

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

FORM 10-K

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

For the fiscal year ended December 31, 2022

OR

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

For the transition period from _____ to _____

Commission file number 1-12378

NVR, Inc.

(Exact Name of Registrant as Specified in its Charter)

Virginia
(State or other jurisdiction of incorporation or organization)

54-1394360
(IRS Employer Identification No.)

11700 Plaza America Drive, Suite 500
Reston, Virginia
(Address of principal executive offices)

20190
(Zip Code)

Registrant's telephone number, including area code: **(703) 956-4000**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common stock, par value \$0.01 per share	NVR	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 every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes No

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

Large accelerated filer	<input checked="" type="checkbox"/>	Accelerated filer	<input type="checkbox"/>
Non-accelerated filer	<input type="checkbox"/>	Smaller reporting company	<input type="checkbox"/>
		Emerging growth company	<input type="checkbox"/>

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal controls over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

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

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to 240.10D-1(b).

The aggregate market value of the voting stock held by non-affiliates of NVR, Inc. on June 30, 2022, the last business day of NVR, Inc.'s most recently completed second fiscal quarter, was approximately \$12,639,637,000.

As of February 13, 2023 there were 3,249,345 total shares of common stock outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of the Proxy Statement of NVR, Inc. to be filed with the Securities and Exchange Commission pursuant to Regulation 14A of the Securities Exchange Act of 1934 on or prior to April 30, 2023 are incorporated by reference into Part III of this report.

NVR, Inc.
Form 10-K

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PART I**Item 1. Business.****General**

NVR, Inc., a Virginia corporation, was formed in 1980 as NVHomes, Inc. Our primary business is the construction and sale of single-family detached homes, townhomes and condominium buildings, all of which are primarily constructed on a pre-sold basis. To more fully serve customers of our homebuilding operations, we also operate a mortgage banking and title services business. We conduct our homebuilding activities directly. Our mortgage banking operations are operated primarily through a wholly owned subsidiary, NVR Mortgage Finance, Inc. (“NVRM”). Unless the context otherwise requires, references to “NVR”, “we”, “us” or “our” include NVR, Inc. and its consolidated subsidiaries.

We are one of the largest homebuilders in the United States. We operate in thirty-five metropolitan areas in fifteen states, and Washington, D.C. Our homebuilding operations include the construction and sale of single-family detached homes, townhomes and condominium buildings under three trade names: Ryan Homes, NVHomes and Heartland Homes. Our Ryan Homes product is marketed primarily to first-time and first-time move-up buyers. Ryan Homes operates in thirty-five metropolitan areas located in Maryland, Virginia, Washington, D.C., Delaware, West Virginia, Pennsylvania, Ohio, New York, New Jersey, Indiana, Illinois, North Carolina, South Carolina, Georgia, Florida and Tennessee. Our NVHomes and Heartland Homes products are marketed primarily to move-up and luxury buyers. NVHomes operates in Delaware and the Washington, D.C., Baltimore, MD and Philadelphia, PA metropolitan areas. Heartland Homes operates in the Pittsburgh, PA metropolitan area. During 2022, approximately 16% of our home settlements accounting for approximately 21% of our homebuilding revenue occurred in the Washington, D.C. metropolitan area.

We generally do not engage in land development (see discussion below of our land development activities). Instead, we typically acquire finished building lots from various third party land developers pursuant to fixed price finished lot purchase agreements (“LPAs”) that require deposits that may be forfeited if we fail to perform under the LPAs. The deposits required under the LPAs are in the form of cash or letters of credit in varying amounts and typically range up to 10% of the aggregate purchase price of the finished lots.

We believe that our lot acquisition strategy avoids the financial requirements and risks associated with direct land ownership and land development. We may, at our option, choose for any reason and at any time not to perform under these LPAs by delivering notice of our intent not to acquire the finished lots under contract. Our sole legal obligation and economic loss for failure to perform under these LPAs is limited to the amount of the deposit pursuant to the liquidated damage provision contained within the LPAs. We do not have any financial guarantees or completion obligations and we typically do not guarantee lot purchases on a specific performance basis under these LPAs. None of the creditors of any of the development entities with which we have entered these LPAs have recourse to our general credit. We generally seek to maintain control over a supply of lots believed to be suitable to meet our five-year business plan.

In addition to constructing homes primarily on a pre-sold basis and utilizing what we believe is a conservative lot acquisition strategy, we focus on obtaining and maintaining a leading market position in each market we serve. This strategy allows us to gain valuable efficiencies and competitive advantages in our markets, which we believe contributes to minimizing the adverse effects of regional economic cycles and provides growth opportunities within these markets. Our continued success is contingent upon our ability to control an adequate supply of finished lots on which to build. As a result, in certain specific strategic circumstances we deviate from our historical lot acquisition strategy and engage in joint venture arrangements with land developers or directly acquire raw ground already zoned for its intended use for development. Once we acquire control of raw ground, we determine whether to sell the raw parcel to a developer and enter into an LPA with the developer to purchase the finished lots or hire a developer to develop the land on our behalf. While joint venture arrangements and direct land development activity are not our preferred method of acquiring finished building lots, we may enter into additional transactions in the future on a limited basis where there exists a compelling strategic or prudent financial reason to do so. We expect, however, to continue to acquire substantially all of our finished lot inventory using LPAs with forfeitable deposits. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations” in Item 7 of this Form 10-K for additional discussion of lots controlled. In addition, see Notes 3, 4 and 5 in the accompanying consolidated financial statements included herein for additional information regarding LPAs, joint ventures and land under development, respectively.

In addition to building and selling homes, we provide a number of mortgage-related services through our mortgage banking operations. Through operations in each of our homebuilding markets, NVRM originates mortgage loans almost exclusively for our homebuyers. NVRM generates revenues primarily from origination fees, gains on sales of loans and title fees. NVRM sells almost all of the mortgage loans it closes into the secondary markets on a servicing released basis.

Segment information for our homebuilding and mortgage banking businesses is included in Note 2 in the accompanying consolidated financial statements.

Homebuilding

Products

We offer single-family detached homes, townhomes and condominium buildings with many different home designs. These home designs have a variety of elevations and numerous other options. Our homes combine traditional, transitional, cottage or urban exterior designs with contemporary interior designs and amenities, generally include two to four bedrooms and range from approximately 1,000 to 10,000 finished square feet. During 2022, the prices at which we settled homes ranged from approximately \$160,000 to \$2.6 million and averaged \$454,300. During 2021, our average price of homes settled was \$403,900.

Markets

Our four reportable homebuilding segments operate in the following geographic regions:

<i>Mid Atlantic:</i>	Maryland, Virginia, West Virginia, Delaware and Washington, D.C.
<i>North East:</i>	New Jersey and Eastern Pennsylvania
<i>Mid East:</i>	New York, Ohio, Western Pennsylvania, Indiana and Illinois
<i>South East:</i>	North Carolina, South Carolina, Tennessee, Florida and Georgia

Backlog

Backlog, which represents homes sold but not yet settled with the customer, totaled 9,162 units and approximately \$4.3 billion at December 31, 2022 compared to 12,730 units and approximately \$5.8 billion at December 31, 2021. The average price of homes in backlog increased to \$472,200 at December 31, 2022 from \$454,200 at December 31, 2021. Backlog may be impacted by customer cancellations for various reasons that are beyond our control, such as the customer's failure to obtain mortgage financing, inability to sell an existing home, job loss or a variety of other reasons. In any period, a portion of the cancellations that we experience are related to new sales that occurred during the same period, and a portion are related to sales that occurred in prior periods and therefore appeared in the opening backlog for the current period. Expressed as the total of all cancellations during the period as a percentage of gross sales during the period, our cancellation rate was 14.2%, 9.2% and 14.9% in 2022, 2021, and 2020, respectively. During the four quarters of each of 2022, 2021 and 2020, approximately 4% in 2022, 3% in 2021 and 6% in 2020 of a reporting quarter's opening backlog cancelled during the quarter. We can provide no assurance that our historical cancellation rates are indicative of the actual cancellation rate that may occur in future periods. Other than those units that are cancelled, and subject to potential construction delays due to continued supply chain disruptions, we expect to settle substantially all of our December 31, 2022 backlog during 2023. See "Risk Factors" in Item 1A and "Seasonality" in Item 7 of this Form 10-K.

Further discussion of settlements, new orders and backlog activity by our homebuilding reportable segment for each of the last three years can be found in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Item 7 of this Form 10-K.

Construction

We utilize independent subcontractors under fixed price contracts to perform construction work on our homes. We use many independent subcontractors in our various markets and we are not dependent on any single subcontractor or on a small number of subcontractors.

Sales and Marketing

Our preferred marketing method is for customers to visit a furnished model home featuring many built-in options and a landscaped lot. The garages of these model homes are usually converted into temporary sales centers where alternative facades and floor plans are displayed and designs for other models are available for review. Sales representatives are compensated predominantly on a commission basis.

Regulation

We and our subcontractors must comply with various federal, state and local zoning, building, environmental, advertising and consumer credit statutes, rules and regulations, as well as other regulations and requirements in connection with our construction and sales activities. All of these regulations have increased the cost to produce and market our products, and in some instances, have delayed our developers' ability to deliver finished lots to us. Counties and cities in which we build homes have at times declared moratoriums on the issuance of building permits and imposed other restrictions in the areas in which sewage treatment facilities and other public facilities do not reach minimum standards. In addition, our homebuilding operations are regulated in certain areas by restrictive zoning and density requirements that limit the number of homes that can be built within the boundaries of a particular area. To date, restrictive zoning laws and the imposition of moratoriums have not had a material adverse effect on our construction activities.

Competition and Market Factors

The housing industry is highly competitive. We compete with numerous homebuilders of varying size, ranging from local to national in scope, some of which have greater financial resources than we do. We also face competition from the home resale market. Our homebuilding operations compete primarily on the basis of price, location, design, quality, service and reputation. Historically, we have been one of the market leaders in each of the markets where we build homes.

The housing industry is cyclical and is affected by consumer confidence levels, prevailing economic conditions and interest rates. Other factors that affect the housing industry and the demand for new homes include: the availability and the cost of land, labor and materials; changes in consumer preferences; demographic trends; and the availability of mortgage finance programs. See “Risk Factors” in Item 1A of this Form 10-K for additional information regarding these risks.

We are dependent upon building material suppliers for a continuous flow of raw materials. Whenever possible, we utilize standard products available from multiple sources. In the past, such raw materials have been generally available to us in adequate supply, however, increased construction activity and demand for building materials, coupled with the ongoing effects of the COVID-19 pandemic, has led to supply chain disruptions and longer construction cycle times during 2021 and 2022.

Mortgage Banking

We provide a number of mortgage related services to our homebuilding customers through our mortgage banking operations. Our mortgage banking operations also include separate subsidiaries that broker title insurance and perform title searches in connection with mortgage loan closings for which they receive commissions and fees. Because NVRM originates mortgage loans almost exclusively for our homebuilding customers, NVRM is dependent on our homebuilding segment. In 2022, NVRM closed approximately 17,000 loans with an aggregate principal amount of approximately \$6.3 billion as compared to approximately 17,700 loans with an aggregate principal amount of approximately \$6.1 billion in 2021. NVRM’s mortgage loans in process that had not closed had an aggregate principal balance of approximately \$2.5 billion as of December 31, 2022 compared to approximately \$3.9 billion as of December 31, 2021.

NVRM sells almost all of the mortgage loans it closes to investors in the secondary markets on a servicing released basis, typically within 30 days from the loan closing. NVRM is an approved seller/servicer for Fannie Mae (“FNMA”) and Freddie Mac (“FHLMC”) mortgage loans and an approved seller/issuer of Ginnie Mae (“GNMA”), Department of Veterans Affairs (“VA”) and Federal Housing Administration (“FHA”) mortgage loans.

Regulation

NVRM is subject to the rules and regulations of FNMA, GNMA, FHLMC, VA and FHA. These rules and regulations restrict certain activities of NVRM. NVRM is currently eligible and expects to remain eligible to participate in such programs. In addition, NVRM is subject to regulation at the state and federal level, including regulations issued by the Consumer Financial Protection Bureau (the “CFPB”) with respect to specific origination, selling and servicing practices.

Competition and Market Factors

NVRM’s main competition comes from national, regional, and local mortgage bankers, mortgage brokers, credit unions and banks in each of these markets. NVRM competes primarily on the basis of customer service, variety of products offered, interest rates offered, prices of ancillary services and relative financing availability and costs.

Human Capital

As of December 31, 2022, we had approximately 6,550 full time employees, of whom approximately 5,500 worked in our homebuilding operations, and approximately 1,050 worked in our mortgage banking operations, compared to December 31, 2021, when we had approximately 6,600 full time employees, of whom approximately 5,600 worked in our homebuilding operations, and approximately 1,000 worked in our mortgage banking operations. None of our employees are covered by collective bargaining agreements.

