the Administrative Agent on or prior to the date specified for the termination of the Aggregate Commitments and such prepayment that the refinancing condition has not been met and the termination and prepayment is to be revoked, provided that the Borrower will continue to be responsible for any costs or expenses pursuant to Section 3.05 in connection with the failure to prepay Loans resulting from such revocation.

2.07 Repayment of Loans .

(a) Revolving Credit Loans . The Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of all Revolving Credit Loans made to the Borrower outstanding on such date.

(b) Swing Line Loans . The Borrower shall repay each Swing Line Loan on the earlier to occur of (i) the date 10 Business Days after such Loan is made and (ii) the Maturity Date.

2.08 Interest .

(a) Subject to the provisions of subsection (b) below, (i) each Eurocurrency Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate per annum equal to the Eurocurrency Rate for such Interest Period plus the Applicable Rate; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate; and (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Rate for Base Rate Loans.

(b) (i) If any amount of principal of any Loan is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirements of Law.

(ii) If any amount (other than principal of any Loan) payable by the Borrower under any Loan Document is not paid when due (without regard to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then upon the request of the Required Lenders, such amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirements of Law.

(iii) Upon the request of the Required Lenders, while any Event of Default exists (other than as set forth in clauses 2.08(b)(i) and (b)(ii) above), the Borrower shall pay interest on the principal amount of all outstanding Obligations hereunder at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Requirements of Law.

(iv) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.

(c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.

2.09 Fees . In addition to certain fees described in subsections (h) and (i) of Section 2.03 :

(a) Commitment Fee .

(i) The Borrower shall pay to the Administrative Agent for the account of each Lender (subject to Section 2.16(a)(iii) with respect to Defaulting Lenders) in accordance with its Applicable Percentage, a commitment fee in Dollars equal to the Applicable Rate times the actual daily amount by which the Revolving Credit Facility exceeds the sum of (i) the Outstanding Amount of Revolving Credit Loans and (ii) the

Outstanding Amount of L/C Obligations, subject to adjustment as provided in Section 2.16 . The commitment fee with respect to the Revolving Credit Facility shall accrue at all times during the Availability Period with respect to the Revolving Credit Facility, including at any time during which one or more of the conditions in Article IV is not met, and shall be due and payable quarterly in arrears on the tenth Business Day after the last Business Day of each March, June, September and December, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period for the Revolving Credit Facility.

(ii) The commitment fees set forth in clause (i) above shall be calculated quarterly in arrears, and if there is any change in the Applicable Rate during any quarter, the actual daily amount shall be computed and multiplied by such Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) Other Fees .

(i) The Borrower shall pay to the Arrangers and the Administrative Agent for their own respective accounts, in Dollars, fees in the amounts and at the times specified in the Fee Letters. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

(ii) The Borrower shall pay to the Lenders, in Dollars, such fees as shall have been separately agreed upon in writing in the amounts and at the times so specified. Such fees shall be fully earned when paid and shall not be refundable for any reason whatsoever.

2.10 Computation of Interest and Fees .

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurocurrency Rate) shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan for the day on which the Loan is made, and shall not accrue on a Loan, or any portion thereof, for the day on which the Loan or such portion is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a) , bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error.

(b) If, as a result of any restatement of or other adjustment to the financial statements of the Borrower or for any other reason, the Borrower, the Administrative Agent or the Required Lenders determine that (i) the Leverage Ratio as calculated by the Borrower as of any applicable date was inaccurate and (ii) a proper calculation of the Leverage Ratio would have resulted in higher pricing for such period, the Borrower shall immediately and retroactively be obligated to pay to the Administrative Agent for the account of the applicable Lenders or L/C Issuer, as the case may be, promptly on demand by the Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, automatically and without further action by the Administrative Agent, any Lender or any L/C Issuer), an amount equal to the excess of the amount of interest and fees that should have been paid for such period over the amount of interest and fees actually paid for such period. This paragraph shall not limit the rights of the Administrative Agent, any Lender or any L/C Issuer, as the case may be, under Section 2.03(c)(iii) , 2.03(h) or 2.08(b) or under Article

VIII. The Borrower's obligations under this paragraph shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.11 Evidence of Debt.

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

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

2.12 Payments Generally; Administrative Agent's Clawback.

(a) General. All payments to be made by the Borrower shall be made free and clear and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrower hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in Same Day Funds not later than 2:00 p.m. on the date specified herein. Without limiting the generality of the foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. The Administrative Agent will promptly distribute to each Lender its Applicable Percentage (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent or the applicable L/C Issuer after 2:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrower shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

(b) (i) Funding by Lenders; Presumption by Administrative Agent. Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of Eurocurrency Rate Loans (or, in the case of any Revolving Credit Borrowing of Base Rate Loans, prior to (A) 12:00 noon on the date of such Revolving Credit Borrowing if such Revolving Credit Borrowing is to be made on a Business Day other than the date the Administrative Agent received the applicable Committed Loan Notice with respect to such Revolving Credit Borrowing and (B) 2:00 p.m. on the date of such Revolving Credit Borrowing if

such Revolving Credit Borrowing is to be made on the same Business Day as the date the Administrative Agent received the applicable Committed Loan Notice with respect to such Revolving Credit Borrowing) that such Lender will not make available to the Administrative Agent such Lender's share of such Revolving Credit Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with Section 2.02 (or, in the case of a Revolving Credit Borrowing of Base Rate Loans, that such Lender has made such share available in accordance with and at the time required by Section 2.02) and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Revolving Credit Borrowing available to the Administrative Agent, then the applicable Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount in Same Day Funds with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of a payment to be made by such Lender, the Overnight Rate, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by the Borrower, the interest rate applicable to Base Rate Loans. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(ii) Payments by Borrower; Presumptions by Administrative Agent . Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders or the applicable L/C Issuer hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable L/C Issuer, as the case may be, the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders or the applicable L/C Issuer, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such L/C Issuer, in Same Day Funds with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the Overnight Rate.

A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this subsection (b) shall be conclusive, absent manifest error.

(c) Failure to Satisfy Conditions Precedent . If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender to the Borrower as provided in the foregoing provisions of this Article II , and such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article IV are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

(d) Obligations of Lenders Several . The obligations of the Lenders hereunder to make
Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make

payments pursuant to Section 10.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 10.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 10.04(c) .

(e) Funding Source . Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.

(f) Insufficient Funds . Subject to the application of Section 8.03 by its terms, if at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, L/C Borrowings, interest and fees then due hereunder, such funds shall be applied (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and L/C Borrowings then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and L/C Borrowings then due to such parties.

2.13 Sharing of Payments by Lenders . If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of the Revolving Credit Loans made by it, or the participations in L/C Obligations or in Swing Line Loans held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such Revolving Credit Loans or participations and accrued interest thereon greater than its *pro rata* share thereof as provided herein, then the Lender receiving such greater proportion shall (a) notify the Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Revolving Credit Loans and subparticipations in L/C Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Revolving Credit Loans and other amounts owing them, provided that:

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

(ii) the provisions of this Section shall not be construed to apply to (x) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (y) the application of Cash Collateral provided for in Section 2.15 , or (z) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in L/C Obligations or Swing Line Loans to any assignee or participant, other than an assignment to the Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this Section shall apply).

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

2.14 Increase in Commitments .

(a) Request for Increase . The Borrower may, from time to time **(other than during the Relief Period, during which time, notwithstanding anything to the contrary in this Agreement, no increase pursuant to this Section 2.14 may be requested or consummated)** , request by written notice to the Administrative Agent one or more increases in the Revolving Credit Facility (each, a " Revolving Credit Increase "); provided that (i) the principal amount for all such Revolving Credit Increases, in the aggregate, since the Closing Date (including the then requested Revolving Credit Increase) shall not exceed the sum (with utilization being determined by the Borrower subject to the limits provided herein) of (x)
$200,000,000 plus (y) a principal amount such that, after giving effect to such proposed Revolving Credit
Increase (measured assuming the entire principal amount of any proposed Revolving Credit Increase being incurred pursuant to this clause (y) is fully drawn), any repayment of other Indebtedness in connection therewith and any other appropriate pro forma adjustment events, the Senior Secured Leverage Ratio is not greater than 2.00 to 1.00; (ii) any such request shall be in a minimum amount of $10,000,000 (or a lesser amount in the event such amount represents all remaining availability under this Section) and the Borrower may make a maximum of five such requests (excluding any requests that are not consummated); (iii) no Revolving Credit Increase shall increase the Swing Line Sublimit without the consent of the Swing Line Lender; (iv) any Revolving Credit Increase may, at the request of the Borrower, be available for the issuance of Letters of Credit within the limits of the L/C Issuer Sublimits; and (v) each Revolving Credit Increase shall constitute Obligations hereunder and shall be guaranteed and secured pursuant to the Guaranty, Collateral Agreement and the other Security Instruments on a *pari passu* basis with the other Obligations hereunder.

(b) Process for Increase . Revolving Credit Increases may be (but shall not be required to be) provided by any existing Lender, in each case on terms permitted in this Section 2.14 and otherwise on terms reasonably acceptable to the Borrower and the Administrative Agent, or by any other Person that qualifies as an Eligible Assignee (each such other Person, an " Additional Lender ") pursuant to a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent; provided that (i) the Administrative Agent shall have consented (in each case, such consent not to be unreasonably withheld, delayed or conditioned) to each proposed Additional Lender providing such Revolving Credit Increase to the extent the Administrative Agent would be required to consent to an assignment to such Additional Lender pursuant to Section 10.06(b)(iii) and (ii) each L/C Issuer and the Swing Line Lender shall have consented to each such Lender or proposed Additional Lender providing such Revolving Credit Increase if such consent by the L/C Issuers or the Swing Line Lender, as the case may be, would be required under Section 10.06(b)(iii) for an assignment of Revolving Credit Loans or Commitments to such Lender or proposed Additional Lender; provided further that the Borrower shall not be required to offer or accept commitments from existing Lenders for any Revolving Credit Increase. No Lender shall have any obligation to increase its Revolving Commitment pursuant to a request for a Revolving Credit Increase, and no consent of any Lender, other than the Lenders agreeing to provide any portion of a Revolving Credit Increase, shall be required to effectuate such Revolving Credit Increase.

(c) Effective Date and Allocations . The Administrative Agent and the Borrower shall determine the effective date of any Revolving Credit Increase (the " Increase Effective Date "). The Administrative Agent shall promptly notify the Borrower and the Lenders of the final allocation of such Revolving Credit Increase and the Increase Effective Date.

(d) Conditions .

(i) As a condition precedent to each Revolving Credit Increase, the Borrower shall deliver to the Administrative Agent a certificate of the Borrower and, if reasonably determined by

the Administrative Agent to be necessary or desirable under applicable Requirements of Law with respect to the Loan Documents of a Guarantor, of each such Guarantor, dated as of the Increase Effective Date, signed by a Responsible Officer of the Borrower or each such Guarantor, as applicable, and (A) certifying and attaching the resolutions adopted by the Borrower or such Guarantor approving or consenting to such Revolving Credit Increase (which, with respect to any such Loan Party, may, if applicable, be the resolutions entered into by such Loan Party in connection with the incurrence of the Obligations on the Closing Date) and (B) certifying that (1) both before and immediately after giving effect to such Revolving Credit Increase, as of the Increase Effective Date no Default or Event of Default shall exist and be continuing, (2) immediately after giving effect to such Revolving Credit Increase, as of the Increase Effective Date the Borrower shall be in *pro forma* compliance (after giving effect to the incurrence of such Revolving Credit Increase and the use of proceeds thereof) with each of the financial covenants contained in Section 7.16 and (3) the representations and warranties of the Borrower and each other Loan Party contained in Article V or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) as of such earlier date, and except that for purposes of this clause (i)(B)(3) , the representations and warranties contained in Sections 5.04(a) and (b) shall be deemed to refer to the most recent statements furnished pursuant to Sections 6.01(a) and (b) , respectively. In addition, as a condition precedent to each Revolving Credit Increase, the Borrower shall deliver or cause to be delivered such other officer's certificates, Organization Documents and legal opinions of the type delivered on the Closing Date as are reasonably requested by, and in form and substance reasonably satisfactory to, the Administrative Agent.

(ii) Each Revolving Credit Increase shall have the same terms as the outstanding Revolving Credit Loans and be part of the existing Revolving Credit Facility hereunder. Upon each Revolving Credit Increase (x) each Lender having a Commitment immediately prior to such increase will automatically and without further act be deemed to have assigned to each Lender providing a portion of the Revolving Credit Increase (each, a " Revolving Credit Increase Lender ") in respect of such increase, and each such Revolving Credit Increase Lender will automatically and without further act be deemed to have assumed a portion of such Lender's participations hereunder in outstanding Letters of Credit and Swing Line Loans such that, after giving effect to each such deemed assignment and assumption of participations, the percentage of the aggregate outstanding participations hereunder in (1) Letters of Credit and (2) Swing Line Loans, will, in each case, equal each Lender's Applicable Percentage (after giving effect to such increase in the Revolving Credit Facility) and (y) if, on the date of such increase there are any Revolving Credit Loans outstanding, the Lenders shall make such payments among themselves as the Administrative Agent may reasonably request to the extent necessary to keep the outstanding Revolving Credit Loans ratable with any revised Applicable Percentages arising from such Revolving Credit Increase, and the Borrower shall pay to the applicable Lenders any amounts required to be paid pursuant to Section 3.05 in connection with such payments among the Lenders as if such payments were effected by prepayments of Revolving Credit Loans.

(e) Conflicting Provisions . This Section shall supersede any provisions in Section 2.13 or 10.01 to the contrary.

2.15 Cash Collateral.

(a) Certain Credit Support Events . If (i) as of the Letter of Credit Expiration Date, any L/C Obligation for any reason remains outstanding, (ii) the Borrower shall be required to provide Cash Collateral pursuant to Section 8.02(c) , or (iii) there shall exist a Defaulting Lender, the Borrower shall immediately (in the case of clause (ii) above) or within one Business Day (in all other cases) (or such longer period of time permitted by the Administrative Agent and the applicable L/C Issuer) following any request by the Administrative Agent or the applicable L/C Issuer, provide Cash Collateral in an amount not less than the applicable Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (iii) above, after giving effect to Section 2.16(a)(iv) and any Cash Collateral provided by the Defaulting Lender). If at any time the Administrative Agent determines that any funds held as Cash Collateral pursuant to the preceding sentence are subject to any right or claim of any Person other than the Administrative Agent or that the total amount of such funds is less than the applicable Minimum Collateral Amount as required by the preceding sentence, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited as Cash Collateral, an amount equal to the excess of (x) such applicable Minimum Collateral Amount over (y) the total amount of funds, if any, then held as Cash Collateral that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit as Cash Collateral, such funds shall be applied, to the extent permitted under applicable Laws, to reimburse the applicable L/C Issuer.

(b) Grant of Security Interest . All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing (unless otherwise agreed by the depositary) deposit accounts at the Administrative Agent or the relevant L/C Issuer, as applicable. To the extent provided by the Borrower, the Borrower, and to the extent provided by any Lender, such Lender, hereby grants to (and subjects to the control of) the relevant L/C Issuer or to the Administrative Agent, for the benefit of the Administrative Agent, the L/C Issuer and the Lenders (including the Swing Line Lender), as applicable, and agrees to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant to this Section 2.15 , and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.15(c) . If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent or the applicable L/C Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, the Borrower or the relevant Defaulting Lender will, promptly (but in any event within five Business Days) after demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. The Borrower shall pay on demand therefor from time to time all customary account opening, activity and other administrative fees and charges in connection with the maintenance and disbursement of Cash Collateral.

(c) Application . Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under any of this Section 2.15 or Sections 2.03 , 2.04 , 2.05 , 2.16 or 8.02 in respect of Letters of Credit or Swing Line Loans shall be held and applied to the satisfaction of the specific L/C Obligations, Swing Line Loans, obligations to fund participations therein (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.

(d) Release . Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the

applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Lender (or, as appropriate, its assignee following compliance with Section 10.06(b)(vi))) or (ii) the Administrative Agent's and the applicable L/C Issuer's good faith determination that there exists excess Cash Collateral; provided that (x) Cash Collateral furnished by or on behalf of a Loan Party shall not be released during the continuance of a Default (and following application as provided in this Section 2.15 may be otherwise applied in accordance with Section 8.03), and (y) the Person providing Cash Collateral and the L/C Issuer or Swing Line Lender, as applicable, may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.16 Defaulting Lenders.

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

(i) Waivers and Amendments . Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Section 10.01 .

(ii) Defaulting Lender Waterfall . Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article VIII or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 10.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first* , to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second* , to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to the L/C Issuer or Swing Line Lender hereunder; *third* , to Cash Collateralize the L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.15 ; *fourth* , as the Borrower may request (so long as no Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth* , if so determined by the Administrative Agent and the Borrower, to be held in a non-interest bearing (unless otherwise agreed by the depositary) deposit account and released *pro rata* in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the L/C Issuer's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.15 ; *sixth* , to the payment of any amounts owing to the Lenders, the L/C Issuer or Swing Line Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the L/C Issuer or the Swing Line Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh* , so long as no Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth* , to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or L/C Borrowings in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 4.03 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and L/C Obligations

owed to, all non-Defaulting Lenders on a *pro rata* basis prior to being applied to the payment of any Loans of, or L/C Obligations owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in L/C Obligations and Swing Line Loans are held by the Lenders *pro rata* in accordance with the Commitments hereunder without giving effect to Section 2.16(a)(iv) . Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.16(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees .

(A) No Defaulting Lender shall be entitled to receive any commitment fee payable under Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrower shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(B) Each Defaulting Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.15 .

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to clause (B) above, the Borrower shall (x) pay to each non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in L/C Obligations that has been reallocated to such non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the applicable L/C Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such L/C Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

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

(v) Cash Collateral, Repayment of Swing Line Loans . If the reallocation described in clause (a)(iv) above cannot, or can only partially, be effected, the Borrower shall, without prejudice to any right or remedy available to it hereunder or under any applicable Requirement of Law, (x) *first* , prepay Swing Line Loans in an amount equal to the Swing Line Lenders' Fronting Exposure and (y) *second* , Cash Collateralize the L/C Issuers' Fronting Exposure in accordance with the procedures set forth in Section 2.15 .

(b) Defaulting Lender Cure . If the Borrower, the Administrative Agent, Swing Line Lender and the L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender (except that during the

continuance of an Event of Default, the Borrower's agreement shall not be required), the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swing Line Loans to be held on a *pro rata* basis by the Lenders in accordance with their Applicable Percentages (without giving effect to Section 2.16(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided , further , that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

ARTICLE III.
TAXES, YIELD PROTECTION AND ILLEGALITY

3.01 Taxes.

(a) L/C Issuer . For purposes of this Section 3.01 , the term "Lender" includes any L/C Issuer and the term "Requirements of Law" includes FATCA.

(b) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes .

(i) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Requirements of Law. If any applicable Requirements of Law (as determined in the good faith discretion of the Administrative Agent) require the deduction or withholding of any Tax from any such payment by the Administrative Agent or a Loan Party, then the Administrative Agent or such Loan Party shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to subsection (f) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States Federal backup withholding and withholding taxes, from any payment made hereunder or under any other Loan Document, then (A) the Administrative Agent shall withhold or make such deductions as are determined in the good faith discretion of the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (f) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes been made.

(iii) If any Loan Party or the Administrative Agent shall be required by any applicable Requirements of Law other than the Code to withhold or deduct any Taxes from any payment made

hereunder or under any other Loan Document, then (A) such Loan Party or the Administrative Agent, as required by such Requirements of Law as determined in the good faith discretion of such Loan Party or the Administrative Agent (as applicable), shall withhold or make such deductions as are determined by it to be required based upon the information and documentation it has received pursuant to subsection (f) below, (B) such Loan Party or the Administrative Agent, to the extent required by such Requirements of Law, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Requirements of Law, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Loan Party shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section 3.01) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction for Indemnified Taxes been made.

(c) Payment of Other Taxes by the Borrower . The Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable Requirements of Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(d) Tax Indemnifications . (i) Each of the Loan Parties shall jointly and severally indemnify each Recipient, within 10 days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section
3.01) payable or paid by such Recipient or required to be withheld or deducted from a payment to such
Recipient, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability (setting forth in reasonable detail the basis and calculation of such payment or liability) delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, the Loan Parties are not indemnifying any Person for Excluded Taxes, except to the extent provided in the immediately succeeding sentence. Each of the Loan Parties shall jointly and severally indemnify the Administrative Agent, within 10 days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section
3.01(d)(ii) below. Upon making such payment to the Administrative Agent, the Borrower shall be subrogated to the rights of the Administrative Agent pursuant to Section 3.01(d)(ii) below against the applicable defaulting Lender (other than the right of set off pursuant to the last sentence of Section
3.01(d)(ii)).

(ii) Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (*x*) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Loan Parties to do so), (*y*) the Administrative Agent and the Loan Parties, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 10.06(d) relating to the maintenance of a Participant Register and (*z*) the Administrative Agent and the Loan Parties, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or a Loan Party in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender

hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii).