Our employees are our most important asset. We are committed to hiring and developing an inclusive workplace with a strong diversity of backgrounds and perspectives. All of our employees must adhere to our code of ethics and standards of business conduct that sets standards for appropriate behavior in the workplace. Our compensation philosophy has been consistent for over 25 years and is designed to motivate and retain highly qualified and experienced employees.

We provide tools for the advancement of our employees by offering training and development opportunities that align with each employee’s responsibilities and career path. We strive to promote employees from within our workforce, as we believe this provides both long-term success and continuity to our operations and growth for our employees. Our focus is demonstrated by the tenure of our executives and our regional and division leaders.

Available Information

We file annual, quarterly and current reports, proxy statements and other information with the Securities and Exchange Commission (the “SEC”). These filings are available to the public over the internet at the SEC’s website at www.sec.gov.

Our principal internet website can be found at www.nvrinc.com. We make available free of charge on or through our website, access to our annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports as soon as reasonably practicable after such material is electronically filed, or furnished, to the SEC.

Our website also includes a corporate governance section which contains our Corporate Governance Guidelines (which includes our Directors’ Independence Standards), Code of Ethics and Standards of Business Conduct, Board Committee Charters, Policies and Procedures for the Consideration of Board of Director Candidates, and Policies and Procedures Regarding Communications with the NVR, Inc. Board of Directors, the Independent Lead Director and the Non-Management Directors as a Group.

Forward-Looking Statements

Some of the statements in this Form 10-K, as well as statements made by us in periodic press releases or other public communications, constitute “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995, Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Certain, but not necessarily all, of such forward-looking statements can be identified by the use of forward-looking terminology, such as “believes,” “expects,” “may,” “will,” “should,” or “anticipates” or the negative thereof or other comparable terminology. All statements other than of historical facts are forward looking statements. Forward-looking statements contained in this document include those regarding market trends, NVR’s financial position, business strategy, the outcome of pending litigation, investigations or similar contingencies, projected plans and objectives of management for future operations. Such forward-looking statements involve known and unknown risks, uncertainties and other factors that may cause the actual results or performance of NVR to be materially different from future results, performance or achievements expressed or implied by the forward-looking statements. Such risk factors include, but are not limited to the following: the economic impact of COVID-19 and related supply chain disruptions, general economic and business conditions (on both a national and regional level); interest rate changes; access to suitable financing by NVR and NVR’s customers; increased regulation in the mortgage banking industry; the ability of our mortgage banking subsidiary to sell loans it originates into the secondary market; competition; the availability and cost of land and other raw materials used by NVR in its homebuilding operations; shortages of labor; weather related slow-downs; building moratoriums; governmental regulation; fluctuation and volatility of stock and other financial markets; mortgage financing availability; and other factors over which NVR has little or no control. NVR undertakes no obligation to update such forward-looking statements except as required by law.

Item 1A. Risk Factors.

Our business is affected by the risks generally incident to the residential construction business, including, but not limited to:

- actual and expected direction of interest rates, which affect the availability of mortgage financing for potential purchasers of homes;
- the availability of adequate land in desirable locations on favorable terms;
- employment levels, consumer confidence and spending and unexpected changes in customer preferences; and
- changes in the national economy and in the local economies of the markets in which we operate.

All of these risks are discussed in detail below.

Business and Industry Risks

An economic downturn or decline in economic conditions could adversely affect our business and our results of operations.

Demand for new homes is sensitive to economic changes driven by conditions such as employment levels, job growth, consumer confidence, inflation and interest rates. If the housing industry suffers a downturn, our sales may decline which could have a material adverse effect on our profitability, stock performance, ability to service our debt obligations and future cash flows.

Interest rate movements, inflation and other economic factors can negatively impact our business.

High rates of inflation generally affect the homebuilding industry adversely because of their adverse impact on interest rates. High interest rates not only increase the cost of borrowed funds to homebuilders but also have a significant adverse effect on housing demand and on the affordability of permanent mortgage financing to prospective purchasers. We are also subject to potential volatility in the price of commodities that impact costs of materials used in our homebuilding business. Increases in prevailing interest rates could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

Our financial results also are affected by the risks generally incident to our mortgage banking business, including interest rate levels, the impact of government regulation on mortgage loan originations and servicing and the need to issue forward commitments to fund and sell mortgage loans. Our homebuilding customers account for almost all of our mortgage banking business. The volume of our continuing homebuilding operations therefore affects our mortgage banking business.

Our mortgage banking business also is affected by interest rate fluctuations. We also may experience marketing losses resulting from daily increases in interest rates to the extent we are unable to match interest rates and amounts on loans we have committed to originate with forward commitments from third parties to purchase such loans. Increases in interest rates may have a material adverse effect on our mortgage banking revenue, profitability, stock performance, ability to service our debt obligations and future cash flows.

Our operations may also be adversely affected by other economic factors within our markets such as negative changes in employment levels, job growth, wage growth, consumer confidence and household formation and availability of mortgage financing, one or all of which could result in reduced demand or price depression from current levels. Such negative trends could have a material adverse effect on homebuilding operations.

These factors and thus, the homebuilding and mortgage banking businesses, have at times in the past been cyclical in nature. Any downturn in the national economy or the local economies of the markets in which we operate could have a material adverse effect on our sales, profitability, stock performance and ability to service our debt obligations. In particular, during 2022, approximately 16% of our home settlements, accounting for 21% of our homebuilding revenue, occurred in the Washington, D.C. metropolitan area. Thus, we are dependent to a significant extent on the economy and demand for housing in that market.

Because almost all of our customers require mortgage financing, the availability of suitable mortgage financing could impair the affordability of our homes, lower demand for our products, and limit our ability to fully deliver our backlog.

Our business and earnings depend on the ability of our potential customers to obtain mortgages for the purchase of our homes. In addition, many of our potential customers must sell their existing homes in order to buy a home from us. The tightening of credit standards and the availability of suitable mortgage financing could prevent customers from buying our homes and could prevent buyers of our customers' homes from obtaining mortgages they need to complete that purchase, either of which could result in potential customers' inability to buy a home from us. If potential customers or the buyers of our customers' current homes are not able to obtain suitable financing, the result could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

If our ability to sell mortgages to investors is impaired, we may be required to fund these commitments ourselves, or we may not be able to originate loans at all.

Our mortgage banking business sells all of the loans it originates into the secondary market, usually within 30 days from the date of closing, and has up to \$150 million available under a repurchase agreement to fund mortgage closings. See "Management's Discussion and Analysis of Financial Condition and Results of Operations – Liquidity and Capital Resources" in Item 7 of this Form 10-K for more information about the repurchase agreement. In the event that disruptions to the secondary markets tighten or eliminate the available liquidity within the secondary markets for mortgage loans, or the underwriting requirements by our secondary market investors continue to become more stringent, our ability to sell future mortgages could decline and we could be required, among other things, to fund our commitments to our buyers with our own financial resources, which is limited, or require our home buyers to find another source of financing. The result of such secondary market disruption could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

If the market value of our inventory or controlled lot position declines, our profit could decrease and we may incur losses.

Inventory risk can be substantial for homebuilders. The market value of building lots and housing inventories can fluctuate significantly as a result of changing market conditions. In addition, inventory carrying costs can be significant and can result in losses in a poorly performing community or market. We must continuously acquire lots for expansion into new markets as well as for replacement and expansion within our current markets, which we generally accomplish by entering into LPAs and paying forfeitable deposits under the LPAs to developers for the contractual right to acquire the lots. In the event of adverse changes in economic, market or community conditions, we may cease further building activities in certain communities or restructure existing LPAs, resulting in forfeiture of some or all of any remaining land contract deposit paid to the developer. We may also have significant impairments of land under development. The forfeiture of land contract deposits or inventory impairments may result in a loss that could have a material adverse effect on our profitability, stock performance, ability to service our debt obligations and future cash flows.

We face competition in our homebuilding and mortgage banking operations.

The homebuilding industry is highly competitive. We compete with numerous homebuilders of varying size, ranging from local to national in scope, some of whom have greater financial resources than we do. We face competition:

- for suitable and desirable lots at acceptable prices;
- from selling incentives offered by competing builders within and across developments; and
- from the existing home resale market.

Our homebuilding operations compete primarily on the basis of price, location, design, quality, service and reputation.

The mortgage banking industry is also competitive. Our main competition comes from national, regional and local mortgage bankers, credit unions, banks and mortgage brokers in each of these markets. Our mortgage banking operations compete primarily on the basis of customer service, variety of products offered, interest rates offered, prices of ancillary services and relative financing availability and costs.

We might not be able to continue to compete successfully in our homebuilding or mortgage banking operations. An inability to effectively compete may have an adverse impact on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

Our inability to secure and control an adequate inventory of lots could adversely impact our operations.

The results of our homebuilding operations depend upon our continuing ability to control an adequate number of homebuilding lots in desirable locations. There can be no assurance that an adequate supply of building lots will continue to be available to us on terms similar to those available in the past, or that we will not be required to devote a greater amount of capital to controlling building lots than we have historically. An insufficient supply of building lots in one or more of our markets, an inability of our developers to deliver finished lots in a timely fashion due to their inability to secure financing to fund development activities or for other reasons, or our inability to purchase or finance building lots on reasonable terms could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

A shortage of building materials or labor, or increases in materials or labor costs may adversely impact our operations.

The homebuilding business has from time to time experienced building material and labor shortages, including fluctuating lumber prices and supply. In addition, strong construction market conditions could restrict the labor force available to our subcontractors and us in one or more of our markets. Significant increases in costs resulting from these shortages, or delays in construction of homes, could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

We rely on subcontractors to construct our homes. The failure of our subcontractors to properly construct our homes may be costly.

We engage subcontractors to perform the actual construction of our homes. Despite our quality control efforts, we may discover that our subcontractors have engaged in improper construction practices. The occurrence of such events could require us to repair the homes in accordance with our standards and as required by law. The cost of satisfying our legal obligations in these instances may be significant, and we may be unable to recover the cost of repairs from subcontractors, suppliers and insurers.

Product liability litigation and warranty claims may adversely impact our operations.

Construction defect and home warranty claims are common and can represent a substantial risk for the homebuilding industry. The cost of insuring against construction defect and product liability claims, as well as the claims themselves, can be high. In addition, insurance companies limit coverage offered to protect against these claims. Further restrictions on coverage availability, or significant increases in premium costs or claims, could have a material adverse effect on our financial results.

We are subject to litigation proceedings that could harm our business if an unfavorable ruling were to occur.

From time to time, we are involved in litigation and other legal proceedings relating to claims arising from our operations in the normal course of business. As described in, but not limited to, Item 3, "Legal Proceedings" of this Form 10-K, we are currently subject to certain legal proceedings. Litigation is subject to inherent uncertainties, and unfavorable rulings may occur. These or other litigation or legal proceedings could materially affect our ability to conduct our business in the manner that we expect or otherwise adversely affect us should an unfavorable ruling occur.

If the underwriting quality of our mortgage originations is found to be deficient, our profit could decrease and we may incur losses.

We originate several different loan products to our customers to finance the purchase of their home. We sell all of the loans we originate into the secondary mortgage market generally within 30 days from the date of closing. All of the loans that we originate are underwritten to the standards and specifications of the ultimate investor. Insofar as we underwrite our originated loans to those standards, we bear no increased concentration of credit risk from the issuance of loans, except in certain limited instances where

repurchases or early payment default occur. In the event that a substantial number of the loans that we have originated fall into default and the investors to whom we sold the loans determine that we did not underwrite the loans in accordance with their requirements, we could be required to repurchase the loans from the investor or indemnify the investor for any losses incurred. Any resulting losses could have a material adverse effect on our profitability, stock performance, ability to service our debt obligations and future cash flows.

We may be subject to claims on mortgage loans sold to third parties.

Our mortgage banking operations may be responsible for losses associated with mortgage loans originated and sold to investors in the event of errors or omissions relating to certain representations and warranties that the loans sold meet certain requirements, including representations as to underwriting standards, the type of collateral, the existence of private mortgage insurance, and the validity of certain borrower representations in connection with the loan. The resolution of claims related to alleged breaches of these representations and warranties and repurchase claims could have a material adverse effect on our financial condition, cash flows and results of operations and could result in losses that exceed existing estimates and accruals. Because of the uncertainties inherent in estimating these matters, there can be no assurance that any amounts reserved will be adequate or that any potential inadequacies will not have a material adverse effect on our results of operations.

The loss of key personnel could adversely impact our business.