(e) Evidence of Payments. Upon request by the Borrower or the Administrative Agent, as the case may be, after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Requirements of Law to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(f) Status of Lenders; Tax Documentation.

(i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by Requirements of Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 3.01(f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

(A) any Lender that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), and the Administrative Agent shall deliver to the Borrower on or prior to the date it becomes the Administrative Agent under this Agreement (and from time to time thereafter upon the reasonable request of the Borrower), properly completed and executed originals of IRS Form W-9 certifying that such Lender (or the Administrative Agent, as applicable) is exempt from U.S. federal backup withholding tax;

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

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, properly completed and executed originals of

IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, properly completed and executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(II) properly completed and executed originals of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit H-1 to the effect that such Foreign Lender is neither a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, nor a "controlled foreign corporation" described in Section
881(c)(3)(C) of the Code (a " U.S. Tax Compliance Certificate ") and (y) properly
completed and executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or

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

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

(D) if a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Requirements of Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Requirements of Law (including as

prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(iii) Each Lender and the Administrative Agent agrees that if any form or certification it previously delivered pursuant to this Section 3.01 expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

(g) Treatment of Certain Refunds . If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 3.01 (including by the payment of additional amounts pursuant to this Section 3.01), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this subsection (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection (g) , in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this subsection (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the indemnification payments or additional amounts giving rise to such refund had never been paid. This subsection (g) shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Survival . Each party's obligations under this Section 3.01 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality. If any Lender determines that any Requirement of Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurocurrency Rate, or to determine or charge interest rates based upon the Eurocurrency Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the applicable interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent, (a) any obligation of such Lender to make or continue Eurocurrency Rate Loans or to convert Base Rate Loans to Eurocurrency Rate Loans shall be suspended, and (b) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Eurocurrency Rate component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to

such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurocurrency Rate Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Eurocurrency Rate component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurocurrency Rate Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurocurrency Rate Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurocurrency Rate, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurocurrency Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the Eurocurrency Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.03 Inability to Determine Rates. If in connection with any request for a Eurocurrency Rate Loan or a conversion to or continuation thereof, (a) the Administrative Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurocurrency Rate Loan or (ii) adequate and reasonable means do not exist for determining the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan or in connection with an existing or proposed Base Rate Loan (in each case with respect to clause (a) above, " Impacted Loans "), or (b) the Required Lenders determine that for any reason the Eurocurrency Rate for any requested Interest Period with respect to a proposed Eurocurrency Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will promptly so notify the Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurocurrency Rate Loans shall be suspended (to the extent of the affected Eurocurrency Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurocurrency Rate component of the Base Rate, the utilization of the Eurocurrency Rate component in determining the Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurocurrency Rate Loans (to the extent of the affected Eurocurrency Rate Loans or Interest Periods) or, failing that, will be deemed to have converted such request into a request for a Revolving Credit Borrowing of Base Rate Loans in the amount specified therein.

Notwithstanding the foregoing, if the Administrative Agent has made the determination described in clause (a)(i) of this Section, the Administrative Agent, with the consent of the Borrower and in consultation with the affected Lenders, may establish an alternative interest rate for the Impacted Loans, in which case, such alternative rate of interest shall apply with respect to the Impacted Loans until (1) the Administrative Agent revokes the notice delivered with respect to the Impacted Loans under clause (a) of the first sentence of this Section, (2) the Administrative Agent or the affected Lenders notify the Administrative Agent and the Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (3) any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for such Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to such alternative rate of interest or to determine or charge interest rates based upon such rate or any Governmental Authority has imposed material restrictions on the authority of such Lender to do any of the foregoing and provides the Administrative Agent and the Borrower written notice thereof.

3.04 Increased Costs; Reserves on Eurocurrency Rate Loans.

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

(i) impose, modify or deem applicable any reserve, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement contemplated by Section 3.04(e)) or the L/C Issuer;

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

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

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

(b) Capital Requirements . If any Lender or the L/C Issuer determines that any Change in Law affecting such Lender or the L/C Issuer or any Lending Office of such Lender or such Lender's or the L/C Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the L/C Issuer's capital or on the capital of such Lender's or the L/C Issuer's holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by, or participations in Letters of Credit or Swing Line Loans held by, such Lender, or the Letters of Credit issued by the L/C Issuer, to a level below that which such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the L/C Issuer's policies and the policies of such Lender's or the L/C Issuer's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender or the L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the L/C Issuer or such Lender's or the L/C Issuer's holding company for any such reduction suffered.

(c) Certificates for Reimbursement . A certificate of a Lender or the L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or the L/C Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section 3.04 and delivered to the Borrower shall be conclusive absent manifest error. The Borrower shall pay such Lender or the L/C Issuer, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) Delay in Requests . Failure or delay on the part of any Lender or the L/C Issuer to demand compensation pursuant to the foregoing provisions of this Section 3.04 shall not constitute a waiver of such

Lender's or the L/C Issuer's right to demand such compensation, provided that the Borrower shall not be required to compensate a Lender or the L/C Issuer pursuant to the foregoing provisions of this Section 3.04 for any increased costs incurred or reductions suffered more than nine months prior to the date that such Lender or the L/C Issuer, as the case may be, notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the L/C Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the nine-month period referred to above shall be extended to include the period of retroactive effect thereof).

(e) Additional Reserve Requirements . The Borrower shall pay to each Lender, (i) as long as such Lender shall be required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "Eurocurrency liabilities"), additional interest on the unpaid principal amount of each Eurocurrency Rate Loan equal to the actual costs of such reserves allocated to such Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), and (ii) as long as such Lender shall be required to comply with any reserve ratio requirement or analogous requirement of any other central banking or financial regulatory authority imposed in respect of the maintenance of the Commitments or the funding of the Eurocurrency Rate Loans, such additional costs (expressed as a percentage per annum and rounded upwards, if necessary, to the nearest five decimal places) equal to the actual costs allocated to such Commitment or Loan by such Lender (as determined by such Lender in good faith, which determination shall be conclusive), which in each case shall be due and payable on each date on which interest is payable on such Loan, provided the Borrower shall have received at least 10 days' prior notice (with a copy to the Administrative Agent) of such additional interest or costs from such Lender. If a Lender fails to give notice 10 days prior to the relevant Interest Payment Date, such additional interest or costs shall be due and payable 10 days from receipt of such notice, provided that, with respect to interest payable on any Interest Payment Date, the Borrower shall not be required to compensate a Lender pursuant to the foregoing provisions of this Section 3.04(e) for any reserves (or analogous amount) suffered by such Lender more than four months prior to such Interest Payment Date.

3.05 Compensation for Losses . Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrower shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

(a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);

(b) any failure by the Borrower (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower;

(c) any failure by the Borrower to make payment of any drawing under any Letter of Credit (or interest due thereon) denominated in an Alternative Currency on its scheduled due date or any payment thereof in a different currency; or

(d) any assignment of a Eurocurrency Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Section 10.13 ;

including any loss or expense arising from the liquidation or reemployment of funds obtained by it to maintain such Loan, or from fees payable to terminate the deposits from which such funds were obtained,

but excluding any loss of profits or margin. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. A certificate of a Lender setting forth the amount of any such loss, cost or expense provided for in this Section and delivered to the Borrower shall be conclusive absent manifest error.

For purposes of calculating amounts payable by the Borrower to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each Eurocurrency Rate Loan made by it at the Eurocurrency Rate for such Loan by a matching deposit or other borrowing in the offshore interbank market for such currency for a comparable amount and for a comparable period, whether or not such Eurocurrency Rate Loan was in fact so funded.

3.06 Mitigation Obligations. Each Lender may make any Credit Extension to the Borrower through any Lending Office, provided that the exercise of this option shall not affect the obligation of the Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under Section 3.04, or the Borrower is required to pay any Indemnified Taxes or any additional amount to any Lender, the L/C Issuer, or any Governmental Authority for the account of any Lender or the L/C Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then at the request of the Borrower such Lender or the L/C Issuer shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or the L/C Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the L/C Issuer, as the case may be. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or the L/C Issuer in connection with any such designation or assignment.

3.07 Survival. All of the Borrower's obligations under this Article III shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of the Administrative Agent.

ARTICLE IV.
CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

4.01 Conditions of Execution Date. The effectiveness of this Agreement and the occurrence of the Execution Date are subject to the Administrative Agent's receipt of the following, each of which shall be originals, telecopies or electronic images (e.g., "pdf" or "tif") (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the Borrower (to the extent applicable), each dated the Execution Date (or, in the case of certificates of governmental officials, a recent date before the Execution Date) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

(a) executed counterparts of this Agreement, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(b) a Note executed by the Borrower in favor of each Lender requesting a Note;

(c) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of the Borrower as the Administrative Agent may require evidencing

the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement;

(d) such documents and certifications as the Administrative Agent may reasonably require to evidence that the Borrower is duly organized or formed, and that the Borrower is validly existing and in good standing in its jurisdiction of organization;

(e) a favorable opinion of (A) Baker Botts L.L.P., counsel to the Borrower and (B) Andre Hall, internal counsel to the Borrower, in each case addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders and addressing such matters concerning the Borrower and the Loan Documents to be provided on or prior to the Execution Date as the Required Lenders may reasonably request;

(f) a certificate of a Responsible Officer of the Borrower either (A) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by the Borrower and the validity against the Borrower of this Agreement, and such consents, licenses and approvals shall be in full force and effect, or (B) stating that no such consents, licenses or approvals are so required;

(g) a certificate of the chief financial officer or treasurer of the Borrower certifying that as of the Execution Date (A) all of the representations and warranties in this Agreement (other than those that speak solely to a date after the Execution Date, including the Closing Date) are true and correct in all material respects (or, to the extent any such representation and warranty is modified by a materiality or Material Adverse Effect standard, in all respects) as of such date (except to the extent that such representations and warranties expressly relate to an earlier date, in which case they shall be true and correct in all material respects (or, to the extent any such representation and warranty is modified by a materiality or Material Adverse Effect standard, in all respects) as of such earlier date) and (B) no Default shall exist, or would result from the occurrence of the Execution Date (determined as if each provision of Section 8.01 applied on the Execution Date, other than Section 8.01(d) (solely with respect to Articles VI and VII) and Section 8.01(i));

(h) such documentation and other information as has been reasonably requested by the Administrative Agent or any Lender prior to the Execution Date with respect to the Loan Parties in connection with the provisions of Sections 6.10 and 6.11 hereof;

(i) the Projections; and

(j) the Form 10, along with any amendments or additions thereto, or modifications thereof, in each case effectuated prior to the Execution Date, which shall include the three years of audited financial statements and any unaudited quarterly financial statements required thereby (and, to the extent not otherwise required to be included in the Form 10, unaudited financial statements of the Borrower and its Subsidiaries for any fiscal quarter ending after December 31, 2014 and at least 45 days prior to the Execution Date).

Without limiting the generality of the provisions of the last paragraph of Section 9.03 , for purposes of determining compliance with the conditions specified in this Section 4.01 , each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Execution Date specifying its objection thereto.

4.02 Conditions of Closing Date. The occurrence of the Closing Date and the obligation of the L/C Issuer and each Lender to make its initial Credit Extension hereunder, are each subject to satisfaction of the following conditions precedent:

(a) The Administrative Agent's receipt of the following (to the extent not previously delivered in connection with the Execution Date), each of which shall be originals, telecopies or electronic images (e.g., "pdf" or "tif") (followed promptly by originals) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party (to the extent applicable), each dated the Closing Date (or, in the case of (x) certificates of governmental officials, a recent date before the Closing Date and (y) documents previously delivered pursuant to Section 4.01 , the date of the prior delivery thereof) and each in form and substance reasonably satisfactory to the Administrative Agent and each of the Lenders:

(i) executed counterparts of the Guaranty, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(ii) executed counterparts of each Security Instrument to be entered into by any Loan Party on or prior to the Closing Date, duly executed by each Loan Party party thereto, together with:

(A) certificates representing the certificated Pledged Interests pledged under the Collateral Agreement, and accompanied by undated stock or other transfer powers executed in blank,

(B) proper financing statements in form appropriate for filing under the Uniform Commercial Code of all jurisdictions that the Administrative Agent may deem necessary or desirable in order to perfect the Liens created under the Collateral Agreement, covering the Collateral described therein,

(C) completed requests for information, dated on or before the Closing Date, listing all effective financing statements filed in the jurisdictions referred to in clause (B) above that name any Loan Party as debtor, together with copies of such financing statements, and

(D) evidence of the completion of all other actions, recordings and filings of or with respect to the Security Instruments to be entered into on the Closing Date, or that have been entered into prior to the Closing Date, that the Administrative Agent may deem necessary or desirable in order to perfect, or to confirm or continue the prior perfection of, the Liens created thereby (including receipt of duly executed payoff letters and UCC-3 termination statements, if any), and

(E) such Intellectual Property Security Agreements as the Administrative Agent may deem necessary or desirable in order to perfect, or provide notice of, the Liens created under the Collateral Agreement in intellectual property Collateral, in form appropriate for filing with the United States Patent and Trademark Office or the United States Copyright Office;

(iii) with respect to each Mortgaged Property described in clause (a) of such definition, except to the extent the matters set forth in clauses (A), (B), (C) or (F) below are waived by the Administrative Agent (in which case Section 6.27 shall apply to any such matters that are so waived), each of the following:

(A) evidence that counterparts of the Mortgages have been duly executed, acknowledged and delivered and are in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may deem necessary or desirable in order to create, confirm or continue a valid first and subsisting Lien on the property described therein in favor of the Administrative Agent for the benefit of the Secured Parties, excepting only Liens permitted under the Loan Documents, and that all filing, documentary, stamp, intangible and recording taxes and fees have been paid (or the Borrower has made arrangements satisfactory to the Administrative Agent for payment thereof),

(B) fully paid American Land Title Association Lender's Extended Coverage title insurance policy (or policies) (the " Mortgagee Policies ") or marked up unconditional binder for such insurance, in each case with endorsements and in amounts acceptable to the Administrative Agent, issued, coinsured and reinsured by title insurers acceptable to the Administrative Agent, insuring the Mortgages to be valid first and subsisting Liens on the property described therein, free and clear of all defects (including, but not limited to, mechanics' and materialmen's Liens) and encumbrances, excepting only Liens permitted under the Loan Documents,

(C) evidence that all premiums in respect of the Mortgagee Policies have been paid (or the Borrower has made arrangements satisfactory to the Administrative Agent for payment thereof),

(D) a completed "Life-of-Loan" Federal Emergency Management Agency Standard Flood Hazard Determination with respect to each Mortgaged Property (together with a notice about special flood hazard area status and flood disaster assistance duly executed by the Borrower and each Loan Party relating thereto),

(E) evidence satisfactory to each Lender of flood insurance as may be required to comply with the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, the National Flood Insurance Reform Act of 1994 and the Biggert-Waters Flood Insurance Act of 2012, and

(F) evidence that all other action that the Administrative Agent may deem necessary or desirable in order to create valid first and subsisting Liens (excepting only Liens permitted under the Loan Documents) on the property described in the Mortgages has been taken;

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

(v) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing and in good standing in its jurisdiction of organization;

(vi) a favorable opinion of (A) Baker Botts L.L.P., counsel to the Loan Parties, (B) Andre Hall, internal counsel to the Borrower, (C) Vorys, Sater, Seymour and Pease LLP, local

Ohio counsel to certain of the Loan Parties, (D) Jones, Walker, Waechter, Poitevent, CarrŁre & DenŁgre L.L.P., local Mississippi counsel to certain of the Loan Parties, (E) Beck, Chaet, Bamberger & Polsky, S.C., local Wisconsin counsel to certain of the Loan Parties and (F) K&L Gates, LLP, local Pennsylvania counsel to certain of the Loan Parties, in each case addressed to the Administrative Agent and each Lender, in form and substance reasonably satisfactory to the Administrative Agent and the Lenders and addressing such matters concerning the Loan Parties, this Agreement and the Loan Documents to be executed on the Closing Date as the Required Lenders may reasonably request;

(vii) a certificate of a Responsible Officer of the Borrower (A) either (x) attaching copies of all consents, licenses and approvals required in connection with the execution, delivery and performance by each Loan Party and the validity against each Loan Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect, or (y) stating that no such consents, licenses or approvals are so required and (B) either (x) attaching copies of any amendments, additions or modifications to the Form 10 effectuated on or after the Execution Date through and including the Closing Date, provided that the Form 10 shall not have been altered, amended, supplemented or otherwise modified (or the information provided thereby) from the Form 10 provided on or prior to the Execution Date in any manner that could reasonably be expected to be adverse to any material interest of the Administrative Agent or the Lenders (unless approved by the Required Lenders, notwithstanding the provisions of Section 10.01 to the contrary, such approval not to be unreasonably conditioned, withheld or delayed) or (y) stating that no amendments, additions or modifications to the Form 10 have been effectuated on or after the Execution Date;

(viii) a certificate of the chief financial officer or the treasurer of the Borrower, certifying that (A) as of the last day of the most recently ended Fiscal Quarter (but at least 45 days prior to the Closing Date) or Fiscal Year (but at least 90 days prior to the Closing Date), the Borrower is in compliance with the financial covenants in Section 7.16 after giving *pro forma* effect to the incurrence and repayment of Indebtedness on the Closing Date (and providing such backup evidence as may reasonably be requested), (B) the Securities and Exchange Commission has declared the Form 10 effective and that no stop orders relating to the Spinoff or other restrictions that would otherwise prohibit or enjoin the occurrence of the Spinoff shall be in existence, (C) the conditions specified in Sections 4.03(a) and (b) (with satisfaction of Section 4.03(b) determined as if each provision of Section 8.01 , other than Section 8.01(d) (solely with respect to Articles VI and VII) and Section 8.01(i) , applied on and after the Execution Date) have been satisfied and (D) that there has been no event or circumstance since December 31, 2014 that has had or would be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect;

(ix) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect, together with the certificates of insurance or other appropriate documentation, naming the Administrative Agent, on behalf of the Secured Parties, as an additional insured or loss payee, as the case may be, under all insurance policies (including flood insurance policies) maintained with respect to the assets and properties of the Loan Parties that constitute Collateral;

(x) such documentation and other information as has been reasonably requested by the Administrative Agent or any Lender prior to the Closing Date with respect to the Loan Parties in connection with the provisions of Sections 6.10 hereof;

(xi) unaudited consolidated financial statements of the Borrower and its Subsidiaries for each fiscal quarter ended after the date of the filing of the Form 10 and at least 45 days prior to the Closing Date;

(xii) a certificate signed by a person that would (if BWC were a Loan Party) be a Responsible Officer of BWC certifying that attached thereto is a true and correct copy of the resolutions of BWC approved and entered into with respect to the approval of the Spinoff, and stating that such resolutions have not been amended, altered or otherwise modified since the date thereof (or attaching any such amendment, alternation or other modification);

(xiii) evidence that the Existing Credit Agreement has been, or substantially concurrently with the Closing Date is being, terminated, all Indebtedness in respect of the Existing Credit Agreement has been, or substantially concurrently with the Closing Date is being, repaid (other than letters of credit thereunder that are being deemed issued under this Agreement or the Remainco Credit Facilities), and all Liens, if any, securing any such repaid and terminated Indebtedness have been or substantially concurrently with the Closing Date are being released; and

(xiv) evidence that the Remainco Credit Facilities have been, or substantially concurrently with the Closing Date are being, entered into by BWC and certain of its Subsidiaries.

(b) The Execution Date shall have occurred.

(c) The Administrative Agent and the Lenders shall have received satisfactory evidence that as of the Closing Date (i) the Borrower is a direct, wholly-owned subsidiary of BWC (unless the Spinoff has occurred or is occurring substantially simultaneously therewith), (ii) BWPGG is a wholly-owned direct or indirect subsidiary of the Borrower, and (iii) substantially all of the subsidiaries of BWPGG (other than Babcock & Wilcox Canada, Ltd. and its subsidiary Intech International, Inc.) are direct or indirect subsidiaries of BWPGG.

(d) The Closing Date shall have occurred on or prior to September 1, 2015.

(e) (i) All fees required to be paid to the Administrative Agent and the Arrangers on or before the Closing Date shall have been paid and (ii) all fees required to be paid to the Lenders on or before the Closing Date shall have been paid, in each case pursuant to the Fee Letters.

(f) Unless waived by the Administrative Agent, the Borrower shall have paid all reasonable out-of-pocket fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent) to the extent invoiced at least two Business Days prior to the Closing Date (with reasonable and customary supporting documentation), plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

Without limiting the generality of the provisions of the last paragraph of Section 9.03 , for purposes of determining compliance with the conditions specified in this Section 4.02 , each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.03 Conditions to all Credit Extensions . The obligation of each Lender to honor any Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurocurrency Rate Loans), including the initial Credit Extension on the Closing Date is subject to the following conditions precedent:

(a) The representations and warranties of (i) the Borrower contained in Article V and (ii) each Loan Party contained in each other Loan Document or in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) as of such earlier date, and except that for purposes of this Section 4.03 , the representations and warranties contained in subsections (a) and (b) of Section 5.04 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 6.01 .