We rely on our key personnel to effectively operate and manage our business. Specifically, our future success depends heavily on the performance of our senior management team. Our business may be adversely affected if we are unable to retain key personnel or attract qualified personnel to manage our business.

Our failure to maintain the security of our electronic and other confidential information could expose us to liability and materially adversely affect our financial condition and results of operations.

Privacy, security, and compliance concerns have continued to increase as technology has evolved. As part of our normal business activities, we collect and store certain confidential information, including personal information of homebuyers/borrowers and information about employees, vendors and suppliers, some of which is processed and stored on third party vendor platforms. This information is entitled to protection under a number of federal and state laws. We may share some of this information with vendors who assist us with certain aspects of our business, particularly our mortgage and title businesses.

We have implemented systems and processes intended to secure our information technology systems and prevent unauthorized access to or loss of sensitive, confidential and personal data, including through the use of encryption and authentication technologies. Additionally, we have continued to elevate our monitoring capabilities to enhance early detection and rapid response to potential security anomalies. Our management team regularly reviews our response readiness and completes tabletop exercises on potential cybersecurity breaches with the assistance of a third party cybersecurity consultant. We also require employees to complete training sessions regarding matters such as cybersecurity threats and data protection on a regular basis. These security measures may not be sufficient for all possible occurrences and may be vulnerable to hacking, employee error, malfeasance, system error, faulty password management or other irregularities. Further, development and maintenance of these measures are costly and require ongoing monitoring and updating as technologies change and efforts to overcome security measures become increasingly sophisticated.

Our failure to maintain the security of the data we are required to protect, including via the penetration of our network security and the misappropriation of confidential and personal information, could result in business disruption, damage to our reputation, financial obligations to third parties, fines, penalties, regulatory proceedings and private litigation with potentially large costs, and also in deterioration in customers' confidence in us and other competitive disadvantages, and thus could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

Volatility in the credit and capital markets may impact our ability to access necessary financing.

If we require working capital greater than that provided by our operations and our credit facility, we may be required to seek to increase the amount available under the facility or seek alternative financing, which might not be available on terms that are favorable or acceptable. If we are required to seek financing to fund our working capital requirements, volatility in credit or capital markets may restrict our flexibility to access financing. If we are at any time unsuccessful in obtaining sufficient capital to fund our planned homebuilding expenditures, we may experience a substantial delay in the completion of homes then under construction, or we may be unable to control or purchase finished building lots. Any delay could result in cost increases and could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

Our mortgage banking operations depend in part on the availability, cost and other terms of mortgage financing facilities, and may be adversely affected by any shortage or increased cost of such financing. Additional or replacement financing might not be available on terms that are favorable or acceptable. Our mortgage banking operations are also dependent upon the securitization market for mortgage-backed securities, and could be materially adversely affected by any fluctuation or downturn in such market.

Our current indebtedness may impact our future operations.

As of December 31, 2022 we had \$900 million in senior notes outstanding. Our existing indebtedness contains restrictive covenants and any future indebtedness may also contain such covenants. These covenants include, or could include, restrictions on our ability to create, incur, assume or guarantee secured debt, enter into sale and leaseback transactions and conditions related to mergers and/or the sale of assets. Substantial losses by us or other action or inaction by us or our subsidiaries could result in the violation of one or more of these covenants, which could result in decreased liquidity or a default on our current or future indebtedness, thereby having a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

Regulatory Risk

Government regulations and environmental matters could negatively affect our operations.

We are subject to various local, state and federal statutes, ordinances, rules and regulations concerning zoning, building design, construction and similar matters, including local regulations that impose restrictive zoning and density requirements in order to limit the number of homes that can eventually be built within the boundaries of a particular area. These regulations may further increase the cost to produce and market our products. In addition, we have from time to time been subject to, and may also be subject in the future to, periodic delays in our homebuilding projects due to building moratoriums in the areas in which we operate or delays in receiving the necessary governmental approvals. Changes in regulations that restrict homebuilding activities in one or more of our principal markets could have a material adverse effect on our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

In addition, new housing developments are often subject to various assessments or impact fees for schools, parks, streets, highways and other public improvements. The cost of these assessments is subject to substantial change and could cause increases in the construction cost of our homes, which, in turn, could reduce our profitability.

We are also subject to a variety of local, state and federal statutes, ordinances, rules and regulations concerning the protection of health and the environment. We are subject to a variety of environmental conditions that can affect our business and our homebuilding projects. The particular environmental laws that apply to any given homebuilding site vary greatly according to the location and environmental condition of the site and the present and former uses of the site and adjoining properties. Environmental laws and conditions may result in delays, cause us to incur substantial compliance and other costs, or prohibit or severely restrict homebuilding activity in certain environmentally sensitive regions or areas, thereby adversely affecting our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

Increased regulation of the mortgage industry could harm our future sales and earnings.

The mortgage industry remains under intense scrutiny and continues to face increasing regulation at the federal, state and local level. Potential changes to federal laws and regulations could have the effect of limiting the activities of FNMA and FHLMC, the entities that provide liquidity to the secondary mortgage market, which could lead to increases in mortgage interest rates. Tighter underwriting requirements and fee restrictions and the increasingly complex regulatory environment may negatively impact our mortgage loan origination business in the form of lower demand, decreased revenue and increased operating costs.

We are an approved seller/servicer of FNMA and FHLMC mortgage loans and an approved seller/issuer of GNMA, VA and FHA mortgage loans, and are subject to all of those agencies' rules and regulations. Any significant impairment of our eligibility to sell/service these loans could have a material adverse impact on our mortgage operations. In addition, we are subject to regulation at the state and federal level with respect to specific origination, selling and servicing practices including the Real Estate Settlement and Protection Act. Adverse changes in governmental regulation may have a negative impact on our mortgage loan origination business.

Risks Related to Other External Risks

Health epidemics, including the recent COVID-19 pandemic, have had, and could in the future have, an adverse impact on our business and operations, and the markets, states and local communities in which we operate.

Our business and operations could be adversely affected by health epidemics, including the COVID-19 pandemic, impacting the markets, states and local communities in which we operate. The COVID-19 pandemic had a significant impact on our supply chains. General uncertainty continues regarding the near-term and long-term impact of the COVID-19 virus on the domestic and international economy and on public health.

The ultimate impact of the COVID-19 pandemic or a similar health epidemic is highly uncertain and subject to change. There is no guarantee that a future outbreak of COVID-19 or any other widespread epidemics will not occur. There is uncertainty regarding governmental actions that may occur, and the effects of economic relief efforts on the U.S. economy, either of which could be potential disruptors to our business. Over the long term, these disruptions could lower demand for our products, impair our ability to

sell and/or build homes in our normal manner, increase our losses on contract land deposits, and negatively impact our lending and secondary mortgage market activities. These developments and other consequences of an outbreak could materially and adversely affect our operations, profitability and cash flows.

Weather-related and other events beyond our control may adversely impact our operations.

Extreme weather or other events, such as significant snowfalls, hurricanes, tornadoes, earthquakes, forest fires, floods, terrorist attacks or war may affect our markets, our operations and our profitability. These events may impact our physical facilities or those of our suppliers or subcontractors and our housing inventories, causing us material increases in costs, or delays in construction of homes, which could have a material adverse effect upon our sales, profitability, stock performance, ability to service our debt obligations and future cash flows.

Our continued success is dependent on positive perceptions of us and our brands which, if eroded, could adversely affect our business and our relationships with our customers.

We believe that one of the reasons our customers buy from us, our employees choose NVR as a place of employment, and our vendors choose to do business with us is the reputation we have built over many years. To be successful in the future, we must continue to preserve our reputation. Reputational value is based in large part on perceptions, and broad access to social media makes it easy for anyone to provide public feedback that can influence perceptions of the brands under which we do business. It may be difficult to control negative publicity, regardless of whether it is accurate. While reputations may take decades to build, negative incidents can quickly erode trust and confidence, could damage our reputation, reduce the demand for our homes or negatively impact the morale and performance of our employees, all of which could adversely affect our business.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our corporate offices are located in Reston, Virginia, where we currently lease approximately 61,000 square feet of office space. The current corporate office lease expires in April 2026.

In connection with the operation of the homebuilding segment, we lease production facilities in the following seven locations: Thurmont, Maryland; Burlington County, New Jersey; Farmington, New York; Kings Mountain, North Carolina; Darlington, Pennsylvania; Portland, Tennessee; and Richmond, Virginia. These facilities range in size from approximately 40,000 square feet to 400,000 square feet and total approximately one million square feet. Each of these leases contains various options for extensions of the lease and for the purchase of the facility. Additionally, certain facility leases have early termination options. These leases currently expire between 2027 and 2040. During 2022 we entered into a lease agreement for a new production facility in Fayetteville, North Carolina of approximately 145,000 square feet. The lease has a term of 10 years from the commencement date which is expected to be in the fourth quarter of 2023 and contains an option for three five year extensions. In addition, we own a production facility of approximately 100,000 square feet in Dayton, Ohio. Our plant utilization was 58% and 61% of total capacity in 2022 and 2021, respectively.

In connection with both our homebuilding and mortgage banking businesses, we also lease office space in multiple locations for homebuilding divisional offices and mortgage banking and title services branches under leases expiring at various times through 2030, none of which are individually material to our business.

We anticipate that, upon expiration of existing production facility and office leases, we will be able to renew them or obtain comparable facilities on terms acceptable to us.

Item 3. Legal Proceedings.

We are involved in various litigation matters arising in the ordinary course of business. In the opinion of management, and based on advice of legal counsel, these matters are not expected to have a material adverse effect on our financial position, results of operations or cash flows. Legal costs incurred in connection with outstanding litigation matters are expensed as incurred.

Item 4. Mine Safety Disclosures.

Not applicable.

PART II

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

(dollars in thousands, except per share data)

Our shares of common stock are listed and principally traded on the New York Stock Exchange under the trading symbol “NVR.” As of the close of business on February 13, 2023, there were 178 shareholders of record of our common stock.

We have never paid a cash dividend on our shares of common stock and have no current intention to do so in the future.

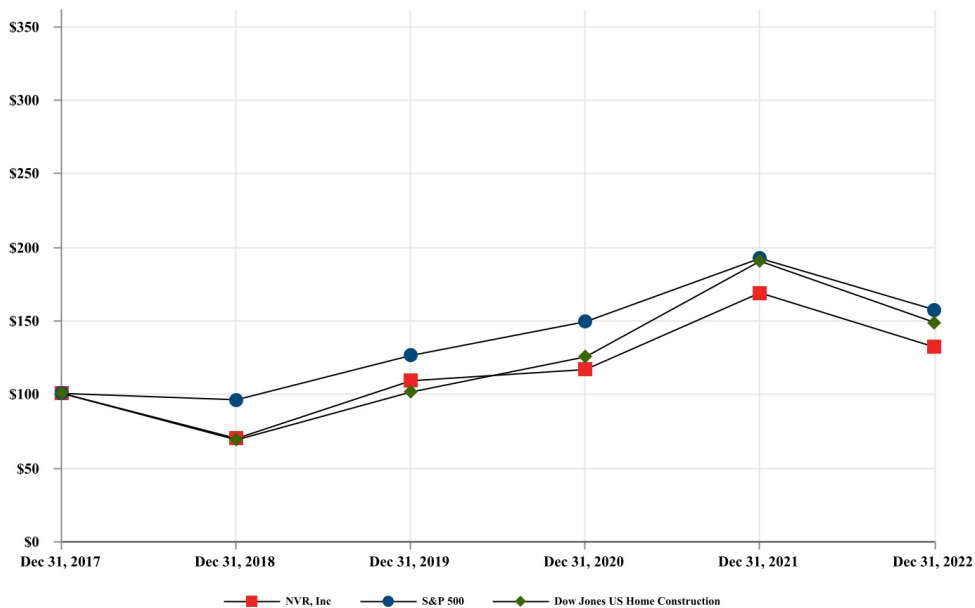
We had two share repurchase authorizations outstanding during the quarter ended December 31, 2022. On May 4, 2022 and August 3, 2022, we publicly announced the Board of Directors’ approval to repurchase our outstanding common stock in one or more open market and/or privately negotiated transactions, up to an aggregate of \$500,000 per authorization. Repurchase activity is conducted pursuant to publicly announced Board authorizations, and is typically executed in accordance with the safe-harbor provisions of Rule 10b-18 promulgated under the Securities Exchange Act of 1934, as amended. In addition, the Board resolutions authorizing us to repurchase shares of our common stock specifically prohibit us from purchasing shares from our officers, directors, Profit Sharing Plan Trust or Employee Stock Ownership Plan Trust. The repurchase authorizations do not have expiration dates. The following table provides information regarding common stock repurchases during the quarter ended December 31, 2022:

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
October 1 - 31, 2022	23,573	\$ 4,071.41	23,573	\$ 527,875
November 1 - 30, 2022	4,931	\$ 4,094.45	4,931	\$ 507,685
December 1 - 31, 2022	—	\$ —	—	\$ 507,685
Total	28,504	\$ 4,075.40	28,504	

The information required by this item with respect to securities authorized for issuance under equity compensation plans is provided under Item 12 of this Form 10-K.