(b) No Default shall exist, or would result from such proposed Credit Extension or the application of the proceeds thereof.

(c) The Administrative Agent and, if applicable, the L/C Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.

(d) In the case of an L/C Credit Extension to be denominated in an Alternative Currency, there shall not have occurred any change in national or international financial, political or economic conditions or currency exchange rates or exchange controls which in the reasonable opinion of the applicable L/C Issuer would make it impracticable for such L/C Credit Extension to be denominated in the relevant Alternative Currency.

Each Request for Credit Extension (other than a Committed Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurocurrency Rate Loans) submitted by the Borrower (or with respect to a Letter of Credit Application, any Permitted L/C Party) shall be deemed to be a representation and warranty of the Borrower that the conditions specified in Sections 4.03(a) and (b) have been satisfied on and as of the date of the applicable Credit Extension.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

To induce the Lenders, the L/C Issuers and the Administrative Agent to enter into this Agreement, the Borrower represents and warrants each of the following to the Lenders, the L/C Issuers and the Administrative Agent, on and as of the Execution Date (other than those representations and warranties that speak solely to a date after the Execution Date or to a document or agreement executed after the Execution Date), on and as of the Closing Date and the making of Credit Extensions on the Closing Date and on and as of each date as required by Section 4.03 or on any other date required by any Loan Document (with references in this Article V (other than Sections 5.03 , 5.04 and 5.05) to "Subsidiaries" to exclude Captive Insurance Subsidiaries):

5.01 Corporate Existence, Compliance with Law . Each of the Borrower and the Borrower's Subsidiaries (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, (b) is duly qualified to do business as a foreign corporation and in good standing under the laws of each jurisdiction where such qualification is necessary, except where the failure to be so qualified or

in good standing would not have a Material Adverse Effect, (c) has all requisite corporate or other organizational power and authority and the legal right to own, pledge, mortgage and operate its properties, to lease the property it operates under lease and to conduct its business as now or currently proposed to be conducted, (d) is in compliance with its Constituent Documents, (e) is in compliance with all applicable Requirements of Law except where the failure to be in compliance would not, in the aggregate, have a Material Adverse Effect and (f) has all necessary licenses, permits, consents or approvals from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction, to the extent required for such ownership, operation and conduct, except for licenses, permits, consents, approvals, filings or notices that can be obtained or made by the taking of ministerial action to secure the grant or transfer thereof or the failure of which to obtain or make would not, in the aggregate, have a Material Adverse Effect.

5.02 Corporate Power; Authorization; Enforceable Obligations.

(a) The execution, delivery and performance by each Loan Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby:

(i) are within such Loan Party's corporate, limited liability company, partnership or other organizational powers;

(ii) have been duly authorized by all necessary corporate, limited liability company or partnership action, including the consent of shareholders, partners and members where required;

(iii) do not and will not (A) contravene such Loan Party's or any of its Subsidiaries' respective Constituent Documents, (B) violate any other Requirement of Law applicable to such Loan Party (including Regulations T, U and X of the FRB), or any order or decree of any Governmental Authority or arbitrator applicable to such Loan Party, (C) conflict with or result in the breach of, or constitute a default under, or result in or permit the termination or acceleration of, any lawful Contractual Obligation of such Loan Party or any of its Subsidiaries, other than in the case of this clause (C) any such conflict, breach, default, termination or acceleration that could not reasonably be expected to have a Material Adverse Effect, or (D) result in the creation or imposition of any Lien upon any property of such Loan Party or any of its Subsidiaries, other than those in favor of the Secured Parties pursuant to the Security Instruments; and

(iv) do not require the consent of, authorization by, approval of, notice to, or filing or registration with, any Governmental Authority or any other Person, other than (A) routine tax filings, of which the failure to so file will not result in any Loan Document being unenforceable against, or the performance of any Loan Document being impaired in any way with respect to, any Loan Party, (B) those listed on Schedule 5.02 or that have been or will be, prior to the Closing Date, obtained or made, copies of which have been or will be delivered to the Administrative Agent pursuant to Section 4.02 , and each of which on the Closing Date will be in full force and effect and, (C) with respect to the Collateral, filings required to perfect the Liens created by the Security Instruments.

(b) This Agreement has been, and each of the other Loan Documents will have been upon delivery thereof pursuant to the terms of this Agreement, duly executed and delivered by each Loan Party who is a party thereto. This Agreement is, and the other Loan Documents will be, when delivered, the legal, valid and binding obligation of each Loan Party who is a party thereto, enforceable against such Loan Party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or

other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.03 Ownership of Borrower; Subsidiaries.

(a) All of the outstanding capital stock of the Borrower is validly issued, fully paid and non-assessable.

(b) Set forth on Schedule 5.03 is a complete and accurate list showing, as of the Closing Date, all Subsidiaries of the Borrower and, as to each such Subsidiary, the jurisdiction of its organization, the number of shares of each class of Stock authorized (if applicable), the number outstanding on the Closing Date, the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower. Except as set forth on Schedule 5.03 , as of the Closing Date no Stock of any Subsidiary of the Borrower is subject to any outstanding option, warrant, right of conversion or purchase of any similar right. Except as set forth on Schedule 5.03 , as of the Closing Date all of the outstanding Stock of each Subsidiary of the Borrower owned (directly or indirectly) by the Borrower has been validly issued, is fully paid and non-assessable (to the extent applicable) and is owned by the Borrower or a Subsidiary of the Borrower, free and clear of all Liens (other than the Lien in favor of the Secured Parties created pursuant to the Security Instruments), options, warrants, rights of conversion or purchase or any similar rights. Except as set forth on Schedule 5.03 , as of the Closing Date neither the Borrower nor any such Subsidiary is a party to, or has knowledge of, any agreement restricting the transfer or hypothecation of any Stock of any such Subsidiary, other than the Loan Documents and, with respect to any Subsidiary that is not a Wholly-Owned Subsidiary, the Constituent Documents of such Subsidiary. The Borrower does not own or hold, directly or indirectly, any Stock of any Person other than such Subsidiaries and Investments permitted by Section 7.03 .

5.04 Financial Statements.

(a) The interim unaudited financial statements for the Borrower and its Subsidiaries for the most-recently ended Fiscal Quarter, copies of which have been furnished to each Lender, fairly present in all material respects, subject to the absence of footnote disclosure and normal recurring year-end audit adjustments, the consolidated financial condition of the Borrower and its Subsidiaries as at such dates and the consolidated results of the operations of the Borrower and its Subsidiaries for the period ended on such dates, all in conformity with GAAP.

(b) The audited consolidated balance sheet of the Borrower and its Subsidiaries as of the end of the Fiscal Year ended December 31, 2014, and the related statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, copies of which have been furnished to each Lender, (i) were prepared in conformity with GAAP and (ii) fairly present in all material respects, the consolidated financial condition of the Borrower and its Subsidiaries as at the date indicated and the consolidated results of their operations and cash flow for the period indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which the Borrower's Accountants shall concur and that shall have been disclosed in the notes to the financial statements).

(c) Except as set forth on Schedule 5.04 , neither the Borrower nor any of its Subsidiaries has, as of the Closing Date, any material obligation, contingent liability or liability for taxes, long-term leases (other than operating leases) or unusual forward or long-term commitment that is not reflected in the financial statements referred to in clause (b) above and not otherwise permitted by this Agreement.

(d) The Projections have been prepared by the Borrower taking into consideration past operations of its business, and reflect projections for the period beginning approximately January 1, 2015

and ending approximately December 31, 2019 on a Fiscal Year by Fiscal Year basis. The Projections are based upon estimates and assumptions stated therein, all of which the Borrower believes, as of the Closing Date, to be reasonable in light of current conditions and current facts known to the Borrower (other than any necessary adjustments due to fees payable in accordance herewith) and, as of the Closing Date, reflect the Borrower's good faith estimates of the future financial performance of the Borrower and its Subsidiaries and of the other information projected therein for the periods set forth therein.

5.05 Material Adverse Change. Since December 31, 2014, there has been no event or circumstance, either individually or in the aggregate, that has had or would reasonably be expected to result in a Material Adverse Effect.

5.06 Solvency. Both before and after giving effect to (a) the Credit Extensions to be made or extended on the Closing Date or such other date as Credit Extensions requested hereunder are made or extended, (b) the disbursement of the proceeds of such Loans pursuant to the instructions of the Borrower, (c) the consummation of the transactions contemplated hereby and (d) the payment and accrual of all transaction costs in connection with the foregoing, the Loan Parties, taken as a whole, are Solvent.

5.07 Litigation. Except as set forth on Schedule 5.07 , there are no pending or, to the knowledge of the Borrower, threatened actions, investigations or proceedings against the Borrower or any of its Subsidiaries before any court, Governmental Authority or arbitrator other than those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Schedule 5.07 lists all litigation pending against any Loan Party as of the Closing Date that, if adversely determined, could be reasonably expected to have a Material Adverse Effect.

5.08 Taxes. All federal income and other material tax returns, reports and statements (collectively, the " Tax Returns ") required to be filed by the Borrower or any of its Subsidiaries have been filed with the appropriate Governmental Authorities in all jurisdictions in which such Tax Returns are required to be filed, all such Tax Returns are true and correct in all material respects, and all material taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any fine, penalty, interest, late charge or loss may be added thereto for non-payment thereof except where contested in good faith and by appropriate proceedings if adequate reserves therefor have been established on the books of the Borrower or such Subsidiary in conformity with GAAP. The Borrower and each of its Subsidiaries have withheld and timely paid to the respective Governmental Authorities all material amounts required to be withheld.

5.09 Full Disclosure . The Information Memorandum and any other information prepared or furnished by or on behalf of any Loan Party and delivered to the Lenders in writing in connection with this Agreement or the consummation of the transactions contemplated hereunder or thereunder (in each case, taken as a whole) does not, as of the time of delivery of such information (with respect to the Information Memorandum, as of the Closing Date only), contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein or herein not misleading; provided that to the extent any such information was based upon, or constituted, a forecast or projection, such Loan Party represents only, in respect of such projection or forecast, that it acted in good faith and utilized reasonable assumptions and due care in the preparation of such information.

5.10 Margin Regulations. The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the FRB), and no proceeds of any Credit Extension will be used to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock in contravention of Regulation T, U or X of the FRB.

5.11 No Burdensome Restrictions; No Defaults.

(a) Neither the Borrower nor any of its Subsidiaries (i) is a party to any Contractual Obligation (x) the compliance with which could reasonably be expected to have a Material Adverse Effect or (y) the performance of which by any party thereof would result in the creation of a Lien (other than a Lien permitted under Section 7.02) on the property or assets of any party thereof or (ii) is subject to any charter restriction that could reasonably be expected to have a Material Adverse Effect.

(b) Neither the Borrower nor any of its Subsidiaries is in default under or with respect to any Contractual Obligation owed by it, other than, in either case, those defaults that would not reasonably be expected to have a Material Adverse Effect.

(c) No Default has occurred and is continuing.

5.12 Investment Company Act. None of the Borrower or any Subsidiary is or is required to be registered as an "investment company" under the Investment Company Act of 1940.

5.13 Use of Proceeds. The (a) proceeds of the Loans are being used by the Borrower only (i) for working capital needs, capital expenditures, Permitted Acquisitions, general corporate purposes and other lawful corporate purposes of the Borrower and its Subsidiaries and (ii) to pay fees and expenses in connection with this Agreement and the related transactions, and (b) Letters of Credit are being solely used by the Borrower to support warranties, bid bonds, payment or performance obligations and for other general corporate purposes by Permitted L/C Parties.

5.14 Insurance. All policies of insurance of any kind or nature currently maintained by the Borrower or any of its Subsidiaries, including policies of fire, theft, product liability, public liability, property damage, other casualty, employee fidelity, workers' compensation and employee health and welfare insurance, are in full force and effect and are of a nature and provide such coverage as is sufficient and as is customarily carried by businesses of the size and character of such Person.

5.15 Labor Matters.

(a) There are no strikes, work stoppages, slowdowns or lockouts pending or, to the Borrower's knowledge, threatened against or involving the Borrower, any of its Subsidiaries or any Guarantor, other than those that, in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(b) There are no unfair labor practices, grievances or complaints pending, or, to the Borrower's knowledge, threatened, against or involving the Borrower, any of its Subsidiaries or any Guarantor, nor, to the Borrower's knowledge, are there any unfair labor practices, arbitrations or grievances threatened involving the Borrower, any of its Subsidiaries or any Guarantor, other than those that if resolved adversely to the Borrower, such Subsidiary or such Guarantor, as applicable, would not reasonably be expected to have a Material Adverse Effect.

5.16 ERISA .

(a) Each Employee Benefit Plan that is intended to qualify under Section 401 of the Code (i) (x) has received a favorable determination letter, or is subject to a favorable opinion letter, from the IRS indicating that such Employee Benefit Plan is so qualified and any trust created under any Employee Benefit Plan is exempt from tax under the provisions of Section 501 of the Code, (y) is substantially similar to an "employee benefit plan" as defined in Section 3(3) of ERISA that is, or was, sponsored, maintained, or

contributed to by a former ERISA Affiliate that received such a favorable determination letter or opinion letter prior to the Spinoff, or (z) is the subject of an application for such a favorable determination letter or opinion letter that is currently being processed by the IRS, and (ii) to the knowledge of the Borrower, nothing has occurred subsequent to the issuance of such determination or opinion letter, as applicable, which would cause such Employee Benefit Plan to lose its qualified status or that would cause such trust to become subject to tax, except where such failures could not reasonably be expected to have a Material Adverse Effect.

(b) The Borrower, each of its Subsidiaries, each Guarantor and each of their respective ERISA Affiliates is in material compliance with all applicable provisions and requirements of ERISA, the Code and applicable Employee Benefit Plan provisions with respect to each Employee Benefit Plan except for non-compliances that would not reasonably be expected to have a Material Adverse Effect.

(c) There has been no, nor is there reasonably expected to occur, any ERISA Event other than those that, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(d) Except (i) to the extent required under Section 4980B of the Code or similar state laws, and (ii) with respect to which the aggregate liability, calculated on a FAS 106 basis as of December 31, 2014, does not exceed $150,000,000, no Employee Benefit Plan provides health or welfare benefits (through the purchase of insurance or otherwise) to any retired or former employees, consultants or directors (or their dependents) of the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates.

5.17 Environmental Matters.

(a) The operations of the Borrower and each of its Subsidiaries have been and are in compliance with all Environmental Laws, including obtaining and complying with all required environmental, health and safety Permits, other than non-compliances that, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(b) None of the Borrower or any of its Subsidiaries or any Real Property currently or, to the knowledge of the Borrower, previously owned, operated or leased by or for the Borrower or any of its Subsidiaries is subject to any pending or, to the knowledge of the Borrower, threatened, claim, order, agreement, notice of violation, notice of potential liability or is the subject of any pending or threatened proceeding or governmental investigation under or pursuant to Environmental Laws other than those orders, agreements, notices, proceedings or investigations that, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(c) To the knowledge of the Borrower, there are no facts, circumstances or conditions arising out of or relating to the operations or ownership of the Borrower or of Real Property owned, operated or leased by the Borrower or any of its Subsidiaries that are not specifically included in the financial information furnished to the Lenders other than those that, in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

5.18 Intellectual Property. Except where the failure to do so would not, taken as a whole, reasonably be expected to have a Material Adverse Effect, the Borrower and its Subsidiaries own or license or otherwise have the right to use all licenses, permits, patents, patent applications, trademarks, trademark applications, service marks, trade names, copyrights, copyright applications, franchises, authorizations and other intellectual property rights (including all Intellectual Property as defined in the Collateral Agreement)

that are necessary for the operations of their respective businesses, without infringement upon or conflict with the rights of any other Person with respect thereto. Except where the failure to do so would not, taken as a whole, reasonably be expected to have a Material Adverse Effect, no slogan or other advertising device, product, process, method, substance, part or component, or other material now employed, or now contemplated to be employed, by the Borrower or any of its Subsidiaries infringes upon or conflicts with any rights owned by any other Person, and no claim or litigation regarding any of the foregoing is pending or threatened.

5.19 Title; Real Property.

(a) Each of the Borrower and its Subsidiaries has valid and indefeasible title to, or valid leasehold interests in, all of its material properties and assets (including Real Property) and good title to, or valid leasehold interests in, all material personal property, in each case that is purported to be owned or leased by it, including those reflected on the most recent financial statements delivered by the Borrower hereunder, and none of such properties and assets is subject to any Lien, except Liens permitted under Section 7.02 . The Borrower and its Subsidiaries have received all deeds, assignments, waivers, consents, non-disturbance and recognition or similar agreements, bills of sale and other documents, and have duly effected all recordings, filings and other actions necessary to establish, protect and perfect the Borrower's and its Subsidiaries' right, title and interest in and to all such property, other than those that would not reasonably be expected to result in a Material Adverse Effect.

(b) Set forth on Schedule 5.19(b) is a complete and accurate list, as of the Closing Date, of all (i) owned Real Property located in the United States with a reasonably estimated Fair Market Value in excess of $3,000,000 showing, as of the Closing Date, the street address, county (or other relevant jurisdiction or state) and the record owner thereof and (ii) leased Real Property located in the United States with annual lease payments in excess of $1,000,000 showing, as of the Closing Date, the street address and county (or other relevant jurisdiction or state) thereof.

(c) No portion of any Real Property has suffered any material damage by fire or other casualty loss that has not heretofore been completely repaired and restored to its original condition other than those that would not reasonably be expected to have a Material Adverse Effect. As of the Closing Date, no portion of any Mortgaged Property is located in a special flood hazard area as designated by any federal Governmental Authority other than those for which flood insurance has been provided in accordance with Section 4.02(a)(iii) .

(d) Except as would not reasonably be expected to have a Material Adverse Effect, (i) each Loan Party has obtained and holds all Permits required in respect of all Real Property and for any other property otherwise operated by or on behalf of, or for the benefit of, such person and for the operation of each of its businesses as presently conducted and as proposed to be conducted, (ii) all such Permits are in full force and effect, and each Loan Party has performed and observed all requirements of such Permits, (iii) no event has occurred that allows or results in, or after notice or lapse of time would allow or result in, revocation or termination by the issuer thereof or in any other impairment of the rights of the holder of any such Permit, (iv) no such Permits contain any restrictions, either individually or in the aggregate, that are materially burdensome to any Loan Party, or to the operation of any of its businesses or any property owned, leased or otherwise operated by such person, (v) each Loan Party reasonably believes that each of its Permits will be timely renewed and complied with, without material expense, and that any additional Permits that may be required of such Person will be timely obtained and complied with, without material expense and (vi) the Borrower has no knowledge or reason to believe that any Governmental Authority is considering limiting, suspending, revoking or renewing on materially burdensome terms any such Permit.

(e) None of the Borrower or any of its Subsidiaries has received any notice, or has any knowledge, of any pending, threatened or contemplated condemnation proceeding affecting any Real Property or any part thereof, except those that would not reasonably be expected to have a Material Adverse Effect.

(f) Each of the Loan Parties, and, to the knowledge of the Borrower, each other party thereto, has complied with all obligations under all leases of Real Property to which it is a party other than those the failure with which to comply would not reasonably be expected to have a Material Adverse Effect and all such leases are legal, valid, binding and in full force and effect and are enforceable in accordance with their terms other than those the failure of which to so comply with the foregoing would not reasonably be expected to have a Material Adverse Effect. No landlord Lien has been filed, and, to the knowledge of the Borrower, no claim is being asserted, with respect to any lease payment under any lease of Real Property other than those that would not reasonably be expected to have a Material Adverse Effect.

(g) There are no pending or, to the knowledge of the Borrower, proposed special or other assessments for public improvements or otherwise affecting any material portion of the owned Real Property, nor are there any contemplated improvements to such owned Real Property that may result in such special or other assessments, other than those that would not reasonably be expected to have a Material Adverse Effect.

5.20 Security Instruments. The provisions of the Security Instruments, from and after the Closing Date, are effective to create in favor of the Administrative Agent for the benefit of the Secured Parties a legal, valid and enforceable first priority Lien (subject to Liens permitted by Section 7.02) on all right, title and interest of the respective Loan Parties in the Collateral described therein. Except for filings completed on or prior to the Closing Date and filings and other actions contemplated hereby and by the Security Instruments, no filing or other action in the United States will be necessary to perfect or protect such Liens.