STOCK PERFORMANCE GRAPH

The following graph compares the cumulative total return to holders of our common stock since December 31, 2017 with the Dow Jones US Home Construction Index and the S&P 500 Index for that same period, assuming that \$100 was invested in NVR stock and the indices on December 31, 2017.



Comparison of 5 Year Cumulative Total Return	For the Year Ended December 31,											
	2017		2018		2019		2020		2021		2022	
NVR, Inc.	\$	100	\$	69	\$	109	\$	116	\$	168	\$	131
S&P 500	\$	100	\$	96	\$	126	\$	149	\$	192	\$	157
Dow Jones US Home Construction	\$	100	\$	68	\$	101	\$	125	\$	190	\$	148

Item 6. Reserved.

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

(dollars in thousands, except per share data)

Results of Operations

This section of this Form 10-K generally discusses 2022 and 2021 items and year-to-year comparisons between 2022 and 2021. Discussions of 2020 items and year-to-year comparisons between 2021 and 2020 that are not included in this Form 10-K can be found in "Management's Discussion and Analysis of Financial Condition and Results of Operations" in Part II, Item 7 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2021.

Overview**Business Environment and Current Outlook**

During the second quarter of 2022, we began to experience a significant decline in the demand for new homes as home affordability was negatively impacted by rising mortgage interest rates and higher home prices. In addition to affordability concerns, current market conditions including a high rate of inflation, anticipated further interest rate increases and the possibility of a recession have contributed to lower consumer confidence levels. We also faced higher costs for certain materials and labor as strong demand in prior quarters has resulted in increased construction activity and demand for building materials and contractor labor. These factors have led to supply chain disruptions and longer construction cycle times. We continue to work closely with our suppliers and trade partners to manage these disruptions and reduce construction cycle times.

We expect that demand for new homes will continue to be negatively impacted by higher mortgage interest rates and lower consumer confidence driven by affordability issues, high inflation, anticipated further interest rate increases and the possibility of a recession. We also expect to continue to face cost pressures related to building materials, labor and land costs, as well as pricing pressures, which will impact profit margins based on our ability to manage these costs while balancing sales pace and declining home prices. Although we are unable to predict the extent to which this will impact our operational and financial performance, we believe that we are well positioned to take advantage of opportunities that may arise from future economic and homebuilding market volatility due to the strength of our balance sheet and our disciplined lot acquisition strategy.

Business

Our primary business is the construction and sale of single-family detached homes, townhomes and condominium buildings, all of which are primarily constructed on a pre-sold basis. To fully serve customers of our homebuilding operations, we also operate a mortgage banking and title services business. We primarily conduct our operations in mature markets. Additionally, we generally grow our business through market share gains in our existing markets and by expanding into markets contiguous to our current active markets. Our four homebuilding reportable segments consist of the following regions:

<i>Mid Atlantic:</i>	Maryland, Virginia, West Virginia, Delaware and Washington, D.C.
<i>North East:</i>	New Jersey and Eastern Pennsylvania
<i>Mid East:</i>	New York, Ohio, Western Pennsylvania, Indiana and Illinois
<i>South East:</i>	North Carolina, South Carolina, Georgia, Florida and Tennessee

Our lot acquisition strategy is predicated upon avoiding the financial risks associated with direct land ownership and development. We generally do not engage in land development (see discussion below of our land development activities). Instead, we typically acquire finished lots from various third party land developers pursuant to LPAs. These LPAs require deposits, typically ranging up to 10% of the aggregate purchase price of the finished lots, in the form of cash or letters of credit that may be forfeited if we fail to perform under the LPA. This strategy has allowed us to maximize inventory turnover, which we believe enables us to minimize market risk and to operate with less capital, thereby enhancing rates of return on equity and total capital.

In addition to constructing homes primarily on a pre-sold basis and utilizing what we believe is a conservative lot acquisition strategy, we focus on obtaining and maintaining a leading market position in each market we serve. This strategy allows us to gain valuable efficiencies and competitive advantages in our markets, which we believe contributes to minimizing the adverse effects of regional economic cycles and provides growth opportunities within these markets. Our continued success is contingent upon our ability to control an adequate supply of finished lots on which to build.

In limited specific strategic circumstances, we deviate from our historical lot acquisition strategy and engage in joint venture arrangements with land developers or directly acquire raw ground already zoned for its intended use for development. Once we acquire control of raw ground, we determine whether to sell the raw parcel to a developer and enter into an LPA with the developer to purchase the finished lots or to hire a developer to develop the land on our behalf. While joint venture arrangements and direct land development activity are not our preferred method of acquiring finished building lots, we may enter into additional transactions in the future on a limited basis where there exists a compelling strategic or prudent financial reason to do so. We expect, however, to continue to acquire substantially all of our finished lot inventory using LPAs with forfeitable deposits.

As of December 31, 2022, we controlled approximately 131,900 lots as discussed below.

Lot Purchase Agreements ("LPAs")

We controlled approximately 125,100 lots under LPAs with third parties through deposits in cash and letters of credit totaling approximately \$543,100 and \$6,900, respectively. Included in the number of controlled lots are approximately 11,200 lots for which we have recorded a contract land deposit impairment reserve of approximately \$57,100 as of December 31, 2022.

Joint Venture Limited Liability Corporations ("JVs")

We had an aggregate investment totaling approximately \$27,200 in five JVs, expected to produce approximately 5,300 lots. Of the lots to be produced by the JVs, approximately 4,900 lots were controlled by us and approximately 400 lots were either under contract with unrelated parties or currently not under contract.

Land Under Development

We owned land with a carrying value of approximately \$27,100 that we intend to develop into approximately 1,900 finished lots. We had additional funding commitments of approximately \$2,100 under a joint development agreement related to one project, a portion of which we expect will be offset by development credits of approximately \$900.

See Notes 3, 4 and 5 to the consolidated financial statements included herein for additional information regarding LPAs, JVs and land under development, respectively.

Raw Land Purchase Agreements

In addition to the lots we currently control as discussed above, we have certain properties under contract with land owners that are expected to yield approximately 19,300 lots. Some of these properties may require rezoning or other approvals to achieve the expected yield. These properties are controlled with cash deposits totaling approximately \$10,100 as of December 31, 2022, of which approximately \$2,500 is refundable if we do not perform under the contract. We generally expect to assign the raw land contracts to a land developer and simultaneously enter into an LPA with the assignee if the project is determined to be feasible.

Key Financial Results

Our consolidated revenues for the year ended December 31, 2022 totaled \$10,526,434, an increase of 18% from \$8,951,025 in 2021. Our net income for 2022 was \$1,725,575, or \$491.82 per diluted share, increases of 40% and 53% compared to 2021 net income and diluted earnings per share, respectively. Our homebuilding gross profit margin percentage was 25.8% in 2022 compared to 22.3% in 2021. Settlements for the year ended December 31, 2022 totaled 22,732 units, an increase of 6% from 2021. New orders, net of cancellations ("New Orders") during 2022 were 19,164, a decrease of 16% from 2021 while our average New Order sales price increased 6% to \$462.8 in 2022. Our backlog of homes sold but not yet settled with the customer as of December 31, 2022 decreased on a unit basis by 28% to 9,162 units and decreased on a dollar basis by 25% to \$4,325,876 when compared to December 31, 2021. Income before tax from our mortgage banking segment totaled \$122,150 in 2022, a decrease of 29% when compared to \$171,604 in 2021 due primarily to a decrease in secondary marketing gains on sales of loans.

Homebuilding Operations

The following table summarizes the results of our consolidated homebuilding operations and certain operating activity for each of the last three years:

	Year Ended December 31,		
	2022	2021	2020
Financial data:			
Revenues	\$ 10,326,770	\$ 8,701,693	\$ 7,328,889
Gross profit margin	\$ 2,664,499	\$ 1,938,578	\$ 1,391,488
Gross profit margin percentage	25.8 %	22.3 %	19.0 %
Selling, general and administrative expenses	\$ 532,353	\$ 474,808	\$ 431,008
Operating data:			
New orders (units)	19,164	22,721	23,082
Average new order price	\$ 462.8	\$ 436.1	\$ 380.1
Settlements (units)	22,732	21,540	19,766
Average settlement price	\$ 454.3	\$ 403.9	\$ 370.8
Backlog (units)	9,162	12,730	11,549
Average backlog price	\$ 472.2	\$ 454.2	\$ 396.2
New order cancellation rate	14.2 %	9.2 %	14.9 %

Consolidated Homebuilding

Homebuilding revenues increased 19% in 2022 compared to 2021, as a result of a 6% increase in the number of units settled and a 12% increase in the average settlement price year over year. The increase in the number of units settled was primarily attributable to a 10% higher backlog unit balance entering 2022 compared to the same period in 2021, offset partially by an 11% decrease in New Orders in the first six months of 2022 compared to the same period in 2021. The increase in the average settlement price was primarily attributable to a 15% higher average sales price of units in backlog entering 2022 compared to the same period of 2021, coupled with a 10% increase in the average sales price of New Orders during the first six months of 2022 compared to backlog entering 2021. The gross profit margin percentage in 2022 increased to 25.8% from 22.3% in 2021. Gross profit margins were favorably impacted by the aforementioned increase in the average settlement price attributable to improved pricing power in prior quarters and improved leveraging of certain operating costs attributable to the increase in settlement activity year over year. These favorable factors were partially offset by higher material and labor costs year over year.

The number of New Orders decreased 16% while the average sales price of New Orders increased 6% in 2022 when compared to 2021. New Orders were negatively impacted in each of our reportable segments by the significant increase in mortgage interest rates during 2022, resulting in a decline in affordability and in turn, led to lower absorption rates and to an increase in the cancellation rate year over year. Additionally, New Orders were also adversely impacted by a 2% decrease in the average number of active communities year over year. The increase in the average sales price of New Orders was attributable to significant price appreciation resulting from strong demand through the first quarter of 2022.

Selling, general and administrative ("SG&A") expenses in 2022 increased by \$57,545 compared to 2021, but as a percentage of revenue decreased to 5.2% in 2022 from 5.5% in 2021 due to improved leveraging of SG&A costs. The increase in SG&A expense year over year was attributable primarily to an increase of approximately \$24,800 in equity-based compensation due to a four year block grant of Options and RSUs in the second quarter of 2022, as well as, to an increase of approximately \$9,900 in selling and marketing costs and an increase of approximately \$6,500 in personnel costs attributable to higher average headcount year over year.

Our backlog represents homes sold but not yet settled with our customers. As of December 31, 2022, our backlog decreased on a unit basis by 28% to 9,162 units and on a dollar basis by 25% to \$4,325,876 when compared to 12,730 units and \$5,782,035, respectively, as of December 31, 2021. The decrease in both backlog units and dollars was primarily attributable to a 21% decrease in New Orders during the six-month period ending December 31, 2022 compared to the same period in 2021.

Our backlog may be impacted by customer cancellations for various reasons that are beyond our control, such as failure to obtain mortgage financing, inability to sell an existing home, job loss, or a variety of other reasons. In any period, a portion of the cancellations that we experience are related to new sales that occurred during the same period, and a portion are related to sales that occurred in prior periods and therefore appeared in the beginning backlog for the current period. Calculated as the total of all cancellations during the period as a percentage of gross sales during the period, our cancellation rate was approximately 14%, 9% and 15% in 2022, 2021, and 2020, respectively. During the four quarters of each of 2022, 2021 and 2020, approximately 4% in 2022, 3% in 2021 and 6% in 2020, of a reporting quarter's opening backlog cancelled during the quarter. We can provide no assurance that our historical cancellation rates are indicative of the actual cancellation rate that may occur in future years. Other than those units that are cancelled, and subject to potential construction delays due to continued supply chain disruptions, we expect to settle substantially all of our December 31, 2022 backlog during 2023. See "Risk Factors" in Item 1A of this Form 10-K.

The backlog turnover rate is impacted by various factors, including, but not limited to, changes in New Order activity, internal production capacity, external subcontractor capacity, building material availability and other external factors over which we do not exercise control.

Reportable Homebuilding Segments

Homebuilding segment profit includes all revenues and income generated from the sale of homes, less the cost of homes sold, SG&A expenses, and a corporate capital allocation charge determined by corporate management. The corporate capital allocation charge eliminates in consolidation and is based on the segment's average net assets employed. The corporate capital allocation charged to the operating segment allows the Chief Operating Decision Maker to determine whether the operating segment is providing the desired rate of return after covering our cost of capital.

We record impairment charges on contract land deposits when we determine that it is probable that recovery of the deposit is impaired. For segment reporting purposes, impairments on contract land deposits are generally charged to the operating segment upon the termination of an LPA with the developer, or the restructuring of an LPA resulting in the forfeiture of the deposit. We evaluate our entire net contract land deposit portfolio for impairment each quarter. For presentation purposes below, the contract land deposit reserve at December 31, 2022 and 2021 has been allocated to the reportable segments for the respective years to show contract land deposits on a net basis. The net contract land deposit balances below also include approximately \$6,900 and \$10,100 at December 31, 2022 and 2021, respectively, of letters of credit issued as deposits in lieu of cash.

The following tables summarize certain homebuilding operating activity by reportable segment for each of the last three years:

Selected Segment Financial Data:

	Year Ended December 31,		
	2022	2021	2020
Revenues:			
Mid Atlantic	\$ 4,766,329	\$ 4,049,871	\$ 3,668,542
North East	892,543	767,828	538,772
Mid East	2,147,262	1,891,729	1,524,667
South East	2,520,636	1,992,265	1,596,908

	Year Ended December 31,		
	2022	2021	2020
Gross profit margin:			
Mid Atlantic	\$ 1,280,596	\$ 987,926	\$ 690,058
North East	226,666	163,990	102,621
Mid East	476,659	391,405	282,443
South East	751,734	469,520	327,483

	Year Ended December 31,		
	2022	2021	2020
Gross profit margin percentage:			
Mid Atlantic	26.9 %	24.4 %	18.8 %
North East	25.4 %	21.4 %	19.0 %
Mid East	22.2 %	20.7 %	18.5 %
South East	29.8 %	23.6 %	20.5 %

	Year Ended December 31,		
	2022	2021	2020
Segment profit:			
Mid Atlantic	\$ 994,027	\$ 734,941	\$ 437,849
North East	157,333	105,432	50,677
Mid East	343,236	271,756	168,605
South East	577,030	329,982	205,029

Segment Operating Activity:

	Year Ended December 31,					
	2022		2021		2020	
	Units	Average Price	Units	Average Price	Units	Average Price
New orders, net of cancellations:						
Mid Atlantic	7,816	\$ 526.6	8,749	\$ 522.4	9,230	\$ 453.8
North East	1,679	\$ 528.3	1,685	\$ 497.4	1,738	\$ 416.6
Mid East	4,344	\$ 400.5	5,567	\$ 369.3	5,780	\$ 330.9
South East	5,325	\$ 399.4	6,720	\$ 363.6	6,334	\$ 307.7
Total	19,164	\$ 462.8	22,721	\$ 436.1	23,082	\$ 380.1

	Year Ended December 31,					
	2022		2021		2020	
	Units	Average Price	Units	Average Price	Units	Average Price
Settlements:						
Mid Atlantic	9,042	\$ 527.1	8,310	\$ 487.3	8,363	\$ 438.6
North East	1,763	\$ 506.3	1,666	\$ 460.9	1,375	\$ 391.8
Mid East	5,518	\$ 389.1	5,414	\$ 349.4	4,719	\$ 323.1
South East	6,409	\$ 393.3	6,150	\$ 323.9	5,309	\$ 300.8
Total	<u>22,732</u>	<u>\$ 454.3</u>	<u>21,540</u>	<u>\$ 403.9</u>	<u>19,766</u>	<u>\$ 370.8</u>

	Year Ended December 31,					
	2022		2021		2020	
	Units	Average Price	Units	Average Price	Units	Average Price
Backlog:						
Mid Atlantic	3,692	\$ 536.3	4,918	\$ 534.8	4,479	\$ 470.9
North East	885	\$ 553.9	969	\$ 511.5	950	\$ 447.8
Mid East	1,853	\$ 403.2	3,027	\$ 381.3	2,874	\$ 344.5
South East	2,732	\$ 405.7	3,816	\$ 393.7	3,246	\$ 323.7
Total	<u>9,162</u>	<u>\$ 472.2</u>	<u>12,730</u>	<u>\$ 454.2</u>	<u>11,549</u>	<u>\$ 396.2</u>

Operating Data:

	Year Ended December 31,		
	2022	2021	2020
New order cancellation rate:			
Mid Atlantic	14.4 %	9.0 %	14.9 %
North East	12.2 %	8.6 %	13.1 %
Mid East	16.4 %	10.2 %	14.5 %
South East	12.6 %	8.8 %	15.8 %

	Year Ended December 31,		
	2022	2021	2020
Average active communities:			
Mid Atlantic	160	155	177
North East	36	34	40
Mid East	126	129	138
South East	93	106	112
Total	<u>415</u>	<u>424</u>	<u>467</u>

Homebuilding Inventory:

	As of December 31,	
	2022	2021
Sold inventory:		
Mid Atlantic	\$ 727,501	\$ 867,892
North East	156,798	154,053
Mid East	278,034	342,011
South East	413,576	439,892
Total (1)	<u>\$ 1,575,909</u>	<u>\$ 1,803,848</u>

	As of December 31,	
	2022	2021
Unsold lots and housing units inventory:		
Mid Atlantic	\$ 111,816	\$ 87,412
North East	23,013	14,656
Mid East	17,044	12,892
South East	31,791	14,193
Total (1)	\$ 183,664	\$ 129,153

- (1) Total segment inventory differs from consolidated inventory due to certain consolidation adjustments necessary to convert the reportable segments' results, which are predominantly maintained on a cash basis, to a full accrual basis for external financial statement presentation purposes. These consolidation adjustments are not allocated to our operating segments.

Lots Controlled and Land Deposits:

	As of December 31,	
	2022	2021
Total lots controlled:		
Mid Atlantic	48,200	47,900
North East	11,300	11,900
Mid East	21,800	23,700
South East	50,600	41,400
Total	131,900	124,900

	As of December 31,	
	2022	2021
Contract land deposits, net:		
Mid Atlantic	\$ 212,273	\$ 257,244
North East	54,558	51,257
Mid East	44,813	52,537
South East	191,332	146,246
Total	\$ 502,976	\$ 507,284

	Year Ended December 31,		
	2022	2021	2020
Contract land deposit impairments (recoveries), net:			
Mid Atlantic	\$ 3	\$ 16	\$ 114
North East	75	—	60
Mid East	369	10	293
South East	—	—	1,045
Total	\$ 447	\$ 26	\$ 1,512

Mid Atlantic

The Mid Atlantic segment had an approximate \$259,100, or 35%, increase in segment profit in 2022 compared to 2021, driven by improved gross profit margins and an increase in segment revenues of approximately \$716,500, or 18%, year over year. Segment revenues increased due primarily to a 9% increase in the number of units settled and an 8% increase in the average settlement price year over year. The increases in settlements and the average settlement price were primarily attributable to a 10% higher backlog unit balance and a 14% higher average sales price of units in backlog entering 2022 compared to backlog entering 2021. The Mid Atlantic segment's gross profit margin percentage increased to 26.9% in 2022 from 24.4% in 2021. Gross profit margins were favorably impacted by the aforementioned 8% increase in the average settlement price attributable to improved pricing power in prior quarters, offset partially by higher material and labor costs year over year.

Segment New Orders decreased 11% while the average sales price of New Orders increased 1% in 2022 compared to 2021. As previously discussed in the "Consolidated Homebuilding" section above, New Orders were negatively impacted by the significant increase in mortgage interest rates. The increase in the average sales price of New Orders was attributable to significant price appreciation resulting from strong demand through the first quarter of 2022.

North East

The North East segment had an approximate \$51,900, or 49%, increase in segment profit in 2022 compared to 2021, driven by an increase in segment revenues of approximately \$124,700, or 16%, year over year and improved gross profit margins. The increase in segment revenues was attributable to a 6% increase in the number of units settled and a 10% increase in the average settlement price year over year. The increase in the number of units settled was attributable to a 2% higher backlog unit balance entering 2022 compared to the backlog unit balance entering 2021, coupled with an 8% increase in New Orders in the segment during the first six months of 2022 compared to the same period in 2021. The increase in the average settlement price was primarily attributable to a 14% higher average sales price of units in backlog entering 2022 compared to backlog entering 2021. The segment's gross profit margin percentage increased to 25.4% in 2022 from 21.4% in 2021. Gross profit margins were favorably impacted by the aforementioned 10% increase in the average settlement price, offset partially by higher material and labor costs year over year.

Segment New Orders were flat while the average sales price of New Orders increased 6% in 2022 compared to 2021. New Orders were flat despite a 7% increase in the average number of active communities year over year due primarily to the impact of the significant increase in mortgage interest rates in 2022 as previously discussed in the "Consolidated Homebuilding" section above. The increase in the average sales price of New Orders was attributable to significant price appreciation resulting from strong demand through the first quarter of 2022.

Mid East

The Mid East segment had an approximate \$71,500, or 26%, increase in segment profit in 2022 compared to 2021. The increase in segment profit was driven by an increase of segment revenues of approximately \$255,500, or 14%, year over year and improved gross profit margins. Segment revenues increased due to increases in the number of units settled and the average settlement price of 2% and 11%, respectively, year over year. The increase in the number of units settled was largely attributable to a 5% higher backlog unit balance entering 2022 compared to the backlog unit balance entering 2021. The increase in the average settlement price was primarily attributable to an 11% higher average sales price of units in backlog entering 2022 compared to the same period in 2021, coupled with a 12% increase in the average sales price of New Orders in the first six months of 2022 compared to the same period in 2021. The segment's gross profit margin percentage increased to 22.2% in 2022 from 20.7% in 2021. Gross profit margins were favorably impacted by the aforementioned 11% increase in the average settlement price, offset partially by higher material and labor costs year over year.

Segment New Orders decreased 22% while the average sales price of New Orders increased 8% in 2022 compared to 2021. As previously discussed in the "Consolidated Homebuilding" section above, New Orders in 2022 were negatively impacted by the significant increase in mortgage interest rates. In addition, New Orders were also negatively impacted by a 2% decrease in the average number of active communities in 2022 compared to 2021. The increase in the average sales price of New Orders was attributable to significant price appreciation resulting from strong demand through the first quarter of 2022.

South East

The South East segment had an approximate \$247,000, or 75%, increase in segment profit in 2022 compared to 2021. The increase in segment profit was primarily driven by an increase in segment revenues of approximately \$528,400, or 27%, year over year and improved gross profit margins. The increase in revenues was attributable to a 4% increase in the number of units settled and a 21% increase in the average settlement price year over year. The increase in the number of units settled was primarily attributable to an 18% higher backlog unit balance entering 2022 compared to the same period in 2021, offset partially by an 18% decrease in New Orders in the first six months of 2022 compared to the same period in 2021. The increase in the average settlement price was primarily attributable to a 22% higher average sales price of units in backlog entering 2022 compared to the same period in 2021, coupled with a 21% increase in the average sales price of New Orders in the first six months of 2022 compared to the same period in 2021. The segment's gross profit margin percentage increased to 29.8% in 2022 from 23.6% in 2021. Gross profit margins were favorably impacted by the aforementioned 21% increase in the average settlement price, offset partially by higher material and labor costs year over year.

Segment New Orders decreased 21% while the average sales price of New Orders increased 10% in 2022 compared to 2021. The decrease in New Orders was primarily attributable to a 12% decrease in the average number of active communities, coupled with the impact of the significant increase in mortgage interest rates in 2022 as previously discussed in the "Consolidated Homebuilding" section above. The increase in the average sales price of New Orders was attributable to significant price appreciation resulting from strong demand through the first quarter of 2022.

Homebuilding Segment Reconciliations to Consolidated Homebuilding Operations

In addition to the corporate capital allocation and contract land deposit impairments discussed above, the other reconciling items between homebuilding segment profit and homebuilding consolidated profit before tax include unallocated corporate overhead (which includes all management incentive compensation), equity-based compensation expense, consolidation adjustments and external corporate interest expense. Our overhead functions, such as accounting, treasury and human resources, are centrally performed and the costs are not allocated to our operating segments. Consolidation adjustments consist of such items to convert the reportable segments' results, which are predominantly maintained on a cash basis, to a full accrual basis for external financial statement presentation purposes, and are not allocated to our operating segments. External corporate interest expense is primarily comprised of interest charges on our 3.00% Senior Notes due 2030, and is not charged to the operating segments because the charges are included in the corporate capital allocation discussed above.