5.21 OFAC . Neither the Borrower, nor any of its Subsidiaries, nor, to the knowledge of the Borrower, any director, officer, employee or agent thereof, is or is owned or controlled by an individual or entity that is (i) listed on the List of Specially Designated Nationals and Blocked Persons or Sectoral Sanctions Identifications List maintained by OFAC, (ii) otherwise the subject of any Sanctions or a Person who, under any Sanctions, the Administrative Agent, any Lender or any L/C Issuer is prohibited from transacting business with or (iii) in violation of any applicable Requirement of Law relating to Sanctions. No Loan, nor the proceeds from any Loan, has or have been used, directly by the Borrower or any of its Subsidiaries, or, to the knowledge of the Borrower, by any recipient of those funds from the Borrower or any Subsidiary, to lend, contribute, provide or make available by any Loan Party or any Subsidiary to fund any activity or business in any Designated Jurisdiction if that activity or business would violate any Sanctions, or to fund any activity or business of any Person located, organized or residing in any Designated Jurisdiction or who is the subject of any Sanctions, or in any other manner that, in each case, would result in any violation by any Lender, the Arranger, the Administrative Agent, any L/C Issuer or the Swing Line Lender of Sanctions.

5.22 Anti-Corruption Laws. The Borrower and its Subsidiaries have conducted their businesses in all material respects in compliance with applicable Anti-Corruption Laws and have instituted and maintained policies and procedures intended to promote and achieve compliance with such laws.

5.23 EEA Financial Institutions. No Loan Party is an EEA Financial Institution.

ARTICLE VI. AFFIRMATIVE COVENANTS

The Borrower agrees with the Lenders, L/C Issuers and the Administrative Agent to each of the following, from and after the Closing Date and thereafter as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Required Lenders otherwise consent in writing (provided that those provisions under this Article VI with which Subsidiaries of the Borrower are required to comply shall exclude from such compliance any Captive Insurance Subsidiary):

6.01 Financial Statements. The Borrower shall furnish to the Administrative Agent each of the following:

(a) Quarterly Reports . Within 45 days after the end of each of the first three Fiscal Quarters of each Fiscal Year (unless such period is extended pursuant to SEC guidelines), consolidated unaudited balance sheets as of the close of such quarter and the related statements of income and cash flow for such quarter and that portion of the Fiscal Year ending as of the close of such quarter, setting forth in comparative form the figures for the corresponding period in the prior year, in each case certified by a Responsible Officer of the Borrower as fairly presenting in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in accordance with GAAP (subject to the absence of footnote disclosure and normal year-end audit adjustments).

(b) Annual Reports . Within 90 days after the end of each Fiscal Year (unless such period is extended pursuant to SEC guidelines), consolidated balance sheets of the Borrower and its Subsidiaries as of the end of such Fiscal Year and related statements of income and cash flows of the Borrower and its Subsidiaries for such Fiscal Year, all prepared in conformity with GAAP and certified, in the case of such consolidated financial statements, without qualification as to the scope of the audit or as to the Borrower being a going concern by the Borrower's Accountants, together with the report of such accounting firm stating that (i) such financial statements fairly present in all material respects the consolidated financial condition of the Borrower and its Subsidiaries as at the dates indicated and the results of their operations and cash flow for the periods indicated in conformity with GAAP applied on a basis consistent with prior years (except for changes with which the Borrower's Accountants shall concur and that shall have been disclosed in the notes to the financial statements) and (ii) the examination by the Borrower's Accountants in connection with such consolidated financial statements has been made in accordance with generally accepted auditing standards.

(c) Compliance Certificate . Together with each delivery of any financial statement pursuant to clause (a) or (b) above, a Compliance Certificate (i) showing in reasonable detail the calculations used in determining the Leverage Ratio and demonstrating compliance with each of the other financial covenants contained in Section 7.16 , and (ii) stating that no Default has occurred and is continuing or, if a Default has occurred and is continuing, stating the nature thereof and the action which the Borrower has taken or proposes to take with respect thereto.

The Borrower hereby acknowledges that (i) the Administrative Agent and/or one or more of the Arrangers may, but shall not be obligated to, make available to the Lenders and the L/C Issuers materials and/or information provided by or on behalf of the Borrower hereunder (collectively, " Borrower Materials ") by posting the Borrower Materials on Debt Domain, IntraLinks, SyndTrak or another similar electronic system (the " Platform ") and (ii) certain of the Lenders (each, a " Public Lender ") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and

other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that (w) all Borrower Materials that the Borrower intends to be made available to Public Lenders shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent, each Arranger, each L/C Issuer and the Lenders to treat the Borrower Materials as not containing any material non-public information with respect to the Borrower or its securities for purposes of United States Federal and state securities laws (provided , however , that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 10.07); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

Documents required to be delivered pursuant to Section 6.01(a) or (b) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower posts such documents, or provides a link thereto on the Borrower's website on the Internet at the website address listed on Schedule 10.02 ; or (ii) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (i) the Borrower shall deliver paper copies of such documents to the Administrative Agent or any Lender upon its request to the Borrower to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (ii) the Borrower shall notify the Administrative Agent (by facsimile or electronic mail) of the posting of any such documents. The Administrative Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Borrower with any such request by a Lender for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

6.02 Collateral Reporting Requirements. The Borrower shall furnish to the Administrative Agent each of the following:

(a) Updated Corporate Chart . If requested by the Administrative Agent, together with each delivery of any financial statement pursuant to Section 6.01(b) , a corporate organizational chart or other equivalent list, current as of the date of delivery, in form and substance reasonably acceptable to the Administrative Agent and certified as true, correct and complete by a Responsible Officer of the Borrower, setting forth, for each of the Loan Parties, all Persons subject to Section 6.22 , all Subsidiaries of any of them and any joint venture (including Joint Ventures) entered into by any of the foregoing, (i) its full legal name, (ii) its jurisdiction of organization and organizational number (if any) and (iii) the number of shares of each class of its Stock authorized (if applicable), the number outstanding as of the date of delivery, and the number and percentage of the outstanding shares of each such class owned (directly or indirectly) by the Borrower.

(b) Additional Information . From time to time, statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral, all as the Administrative Agent may reasonably request, and in reasonable detail.

(c) Additional Filings . At any time and from time to time, upon the reasonable written request of the Administrative Agent, and at the sole expense of the Loan Parties, duly executed, delivered and recorded instruments and documents for the purpose of obtaining or preserving the full benefits of this

Agreement, each Security Instrument and each other Loan Document and of the rights and powers herein and therein granted (and each Loan Party shall take such further action as the Administrative Agent may reasonably request for such purpose, including the filing of any financing or continuation statement under the UCC or other similar Requirement of Law in effect in any domestic jurisdiction with respect to the security interest created by the Collateral Agreement but excluding (i) the execution and delivery of any control agreements with respect to deposit accounts or securities accounts (except with respect to deposit accounts holding Cash Collateral provided hereunder), (ii) any filings to perfect Liens on intellectual property, other than any such filings under the UCC or with the U.S. Patent and Trademark Office or U.S. Copyright Office and (iii) any filings or actions in any jurisdiction outside the United States.

The reporting requirements set forth in this Section 6.02 are in addition to, and shall not modify and are not in replacement of, any rights and other obligation set forth in any Loan Document (including notice and reporting requirements) and satisfaction of the reporting obligations in this Section 6.02 shall not, by itself, operate as an update of any Schedule or any schedule of any other Loan Document and shall not cure, or otherwise affect in any way, any Default, including any failure of any representation or warranty of any Loan Document to be correct in any respect when made.

6.03 Default and certain other Notices. Promptly and in any event within five Business Days after a Responsible Officer of the Borrower obtains actual knowledge thereof, the Borrower shall give the Administrative Agent notice:

(a) of the occurrence of any Default or Event of Default;

(b) of any amendments, additions or modifications to the Form 10 effectuated on or after the Closing Date, or of any material notices from the SEC with respect thereto, including, without limitation, notice of the effectiveness of the Spinoff; and

(c) of the issuance of a notice of proposed debarment or notice of proposed suspension by a Governmental Authority or Governmental Authorities.

Each notice pursuant to this Section 6.03 (other than Section 6.03(b)) shall be accompanied by a statement of a Responsible Officer of the Borrower setting forth details of the occurrence referred to therein, the anticipated effect thereof, and stating what action the Borrower has taken and proposes to take with respect thereto. Each notice pursuant to Section 6.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached. Any notice pursuant to this Section 6.03 , if given by telephone, shall be promptly confirmed in writing on the next Business Day.

6.04 Litigation. Promptly after a Responsible Officer of the Borrower obtains actual knowledge of the commencement thereof, the Borrower shall give the Administrative Agent written notice of the commencement of all actions, suits and proceedings before any domestic or foreign Governmental Authority or arbitrator, regarding the Borrower, any of its Subsidiaries or any Joint Venture that (i) seeks injunctive or similar relief that, in the reasonable judgment of the Borrower, if adversely determined, would reasonably be expected to result in a Material Adverse Effect or (ii) in the reasonable judgment of the Borrower would expose the Borrower, such Subsidiary or such Joint Venture to liability in an amount aggregating $20,000,000 (in excess of insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage) or more or that, if adversely determined, would reasonably be expected to have a Material Adverse Effect.

6.05 Labor Relations. Promptly after a Responsible Officer of the Borrower has actual knowledge of the same, the Borrower shall give the Administrative Agent written notice of (a) any material

labor dispute to which the Borrower, any of its Subsidiaries, any Guarantors or any Joint Venture is a party, including any strikes, lockouts or other material disputes relating to any of such Person's plants and other facilities, provided that such dispute, strike or lockout involves a work stoppage exceeding 30 days, (b) any material Worker Adjustment and Retraining Notification Act or related liability incurred with respect to the closing of any plant or other facility of any such Person affecting 300 or more employees of the Borrower and its Subsidiaries and (c) any material union organization activity with respect to employees of the Borrower or any of its Subsidiaries not covered by a collective bargaining agreement as of the Closing Date.

6.06 Tax Returns. Upon the reasonable request of any Lender, through the Administrative Agent, the Borrower shall provide copies of all federal, state, local and foreign tax returns and reports filed by the Borrower, any of its Subsidiaries or any Joint Venture in respect of taxes measured by income (excluding sales, use and like taxes).

6.07 Insurance. As soon as is practicable and in any event within 90 days after the end of each Fiscal Year, the Borrower shall furnish the Administrative Agent with a report on the standard "Acord" form (or other form acceptable to the Administrative Agent) outlining all material insurance coverage maintained as of the date of such report by the Borrower and its Subsidiaries and the duration of such coverage.

6.08 ERISA Matters . The Borrower shall furnish the Administrative Agent each of the following:

(a) promptly and in any event within 30 days after a Responsible Officer of the Borrower knows, or has reason to know, that any ERISA Event has occurred that, alone or together with any other ERISA Event, would reasonably be expected to result in liability of the Borrower, any Subsidiary, any Guarantor and/or any ERISA Affiliate in an aggregate amount exceeding $20,000,000, written notice describing the nature thereof, what action the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto, including copies of any notices or correspondence with any Governmental Authority and, when known by such Responsible Officer, any action taken or threatened by the IRS, the Department of Labor or the PBGC with respect to such event;

(b) simultaneously with the date that the Borrower, any of its Subsidiaries or any ERISA Affiliate files with the PBGC a notice of intent to terminate any Title IV Plan, if, at the time of such filing, such termination would reasonably be expected to require additional contributions of the Borrower, any Subsidiary, any Guarantor and/or any ERISA Affiliate in an aggregate amount exceeding $20,000,000 in order to be considered a standard termination within the meaning of Section 4041(b) of ERISA, a copy of each notice; and

(c) promptly, copies of (i) each Schedule SB (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates with the IRS with respect to each Title IV Plan, which is requested by the Administrative Agent; (ii) all notices received by the Borrower, any of its Subsidiaries, any Guarantor or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event that would reasonably be expected to result in liability of the Borrower, any Subsidiary, any Guarantor and/or any ERISA Affiliate in an aggregate amount exceeding $20,000,000; and (iii) copies of such other documents or governmental reports or filings relating to any Employee Benefit Plan as the Administrative Agent shall reasonably request.

6.09 Environmental Matters . The Borrower shall provide the Administrative Agent promptly, and in any event within 10 Business Days after any Responsible Officer of the Borrower obtains actual knowledge of any of the following, written notice of each of the following:

(a) that any Loan Party is or may be liable to any Person as a result of a Release or threatened Release that would reasonably be expected to subject such Loan Party to Environmental Liabilities and Costs of $20,000,000 or more;

(b) the receipt by any Loan Party of notification that any material real or personal property of such Loan Party is or is reasonably likely to be subject to any Environmental Lien;

(c) the receipt by any Loan Party of any notice of violation of or potential liability under, or knowledge by a Responsible Officer of the Borrower that there exists a condition that would reasonably be expected to result in a violation of or liability under, any Environmental Law, except for violations and liabilities the consequence of which, in the aggregate, would not be reasonably likely to subject the Loan Parties collectively to Environmental Liabilities and Costs of $20,000,000 or more; and

(d) promptly following reasonable written request by any Lender, through the Administrative Agent, a report providing an update of the status of any environmental, health or safety compliance, hazard or liability issue identified in any notice or report delivered pursuant to this Section 6.09 .

6.10 Patriot Act Information. Each Lender that is subject to the Patriot Act (as hereinafter defined) and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrower that pursuant to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the " Patriot Act "), it is required to obtain, verify and record information that identifies the Borrower and each other Loan Party, which information includes the name and address of the Borrower and each other Loan Party and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrower and each other Loan Party in accordance with the Patriot Act. The Borrower shall promptly, following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender reasonably requests in order to comply with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including, without limitation, the Patriot Act.

6.11 Other Information. The Borrower shall provide the Administrative Agent or any Lender with such other information respecting the business, properties, condition, financial or otherwise, or operations of the Borrower, any of its Subsidiaries or any Joint Venture as the Administrative Agent or such Lender, through the Administrative Agent, may from time to time reasonably request. The Administrative Agent shall provide copies of any written information provided to it pursuant to Sections 6.01 through 6.10 above to any Lender requesting the same.

6.12 Preservation of Corporate Existence, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, preserve and maintain its legal existence, rights (charter and statutory) and franchises, except as permitted by Sections 7.03 , 7.04 and 7.06 and except if, in the reasonable business judgment of the Borrower, it is in the business interest of the Borrower or such Subsidiary not to preserve and maintain such rights (charter and statutory) and franchises, and such failure to preserve the same would not reasonably be expected to have a Material Adverse Effect and would not reasonably be expected to materially affect the interests of the Secured Parties under the Loan Documents or the rights and interests of any of them in the Collateral.

6.13 Compliance with Laws, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, comply with all applicable Requirements of Law, Contractual Obligations and Permits, except where the failure so to comply would not reasonably be expected to have a Material Adverse Effect.

6.14 Conduct of Business. The Borrower shall, and shall cause each of its Subsidiaries to, (a) conduct its business in the ordinary course (except for non-material changes in the nature or conduct of its business as carried on as of the Closing Date) and (b) use its reasonable efforts, in the ordinary course, to preserve its business and the goodwill and business of the customers, suppliers and others having business relations with the Borrower or any of its Subsidiaries, except where the failure to comply with the covenants in each of clauses (a) and (b) above would not reasonably be expected to have a Material Adverse Effect.

6.15 Payment of Taxes, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, pay and discharge (or cause to be paid and discharged) before the same shall become delinquent, all lawful governmental claims, taxes, assessments, charges and levies made, assessed, filed or otherwise imposed on or against any of them, except where (a) contested in good faith, by proper proceedings and adequate reserves therefor have been established on the books of the Borrower or the appropriate Subsidiary in conformity with GAAP or (b) the failure to so pay and discharge would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

6.16 Maintenance of Insurance. The Borrower shall, and shall cause each of its Subsidiaries to, (a) maintain insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as, in the reasonable determination of the Borrower, is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates and (b) cause all property and general liability insurance to name the Administrative Agent on behalf of the Secured Parties as additional insured (with respect to liability policies), loss payee (with respect to property policies) or lender's loss payee (with respect to property policies), as appropriate, and to provide that no cancellation, material addition in amount or material change in coverage shall be effective until after 30 days' written notice thereof to the Administrative Agent.

6.17 Access. The Borrower shall from time to time during normal business hours permit the Administrative Agent, the L/C Issuers and the Lenders, or any agents or representatives thereof, within five Business Days after written notification of the same (except that during the continuance of an Event of Default, no such notice shall be required) to (a) examine and make copies of and abstracts from the records and books of account of the Borrower and each of its Subsidiaries, (b) visit the properties of the Borrower and each of its Subsidiaries, (c) discuss the affairs, finances and accounts of the Borrower and each of its Subsidiaries with any of their respective officers or directors; provided that the Borrower will not be required to permit any examination or visit as set forth in clauses (a) and (b) above with respect to each of the Administrative Agent, the L/C Issuers and the Lenders (or any agents or representatives thereof) (i) within the twelve-month period following the date of the most recent examination or visit by any L/C Issuer, any Lender or the Administrative Agent (or any agents or representatives thereof), as applicable, unless an Event of Default has occurred and is continuing and (ii) unless such visit is coordinated through the Administrative Agent.

6.18 Keeping of Books. The Borrower shall, and shall cause each of its Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made in conformity with GAAP of the financial transactions and assets and business of the Borrower and each such Subsidiary.

6.19 Maintenance of Properties, Etc. The Borrower shall, and shall cause each of its Subsidiaries to, maintain and preserve (a) in good working order and condition (ordinary wear and tear excepted) all of its properties necessary in the conduct of its business, (b) all rights, permits, licenses,

approvals and privileges (including all Permits) necessary in the conduct of its business and (c) all Material Intellectual Property, except where failure to so maintain and preserve the items set forth in clauses (a), (b) and (c) above would not reasonably be expected to have a Material Adverse Effect.

6.20 Application of Proceeds. The Borrower shall use the entire amount of the proceeds of the Loans as provided in Section 5.13 .

6.21 Environmental.

(a) The Borrower shall, and shall cause each of its Subsidiaries to, exercise reasonable due diligence in order to comply in all material respects with all Environmental Laws.

(b) The Borrower agrees that the Administrative Agent may, from time to time, retain, at the expense of the Borrower, an independent professional consultant reasonably acceptable to the Borrower to review any report relating to Contaminants prepared by or for the Borrower and to conduct its own investigation (the scope of which investigation shall be reasonable based upon the circumstances) of any property currently owned, leased, operated or used by the Borrower or any of its Subsidiaries, if (x) a Default or an Event of Default shall have occurred and be continuing, or (y) the Administrative Agent reasonably believes (1) that an occurrence relating to such property is likely to give rise to any Environmental Liabilities and Costs or (2) that a violation of an Environmental Law on or around such property has occurred or is likely to occur, which could, in either such case, reasonably be expected to result in Environmental Liabilities and Costs in excess of $20,000,000, provided that, unless an Event of Default shall have occurred and be continuing, such consultant shall not drill on any property of the Borrower or any of its Subsidiaries without the Borrower's prior written consent. Borrower shall use its reasonable efforts to obtain for the Administrative Agent and its agents, employees, consultants and contractors the right, upon reasonable notice to Borrower, to enter into or on to the facilities currently owned, leased, operated or used by Borrower or any of its Subsidiaries to perform such tests on such property as are reasonably necessary to conduct such a review and/or investigation. Any such investigation of any property shall be conducted, unless otherwise agreed to by Borrower and the Administrative Agent, during normal business hours and shall be conducted so as not to unreasonably interfere with the ongoing operations at any such property or to cause any damage or loss at such property. Borrower and the Administrative Agent hereby acknowledge and agree that any report of any investigation conducted at the request of the Administrative Agent pursuant to this subsection will be obtained and shall be used by the Administrative Agent and the Lenders for the purposes of the Lenders' internal credit decisions, to monitor the Obligations and to protect the Liens created by the Loan Documents, and the Administrative Agent and the Lenders hereby acknowledge and agree any such report will be kept confidential by them to the extent permitted by law except as provided in the following sentence. The Administrative Agent agrees to deliver a copy of any such report to Borrower with the understanding that Borrower acknowledges and agrees that (i) it will indemnify and hold harmless the Administrative Agent and each Lender from any costs, losses or liabilities relating to Borrower's use of or reliance on such report, (ii) neither Administrative Agent nor any Lender makes any representation or warranty with respect to such report, and (iii) by delivering such report to Borrower, neither the Administrative Agent nor any Lender is requiring or recommending the implementation of any suggestions or recommendations contained in such report.

(c) Promptly after a Responsible Officer of the Borrower obtains actual knowledge thereof, the Borrower shall advise the Administrative Agent in writing and in reasonable detail of (i) any Release or threatened Release of any Contaminants required to be reported by Borrower or its Subsidiaries, to any Governmental Authorities under any applicable Environmental Laws and which would reasonably be expected to have Environmental Liabilities and Costs in excess of $20,000,000, (ii) any and all written communications with respect to any pending or threatened claims under Environmental Law in each such

case which, individually or in the aggregate, have a reasonable possibility of giving rise to Environmental Liabilities and Costs in excess of $20,000,000, (iii) any Remedial Action performed by Borrower or any other Person in response to (x) any Contaminants on, under or about any property, the existence of which has a reasonable possibility of resulting in Environmental Liabilities and Costs in excess of $20,000,000, or (y) any other Environmental Liabilities and Costs in excess of $20,000,000 that could result in Environmental Liabilities and Costs in excess of $20,000,000, (iv) discovery by Borrower or its Subsidiaries of any occurrence or condition on any material property that could cause Borrower's or its Subsidiaries' interest in any such property to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof under any applicable Environmental Laws or Environmental Liens, and (v) any written request for information from any Governmental Authority that fairly suggests such Governmental Authority is investigating whether Borrower or any of its Subsidiaries may be potentially responsible for a Release or threatened Release of Contaminants which has a reasonable possibility of giving rise to Environmental Liabilities and Costs in excess of $20,000,000.