	Year Ended December 31,		
	2022	2021	2020
Homebuilding consolidated gross profit:			
Mid Atlantic	\$ 1,280,596	\$ 987,926	\$ 690,058
North East	226,666	163,990	102,621
Mid East	476,659	391,405	282,443
South East	751,734	469,520	327,483
Consolidation adjustments and other	(71,156)	(74,263)	(11,117)
Homebuilding consolidated gross profit	<u>\$ 2,664,499</u>	<u>\$ 1,938,578</u>	<u>\$ 1,391,488</u>

	Year Ended December 31,		
	2022	2021	2020
Homebuilding consolidated profit before taxes:			
Mid Atlantic	\$ 994,027	\$ 734,941	\$ 437,849
North East	157,333	105,432	50,677
Mid East	343,236	271,756	168,605
South East	577,030	329,982	205,029
Reconciling items:			
Contract land deposit impairment reserve (1)	(27,300)	22,163	(24,633)
Equity-based compensation expense (2)	(78,931)	(53,587)	(47,548)
Corporate capital allocation (3)	302,904	252,787	239,233
Unallocated corporate overhead	(129,998)	(139,611)	(114,921)
Consolidation adjustments and other (4)	(1,719)	(56,511)	54,561
Corporate interest income	32,457	2,840	8,464
Corporate interest expense	(37,995)	(51,393)	(39,356)
Reconciling items sub-total	<u>59,418</u>	<u>(23,312)</u>	<u>75,800</u>
Homebuilding consolidated profit before taxes	<u>\$ 2,131,044</u>	<u>\$ 1,418,799</u>	<u>\$ 937,960</u>

- (1) This item represents changes to the contract land deposit impairment reserve, which are not allocated to the reportable segments. See further discussion of contract land deposit impairment charges in Note 3 in the accompanying consolidated financial statements.
- (2) The increase in equity-based compensation expense in 2022 was primarily attributable to a four year block grant of Options and RSUs in May 2022. See further discussion of equity-based compensation in Note 12 in the accompanying consolidated financial statements.
- (3) This item represents the elimination of the corporate capital allocation charge included in the respective homebuilding reportable segments. The corporate capital allocation charge is based on the segment's monthly average asset balance and is as follows for the years presented:

	Year Ended December 31,		
	2022	2021	2020
Corporate capital allocation charge:			
Mid Atlantic	\$ 143,251	\$ 124,316	\$ 124,426
North East	30,623	25,431	22,850
Mid East	51,376	43,686	40,256
South East	77,654	59,354	51,701
Total corporate capital allocation charge	\$ 302,904	\$ 252,787	\$ 239,233

- (4) The consolidation adjustments and other in each period are primarily driven by changes in units under construction as well as significant fluctuations in lumber prices year over year. Our reportable segments' results include the intercompany profits of our production facilities for home packages delivered to our homebuilding divisions. Costs related to homes not yet settled are reversed through the consolidation adjustment and recorded in inventory. These costs are subsequently recorded through the consolidation adjustment when the respective homes are settled. The consolidation adjustment in 2021 was negatively impacted by a higher number of units under construction as of the end of the year compared to the prior year end, resulting in an increase in the reversal of intercompany profits year over year through the consolidation adjustment. In 2022, the consolidation adjustment was favorably impacted by a reduction in the number of units under construction year over year, resulting in a decrease in intercompany profits deferred year over year. This favorable impact was offset by the recognition of previously deferred home package costs that included higher priced lumber.

Mortgage Banking Segment

We conduct our mortgage banking activity through NVRM, a wholly owned subsidiary. NVRM focuses almost exclusively on serving the homebuilding segment customer base. The following table summarizes the results of our mortgage banking operations and certain statistical data for each of the last three years:

	Year Ended December 31,		
	2022	2021	2020
Loan closing volume:			
Total principal	\$ 6,313,416	\$ 6,073,934	\$ 5,317,811
Loan volume mix:			
Adjustable rate mortgages	8 %	3 %	2 %
Fixed-rate mortgages	92 %	97 %	98 %
Operating profit:			
Segment profit	\$ 125,756	\$ 176,251	\$ 143,319
Equity-based compensation expense	(3,606)	(4,647)	(3,246)
Mortgage banking income	\$ 122,150	\$ 171,604	\$ 140,073
Capture rate:			
	83 %	89 %	90 %
Mortgage banking fees:			
Net gain on sale of loans	\$ 152,668	\$ 205,582	\$ 168,720
Title services	46,793	42,958	38,554
Servicing fees	203	792	760
	\$ 199,664	\$ 249,332	\$ 208,034

Loan closing volume in 2022 increased by approximately \$239,500, or 4%, from 2021. The increase was primarily attributable to a 9% increase in the average loan balance for loans closed, driven by a 12% increase in the homebuilding segment's average home settlement price in 2022 as compared to 2021. The increase was partially offset by a 4% decrease in the number of loans closed, which was primarily attributable to the 6% decrease in capture rate in 2022 compared to 2021, due to a more competitive mortgage environment in 2022.

Segment profit in 2022 decreased by approximately \$50,500, or 29%, from 2021. This decrease was primarily attributable to a decrease of approximately \$49,700, or 20%, in mortgage banking fees, primarily due to a decrease in gains on sales of loans due to a more competitive mortgage environment.

Mortgage Banking – Other

We sell all of the loans we originate into the secondary mortgage market. Insofar as we underwrite our originated loans to the standards and specifications of the ultimate investor, we have no further financial obligations from the issuance of loans, except in certain limited instances where repurchases or early payment default occur. Those underwriting standards are typically equal to or more stringent than the underwriting standards required by FNMA, GNMA, FHLMC, VA and FHA. Because we sell all of our loans and do not service them, there is often a substantial delay between the time that a loan goes into default and the time that the investor requests us to reimburse them for losses incurred because of the default. We believe that all of the loans that we originate are underwritten to the standards and specifications of the ultimate investor to whom we sell our originated loans. We employ a quality control department to ensure that our underwriting controls are effective, and further assess the underwriting function as part of our assessment of internal controls over financial reporting.

We maintain a reserve for losses on mortgage loans originated that reflects our judgment of the present loss exposure from the loans that we have originated and sold. At December 31, 2022 and 2021, we had repurchase reserves of approximately \$21,800 and \$21,400, respectively.

NVRM is dependent on our homebuilding operation's customers for business. If new orders and selling prices of the homebuilding segment decline, NVRM's operations will also be adversely affected. In addition, NVRM's operating results may be adversely affected in future periods due to tightening and volatility of the credit markets, changes in investor funding times, increased regulation of mortgage lending practices and increased competition in the mortgage market.

Seasonality

We generally have higher New Order activity in the first half of the year and higher home settlements, revenues and net income in the second half of the year. However, our typical seasonal New Order and settlement trends may be affected by significant changes in market conditions.

Effective Tax Rate

Our consolidated effective tax rates in 2022 and 2021 were 23.42% and 22.24%, respectively. The effective tax rates in each year were favorably impacted by the recognition of an income tax benefit related to excess tax benefits from stock option exercises totaling \$50.3 million and \$48.4 million for 2022 and 2021, respectively.

We expect continued tax rate volatility in future years attributable to the recognition of excess tax benefits from equity plan activity and distributions from the deferred compensation plans.

Recent Accounting Pronouncements Pending Adoption

See Note 1 to the accompanying consolidated financial statements for discussion of recently issued accounting pronouncements applicable to us.

Liquidity and Capital Resources

We fund our operations primarily from our current cash holdings and cash flows generated by operating activities. In addition, we have available a short-term unsecured working capital revolving credit facility and revolving mortgage repurchase facility, as further described below. As of December 31, 2022, we had a strong liquidity position with approximately \$2,500,000 in cash and cash equivalents, approximately \$289,000 in unused committed capacity under our revolving credit facility and \$150,000 in unused committed capacity under our revolving mortgage repurchase facility.

Material Cash Requirements

We believe that our current cash holdings, cash generated from operations, and cash available under our short-term unsecured credit agreement and revolving mortgage repurchase facility, as well as the public debt and equity markets, will be sufficient to satisfy both our short term and long term cash requirements for working capital to support our daily operations and meet commitments under our contractual obligations with third parties. Our material contractual obligations primarily consist of the following:

- (i) Payments due to service our debt and interest on that debt. In June 2022, we used cash holdings to redeem \$600,000 in outstanding 3.95% Senior Notes that were set to mature in September 2022. The Senior Notes were redeemed at par, plus accrued interest. Our current outstanding Senior Notes total \$900,000 and mature in May 2030. Future interest payments on our remaining outstanding Senior Notes total approximately \$199,050, with approximately \$27,000 due within the next twelve months.

- (ii) Payment obligations totaling approximately \$348,000 under existing LPAs for deposits to be paid to land developers, assuming that contractual development milestones are met by the developers and we exercise our option to acquire finished lots under those LPAs. We expect to make the majority of these payments within the next three years.
- (iii) Obligations under operating and finance leases related primarily to office space and our production facilities. See Note 13 of this Form 10-K for additional discussion of our leases.

In addition to funding growth in our homebuilding and mortgage banking operations, we historically have used a substantial portion of our excess liquidity to repurchase outstanding shares of our common stock in open market and privately negotiated transactions. This ongoing repurchase program assists us in accomplishing our primary objective, creating increases in shareholder value. See "Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities" in Item 5 of this Form 10-K for disclosure of amounts repurchased during the fourth quarter of 2022. For the year ended December 31, 2022, we repurchased 323,652 shares of our common stock at an aggregate purchase price of \$1,500,358. As of December 31, 2022, we had approximately \$507,700 available under Board approved repurchase authorizations.

Capital Resources

Senior Notes

During the second quarter of 2022, we redeemed the outstanding \$600,000 principal amount of 3.95% Senior Notes due September 15, 2022, at par, plus accrued interest.

As of December 31, 2022, we had a total of \$900,000 in outstanding Senior Notes which mature in May 2030. The Senior Notes are senior unsecured obligations and rank equally in right of payment with any of our existing and future unsecured senior indebtedness, will rank senior in right of payment to any of our future indebtedness that is by its terms expressly subordinated to the Senior Notes and will be effectively subordinated to any of our existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. The indenture governing the Senior Notes does not contain any financial covenants; however, it does contain, among other items, and subject to certain exceptions, covenants that restrict our ability to create, incur, assume or guarantee secured debt, enter into sale and leaseback transactions and conditions related to mergers and/or the sale of assets. We were in compliance with all covenants under the Senior Notes at December 31, 2022.

Credit Agreement

We have an unsecured revolving credit agreement (the "Credit Agreement") with a group of lenders which may be used for working capital and general corporate purposes. The Credit Agreement provides for aggregate revolving loan commitments of \$300,000 (the "Facility"). Under the Credit Agreement, we may request increases of up to \$300,000 to the Facility in the form of revolving loan commitments or term loans to the extent that new or existing lenders agree to provide additional revolving loan or term loan commitments. In addition, the Credit Agreement provides for a \$100,000 sublimit for the issuance of letters of credit of which there was approximately \$11,000 outstanding at December 31, 2022. The Credit Agreement termination date is February 12, 2026. There were no borrowings outstanding under the Credit Agreement as of December 31, 2022.

Repurchase Agreement

Our mortgage banking subsidiary, NVRM, has an unsecured revolving mortgage repurchase agreement (the "Repurchase Agreement") which is non-recourse to NVR. The purpose of the Repurchase Agreement is to finance the origination of mortgage loans by NVRM. The Repurchase Agreement provides borrowing capacity up to \$150,000, subject to certain sublimits. The Repurchase Agreement expires on July 19, 2023. At December 31, 2022, there was no debt outstanding under the Repurchase Agreement and there were no borrowing base limitations.

See Note 9 of this Form 10-K for additional disclosures regarding our Senior Notes, Credit Agreement and Repurchase Agreement.

Cash Flows

For the year ended December 31, 2022, cash, restricted cash and cash equivalents decreased by \$62,466. Net cash provided by operating activities was \$1,870,101, due primarily to cash provided by earnings in 2022 and by a decrease in inventory of \$159,091 attributable to a decrease in units under construction at December 31, 2022 compared to December 31, 2021. Additionally, cash was provided by net proceeds of \$156,756 from mortgage loan activity. Cash was primarily used as a result of a decrease in customer deposits of \$103,659 attributable to the decrease in our ending backlog year over year.

Net cash used in investing activities in 2022 was \$27,431. Cash was used primarily for purchases of property, plant and equipment of \$18,428 and investments in unconsolidated joint ventures totaling \$9,735.

Net cash used by financing activities in 2022 was \$1,905,136. Cash was used primarily to repurchase 323,652 shares of our common stock at an aggregate purchase price of \$1,500,358 under our ongoing common stock repurchase program, discussed above. In addition, cash was used to redeem the outstanding \$600,000 principal amount of 3.95% Senior Notes due September 15, 2022. Cash was provided from stock option exercise proceeds totaling \$196,717.