(d) Borrower shall promptly notify the Administrative Agent of (i) any proposed acquisition of Stock, assets, or property by Borrower or any of its Subsidiaries that would reasonably be expected to expose Borrower or any of its Subsidiaries to, or result in Environmental Liabilities and Costs in excess of
$20,000,000 and (ii) any proposed action to be taken by Borrower or any of its Subsidiaries to commence manufacturing, industrial or other similar operations that would reasonably be expected to subject Borrower or any of its Subsidiaries to additional Environmental Laws, that are materially different from the Environmental Laws applicable to the operations of Borrower or any of its Subsidiaries as of the Closing Date.

(e) Borrower shall, at its own expense, provide copies of such documents or information as the Administrative Agent may reasonably request in relation to any matters disclosed pursuant to this subsection.

(f) To the extent required by Environmental Laws or Governmental Authorities under applicable Environmental Laws, Borrower shall promptly take, and shall cause each of its Subsidiaries promptly to take, any and all necessary Remedial Action in connection with the presence, handling, storage, use, disposal, transportation or Release or threatened Release of any Contaminants on, under or affecting any property in order to comply in all material respects with all applicable Environmental Laws and Permits. In the event Borrower or any of its Subsidiaries undertakes any Remedial Action with respect to the presence, Release or threatened Release of any Contaminants on or affecting any property, Borrower or any of its Subsidiaries shall conduct and complete such Remedial Action in material compliance with all applicable Environmental Laws, and in material accordance with the applicable policies, orders and directives of all relevant Governmental Authorities except when, and only to the extent that, Borrower or any such Subsidiaries' liability for such presence, handling, storage, use, disposal, transportation or Release or threatened Release of any Contaminants is being contested in good faith by Borrower or any of such Subsidiaries. In the event Borrower fails to take required actions to address such Release or threatened Release of Contaminants or to address a violation of or liability under Environmental Law, the Administrative Agent may, upon providing the Borrower with 5 Business Days' prior written notice, enter the property and, at Borrower's sole expense, perform whatever action the Administrative Agent reasonably deems prudent to rectify the situation.

6.22 Additional Collateral and Guaranties. Notify the Administrative Agent promptly after any Person (i) becomes a Wholly-Owned Domestic Subsidiary that is not an Immaterial Subsidiary (including a Wholly-Owned Domestic Subsidiary that ceases for any reason to satisfy the definition of "Immaterial Subsidiary" at any time) or (ii) becomes a First-Tier Foreign Subsidiary, and promptly

thereafter (and in any event within 30 days, or such longer period of time permitted by the Administrative Agent in its sole discretion):

(a) if such Person is a Wholly-Owned Domestic Subsidiary and is not a Captive Insurance Subsidiary or an Excluded Domestic Subsidiary:

(i) cause such Wholly-Owned Domestic Subsidiary to become a Guarantor by executing and delivering to the Administrative Agent a Joinder Agreement or such other document as the Administrative Agent shall deem reasonably appropriate for such purpose; and

(ii) cause such Person to deliver to the Administrative Agent documents of the types referred to in clauses (iv), (v) and (vii) of Section 4.02(a) and, at the request of the Administrative Agent, favorable opinions of counsel to such Person (which shall cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in clause (a)(i)), all in form, content and scope reasonably satisfactory to the Administrative Agent;

(iii) cause such Person to deliver to the Administrative Agent for the benefit of the Secured Parties, Security Instruments (or supplements thereto), as specified by and in form and substance reasonably satisfactory to the Administrative Agent (including delivery of all certificated Pledged Interests in and of such Subsidiary, and other instruments of the type specified in Section 4.02(a)(ii) and (iii)), securing payment of all the Obligations and constituting Liens on all such real and personal properties,

(iv) take whatever action (including the filing of Uniform Commercial Code financing statements and the giving of notices) as may be necessary or advisable in the reasonable opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the Security Instruments (or supplements thereto) delivered pursuant to this Section 6.22 , enforceable against all third parties in accordance with their terms (subject to Liens permitted by the Loan Documents), provided that no such actions shall be required in any jurisdiction outside the United States; and

(b) if such Person is a First-Tier Foreign Subsidiary any of whose Stock is owned by a Loan Party (or a Person becoming a Loan Party pursuant to this Section), cause such Loan Party to deliver to the Administrative Agent for the benefit of the Secured Parties all certificated Pledged Interests in and of such First-Tier Foreign Subsidiary, and any Security Instruments (or supplements thereto), as specified by and in form and substance reasonably satisfactory to the Administrative Agent, in each case securing payment of all the Obligations and constituting Liens on all such Pledged Interests.

6.23 Real Property. With respect to any fee interest in any Material Real Property that is acquired or any lease of domestic Real Property that is leased for more than $5,000,000 annually, in either case after the Closing Date by the Borrower or any other Loan Party, the Borrower or the applicable Loan Party shall promptly (and, in any event, within thirty days following the date of such acquisition, unless such date is extended by the Administrative Agent in its sole discretion) (i) in the case of any Material Real Property, execute and deliver a first priority Mortgage (subject only to Liens permitted by this Agreement and such Mortgage) in favor of the Administrative Agent, for the benefit of the Secured Parties, covering such Real Property and complying with the provisions herein and in the Security Instruments, (ii) in the case of any leased domestic Real Property that is leased for more than $5,000,000 annually, if requested by the Administrative Agent, execute and deliver a first priority Mortgage (subject only to Liens permitted by this Agreement and such Mortgage) in favor of the Administrative Agent, for the benefit of the Secured

Parties, covering such Real Property and complying with the provisions herein and in the Security Instruments, (iii) provide the Secured Parties with title insurance in an amount at least equal to the purchase price of such Real Property (or such other amount as the Administrative Agent shall reasonably specify) described in clauses (i) or (ii) above, and if applicable, ~~flood insurance and~~ lease estoppel certificates, all in accordance with the standards for deliveries contemplated on or prior to the Closing Date, as described in Section 4.02(a)(iii) hereof, (iv) if requested by the Administrative Agent, deliver to the Administrative Agent legal opinions relating to the matters described above, which opinions shall be in form and substance, and from counsel, reasonably satisfactory to the Administrative Agent, ~~and~~ (v) if requested by the Administrative Agent, use commercially reasonable efforts to obtain Landlord Lien Waivers for each domestic Real Property leasehold interest on which a manufacturing facility or warehouse or other facility where Collateral is stored or held (but excluding any office lease that does not include manufacturing or warehouse facilities), provided that no such landlord Lien Waiver shall be required for any location at which Collateral is stored or located unless the aggregate value of Collateral stored or held at such location exceeds $ ~~5,000,000.~~ **5,000,000 and (vi) comply with the Flood Requirement Standards. Without limiting the foregoing, at any time there is Material Real Property that is subject to a Mortgage, no MIRE Event shall be consummated prior to the Administrative Agent confirming compliance with the Flood Requirement Standards.**

6.24 Further Assurances. Promptly upon request by the Administrative Agent, or any Lender through the Administrative Agent, the Borrower or the applicable Loan Party shall (a) correct any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and (b) do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, deeds, certificates, assurances and other instruments as the Administrative Agent, or any Lender through the Administrative Agent, may reasonably require from time to time in order to (i) carry out more effectively the purposes of the Loan Documents, (ii) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Security Instruments, (iii) perfect and maintain the validity, effectiveness and priority of any of the Security Instruments and any of the Liens intended to be created thereunder and (iv) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party, and cause each of its Subsidiaries that is required by this Agreement to be a Guarantor to do so. Notwithstanding anything to the contrary contained in this Section 6.24 or any Loan Document, no Loan Party shall be required to (i) execute or deliver any control agreements with respect to deposit accounts (other than with respect to Cash Collateral), commodities accounts or securities accounts, (ii) make any filings to perfect Liens on intellectual property, other than any such filings under the UCC or with the U.S. Patent and Trademark Office or U.S. Copyright Office, and (iii) make any filings or take any actions in any jurisdiction outside the United States to create or perfect any Liens created by the Security Instruments.

6.25 Anti-Corruption Laws; Sanctions. The Borrower will, and will cause its Subsidiaries to, maintain in effect and enforce policies and procedures intended to promote and achieve compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents (in their respective activities on behalf of the Borrower and its Subsidiaries) with applicable Anti-Corruption Laws and applicable Sanctions.

6.26 Cash Collateralization of Extended Letters of Credit. The Borrower shall provide Cash Collateral (in an amount equal to 105% of the maximum face amount of each Extended Letter of Credit, calculated in accordance with Section 1.08) to each applicable L/C Issuer with respect to each Extended

Letter of Credit issued by such L/C Issuer by a date that is no earlier than 120 days prior to the Maturity Date, but no later than 95 days prior to the Maturity Date (or, if such Letter of Credit is issued on or after the date that is 95 days prior to the Maturity Date, on the date of issuance thereof); provided that if the Borrower fails to provide Cash Collateral with respect to any such Extended Letter of Credit by such time, such event shall be treated as a drawing under such Extended Letter of Credit (in an amount equal to 105% of the maximum face amount of each such Letter of Credit, calculated in accordance with Section 1.08), which shall be reimbursed (or participations therein funded) in accordance with Section 2.03(c) , with the proceeds being utilized to provide Cash Collateral for such Letter of Credit.

6.27 Post Closing Deliveries. To the extent not delivered on or prior to the Closing Date pursuant to a waiver by the Administrative Agent with respect to such Mortgaged Property as provided in Section 4.02(a)(iii) , the Borrower shall deliver to the Administrative Agent on or prior to sixty (60) days after the Closing Date (or such later date as the Administrative Agent may agree in its sole discretion) each document, and satisfy each other condition, with respect to such Mortgaged Property as described in Section 4.02(a)(iii) , including (to the extent applicable) a favorable opinion with respect thereto as described in Section 4.02(a)(vi) .

ARTICLE VII. NEGATIVE COVENANTS

The Borrower agrees with the Lenders and the Administrative Agent to each of the following, from the Closing Date and thereafter as long as any Obligation or any Commitment remains outstanding and, in each case, unless the Required Lenders otherwise consent in writing (provided that references herein to "Subsidiaries" shall exclude any Captive Insurance Subsidiary for all Sections under this Article VII except Sections 7.01 and 7.02):

7.01 Indebtedness. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly create, incur, assume or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except for the following:

(a) Indebtedness under the Loan Documents;

(b) Indebtedness outstanding on the Closing Date and listed on Schedule 7.01 ;

(c) Guaranty Obligations incurred by the Borrower or any Guarantor in respect of Indebtedness of the Borrower or any Guarantor that is permitted by this Section 7.01 (other than clause (g) below);

(d) (i) Indebtedness in respect of Capital Lease Obligations and purchase money obligations for tangible property, (ii) Indebtedness in respect of sale and leaseback transactions permitted by Section 7.13 **(giving effect to the proviso contained therein)** and (iii) other secured Indebtedness (including secured Indebtedness incurred or assumed by the Borrower and its Subsidiaries in connection with a Permitted Acquisition); provided , however , that **(A)** the Liens securing such Indebtedness shall be within the limitations set forth in Sections 7.02(d), 7.02(e) or 7.02(k ~~);~~ **), (B) other than during the Relief Period** the aggregate principal amount of all such Indebtedness permitted by this subsection (d) at any one time outstanding shall not exceed $100,000,000 and ~~the Liens securing such Indebtedness shall be within the~~ limitations set forth in Sections 7.02(d) , 7.02(e) or 7.02(k); **(C) during the Relief Period, (x) no amount may be outstanding under clause (d)(ii), (y) the aggregate principal amount of all such Indebtedness at any one time outstanding under clause (d)(i) shall not exceed $50,000,000 less any usage pursuant**

to clause (d)(iii) and (z) the aggregate principal amount of all such Indebtedness at any one time outstanding under clause (d)(iii) shall not exceed $10,000,000 (it being understood that at no time during the Relief Period shall the aggregate principal amount of all Indebtedness outstanding under this clause (d) exceed $50,000,000); and

(e) renewals, extensions, refinancings and refundings of Indebtedness permitted by clause (b) or (d) above or this clause (e); provided , however , that any such renewal, extension, refinancing or refunding is in an aggregate principal amount not greater than the principal amount of (plus reasonable fees, expenses and any premium incurred in connection with the renewal, extension, refinancing or refunding of such Indebtedness), and is on terms that in the aggregate are not materially less favorable to the Borrower or such Subsidiary than, including as to weighted average maturity, the Indebtedness being renewed, extended, refinanced or refunded;

(f) Indebtedness arising from intercompany loans among the Borrower and its Subsidiaries; provided that (x) if any such Indebtedness owing to a Loan Party that is a party to the Collateral Agreement is evidenced by a promissory note, such note shall be subject to a first priority Lien pursuant to the Collateral Agreement, (y) all such Indebtedness owed by a Loan Party to a Subsidiary that is not a Loan Party shall be Subordinated Debt, and (z) any payment by any Guarantor under any guaranty of the Obligations shall result in a *pro tanto* reduction of the amount of any Indebtedness owed by such Subsidiary to the Borrower or to any of its Subsidiaries for whose benefit such payment is made; provided , further , that, in each case, the Investment in the intercompany loan by the lender thereof is permitted under Section
7.03 ;

(g) Non-Recourse Indebtedness;

(h) Indebtedness under or in respect of Swap Contracts that are not speculative in nature;

(i) unsecured Indebtedness of any Subsidiary (other than a Guarantor) in aggregate principal amount not to exceed $100,000,000 at any time outstanding;

(j) Indebtedness in respect of any insurance premium financing for insurance being acquired by the Borrower or any Subsidiary under customary terms and conditions and not in connection with the borrowing of money;

(k) Indebtedness under or in respect of Cash Management Agreements;

(l) Indebtedness in respect of matured or drawn Performance Guarantees in the nature of letters of credit, bankers acceptances, bank guarantees or other similar obligations, but only so long as such Indebtedness is reimbursed or extinguished within 5 Business Days of being matured or drawn;

(m) Indebtedness in respect of matured or drawn Performance Guarantees in the nature of surety bonds, performance bonds and other similar obligations, in each case that would appear as indebtedness on a consolidated balance sheet of the Borrower prepared in accordance with GAAP, in an aggregate amount not to exceed $150,000,000 at any time outstanding;

(n) Cash Collateralized Letters of Credit; and

(o) unsecured Indebtedness of any Loan Party so long as at the time of incurrence of such
Indebtedness (i) no Default has occurred and is continuing or would result therefrom and (ii) the Borrower

and its Subsidiaries are in *pro forma* compliance with the financial covenants set forth in Section 7.16 immediately before and after giving effect to the incurrence of such Indebtedness **;**

provided that during the Relief Period, the aggregate outstanding principal amount of all Indebtedness pursuant to Sections 7.01(i) and (o) that is not Subordinated Debt shall not exceed $300,000,000 at any time .

7.02 Liens. The Borrower shall not, and shall not permit any of its Subsidiaries to, create or suffer to exist any Lien upon or with respect to any of their respective properties or assets, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, except for the following:

(a) Liens created pursuant to any Loan Document;

(b) Liens existing on the Closing Date and listed on Schedule 7.02 ;

(c) Customary Permitted Liens;

(d) Liens granted by the Borrower or any Subsidiary of the Borrower under a Capital Lease and Liens to which any property is subject at the time, on or after the Closing Date, of the Borrower's or such Subsidiary's acquisition thereof in accordance with this Agreement, in each case securing Indebtedness permitted under Section 7.01(d) and limited to the property purchased (and proceeds thereof) with the proceeds subject to such Capital Lease or Indebtedness;

(e) purchase money security interests in real property, improvements thereto or equipment (including any item of equipment purchased in connection with a particular construction project that the Borrower or a Subsidiary expects to sell to its customer with respect to such project and that, pending such sale, is classified as inventory) hereafter acquired (or, in the case of improvements, constructed) by the Borrower or any of its Subsidiaries; provided , however , that (i) such security interests secure purchase money Indebtedness permitted under Section 7.01(d) and are limited to the property purchased with the proceeds of such purchase money Indebtedness (and proceeds thereof), (ii) such security interests are incurred, and the Indebtedness secured thereby is created, within ninety days of such acquisition or construction, and (iii) the Indebtedness secured thereby does not exceed the lesser of the cost or Fair Market Value of such real property, improvements or equipment at the time of such acquisition or construction;

(f) any Lien securing the renewal, extension, refinancing or refunding of any Indebtedness secured by any Lien permitted by clause (b), (d) or (e) above, this clause (f) or clause (k) below, without any material change in the assets subject to such Lien;

(g) Liens in favor of lessors securing operating leases permitted hereunder;

(h) Liens securing Non-Recourse Indebtedness permitted under Section 7.01(g) on (i) the assets of the Subsidiary or Joint Venture financed by such Non-Recourse Indebtedness and (ii) the Stock of the Joint Venture or Subsidiary financed by such Non-Recourse Indebtedness;

(i) Liens arising out of judgments or awards and not constituting an Event of Default under Section 8.01(g) ;

(j) Liens encumbering inventory, work-in-process and related property in favor of customers or suppliers securing obligations and other liabilities to such customers or suppliers (other than

Indebtedness) to the extent such Liens are granted in the ordinary course of business and are consistent with past business practices;

(k) Liens not otherwise permitted hereunder securing Indebtedness permitted by Section 7.01(d)(ii) or (iii) and encumbering assets of (i) Foreign Subsidiaries or (ii) Domestic Subsidiaries that are not (and are not required to be) Guarantors, in each case that do not constitute Collateral;

(l) Liens with respect to foreign exchange netting arrangements to the extent incurred in the ordinary course of business and consistent with past business practices; provided that the aggregate outstanding amount of all such obligations and liabilities secured by such Liens shall not exceed $10,000,000 at any time;

(m) Liens securing insurance premium financing permitted under Section 7.01(j) under customary terms and conditions; provided that no such Lien may extend to or cover any property other than the insurance being acquired with such financing, the proceeds thereof and any unearned or refunded insurance premiums related thereto;

(n) Liens not otherwise permitted by this Section securing obligations or other liabilities (other than Indebtedness for borrowed money) of the Borrower or its Subsidiaries; provided that the aggregate outstanding amount of all such obligations and liabilities secured by such Liens shall not exceed $15,000,000 at any time;

(o) Liens on Cash Collateral securing only Cash Collateralized Letters of Credit;

(p) Liens securing reimbursement obligations of any Foreign Subsidiary in respect of Performance Guarantees (including any obligation to make payments in connection with such performance, but excluding obligations for the payment of borrowed money) issued by a Person that is not the Borrower or an Affiliate of the Borrower; provided such Liens shall be limited to (i) any contract as to which such Performance Guarantee provides credit support, (ii) any accounts receivable arising out of such contract and (iii) the deposit account into which such accounts receivable are deposited (the property described in clauses (i) through (iii), collectively, the " Performance Guarantee Collateral "); and

(q) Liens on cash or Cash Equivalents securing (i) reimbursement obligations in respect of Performance Guarantees and other similar obligations (including any obligation to make payments in connection with such performance, but excluding obligations for the payment of borrowed money) and (ii) Swap Contracts that are not speculative in nature; provided that, in each case, the aggregate outstanding amount of all such obligations and liabilities secured by such Liens shall not exceed ~~$200,000,000~~ **(x)** at any time **during the Relief Period, $25,000,000 or (y) at any time other than during the Relief Period, $200,000,000** ;

7.03 Investments. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly make or maintain any Investment except for the following:

(a) Investments existing on the Closing Date and disclosed on Schedule 7.03 , and any refinancings of such Investments to the extent constituting Indebtedness otherwise permitted under Section 7.01(b) , provided such refinancing complies with the provisions of Section 7.01(e) ;

(b) Investments held by the Borrower or such Subsidiary in the form of cash or Cash Equivalents;

(c) Investments in accounts, contract rights and chattel paper (each as defined in the UCC), notes receivable and similar items arising or acquired from the sale of Inventory in the ordinary course of business consistent with the past practice of the Borrower and its Subsidiaries;

(d) Investments received in settlement of amounts due to the Borrower or any Subsidiary of the Borrower effected in the ordinary course of business;

(e) Investments by the Borrower in any Wholly-Owned Subsidiary and Investments of any Wholly-Owned Subsidiary in the Borrower or in another Wholly-Owned Subsidiary;

(f) loans or advances to employees of the Borrower or any of its Subsidiaries (or guaranties of loans and advances made by a third party to employees of the Borrower or any of its Subsidiaries) in the ordinary course of business; provided , that the aggregate principal amount of all such loans and advances and guaranties of loans and advances shall not exceed $1,000,000 at any time;

(g) Investments constituting Guaranty Obligations permitted by Section 7.01 ;

(h) Investments in connection with a Permitted Acquisition; **provided, that at any time during the Relief Period, the aggregate consideration paid for all Permitted Acquisitions closed during the Relief Period shall not exceed $10,000,000 less the amount of Investments outstanding at such time pursuant to Section 7.03(l)(ii);**

(i) Investments in Rabbi Trusts in an aggregate amount not to exceed $15,000,000 (plus income and capital growth with respect thereto);

(j) Investments in the nature of, and arising directly as a result of, consideration received in connection with an Asset Sale made in compliance with Section 7.04 ;

(k) Investments made in connection with the Foreign Subsidiary Reorganization; and

(l) other Investments not constituting Acquisitions by the Borrower or any Subsidiary made after the Closing Date; provided that the aggregate outstanding amount of all Investments made pursuant to this clause (l) **(i)** at a time **(other than during the Relief Period)** when the Leverage Ratio (after giving *pro forma* effect to such Investments and any Indebtedness incurred in connection therewith) was greater than or equal to 2.00 to 1.00 shall not exceed 10% of the consolidated total assets of the Borrower and its Subsidiaries, as determined in accordance with GAAP as of the last day of the immediately preceding Fiscal Year **and (ii) at any time during the Relief Period shall not exceed (A) $10,000,000 less (B) the aggregate consideration paid for all Permitted Acquisitions closed during the Relief Period pursuant to Section 7.03(h)** ; provided further that upon request by the Administrative Agent at any time the Leverage Ratio is greater than or equal to 2.00 to 1.00, the Borrower shall deliver to the Administrative Agent a schedule of all then-outstanding Investments made pursuant to this clause (l) at a time when the Leverage Ratio was less than 2.00 to 1.00.

For purposes of covenant compliance, the amount of any Investment shall be the original cost of such Investment, minus the amount of any portion of such Investment repaid to the investor as a dividend, repayment of loan or advance, release or discharge of a guarantee or other obligation or other transfer of property or return of capital, as the case may be, but without any other adjustments for increases or decreases in value, or write-ups, write-downs or write-offs with respect to such Investment or interest earned on such Investment.

7.04 Asset Sales. The Borrower shall not, and shall not permit any of its Subsidiaries to, sell, convey, transfer, lease or otherwise dispose of any of their respective assets or any interest therein (including the sale or factoring at maturity of any accounts) to any Person, or permit or suffer any other Person to acquire any interest in any of their respective assets or, in the case of any Subsidiary, issue or sell any shares of such Subsidiary's Stock or Stock Equivalent (any such disposition being an " Asset Sale ") except for the following:

(a) the sale or disposition of inventory in the ordinary course of business;

(b) transfers resulting from any taking or condemnation of any property of the Borrower or any of its Subsidiaries (or, as long as no Default exists or would result therefrom, deed in lieu thereof);

(c) as long as no Default exists or would result therefrom, the sale or disposition of equipment that the Borrower reasonably determines is no longer useful in its or its Subsidiaries' business, has become obsolete, damaged or surplus or is replaced in the ordinary course of business;

(d) as long as no Default exists or would result therefrom, the sale or disposition of assets (including the issuance or sale of Stock or Stock Equivalents) of any Subsidiary that either (i) is not a Wholly-Owned Subsidiary or (ii) is an Immaterial Subsidiary that, in each case, both at the time of such sale and as of the Closing Date (or if later, the time of formation or acquisition of such Subsidiary), do not constitute, in the aggregate, all or substantially all of the assets (or the Stock or Stock Equivalents) of such Subsidiary;

(e) as long as no Default exists or would result therefrom, the lease or sublease of Real Property not constituting a sale and leaseback, to the extent not otherwise prohibited by this Agreement or the Mortgages;

(f) as long as no Default exists or would result therefrom, non-exclusive assignments and licenses of intellectual property of the Borrower and its Subsidiaries in the ordinary course of business;

(g) as long as no Default exists or would result therefrom, discounts, adjustments, settlements and compromises of Accounts and contract claims in the ordinary course of business;

(h) any Asset Sale (i) to the Borrower or any Guarantor or (ii) by any Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party;

(i) as long as no Default exists or would result therefrom, any other Asset Sale for Fair Market Value and where either (A) at least 75% of the consideration received therefor is cash or Cash Equivalents or (B) the Non-Cash Consideration from such Asset Sale and all other Asset Sales made in reliance upon this subclause (B) during any Fiscal Year does not exceed $10,000,000; provided , however , that with respect to any such Asset Sale in accordance with this clause (i), the aggregate consideration received for the sale of all assets sold in accordance with this clause (i) during any Fiscal Year, including such Asset Sale, shall not exceed 5% of Consolidated Tangible Assets as of the last day of the immediately preceding Fiscal Year;

(j) any single transaction or series of related transactions so long as neither such single transaction nor such series of related transactions involves assets having a Fair Market Value of more than $3,000,000;

(k) Asset Sales permitted by Section 7.13 , Investments permitted by Section 7.03 and Restricted Payments permitted by Section 7.05 ;

(l) the Foreign Subsidiary Reorganization; and

(m) the Form 10 Transactions by and among the Borrower and its Subsidiaries and BWC and its Subsidiaries reasonably necessary to effectuate the Spinoff.

7.05 Restricted Payments. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, declare, order, pay or make any sum for any Restricted Payment except for:

(a) Restricted Payments by the Borrower to any Guarantor;

(b) Restricted Payments by (i) any Subsidiary of the Borrower to the Borrower or any Guarantor or (ii) any Subsidiary that is not a Loan Party to another Subsidiary that is not a Loan Party;

(c) Restricted Payments by any Subsidiary that is not a Wholly-Owned Subsidiary to the Borrower or any Guarantor and to any other direct or indirect holders of equity interests in such Subsidiary to the extent (i) such Restricted Payments are made *pro rata* (or on a basis more favorable to the Borrower or such Guarantor) among the holders of the equity interests in such Subsidiary or (ii) pursuant to the terms of the joint venture or other distribution agreement for such Subsidiary in form and substance approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed);

(d) any redemption, retirement, sinking fund or similar payment, purchase or other acquisition for value, direct or indirect, of any Stock or Stock Equivalents of the Borrower or any of its Subsidiaries (i) made solely with the proceeds received from the exercise of any warrant or option or (ii) that is deemed to occur upon the cashless exercise of stock options or warrants;

(e) the repurchase, redemption or other acquisition or retirement for value of any Stock or Stock Equivalents of the Borrower or any Subsidiary held by any current or former officer, director or employee pursuant to any equity - based compensation plan, equity subscription agreement, stock option agreement, shareholders' agreement or similar agreement in an aggregate amount not to exceed $20,000,000 in any Fiscal Year;

(f) so long as no Default exists or would result therefrom **and the Relief Period is not then in effect (it being understood that no Restricted Payment under this clause (f) may be declared, made or paid during the Relief Period)** , the Borrower may make Restricted Payments of the type described in clauses (a) and (b) of the definition thereof (including Restricted Payments of the type described in clause (e) of this Section that are in excess of the aggregate amount permitted in clause (e) of this Section); provided that the aggregate amount of all Restricted Payments made under this clause (f) at a time when the Leverage Ratio (after giving *pro forma* effect to such proposed Restricted Payment and any Indebtedness incurred in connection therewith) was greater than or equal to 2.00 to 1.00 shall not exceed $150,000,000 in any Fiscal Year;

(g) the dividend or other distribution to BWC and its Subsidiaries of intercompany receivables owed by BWC and its Subsidiaries to the Borrower and its Subsidiaries in connection with the Spinoff to the extent constituting a Form 10 Transaction.

7.06 Fundamental Changes. Merge, amalgamate, dissolve, liquidate, consolidate with or into another Person, or dispose of (whether in one transaction or in a series of transactions) all or substantially

all of its assets (whether now owned or hereafter acquired) to or in favor of any Person, except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge or consolidate with or into (i) the Borrower, provided that the Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries, provided that when any Guarantor is merging or consolidating with another Subsidiary, the continuing or surviving Person shall be a Guarantor (whether as the survivor or by becoming a Guarantor in a manner reasonably satisfactory to the Administrative Agent, including by joining the Guaranty);

(b) any Subsidiary may dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise) to the Borrower or to another Subsidiary; provided that if the transferor in such a transaction is a Guarantor, then the transferee must either be the Borrower or a Guarantor;

(c) any Person may be merged or amalgamated with or into the Borrower or any Subsidiary of the Borrower in connection with a transaction that constitutes a Permitted Acquisition, provided that (i) if the Borrower is a party to such transaction, the Borrower shall be the continuing or surviving Person, or (ii) if a Guarantor is a party to such transaction, the continuing or surviving Person shall be a Guarantor (whether as the survivor or by becoming a Guarantor in a manner reasonably satisfactory to the Administrative Agent, including by joining the Guaranty);

(d) any Subsidiary may dissolve or liquidate so long as (i) such dissolution or liquidation could not reasonably be expected to result in a Material Adverse Effect or have a material adverse effect on the value of the Guaranty or the Collateral (if any) and (ii) if such dissolving Subsidiary is a Guarantor, it transfers all or substantially all of its assets and operations to another Guarantor; and

(e) an Asset Sale permitted under Section 7.04 may be consummated.

7.07 Change in Nature of Business . The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any business other than the Eligible Line of Business.

7.08 Transactions with Affiliates . The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any transaction of any kind involving aggregate payments or consideration in excess of $1,000,000 with any Affiliate of the Borrower, whether or not in the ordinary course of business, other than on fair and reasonable terms substantially as favorable to the Borrower or such Subsidiary as could reasonably be expected to be obtainable by the Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate except:

(a) transactions among the Borrower and its Subsidiaries not otherwise prohibited under the Loan Documents;

(b) Restricted Payments and Investments otherwise permitted by this Agreement;

(c) transactions in accordance with the Affiliate Agreements or as thereafter amended or replaced in any manner that, taken as a whole, is not more disadvantageous to the Lenders or the Borrower in any material respect than such agreement as it was in effect on the Closing Date;

(d) reasonable director, officer and employee compensation (including bonuses) and other benefits (including pursuant to any employment agreement or any retirement, health, stock option or other benefit plan) and indemnification and insurance arrangements, in each case, as determined in good faith by the Borrower's board of directors or senior management;

(e) the entering into of a tax sharing agreement, or payments pursuant thereto, between the Borrower and/or one or more Subsidiaries, on the one hand, and any Tax Affiliate, on the other hand, which payments by the Borrower and its Subsidiaries are not in excess of the tax liabilities that would have been payable by them on a stand-alone basis;

(f) so long as the Borrower is subject to the filing requirements of the SEC, any transaction not otherwise prohibited under the Loan Documents with a Person that would constitute an Affiliate of the Borrower solely because the Borrower or a Subsidiary owns Stock in or otherwise Controls such Person;

(g) pledges by the Borrower or any Subsidiary of Stock of any Joint Venture in a transaction permitted by Section 7.02(h)(ii) ;

(h) any transaction entered into by a Person prior to the time such Person becomes a Subsidiary or is merged or consolidated into the Borrower or a Subsidiary (provided that such transaction is not entered into in contemplation of such event); and

(i) the Form 10 Transactions by and among the Borrower and its Subsidiaries and BWC and its Subsidiaries reasonably necessary to effectuate the Spinoff.

7.09 Burdensome Agreements. The Borrower shall not, and shall not permit any of its Subsidiaries to, (a) other than for any Subsidiary that is not a Wholly-Owned Subsidiary, agree to enter into or suffer to exist or become effective any consensual encumbrance or consensual restriction of any kind on the ability of such Subsidiary to pay dividends or make any other distribution or transfer of funds or assets or make loans or advances to or other Investments in, or enter into any Guaranty Obligation or pay any Indebtedness owed to, the Borrower or any other Subsidiary of the Borrower or (b) other than customary non-assignment provisions in contracts entered into in the ordinary course of business, enter into or permit to exist or become effective any enforceable agreement prohibiting or limiting the ability of the Borrower or any Subsidiary to create, incur, assume or permit to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, to secure the Obligations, including any agreement requiring any other Indebtedness or Contractual Obligation to be equally and ratably secured with the Obligations; provided that the limitations of this Section 7.09 shall not apply to such limitations contained in (i) the Loan Documents, (ii) any agreement governing any Non-Recourse Indebtedness or any Indebtedness permitted by Section 7.01(b) , (d) , (e) , (g) (in the case of any such Indebtedness, so long as any prohibition or limitation is only effective against the assets financed thereby) or (i) or (iii) any agreement of a Subsidiary that is not (and is not required to become) a Loan Party that is in existence at the time of, and is not entered into in anticipation of, the acquisition of such Person as a Subsidiary of the Borrower (and, with respect to this clause (iii), including any amendment, extension, amendment and restatement, replacement, refinancing or other modification of such agreement so long as the relevant limitations are not altered in any manner that is materially adverse to the interests of the Lenders).

7.10 Form 10. Amend, make additions to or otherwise modify the Form 10 on or after the Closing Date in a manner that could reasonably be expected to be adverse to any material interest of the Administrative Agent or the Lenders (unless approved by the Required Lenders, notwithstanding the provisions of Section 10.01 to the contrary, such approval not to be unreasonably conditioned, withheld or delayed); provided that the termination or withdrawal of the Form 10 without the consummation of the Spinoff shall not, without more, be adverse to any material interests of the Lenders.

7.11 Fiscal Year . The Borrower shall not change its Fiscal Year.

7.12 Use of Proceeds. The Borrower shall not, and shall not permit any of its Subsidiaries to, use all or any portion of the proceeds of any credit extended hereunder to purchase or carry margin stock (within the meaning of Regulation U of the FRB) in contravention of Regulation U of the FRB.

7.13 Sale Leasebacks. The Borrower shall not, and shall not permit any of its Subsidiaries to, enter into any sale and leaseback transaction unless the proceeds of such transaction received by the Loan Parties equal the Fair Market Value of the properties subject to such transaction and, after giving effect to such sale and leaseback transaction, the aggregate Fair Market Value of all properties covered at any one time by all sale and leaseback transactions permitted hereunder (other than any sale and leaseback transaction of property entered into within 90 days of the acquisition of such property) does not exceed
$ ~~20,000,000.~~ **20,000,000; provided that notwithstanding the foregoing, in no event shall the Borrower enter into or consummate, or permit any of its Subsidiaries to enter into or consummate, any sale and leaseback transaction at any time during the Relief Period.**

7.14 No Speculative Transactions. The Borrower shall not, and shall not permit any of its Subsidiaries to, engage in any material speculative transaction or in any material transaction involving the entry into of Swap Contracts by such Person except for the sole purpose of hedging in the normal course of business.

7.15 Anti-Corruption Laws. The Borrower shall not, and shall not permit any of its Subsidiaries to, directly or indirectly, use the proceeds of any Credit Extension in violation of applicable Anti-Corruption Laws.

7.16 Financial Covenants.

(a) Interest Coverage Ratio . The Borrower shall not permit the Interest Coverage Ratio as of the ~~end~~ **last day** of any Fiscal Quarter to be less than 4.00 to 1.00.

(b) Leverage Ratio . The Borrower shall not permit the Leverage Ratio as of the ~~end~~ **last day** of any Fiscal Quarter **:**

(i) that occurs on a date that does not fall within the Relief Period to be greater than 3.00 to 1.00; provided that, at the Borrower's option **(other than during the Relief Period)** , the maximum Leverage Ratio permitted by this clause (b) may be increased to 3.25 to 1.00 (each such election, a " Leverage Ratio Increase ") for the four consecutive Fiscal Quarter ending dates (or such shorter time, as may be elected by the Borrower) immediately following the consummation of a Material Acquisition by the Borrower or a Subsidiary; provided further that, in any event (without regard to the making of more than one Material Acquisition), the maximum Leverage Ratio permitted by this clause (b) must return to 3.00 to 1.00 for the Fiscal Quarter ending immediately following each single election by the Borrower of a Leverage Ratio Increase . **; or**

(ii) that occurs on a date that falls within the Relief Period to be greater than 3.50 to 1.00.

7.17 Sanctions . The Borrower shall not, and shall not permit any of its Subsidiaries to use the proceeds of any Credit Extension, or make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, to fund, finance or facilitate any activities of or business with any individual or entity, or in any Designated Jurisdiction, that, in each case at the time of such funding, is the subject of Sanctions, or in any other manner that, to the Borrower's knowledge, would result in a violation by any Lender, Arranger, Administrative Agent, L/C Issuer or Swing Line Lender of Sanctions.

ARTICLE VIII.
EVENTS OF DEFAULT AND REMEDIES

8.01 Events of Default. Any of the following shall, at any time on or after the Closing Date (other than with respect to Section 8.01(c)), and at any time with respect to Section 8.01(c) , constitute an "Event of Default":

(a) Non-Payment of Principal . the Borrower shall fail to pay any principal of any Loan or any L/C Obligation when the same becomes due and payable; or

(b) Non-Payment of Interest and Other Amounts . the Borrower shall fail to pay any interest on any Loan, any fee under any of the Loan Documents or any other Obligation (other than one referred to in clause (a) above and other than Obligations under any Secured Cash Management Agreement or Secured Hedge Agreement) and such non-payment continues for a period of three Business Days after the due date therefor; or

(c) Representations and Warranties . any representation or warranty made or deemed made by any Loan Party in any Loan Document shall prove to have been incorrect in any material respect (or, with respect to representations and warranties modified by a materiality or Material Adverse Effect standard, in all respects) when made or deemed made; or

(d) Failure to Perform Covenants . any Loan Party shall fail to perform or observe (i) any term, covenant or agreement contained in Sections 6.03(a) , 6.12 (with respect to the existence of the Borrower), 6.17 , 6.25, 6.26 or Article VII or (ii) any other term, covenant or agreement contained in this Agreement or in any other Loan Document if such failure under this clause (ii) shall remain unremedied for 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower obtains actual knowledge of such failure and (B) the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent, any Lender or any L/C Issuer; or

(e) Cross-Default . (i) the Borrower or any of its Material Subsidiaries shall fail to make any payment on any recourse Indebtedness of the Borrower or any such Material Subsidiary (other than the Obligations (except Obligations under Secured Cash Management Agreements and Secured Hedge Agreements, which are expressly covered by this clause (e))) or any Guaranty Obligation in respect of Indebtedness of any other Person, and, in each case, such failure relates to Indebtedness having a principal amount in excess of $50,000,000 when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand, early termination event or otherwise), (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to any such Indebtedness, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Indebtedness or (iii) any such Indebtedness shall become or be declared to be due and payable, or required to be prepaid or repurchased (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof; provided that clauses (ii) and (iii) above shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; or

(f) Insolvency Proceedings, Etc. (i) the Borrower or any of its Material Subsidiaries shall generally not pay its debts as such debts become due, shall admit in writing its inability to pay its debts generally or shall make a general assignment for the benefit of creditors, (ii) any proceeding shall be instituted by or against the Borrower or any of its Material Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts, under any Requirement of Law relating to bankruptcy, insolvency or

reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a custodian, receiver, trustee or other similar official for it or for any substantial part of its property; provided , however , that, in the case of any such proceedings instituted against the Borrower or any of its Material Subsidiaries (but not instituted by the Borrower or any of its Subsidiaries), either such proceedings shall remain undismissed or unstayed for a period of 60 days or more or an order or decree approving or ordering any of the foregoing shall be entered, or (iii) the Borrower or any of its Material Subsidiaries shall take any corporate action to authorize any action set forth in clauses (i) or (ii) above; or

(g) Judgments. one or more judgments, orders or decrees (or other similar process) for the payment of money in an amount in excess of $35,000,000 in the aggregate (to the extent not covered by insurance as to which a solvent and unaffiliated insurance company has acknowledged coverage), shall be rendered against one or more of the Borrower and its Material Subsidiaries and shall remain unpaid and either (x) enforcement proceedings shall have been commenced by any creditor upon such judgment, injunction or order or (y) there shall be any period of 30 consecutive days during which a stay of enforcement of such judgment, injunction or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(h) ERISA. one or more ERISA Events shall occur and the amount of all liabilities and deficiencies resulting therefrom imposed on or which could reasonably be expected to be imposed directly on the Borrower, any of its Subsidiaries or any Guarantor, whether or not assessed, when taken together with amounts of all such liabilities and deficiencies for all other such ERISA Events exceeds $35,000,000 in the aggregate; or

(i) Invalidity of Loan Documents. either:

(i) any provision of any Security Instrument or the Guaranty after delivery thereof pursuant to this Agreement or any other Loan Document shall for any reason, except as permitted by the Loan Documents, cease to be valid and binding on, or enforceable against, any Loan Party which is a party thereto, or any Loan Party shall so state in writing; or

(ii) any Security Instrument shall for any reason fail or cease to create a valid Lien on any Collateral with an aggregate value of $10,000,000 or more purported to be covered thereby or, except as permitted by the Loan Documents, such Lien shall fail or cease to be a perfected and first priority Lien or any Loan Party shall so state in writing; or

(j) Change of Control . there occurs any Change of Control.