For the year ended December 31, 2021, cash, restricted cash and cash equivalents decreased by \$172,798. Net cash provided by operating activities was \$1,242,393, due primarily to cash provided by earnings in 2021 and net proceeds of \$344,750 from mortgage loan activity. Additionally, cash was provided by an increase in customer deposits of \$176,705 attributable to the increase in our ending backlog year over year. Cash was primarily used to fund the increase in inventory of \$238,284, attributable to an increase in units under construction at December 31, 2021 compared to December 31, 2020.

Net cash used in investing activities in 2021 was \$18,179. Cash was used primarily for purchases of property, plant and equipment.

Net cash used by financing activities in 2021 was \$1,397,012. Cash was used primarily to repurchase shares of our common stock under our ongoing common stock repurchase program as discussed above. Cash was provided from stock option exercise proceeds totaling \$142,370.

At December 31, 2022 and 2021, the homebuilding segment had restricted cash of \$48,455 and \$60,730, respectively. Restricted cash in each year was attributable to customer deposits for certain home sales.

Critical Accounting Policies and Estimates

General

The preparation of financial statements in conformity with GAAP requires us to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. We continually evaluate the estimates we use to prepare the consolidated financial statements and update those estimates as necessary. In general, our estimates are based on historical experience, on information from third party professionals, and other various assumptions that are believed to be reasonable under the facts and circumstances. Actual results could differ materially from those estimates made by management.

Homebuilding Inventory

The carrying value of inventory is stated at the lower of cost or market value. Cost of lots and completed and uncompleted housing units represent the accumulated actual cost of the units. Field construction supervisors' salaries and related direct overhead expenses are included in inventory costs. Interest costs are not capitalized into inventory, with the exception of land under development and joint venture investments, as applicable. Upon settlement, the cost of the unit is expensed on a specific identification basis. Cost of building materials is determined on a first-in, first-out basis.

Sold inventory is evaluated for impairment based on the contractual sales price compared to the total estimated cost to construct. Unsold inventory is evaluated for impairment by analyzing recent comparable sales prices within the applicable community compared to the costs incurred to date plus the expected costs to complete. Any calculated impairments are recorded immediately in cost of sales.

Contract Land Deposits

We purchase finished lots under LPAs that require deposits that may be forfeited if we fail to perform under the contract. The deposits are in the form of cash or letters of credit in varying amounts and represent a percentage of the aggregate purchase price of the finished lots.

We maintain an allowance for losses on contract land deposits that reflects our judgment of the present loss exposure in the existing contract land deposit portfolio at the end of the reporting period. To analyze contract land deposit impairments, we conduct a loss contingency analysis each quarter. In addition to considering market and economic conditions, we assess contract land deposit impairments on a community-by-community basis pursuant to the purchase contract terms, analyzing quantitative and qualitative information including, as applicable, current sales absorption levels, recent sales' profit margin, the dollar differential between the contractual purchase price and the current market price for lots, a developer's performance, a developer's financial ability or willingness to reduce lot prices to current market prices, if necessary, and the contract's default status by either us or the developer along with an analysis of the expected outcome of any such default.

Our analysis is focused on whether we can sell houses at an acceptable profit margin and sales pace in a particular community in the current market with which we are faced. Because we do not own the finished lots on which we had placed a contract land deposit, if the above analysis leads to a determination that we cannot sell homes at an acceptable profit margin and sales pace at the current contractual lot price, we then determine whether we will elect to default under the contract, forfeit our deposit and terminate the contract, or whether we will attempt to restructure the LPA, which may require us to forfeit the deposit to obtain contract concessions from a developer. We also assess whether an impairment is present due to collectability issues resulting from a developer's non-performance because of financial or other conditions.

Although we consider the allowance for losses on contract land deposits reflected on the December 31, 2022 consolidated balance sheet to be adequate (see Note 1 to the accompanying consolidated financial statements included herein), there can be no

assurance that this allowance will prove to be adequate over time to cover losses due to unanticipated adverse changes in the economy or other events adversely affecting specific markets or the homebuilding industry.

Warranty/Product Liability Reserves

We establish warranty and product liability reserves to provide for estimated future expenses as a result of construction and product defects, product recalls and litigation incidental to our homebuilding business. Liability estimates are determined based on our judgment considering such factors as historical experience, the likely current cost of corrective action, manufacturers' and subcontractors' participation in sharing the cost of corrective action, consultations with third party experts such as engineers, and discussions with our General Counsel and outside counsel retained to handle specific product liability cases. Although we consider the warranty and product liability accrual reflected on the December 31, 2022 consolidated balance sheet to be adequate (see Note 14 to the accompanying consolidated financial statements included herein), there can be no assurance that this accrual will prove to be adequate over time to cover losses due to increased costs for material and labor, the inability or refusal of manufacturers or subcontractors to financially participate in corrective action, unanticipated adverse legal settlements, or other unanticipated changes to the assumptions used to estimate the warranty and product liability accrual.

Equity-Based Compensation

We recognize equity-based compensation expense within our income statement for all share-based payment arrangements, which include non-qualified stock options to purchase shares of NVR common stock ("Options") and restricted share units ("RSUs"). Compensation expense is based on the grant-date fair value of the Options and RSUs granted, and is recognized on a straight-line basis over the requisite service period for the entire award (from the date of grant through the period of the last separately vesting portion of the grant). Options and RSUs which are subject to a performance condition are treated as a separate award from the "service-only" Options and RSUs, and compensation expense is recognized when it becomes probable that the stated performance target will be achieved. We calculate the fair value of our Options, which are non-publicly traded, using the Black-Scholes option-pricing model. The grant date fair value of the RSUs is the closing price of our common stock on the day immediately preceding the date of grant. The reversal of compensation expense previously recognized for grants forfeited is recorded in the period in which the forfeiture occurs.

As noted above, we calculate the fair value of our Options using the Black-Scholes option-pricing model. While the Black-Scholes model is a widely accepted method to calculate the fair value of options, its results are dependent on input variables, two of which, expected term and expected volatility, are significantly dependent on management's judgment. We have concluded that our historical exercise experience is the best estimate of future exercise patterns to determine an Option's expected term. To estimate expected volatility, we analyze the historical volatility of our common stock over a period equal to the Option's expected term. Changes in management's judgment of the expected term and the expected volatility could have a material effect on the grant-date fair value calculated and expensed within the income statement.

In addition, when recognizing equity-based compensation cost related to "performance condition" Option and RSU grants, we are required to make a determination as to whether the performance conditions will be met prior to the completion of the actual performance period. The performance metric is based on our return on capital performance during a specified three year period based on the date of Option grant. While we currently believe that this performance condition will be satisfied at the target level and are recognizing compensation expense related to such Options and RSUs accordingly, our future expected activity levels could cause us to make a different determination, resulting in a change to the compensation expense to be recognized related to performance condition Option and RSU grants that would otherwise have been recognized to date.

Although we believe that the compensation costs recognized in 2022 are representative of the cumulative ratable amortization of the grant-date fair value of unvested Options and RSUs outstanding, changes to the estimated input values such as expected term and expected volatility and changes to the determination of whether performance condition grants will vest, could produce widely different expense valuations and recognition.

Mortgage Repurchase Reserve

We originate several different loan products to our customers to finance the purchase of their home. We sell all of the loans we originate into the secondary mortgage market, typically on a servicing released basis and within 30 days from closing. All of the loans that we originate are underwritten to the standards and specifications of the ultimate investor. Those underwriting standards are typically equal to or more stringent than the underwriting standards required by FNMA, GNMA, FHLMC, VA and FHA. Insofar as we underwrite our originated loans to those standards, we bear no increased concentration of credit risk from the issuance of loans, except in certain limited instances where repurchases or early payment default occur. We employ a quality control department to ensure that our underwriting controls are effectively operating, and further assess the underwriting function as part of our assessment of internal controls over financial reporting. We maintain a reserve for losses on mortgage loans originated that reflects our judgment of the present loss exposure in the loans that we have originated and sold. The reserve is calculated based on an analysis of historical experience and exposure. Although we consider the mortgage repurchase reserve reflected on the December 31, 2022 consolidated balance sheet to be adequate (see Note 16 to the accompanying consolidated financial statements included herein), there can be no

assurance that this reserve will prove to be adequate over time to cover losses due to unanticipated changes to the assumptions used to estimate the mortgage repurchase reserve.

Impact of Inflation, Changing Prices and Economic Conditions

See “Risk Factors” included in Item 1A of this Form 10-K for a description of the impact of inflation, changing prices and economic conditions on our business and our financial results. See also the discussion of the current business environment in the *Overview* section above.

Item 7A. Quantitative and Qualitative Disclosure About Market Risk.

(dollars in thousands)

Market risk is the risk of loss arising from adverse changes in market prices and interest rates. Our market risk arises from interest rate risk inherent in our financial instruments and debt obligations. Interest rate risk results from the possibility that changes in interest rates will cause unfavorable changes in net income or in the value of interest rate-sensitive assets, liabilities and commitments. Lower interest rates tend to increase demand for mortgage loans for home purchasers, while higher interest rates make it more difficult for potential borrowers to purchase residential properties and to qualify for mortgage loans. We have no market rate sensitive instruments held for speculative or trading purposes.

We are exposed to interest rate risk as it relates to our fixed rate debt, primarily our Senior Notes and our variable rate credit facility and loan repurchase facility. Changes to interest rates generally affect the fair value of fixed-rate debt instruments, but not earnings or cash flows. For variable rate debt, interest rate changes generally will not affect the fair value of the variable debt instruments but will affect earnings and cash flow. At December 31, 2022, there was no debt outstanding under our credit facility or loan repurchase facility. See Item 7, Management’s Discussion and Analysis of Financial Condition and Results of Operations and Note 9 to the accompanying consolidated financial statements included herein for further discussion of these debt instruments.

Our mortgage banking segment is exposed to interest rate risk as it relates to its lending activities, including originating mortgage loans and providing rate lock commitments to borrowers. To mitigate the effect of the interest rate risk inherent in providing rate lock commitments to borrowers, we enter into optional or mandatory delivery forward sales contracts to sell whole loans and mortgage-backed securities to investors. The forward sales contracts lock-in a range of interest rates and prices for the sale of loans similar to the specific rate lock commitments. We do not engage in speculative or trading derivative activities. All of the mortgage banking segment’s loan portfolio is held for sale and subject to forward sale commitments. See Item 7, Management’s Discussion and Analysis of Financial Condition and Results of Operations and Note 15 to the accompanying consolidated financial statements included herein for further discussion of these items.

The following table represents the contractual balances of our on-balance sheet financial instruments at the expected maturity dates, as well as the fair values of those on-balance sheet financial instruments at December 31, 2022. The expected maturity categories take into consideration the actual and anticipated amortization of principal and do not take into consideration the reinvestment of cash or the refinancing of existing indebtedness. Because we sell all of the mortgage loans we originate into the secondary markets, we have made the assumption that the portfolio of mortgage loans held for sale will mature in the first year.

	Maturities (000's)							Total	Fair Value
	2023	2024	2025	2026	2027	Thereafter			
Mortgage banking segment									
<i>Interest rate sensitive assets:</i>									
Mortgage loans held for sale	\$ 319,481	—	—	—	—	—	\$ 319,481	\$ 316,806	
Average interest rate	5.6 %	—	—	—	—	—	5.6 %		
<i>Other:</i>									
Forward trades of mortgage-backed securities (a)	\$ (16,060)	—	—	—	—	—	\$ (16,060)	\$ (16,060)	
Forward loan commitments (a)	\$ 11,300	—	—	—	—	—	\$ 11,300	\$ 11,300	
Homebuilding segment									
<i>Interest rate sensitive assets:</i>									
Interest-bearing deposits	\$ 2,453,692	—	—	—	—	—	\$ 2,453,692	\$ 2,453,692	
Average interest rate	4.4 %	—	—	—	—	—	4.4 %		
<i>Interest rate sensitive liabilities:</i>									
Fixed rate obligations	\$ —	—	—	—	—	\$ 900,000	\$ 900,000	\$ 788,166	
Average interest rate	— %	—	—	—	—	3.0 %	3.0 %		

(a) Represents the fair value recorded pursuant to ASC 815, *Derivatives and Hedging*.

Item 8. Financial Statements and Supplementary Data.

The financial statements listed in Item 15 are filed as part of this report and are incorporated herein by reference.

Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Evaluation of Disclosure Controls and Procedures

As of the end of the period covered by this report, an evaluation was performed under the supervision and with the participation of our management, including the principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures, as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended ("Exchange Act").