8.02 Remedies Upon Event of Default . If any Event of Default occurs and is continuing, the Administrative Agent shall, at the request of, or may, with the consent of, the Required Lenders, take any or all of the following actions:

(a) declare the Commitment of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions to be terminated, whereupon such Commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Borrower;

(c) require that the Borrower Cash Collateralize the L/C Obligations (in an amount equal to the then Outstanding Amount thereof); and

(d) exercise on behalf of itself, the Lenders and the L/C Issuers all rights and remedies available to it, the Lenders and the L/C Issuers under the Loan Documents;

provided , however , that upon the occurrence of an actual or deemed entry of an order for relief with respect to the Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of the L/C Issuers to make L/C Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

8.03 Application of Funds. After the exercise of remedies provided for in Section 8.02 (or after the Loans have automatically become immediately due and payable and the L/C Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 8.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.15 and 2.16 , be applied by the Administrative Agent in the following order:

First , to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article III) payable to the Administrative Agent in its capacity as such;

Second , to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest and Letter of Credit Fees) payable to the Lenders and the L/C Issuers (including fees, charges and disbursements of counsel to the respective Lenders and the L/C Issuers arising under the Loan Documents and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Second payable to them;

Third , to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, L/C Borrowings and other Obligations arising under the Loan Documents, ratably among the Lenders and the L/C Issuers in proportion to the respective amounts described in this clause Third payable to them;

Fourth , to payment of that portion of the Obligations constituting unpaid principal of the Loans, L/C Borrowings and Obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the L/C Issuers, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth held by them;

Fifth , to the Administrative Agent for the account of the L/C Issuers, to ~~Cash Collateralize~~ **cash collateralize** that portion of L/C Obligations composed of the aggregate undrawn amount of Letters of Credit to the extent not otherwise ~~Cash Collateralized~~ **cash collateralized** by the Borrower pursuant to Sections 2.03 and ~~2.15~~ **2.15, ratably among the L/C Issuers in proportion to the respective amounts described in this clause Fifth held by them** ; and

Last , the balance, if any, after all of the Obligations have been indefeasibly paid in full, to the Borrower or as otherwise required by any applicable Requirement of Law.

Subject to Sections 2.03(c) and 2.15 , amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Fifth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Notwithstanding the foregoing, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to the Credit Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article IX hereof for itself and its Affiliates as if a "Lender" party hereto.

ARTICLE IX. ADMINISTRATIVE AGENT

9.01 Appointment and Authority .

(a) Each of the Lenders and each L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the L/C Issuers, and the Borrower shall not have any rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Requirement of Law; provided that the meaning of such term in Section 10.06(c) is intended to be consistent with the meaning of such term as used in Section 5f.103-1(c) of the United States Treasury Regulations. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Cash Management Bank) and the L/C Issuer hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and the L/C Issuer for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Section 9.05 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Instruments, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of this Article IX and Article X (including Section 10.04(c) , as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Administrative Agent is further authorized on behalf of all the Lenders, without the necessity of any notice to or further consent from the Lenders, from time to time to take any action, or permit the any co-agents, sub-agents and

attorneys-in-fact appointed by the Administrative Agent to take any action, with respect to any Collateral or the Loan Documents which may be necessary to perfect and maintain perfected the Liens upon any Collateral granted pursuant to any Loan Document.

9.02 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 10.01 and 8.02) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower, a Lender or the L/C Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any

Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Instruments, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

9.04 Reliance by Administrative Agent.

The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or the L/C Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the L/C Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

9.05 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub agents appointed by the Administrative Agent. The Administrative Agent and any such sub agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub agent and to the Related Parties of the Administrative Agent and any such sub agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the L/C Issuers and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the " Resignation Effective Date "), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and the L/C Issuers, appoint a successor Administrative Agent meeting the qualifications set forth above, provided that in no event shall any such successor Administrative Agent be a Defaulting Lender at the time of such appointment and succession. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and, in consultation with the Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the " Removal Effective Date "), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the L/C Issuers under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each L/C Issuer directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Section 3.01(h) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section) . The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 10.04 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

(d) Any resignation by Bank of America as Administrative Agent pursuant to this Section shall also constitute its resignation as L/C Issuer and Swing Line Lender. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as L/C Issuer and all L/C Obligations with respect thereto, including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c) . If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c) . Upon the appointment by the Borrower of a successor L/C Issuer with respect to the Letters of Credit issued by Bank of America and the related L/C Obligations (which may be another existing L/C Issuer) or Swing Line Lender hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer or Swing Line Lender, as applicable, (b) the retiring L/C Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor L/C Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time

of such succession or make other arrangements satisfactory to Bank of America to effectively assume the obligations of Bank of America with respect to such Letters of Credit.

9.07 Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each L/C Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each L/C Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

9.08 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Book Managers, Arrangers, Co-Syndication Agents, Co-Documentation Agents or Managing Agents listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an L/C Issuer hereunder.

9.09 Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or L/C Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, L/C Obligations and all other Obligations (other than Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements) that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the L/C Issuers and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the L/C Issuers and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the L/C Issuers and the Administrative Agent under Sections 2.03(h) and (i) , 2.09 and 10.04) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each L/C Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the L/C Issuers, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04 .

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any L/C

Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or any L/C Issuer in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Lenders, to credit bid all or any portion of the Obligations (including accepting some or all of the Collateral in satisfaction of some or all of the Secured Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 1123 or 1129 of the Bankruptcy Code of the United States, or any similar Laws in any other jurisdictions to which a Loan Party is subject, (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Stock, Stock Equivalents or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more acquisition vehicles to make a bid, (ii) to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets, Stock or Stock Equivalents thereof shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a) through (i) of Section 10.01 of this Agreement, (iii) the Administrative Agent shall be authorized to assign the relevant Obligations to any such acquisition vehicle pro rata by the Lenders, as a result of which each of the Lenders shall be deemed to have received a pro rata portion of any Stock, Stock Equivalents and/or debt instruments issued by such an acquisition vehicle on account of the assignment of the Obligations to be credit bid, all without the need for any Secured Party or acquisition vehicle to take any further action, and (iv) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders *pro rata* and the Stock, Stock Equivalents and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

9.10 Collateral and Guaranty Matters. Each of the Lenders (including in its capacities as a potential Cash Management Bank and a potential Hedge Bank, and on behalf of their Affiliates in such capacities) and each L/C Issuer irrevocably authorize the Administrative Agent, at its option and in its discretion,

(a) to release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Aggregate Commitments and payment in full of all Obligations (other than (A) contingent indemnification obligations and (B) obligations and liabilities under Secured Cash Management Agreements and Secured Hedge Agreements either (x) as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made or (y) notice has not been received by the Administrative Agent from the applicable Cash Management Bank or Hedge Bank that such amounts are then due and payable) and the expiration or termination of all

Letters of Credit (other than Letters of Credit as to which other arrangements satisfactory to the Administrative Agent and the applicable L/C Issuer shall have been made), (ii) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition permitted hereunder or under any other Loan Document (including, without limitation, in connection with the Foreign Subsidiary Reorganization) or (iii) subject to Section 10.01 (including Section 10.01(h)), if approved, authorized or ratified in writing by the Required Lenders;

(b) to subordinate or release any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 7.02(b) , (d) , (e) , (f) or (h) , and to enter into any intercreditor agreement, subordination agreement or similar agreement with respect to any such property; and

(c) to release any Guarantor from its obligations under the Guaranty if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Guaranty pursuant to this Section 9.10 . In each case as specified in this Section 9.10 , the Administrative Agent will, at the Borrower's expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Instruments or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 9.10 .

The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

9.11 Secured Cash Management Agreements and Secured Hedge Agreements. Except as otherwise expressly set forth herein, no Cash Management Bank or Hedge Bank that obtains the benefits of the provisions of Section 8.03 , the Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Security Instrument shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) (or to notice of or to consent to any amendment, waiver or modification of the provisions hereof or of the Guaranty or any Security Instrument) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article IX to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Obligations, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE X. MISCELLANEOUS

10.01 Amendments, Etc. No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrower or the applicable Loan Party, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided , however , that no such amendment, waiver or consent shall:

(a) waive any condition set forth in Section 4.01 or Section 4.02 (other than Section 4.02(e)(i) or (f)) without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment **(i)** terminated pursuant to Section 8.02 **or (ii) mandatorily reduced pursuant to Section 2.06(a)(ii), but excluding any waiver or modification with respect to any mandatory Commitment reduction pursuant to Section 2.06(a)(ii)**) without the written consent of such Lender;

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment (excluding mandatory prepayments, if any) of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender entitled to such payment;

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to clause (iv) of the second proviso to this Section 10.01) any fees or other amounts payable hereunder or under any other Loan Document without the written consent of each Lender entitled to such amount; provided , however , that only the consent of the Required Lenders shall be necessary (i) to amend the definition of "Default Rate" or to waive any obligation of the Borrower to pay interest, commitment fees or Letter of Credit Fees at the Default Rate ~~or~~ **,** (ii) to amend any financial covenant hereunder (or any defined term used therein) even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder **or (iii) to amend the terms and conditions of the Relief Period even if the effect of such amendment would be to reduce the rate of interest on any Loan or L/C Borrowing or to reduce any fee payable hereunder, provided that, after giving effect to such amendment, the rate of interest on Loans and L/C Borrowings and fees payable hereunder are no less than such amounts immediately prior to the Relief Period** ;

(e) change Section 8.03 in a manner that would alter the *pro rata* sharing of payments required thereby without the written consent of each Lender directly and adversely affected thereby;

(f) amend Section 1.06 or the definition of "Alternative Currency" without the written consent of the Administrative Agent and each affected L/C Issuer;

(g) change any provision of this Section 10.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder (other than the definitions specified in clause (ii) of this Section 10.01(h)), without the written consent of each Lender; or

(h) release all or substantially all of the Collateral in any transaction or series of related transactions, or release all or substantially all of the value of the Guaranty, in each case without the written

consent of each Lender, except to the extent the release of any Collateral or any Guarantor is permitted pursuant to Section 9.10 (other than Section 9.10(a)(iii)) (in which case such release may be made by the Administrative Agent acting alone);

and, provided further , that (i) no amendment, waiver or consent shall, unless in writing and signed by the applicable L/C Issuer in addition to the Lenders required above, affect the rights or duties of such L/C Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; and (iv) each Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto. Notwithstanding anything to the contrary herein, (x) no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (1) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (2) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender and (y) the Administrative Agent, the Borrower and the applicable L/C Issuer may, without the consent of any other Lender or L/C Issuer, make such changes as may be necessary to incorporate provisions with respect to the issuance of Letters of Credit in any Alternative Currency approved by such L/C Issuer. Notwithstanding anything to the contrary contained in this Section, if the Administrative Agent and the Borrower shall have jointly identified (each in its sole discretion) an obvious error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the applicable Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Document if the same is not objected to in writing by the Required Lenders within five Business Days following the posting of such amendment to the Lenders.

If any Lender does not consent to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of such Lender and that has been approved by the Required Lenders, the Borrower may replace such non-consenting Lender in accordance with Section 10.13 ; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrower to be made pursuant to this paragraph).

Notwithstanding any provision herein to the contrary, this Agreement may be amended with the written consent of the Required Lenders, the Administrative Agent and the Borrower (i) to add one or more additional revolving credit or term loan facilities to this Agreement and to permit the extensions of credit and all related obligations and liabilities arising in connection therewith from time to time outstanding to share ratably (or on a basis subordinated to the existing facilities hereunder) in the benefits of this Agreement and the other Loan Documents with the obligations and liabilities from time to time outstanding in respect of the existing facilities hereunder, and (ii) in connection with the foregoing, to permit, as deemed appropriate by the Administrative Agent and approved by the Required Lenders, the Lenders providing such additional credit facilities to participate in any required vote or action required to be approved by the Required Lenders or by any other number, percentage or class of Lenders hereunder so long as such amendment does not adversely impact any other Lender’s ability to participate in such vote or action.

10.02 Notices; Effectiveness; Electronic Communication.

(a) Notices Generally . Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by facsimile or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, the Administrative Agent, Bank of America as an L/C Issuer or the Swing Line Lender, to the address, facsimile number, electronic mail address or telephone number specified for such Person on Schedule 10.02 ; and

(ii) if to any other Lender or any other L/C Issuer, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Electronic Communications . Notices and other communications to the Lenders and the L/C Issuer hereunder may be delivered or furnished by electronic communication (including e-mail, FpML messaging, and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or any L/C Issuer pursuant to Article II if such Lender or such L/C Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent, the Swing Line Lender, any L/C Issuer or the Borrower may each, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e -mail or other written acknowledgement), and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (i) and (ii) , if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice, email or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

(c) The Platform . THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE."
THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR

COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the " Agent Parties ") have any liability to the Borrower, any Lender, any L/C Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's, any Loan Party's or the Administrative Agent's transmission of Borrower Materials or notices through the Platform, any other electronic messaging service, or through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided , however , that in no event shall any Agent Party have any liability to the Borrower, any Lender, the L/C Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(d) Change of Address, Etc . Each of the Borrower, the Administrative Agent, the L/C Issuers and the Swing Line Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, facsimile or telephone number for notices and other communications hereunder by notice to the Borrower, the Administrative Agent, each L/C Issuer and the Swing Line Lender. In addition, each Lender and each L/C Issuer agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, facsimile number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender or L/C Issuer. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable Requirements of Law, including United States Federal and state securities laws, to make reference to Borrower Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or its securities for purposes of United States Federal or state securities laws.

(e) Reliance by Administrative Agent, L/C Issuer and Lenders . The Administrative Agent, the L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic or electronic Committed Loan Notices, Letter of Credit Applications and Swing Line Loan Notices) purportedly given by or on behalf of the Borrower (or with respect to a Letter of Credit Application, any Permitted L/C Party) even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Administrative Agent, each L/C Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrower (or with respect to a Letter of Credit Application, any Permitted L/C Party). All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.03 No Waiver; Cumulative Remedies; Enforcement. No failure by any Lender, any L/C Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder or under any other Loan Document shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided, and provided under each other Loan Document, are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 8.02 for the benefit of all the Lenders and the L/C Issuer; provided , however , that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any L/C Issuer or the Swing Line Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an L/C Issuer or Swing Line Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 10.08 (subject to the terms of Section 2.13), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided , further , that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 8.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.13 , any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

10.04 Expenses; Indemnity; Damage Waiver.

(a) Costs and Expenses . The Borrower shall pay (i) all reasonable out of pocket expenses incurred by the Administrative Agent and its Affiliates (including MLPFS and including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, and of special and local counsel retained by the Administrative Agent, but not any other separate counsel to the Arrangers or the Lenders), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement (including, without limitation, the administration of any assignment under Section 10.06 that is determined to be void *ab initio*) and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out of pocket expenses incurred by each L/C Issuer in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out of pocket expenses incurred by the Administrative Agent, any Lender or any L/C Issuer (including the fees, charges and disbursements of any counsel for the Administrative Agent, any Lender or the L/C Issuer) in connection with the enforcement or protection of its rights (A) in connection with this Agreement and the other Loan Documents, including its rights under this Section, or (B) in connection with the Loans made or Letters of Credit issued hereunder, including all such out of pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit, provided that the Borrower's obligations to pay or reimburse for legal fees and expenses pursuant to this clause (iii) shall be limited to the reasonable and documented legal fees and expenses of a single law firm as counsel for the Administrative Agent and one additional law firm as counsel for all other such parties, taken together, in each appropriate

jurisdiction (which may include a single law firm as special, local or foreign counsel acting in multiple jurisdictions), except that in the case where any such Person determines in good faith that a conflict of interest does or may exist in connection with such legal representation and such Person advises the Borrower of such actual or potential conflict of interest and engages its own separate counsel, the reasonable and documented legal fees and expenses of such separate counsel shall also be paid or reimbursed.

(b) Indemnification by the Borrower . The Borrower shall indemnify the Administrative Agent (and any sub-agent thereof), each Arranger, each Lender and each L/C Issuer, and each Related Party of any of the foregoing Persons (each such Person being called an " Indemnitee ") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses (subject to proviso (y) to this sentence below, including the reasonable fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitee and its Related Parties arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby, or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents, (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by any L/C Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Contaminants on or from any property owned or operated by the Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to the Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto; provided that (x) such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses (A) are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee, (B) arises solely from disputes solely between or among Indemnitees (except that in the event of a dispute involving the Administrative Agent, an Arranger, any L/C Issuer or the Swing Line Lender (in each case, acting in its capacity as such), the Administrative Agent, such Arranger, such L/C Issuer or the Swing Line Lender, as applicable, shall be entitled (subject to the other limitations and exceptions set forth in this clause (b)) to the benefit of such indemnification) not relating to or in connection with acts or omissions by the Company, any of its Subsidiaries, any of their respective Affiliates or any other Person or entity or (C) result from a claim brought by the Borrower or any other Loan Party against an Indemnitee for breach in bad faith of such Indemnitee's obligations hereunder or under any other Loan Document, if the Borrower or such Loan Party has obtained a final and nonappealable judgment in its favor on such claim as determined by a court of competent jurisdiction and (y) the Borrower's obligation to pay or reimburse an Indemnitee for the reasonable fees, charges and disbursements of counsel under this subsection (b) shall be limited to the reasonable and documented fees, charges and disbursements of a single law firm chosen by the Administrative Agent as counsel for all such Indemnitees, taken together, in each appropriate jurisdiction (which may include a single law firm as special or local counsel acting in multiple jurisdictions), except that in the case where an Indemnitee determines in good faith that a conflict of interest does or may exist in connection with such legal representation and such Indemnitee advises the Borrower of such actual or potential conflict of interest and engages its own separate counsel, the reasonable and documented fees, charges and disbursements of each such separate counsel shall also be paid or

reimbursed. This Section 10.04(b) shall not apply with respect to Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim.

(c) Reimbursement by Lenders. To the extent that the Borrower for any reason fails to indefeasibly pay (and without limiting any obligation of the Borrower so to pay) any amount required under subsection (a) or (b) of this Section to be paid by it to the Administrative Agent (or any sub-agent thereof), any L/C Issuer, the Swing Line Lender or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent (or any such sub-agent), the applicable L/C Issuer, the Swing Line Lender or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's Total Credit Exposure at such time) of such unpaid amount (including any such unpaid amount in respect of a claim asserted by such Lender), such payment to be made severally among them based on such Lender's Applicable Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought), provided, further that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent (or any such sub-agent), the applicable L/C Issuer or the Swing Line Lender in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent), such L/C Issuer or the Swing Line Lender in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d).

(d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable law, the Borrower shall not assert, and the Borrower hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitee referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for the Borrower's direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) Payments. All amounts due under this Section shall be payable not later than ten Business Days after demand therefor.

(f) Survival. The agreements in this Section and the indemnity provisions of Section 10.02(e) shall survive the resignation of the Administrative Agent, any L/C Issuer and/or the Swing Line Lender, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.05 Payments Set Aside. To the extent that any payment by or on behalf of the Borrower is made to the Administrative Agent, any L/C Issuer or any Lender, or the Administrative Agent, any L/C Issuer or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Administrative Agent, such L/C Issuer or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each L/C Issuer

severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate from time to time in effect, in the applicable currency of such recovery or payment. The obligations of the Lenders and the L/C Issuers under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.06 Successors and Assigns.

(a) Successors and Assigns Generally . The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the L/C Issuers and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including for purposes of this subsection (b), participations in L/C Obligations and in Swing Line Loans) at the time owing to it); provided that in each case any such assignment shall be subject to the following conditions:

(i) Minimum Amounts .

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than $5,000,000 unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts . Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause (ii) shall not (A)

apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans or (B) prohibit any Lender from assigning all or a portion of its rights and obligations under any separate revolving credit or term loan facilities provided pursuant to the last paragraph of Section 10.01 in each case on a non- *pro rata* basis;

(iii) Required Consents . No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (1) an Event of Default has occurred and is continuing at the time of such assignment or (2) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund, provided that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within five Business Days after having received notice thereof;

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments in respect of any unfunded Commitment if such assignment is to a Person that is not a Lender, an Affiliate of such Lender or an Approved Fund with respect to such Lender; and

(C) the consent of each L/C Issuer and of the Swing Line Lender (each such consent not to be unreasonably withheld or delayed) shall be required for any assignment in respect of the Revolving Credit Facility.

(iv) Assignment and Assumption . The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of $3,500; provided , however , that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) No Assignment to Certain Persons . No such assignment shall be made (A) to the Borrower or any of the Borrower's Affiliates or Subsidiaries, or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person, or (D) to any competitor of the Borrower or any of its Subsidiaries that is primarily engaged in an Eligible Line of Business and that has been previously identified as such, by legal entity name, by the Borrower to the Administrative Agent and provided by the Administrative Agent to the Lenders on the Platform, it being understood that the Administrative Agent shall have no responsibility for maintaining or otherwise managing any such list of competitors.

(vi) Certain Additional Payments . In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable *pro rata* share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all

payment liabilities then owed by such Defaulting Lender to the Administrative Agent, any L/C Issuer or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full *pro rata* share of all Loans and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Requirements of Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 3.01 , 3.04 , 3.05 , and 10.04 with respect to facts and circumstances occurring prior to the effective date of such assignment; provided that, except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with subsection (d) of this Section.

(c) Register . The Administrative Agent, acting solely for this purpose as a non-fiduciary agent of the Borrower (and such agency being solely for tax purposes), shall maintain at the Administrative Agent's Office a copy of each Assignment and Assumption delivered to it (or the equivalent thereof in electronic form) and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and L/C Obligations owing to, each Lender pursuant to the terms hereof from time to time (the " Register "). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. 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.

(d) Participations . Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a Person described in Section 10.06(b)(v) that is not permitted to be an assignee with respect to Loans or Commitments) (each, a " Participant ") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Loans (including such Lender's participations in L/C Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrower, the Administrative Agent, the Lenders and the L/C Issuer shall continue to deal solely and directly with such Lender in connection with

such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Section 10.04(c) without regard to the existence of any participation.

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 10.01 that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 , 3.04 and 3.05 (subject to the requirements and limitations therein, including the requirements under Section 3.01(f) (it being understood that the documentation required under Section 3.01(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 3.06 and 10.13 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 3.01 or 3.04 , with respect to any participation, than the Lender from whom it acquired the applicable participation would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrower to effectuate the provisions of Section 10.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 10.08 as though it were a Lender, provided that such Participant agrees to be subject to Section 2.13 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the " Participant Register "); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) Reserved .

(f) Certain Pledges . Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note(s), if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(g) Resignation as L/C Issuer or Swing Line Lender after Assignment .

(i) Notwithstanding anything to the contrary contained herein, if at any time Bank of America or any other L/C Issuer assigns all of its Commitment and Loans pursuant to subsection (b) above, then (i) Bank of America or such other L/C Issuer may, upon 30 days' notice to the Borrower and the Lenders, resign as an L/C Issuer and/or (ii) Bank of America may, upon 30 days'

notice to the Borrower, resign as the Swing Line Lender. In the event of any such resignation of an L/C Issuer or the Swing Line Lender, the Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer (which may be an existing L/C Issuer) or Swing Line Lender hereunder; provided , however , that no failure by the Borrower to appoint any such successor shall affect the resignation of Bank of America or the applicable L/C Issuer as an L/C Issuer or of Bank of America as the Swing Line Lender, as the case may be.

(ii) If Bank of America or any other L/C Issuer resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of an L/C Issuer hereunder with respect to all Letters of Credit issued by it and outstanding as of the effective date of its resignation as an L/C Issuer and all L/C Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). Upon the appointment of a successor L/C Issuer with respect to such resigning L/C Issuer (x) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer and (y) such successor L/C Issuer (or another of the L/C Issuers, as may be arranged by the Borrower) shall issue letters of credit in substitution for the Letters of Credit, if any, issued by the resigning L/C Issuer and outstanding at the time of such succession, or make other arrangements satisfactory to Bank of America or such other resigning L/C Issuer to effectively assume the obligations of Bank of America or such other resigning L/C Issuer with respect to such Letters of Credit. The provisions of subparts (g)(i) and (g)(ii) of this Section shall not limit the ability of the Borrower to appoint and remove L/C Issuers pursuant to Sections 2.03(l) and (m) .

(iii) If Bank of America resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c) . Upon the appointment of a successor Swing Line Lender, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Swing Line Lender.

10.07 Treatment of Certain Information; Confidentiality . Each of the Administrative Agent, the Lenders and each L/C Issuer agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its Related Parties (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent required or requested by any regulatory authority purporting to have jurisdiction over such Person or its Related Parties (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to Section 2.14(c) or (ii) any actual or prospective party (or its Related Parties) to any swap, derivative or other transaction under which payments are to be made by reference to the Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating the Borrower or its Subsidiaries or the credit facilities provided hereunder or (ii) the CUSIP Service Bureau or any similar agency in connection with the issuance and monitoring of CUSIP numbers or other market identifiers with respect to the credit facilities provided

hereunder, (h) with the consent of the Borrower or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Administrative Agent, any Lender, any L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than the Borrower. In addition, the Administrative Agent and the Lenders may disclose the existence of this Agreement and information about this Agreement to market data collectors, similar service providers to the lending industry and service providers to the Agents and the Lenders in connection with the administration of this Agreement, the other Loan Documents, and the Commitments. For purposes of this Section, " Information " means all information received from the Borrower, any Subsidiary or any Affiliate of the Borrower relating to the Borrower, any Subsidiary or any Affiliate of the Borrower or any of their respective businesses, other than any such information that is (i) available to the Administrative Agent, any Lender or any L/C Issuer on a nonconfidential basis prior to disclosure by the Borrower, any Subsidiary or any Affiliate of the Borrower, or (ii) is clearly and conspicuously marked "PUBLIC" by the Borrower, which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the page thereof. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Administrative Agent, the Lenders and the L/C Issuers acknowledges that (a) the Information may include material non-public information concerning the Borrower or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Requirements of Law, including United States Federal and state securities laws.

10.08 Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender, each L/C Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Requirements of Law to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, such L/C Issuer or any such Affiliate to or for the credit or the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or such L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, such L/C Issuer or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or such L/C Issuer different from the branch, office or Affiliate holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.16 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent, the L/C Issuers and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. The rights of each Lender, each L/C Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, such L/C Issuer or their respective Affiliates may have. Each Lender and each L/C Issuer agrees to notify the Borrower and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

10.09 Interest Rate Limitation . Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Requirements of Law (the " Maximum Rate "). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Requirements of Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

10.10 Counterparts; Integration; Effectiveness . This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent or any L/C Issuer constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01 , this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic imaging means (e.g., "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Agreement.

10.11 Survival of Representations and Warranties . All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Administrative Agent and each Lender, regardless of any investigation made by the Administrative Agent or any Lender or on their behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

10.12 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 10.12 , if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, any L/C Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.13 Replacement of Lenders. If any Lender requests compensation under Section 3.04 , or if the Borrower is required to pay any Indemnified Taxes or any additional amount to any Lender or any

Governmental Authority for the account of any Lender pursuant to Section 3.01, or if any Lender is a Defaulting Lender, or if any Lender is subject to replacement pursuant to the last paragraph of Section 10.01, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 10.06), all of its interests, rights (other than its existing rights to payments pursuant to Sections 3.01 and 3.04) and obligations under this Agreement and the related Loan Documents to an Eligible Assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

(a) the Borrower shall have paid to the Administrative Agent the assignment fee specified in Section 10.06(b);

(b) such Lender shall have received payment of an amount equal to 100% of the outstanding principal of its Loans and L/C Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts);

(c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;

(d) such assignment does not conflict with applicable Requirements of Law; and

(e) in the case of an assignment resulting from a Lender becoming a non-consenting Lender pursuant to the last paragraph of Section 10.01, the applicable assignee shall have consented to the applicable amendment, waiver or consent.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply.

10.14 Governing Law; Jurisdiction; Etc.

(a) GOVERNING LAW. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY AGREES THAT IT WILL NOT COMMENCE ANY ACTION, LITIGATION OR PROCEEDING OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST THE ADMINISTRATIVE AGENT, ANY LENDER, ANY L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS RELATING HERETO OR THERETO, IN ANY FORUM OTHER THAN THE COURTS OF THE STATE OF NEW YORK SITTING IN NEW YORK COUNTY AND OF THE

UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, AND ANY APPELLATE COURT FROM ANY THEREOF, AND EACH OF THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION, LITIGATION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH NEW YORK STATE COURT OR, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE ADMINISTRATIVE AGENT, ANY LENDER OR ANY L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE . THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS . EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 10.02 . NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.15 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

10.16 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), the Borrower acknowledges and agrees that: (i) (A) the arranging and other services regarding this Agreement provided by the Administrative Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Borrower and its Affiliates, on the one hand, and the Administrative Agent, the Arrangers and the Lenders, on the other hand,

(B) the Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Borrower is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Administrative Agent, each Arranger and each Lender is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for the Borrower, any other Loan Party or any of their respective Affiliates, or any other Person and (B) neither the Administrative Agent, any Arranger nor any Lender has any obligation to the Borrower or any other Loan Party or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Administrative Agent, the Arrangers, the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Borrower, the other Loan Parties and their respective Affiliates, and neither the Administrative Agent, any Arranger nor any Lender has any obligation to disclose any of such interests to the Borrower, any other Loan Party or any of their respective Affiliates. To the fullest extent permitted by law, the Borrower hereby waives and releases any claims that it may have against the Administrative Agent, any Arranger or any Lender with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

10.17 Electronic Execution of Assignments and Certain Other Documents. The words "execute," "execution," "signed," "signature," and words of like import in or related to any document to be signed in connection with this Agreement and the transactions contemplated hereby (including without limitation Assignment and Assumptions, amendments or other Committed Loan Notices, Swing Line Loan Notices, waivers and consents) shall be deemed to include electronic signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by the Administrative Agent, or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act; provided that, notwithstanding anything contained herein to the contrary, the Administrative Agent is under no obligation to agree to accept electronic signatures in any form or in any format unless expressly agreed to by the Administrative Agent pursuant to procedures approved by it.

10.18 Judgment Currency. If, for the purposes of obtaining judgment in any court, it is necessary to convert a sum due hereunder or any other Loan Document in one currency into another currency, the rate of exchange used shall be that at which in accordance with normal banking procedures the Administrative Agent could purchase the first currency with such other currency on the Business Day preceding that on which final judgment is given. The obligation of the Borrower in respect of any such sum due from it to the Administrative Agent or any Lender hereunder or under the other Loan Documents shall, notwithstanding any judgment in a currency (the " Judgment Currency ") other than that in which such sum is denominated in accordance with the applicable provisions of this Agreement (the " Agreement Currency "), be discharged only to the extent that on the Business Day following receipt by the Administrative Agent or such Lender, as the case may be, of any sum adjudged to be so due in the Judgment Currency, the Administrative Agent or such Lender, as the case may be, may in accordance with normal banking procedures purchase the Agreement Currency with the Judgment Currency. If the amount of the Agreement Currency so purchased is less than the sum originally due to the Administrative Agent or any Lender from the Borrower in the Agreement Currency, the Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Administrative Agent or such Lender, as the case may be, against such loss. If the amount of the Agreement Currency so purchased is greater than the sum

originally due to the Administrative Agent or any Lender in such currency, the Administrative Agent or such Lender, as the case may be, agrees to return the amount of any excess to the Borrower (or to any other Person who may be entitled thereto under applicable law).

10.19 Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Solely to the extent any Lender or L/C Issuer that is an EEA Financial Institution is a party to this Agreement and 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 Lender or L/C Issuer that is an EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, 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 Lender or L/C Issuer 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 undertaking, 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.

[*Signature Pages Follow* **]**

[Signature pages omitted.]

Exhibit 21.1

BABCOCK & WILCOX ENTERPRISES, INC.
SIGNIFICANT SUBSIDIARIES OF THE REGISTRANT
YEAR ENDED DECEMBER 31, 2016

Name of Company	Jurisdiction of Organization	Percentage of Ownership Interest
Americon Equipment Services, Inc.	Delaware	100
Americon, LLC	Delaware	100
B&W de Panama, Inc.	Panama	100
B&W PGG Luxembourg Canada Holdings SARL	Luxembourg	100
B&W PGG Luxembourg Finance SARL	Luxembourg	100
B&W PGG Luxembourg Holdings SARL	Luxembourg	100
B and W SPIG South Africa	South Africa	100
Babcock & Wilcox Beijing Company, Ltd.	China	50
Babcock & Wilcox Construction Co., LLC	Delaware	100
Babcock & Wilcox de Monterrey, S.A. de C.V.	Mexico	100
Babcock & Wilcox Ebensburg Power, LLC	Delaware	100
Babcock & Wilcox Equity Investments, LLC	Delaware	100
Babcock & Wilcox Global Sales and Services Brazil Ltda.	Brazil	100
Babcock & Wilcox Global Sales & Services - Chile SpA	Chile	100
Babcock & Wilcox Global Sales and Service Pte. Ltd.	Singapore	100
Babcock & Wilcox Global Sales & Services SARL	Luxembourg	100
Babcock & Wilcox Holdings, Inc.	Delaware	100
Babcock & Wilcox India Holdings, Inc.	Delaware	100
Babcock & Wilcox India Private Limited	India	100
Babcock & Wilcox International Investments Co., Inc.	Panama	100
Babcock & Wilcox International Sales and Service Corporation	Delaware	100
Babcock & Wilcox International, Inc.	Delaware	100
Babcock & Wilcox MEGTEC Holdings, Inc.	Delaware	100
Babcock & Wilcox MEGTEC, LLC	Delaware	100
Babcock & Wilcox Monterrey Finance SARL	Luxembourg	100
Babcock & Wilcox Power Generation Group Canada Corp.	Nova Scotia	100
Babcock & Wilcox Singapore Pte. Ltd.	Singapore	100
Babcock & Wilcox Slovakia s.r.o.	Slovakia	100
Babcock & Wilcox SPIG, Inc.	New Jersey	100
Babcock & Wilcox SPIG S.r.l.	Italy	100
Babcock & Wilcox Technology, LLC	Delaware	100
Babcock & Wilcox Volund Limited	United Kingdom	100
Babcock & Wilcox Volund A/S	Denmark	100
BWL Energy (Teesside) Ltd.	Northern Ireland	50
Dampkraft Insurance Company	South Carolina	100
D.C.S. Dry Cooling Services S.r.l.	Italy	100
Delta Power Services, LLC	Delaware	100
Diamond Operating Co., Inc.	Delaware	100
Diamond Power Australia Holdings, Inc.	Delaware	100

Name of Company	Jurisdiction of Organization	Percentage of Ownership Interest
Diamond Power Central & Eastern Europe s.r.o.	Czech Republic	100
Diamond Power China Holdings, Inc.	Delaware	100
Diamond Power do Brasil Limitada	Brazil	100
Diamond Power Equity Investments, Inc.	Delaware	100
Diamond Power Finland OY	Finland	100
Diamond Power Germany GmbH	Germany	95
Diamond Power International, LLC	Delaware	100
Diamond Power Machine (Hubei) Co., Inc.	China	50
Diamond Power Services S.E.A. Ltd.	Thailand	50
Diamond Power Specialty (Proprietary) Limited	Republic of South Africa	100
Diamond Power Specialty Limited	United Kingdom	100
Diamond Power Sweden AB	Sweden	100
DPS Anson, LLC	Delaware	100
DPS Berlin, LLC	Delaware	100
DPS Cadillac, LLC	Delaware	100
DPS Florida, LLC	Delaware	100
DPS Gregory, LLC	Delaware	100
DPS Mecklenburg, LLC	Delaware	100
DPS Piedmont, LLC	Delaware	100
Ebensburg Energy, LLC	Delaware	100
Ebensburg Investors Limited Partnership	Pennsylvania	100
Ebensburg Power Company	Pennsylvania	100
Gotaverken Miljo AB	Sweden	100
Loibl Allen-Sherman-Hoff GmbH	Germany	100
MEGTEC Energy & Environmental LLC	Delaware	100
MEGTEC Environmental Limited	United Kingdom	100
MEGTEC IEPG BV	Netherlands	100
MEGTEC India Holdings, LLC	Delaware	100
MEGTEC Systems AB	Sweden	100
MEGTEC Systems Amal AB	Sweden	100
MEGTEC Systems Australia, Inc.	Delaware	100
MEGTEC Systems India Private Ltd.	India	100
MEGTEC Systems Limited	United Kingdom	100
MEGTEC Systems S.A.S.	France	100
MEGTEC Systems Shanghai Ltd.	China	100
MEGTEC Systems, Inc.	Delaware	100
MEGTEC Thermal Energy & Environmental Technology (Shanghai), LTD.	China	100
MEGTEC TurboSonic Inc.	Ontario	100
MEGTEC TurboSonic Technologies, Inc.	Delaware	100
MTS Asia, Inc.	Delaware	100
MTS Environmental GmbH	Germany	100
O&M Holding Company	Delaware	100
P. T. Babcock & Wilcox Asia	Indonesia	100
Palm Beach Resource Recovery Corporation	Florida	100

Name of Company	Jurisdiction of Organization	Percentage of Ownership Interest
Power Systems Operations, Inc.	Delaware	100
Revloc Reclamation Service, Inc.	Delaware	100
Servicios de Fabricacion de Valle Soleado, S.A. de C.V.	Mexico	100
Servicios Profesionales de Valle Soleado, S.A. de C.V.	Mexico	100
SOFCo - EFS Holdings LLC	Delaware	100
SPIG S.p.A.	Italy	100
SPIG S.p.A.	Ecuador	100
SPIG Kuhlturmtechnologien GmbH	Germany	100
SPIG Turn Apa de Racine	Romania	100
SPIG Vostock	Russia	95
SPIG Sogutma Sistemleri Tlc Ldt	Turkey	100
SPIG Cooling Tower India Pvt. Ltd.	India	100
SPIG Torres de Resfriamento Ltda.	Brazil	100
SPIG (Shanxi) Cooling System Co., Ltd.	China	100
SPIG (Shanxi) Cooling Technology Company, Ltd.	China	60
SPIG KOREA LTD.	Korea	100
The Babcock & Wilcox Company	Delaware	100
Thermax Babcock & Wilcox Energy Solutions Private Limited	India	49

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement No. 333-204812 on Form S-1, and to the incorporation by reference in the Registration Statement No. 333-205333 on Form S-8, of our reports dated February 28, 2017, relating to the consolidated and combined financial statements of Babcock & Wilcox Enterprises, Inc., (which report expresses an unqualified opinion and includes an explanatory paragraph related to the completion of the spin-off of the Company effective June 30, 2015 by The Babcock and Wilcox Company) and the effectiveness of Babcock & Wilcox Enterprises, Inc.'s internal control over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2016.

/S/ DELOITTE & TOUCHE LLP

Charlotte, North Carolina
February 28, 2017

EXHIBIT 31.1

CERTIFICATION

I, E. James Ferland, certify that:

1. I have reviewed this annual report on Form 10-K of Babcock & Wilcox Enterprises, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer 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)) for the registrant and have:

    a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer 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.

February 28, 2017

/s/ E. James Ferland

E. James Ferland

Chairman and Chief Executive Officer

EXHIBIT 31.2

CERTIFICATION

I, Jenny L. Apker, certify that:

1. I have reviewed this annual report on Form 10-K of Babcock & Wilcox Enterprises, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer 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)) for the registrant and have:

    a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

    b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

    c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

    d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer 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.

February 28, 2017

Jenny L. Apker

Senior Vice President and Chief Financial Officer

EXHIBIT 32.1

BABCOCK & WILCOX ENTERPRISES, INC.

Certification Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002
(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), I, E. James Ferland, Chairman and Chief Executive Officer of Babcock & Wilcox Enterprises, Inc., a Delaware corporation (the "Company"), hereby certify, to my knowledge, that:

(1) the Company's Annual Report on Form 10-K for the year ended December 31, 2016 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of B&W as of the dates and for the periods expressed in the Report.

Dated: February 28, 2017

/s/ E. James Ferland

E. James Ferland

Chairman and Chief Executive Officer

EXHIBIT 32.2

BABCOCK & WILCOX ENTERPRISES, INC.

Certification Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002
(Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code)

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code), I, Jenny L. Apker, Senior Vice President and Chief Financial Officer of Babcock & Wilcox Enterprises, Inc., a Delaware corporation (the "Company"), hereby certify, to my knowledge, that:

(1) the Company's Annual Report on Form 10-K for the year ended December 31, 2016 (the "Report") fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of B&W as of the dates and for the periods expressed in the Report.

Dated: February 28, 2017

/s/ Jenny L. Apker

Jenny L. Apker

Senior Vice President and Chief Financial Officer

Exhibit 95

Mine or Operating Name/MSHA Identification Number	Section 104 S&S Citations (#)	Section 104(b) Orders (#)	Section 104(d) Citations and Orders (#)	Section 110(b)(2) Violations (#)	Section 107(a) Orders (#)	Total Dollar Value of MSHA Assessments Proposed ($)	Total Number of Mining Related Fatalities #	Received Notice of Pattern of Violations Under Section 104(e) (yes/no)	Received Notice of Potential to Have Pattern Under Section 104(e) (yes/no)	Legal Actions Pending as of 12/31/2016 (#)	Legal Actions Initiated During Period (#)	Legal Actions Resolved During Period (#)
Revloc Refuse Site ID # 3608032	1	0	0	0	0	$228	0	No	No	0	0	0