Based on that evaluation, the principal executive officer and principal financial officer concluded that the design and operation of these disclosure controls and procedures as of December 31, 2022 were effective to provide reasonable assurance that information required to be disclosed in our reports under the Exchange Act, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms and that such information is accumulated and communicated to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting, as such term is defined in Rule 13a-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in *Internal Control – Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on our evaluation under the framework in *Internal Control – Integrated Framework (2013)*, our management concluded that our internal control over financial reporting was effective as of December 31, 2022. There have been no changes in our internal control over financial reporting identified in connection with the evaluation referred to above that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

Our internal control over financial reporting as of December 31, 2022 has been audited by KPMG LLP, an independent registered public accounting firm, as stated in their attestation report which is included herein.

Item 9B. Other Information.

None.

Item 9C. Disclosure Regarding Foreign Jurisdictions that Prevent Inspections.

Not applicable.

PART III

Item 10. Directors, Executive Officers, and Corporate Governance.

Our executive officers are:

Name	Age	Title
Paul C. Saville	67	Executive Chairman of the Board
Eugene J. Bredow	53	President and Chief Executive Officer
Daniel D. Malzahn	53	Senior Vice President, Chief Financial Officer and Treasurer
Matthew B. Kelpy	49	Vice President and Chief Accounting Officer

The remaining information required by this item will be included under the captions "Proposal No.1 - Election of Directors", "Executive Summary" within "Compensation Discussion and Analysis" and "Corporate Governance Principles and Board Matters" in our definitive Proxy Statement for the 2023 Annual Meeting of Shareholders ("2023 Proxy Statement") and is incorporated herein by reference. Our 2023 Proxy Statement is expected to be filed with the Securities and Exchange Commission on or prior to April 30, 2023.

Item 11. Executive Compensation.

The information required by this item will be included under the caption "Compensation Discussion and Analysis" in our 2023 Proxy Statement and is incorporated herein by reference. Our 2023 Proxy Statement is expected to be filed with the Securities and Exchange Commission on or prior to April 30, 2023.

Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.

Equity Compensation Plan Information

The following table summarizes our equity compensation plans as of December 31, 2022:

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in the first column)
Equity compensation plans approved by security holders (1)	623,874	\$ 2,897.24	86,724
Equity compensation plans not approved by security holders	—	\$ —	—
Total	623,874	\$ 2,897.24	86,724

- (1) This category includes the restricted share units ("RSUs") authorized to be issued under the 2010 and 2018 Equity Incentive Plans. At December 31, 2022, there were 33,320 RSUs outstanding. Of the total 86,724 shares remaining available for future issuance under the shareholder approved plans, up to a total of 18,310 may be issued as RSUs. The weighted-average exercise price of outstanding options under security holder approved plans was \$3,060.71.

The remaining information required by this item will be included under the caption "Security Ownership of Certain Beneficial Owners and Management" in our 2023 Proxy Statement and is incorporated herein by reference. Our 2023 Proxy Statement is expected to be filed with the Securities and Exchange Commission on or prior to April 30, 2023.

Item 13. Certain Relationships and Related Transactions, and Director Independence.

The information required by this item will be included under the caption "Corporate Governance Principles and Board Matters" in our 2023 Proxy Statement and is incorporated herein by reference. Our 2023 Proxy Statement is expected to be filed with the Securities and Exchange Commission on or prior to April 30, 2023.

Item 14. Principal Accountant Fees and Services.

The information required by this item will be included under the caption "Proposal No. 2 - Ratification of Appointment of Independent Auditor" in our 2023 Proxy Statement and is incorporated herein by reference. Our 2023 Proxy Statement is expected to be filed with the Securities and Exchange Commission on or prior to April 30, 2023.

PART IV

Item 15. Exhibits and Financial Statement Schedules.

The following documents are filed as part of this report:

1. Financial Statements

NVR, Inc. - Consolidated Financial Statements

Reports of Independent Registered Public Accounting Firm (KPMG LLP, McLean, VA, Auditor Firm ID: 185)
 Consolidated Balance Sheets
 Consolidated Statements of Income
 Consolidated Statements of Shareholders' Equity
 Consolidated Statements of Cash Flows
 Notes to Consolidated Financial Statements

2. Exhibits

Exhibit Number	Exhibit Description	Incorporated by Reference		
		Form	File Number	Filing Date
3.1	Restated Articles of Incorporation of NVR, Inc.	10-K	3.1	2/25/2011
3.2	Bylaws, as amended, of NVR, Inc.	8-K	3.1	3/17/2016
4.1	Indenture dated as of April 14, 1998 between NVR, Inc., as issuer and the Bank of New York as trustee.	8-K	4.3	4/23/1998
4.2	Form of Note (included in Indenture).	8-K	4.5	4/23/1998
4.3	Fifth Supplemental Indenture dated September 10, 2012 among NVR, Inc. and U.S. Bank Trust National Association.	8-K	4.1	9/10/2012
4.4	Sixth Supplemental Indenture dated as of May 4, 2020 among NVR, Inc. and U.S. Bank Trust National Association.	8-K	4.1	5/4/2020
4.5	Seventh Supplemental Indenture dated September 9, 2020 between NVR, Inc. and U.S. Bank Trust National Association.	8-K	4.1	9/9/2020
4.6	Eighth Supplemental Indenture dated September 17, 2020 between NVR, Inc. and U.S. Bank Trust National Association.	8-K	4.2	9/17/2020
4.7	Form of Global Note.	8-K	4.2	9/10/2012
4.8	Description of Securities of NVR, Inc.	10-K	4.5	2/19/2020
10.1*	Amended and Restated Employment Agreement between NVR, Inc. and Paul C. Saville dated November 4, 2015.	10-Q	10.1	11/6/2015
10.2*	Amended and Restated Employment Agreement between NVR, Inc. and Daniel D. Malzahn dated November 4, 2015.	10-Q	10.2	11/6/2015
10.3*	Amended and Restated Employment Agreement between NVR, Inc. and Eugene J. Bredow dated November 4, 2015.	10-Q	10.4	11/6/2015
10.4*	Amendment No. 1 to Employment Agreement between NVR, Inc. and Eugene J. Bredow dated March 1, 2018.	10-Q	10.1	5/1/2018
10.5*	Amendment No. 2 to Employment Agreement between NVR, Inc. and Eugene J. Bredow dated April 1, 2019.	10-Q	10.2	5/1/2019
10.6*	Extension of Employment Agreement between NVR, Inc. and Paul C. Saville date November 4, 2020.	10-Q	10.1	11/4/2020

Exhibit Number	Exhibit Description	Incorporated by Reference			
		Form	File Number	Exhibit Number	Filing Date
10.7*	Extension of Employment Agreement between NVR, Inc. and Daniel D. Malzahn date November 4, 2020.	10-Q		10.2	11/4/2020
10.8*	Extension of Employment Agreement between NVR, Inc. and Eugene J. Bredow date November 4, 2020.	10-Q		10.4	11/4/2020
10.9*	Amendment No. 1 to the Employment Agreement between NVR, Inc. and Paul C. Saville dated May 4, 2022.	8-K		10.1	5/6/2022
10.10*	Amendment No. 3 to the Employment Agreement between NVR, Inc. and Eugene J. Bredow dated May 4, 2022.	8-K		10.2	5/6/2022
10.11*	Amendment No. 1 to the Employment Agreement between NVR, Inc. and Daniel D. Malzahn dated May 4, 2022.	8-K		10.3	5/6/2022
10.12*	Profit Sharing Plan of NVR, Inc. and Affiliated Companies.	S-8	333-29241	4.1	6/13/1997
10.13*	Employee Stock Ownership Plan of NVR, Inc.	10-K/A			12/31/1994
10.14*	Amended and Restated NVR, Inc. Nonqualified Deferred Compensation Plan.	10-Q		10.5	11/6/2015
10.15*	First Amendment to NVR, Inc. Nonqualified Deferred Compensation Plan.	10-K		10.36	2/15/2017
10.16*	Description of the Board of Directors' compensation arrangement.	10-K		10.15	2/13/2019
10.17*	NVR, Inc. 2018 Equity Incentive Plan	S-8	333-224629	10.1	5/3/2018
10.18*	The Form of Non-Qualified Stock Option Agreement (Management time-based grants) under the NVR, Inc. 2018 Equity Incentive Plan.	8-K		10.1	5/14/2018
10.19*	The Form of Non-Qualified Stock Option Agreement (Director time-based grants) under the NVR, Inc. 2018 Equity Incentive Plan.	8-K		10.2	5/14/2018
10.20*	The Form of Non-Qualified Stock Option Agreement (Management performance-based grants) under the NVR, Inc. 2018 Equity Incentive Plan.	8-K		10.3	5/14/2018
10.21*	The Form of Non-Qualified Stock Option Agreement (Director performance-based grants) under the NVR, Inc. 2018 Equity Incentive Plan.	8-K		10.4	5/14/2018
10.22*	The Form of Restricted Share Units Agreement (Management grants) under the NVR, Inc. 2018 Equity Incentive Plan.	8-K		10.5	5/14/2018
10.23*	The Form of Restricted Share Units Agreement (Director grants) under the NVR, Inc. 2018 Equity Incentive Plan.	8-K		10.6	5/14/2018
10.24*	NVR, Inc. 2014 Equity Incentive Plan.	S-8	333-195756	10.1	5/7/2014
10.25*	The Form of Non-Qualified Stock Option Agreement (Management time-based grants) under the NVR, Inc. 2014 Equity Incentive Plan.	8-K		10.4	5/6/2022
10.26*	The Form of Non-Qualified Stock Option Agreement (Director time-based grants) under the NVR, Inc. 2014 Equity Incentive Plan.	8-K		10.2	5/7/2014
10.27*	The Form of Non-Qualified Stock Option Agreement (Management performance-based grants) under the NVR, Inc. 2014 Equity Incentive Plan.	8-K		10.5	5/6/2022

Exhibit Number	Exhibit Description	Incorporated by Reference			
		Form	File Number	Exhibit Number	Filing Date
10.28*	The Form of Non-Qualified Stock Option Agreement (Director performance-based grants) under the NVR, Inc. 2014 Equity Incentive Plan.	8-K		10.4	5/7/2014
10.29*	NVR, Inc. 2010 Equity Incentive Plan.	S-8	333-166512	10.1	5/4/2010
10.30*	The Amended Form of Non-Qualified Stock Option Agreement (Management grants) under the NVR, Inc. 2010 Equity Incentive Plan.	10-K		10.29	2/13/2019
10.31*	The Form of Non-Qualified Stock Option Agreement (Management performance-based grants) under the NVR, Inc. 2010 Equity Incentive Plan.	10-K		10.30	2/13/2019
10.32*	The Form of Non-Qualified Stock Option Agreement (Director grants) under the NVR, Inc. 2010 Equity Incentive Plan.	8-K		10.2	5/6/2010
10.33*	The Form of Restricted Share Units Agreement (Management grants) under the NVR, Inc. 2010 Equity Incentive Plan.	10-Q		10.2	7/30/2013
10.34*	The Form of Restricted Share Units Agreement (Director grants) under the NVR, Inc. 2010 Equity Incentive Plan.	8-K		10.4	5/6/2010
10.35	Second Amended and Restated Master Repurchase Agreement dated July 20, 2022 between NVR Mortgage Finance, Inc. and U.S. Bank National Association.	10-Q		10.4	8/3/2022
10.36	Amended and Restated Credit Agreement dated February 12, 2021 among NVR, Inc. and the lenders party hereto, Bank of America, N.A., as Administrative Agent and BofA Securities, Inc. as Sole Lead Arranger and Sole Book Runner.	10-K		10.48	2/12/2021
10.37	First Amendment to Amended and Restated Credit Agreement dated December 9, 2022 by and among NVR, Inc. and Bank of America, N.A., as Administrative Agent. Filed herewith.				
10.38*	Summary of 2023 Executive Officer Incentive Compensation plan. Filed herewith.				
21	NVR, Inc. Subsidiaries. Filed herewith.				
23	Consent of KPMG LLP (Independent Registered Public Accounting Firm). Filed herewith.				
31.1	Certification of NVR's Chief Executive Officer pursuant to Rule 13a-14(a). Filed herewith.				
31.2	Certification of NVR's Chief Financial Officer pursuant to Rule 13a-14(a). Filed herewith.				
32	Certification of NVR's Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. Filed herewith.				
101.INS	XBRL Instance Document - the instance document does not appear in the Interactive Data File because XBRL tags are embedded within the Inline XBRL document.				
101.SCH	XBRL Taxonomy Extension Schema Document				
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document				
101.DEF	XBRL Taxonomy Extension Definition Linkbase Document				

Exhibit Number	Exhibit Description	Incorporated by Reference			
		Form	File Number	Exhibit Number	Filing Date
101.LAB	XBRL Taxonomy Extension Label Linkbase Document				
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document				
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101). * Exhibit is a 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.

NVR, Inc.

February 15, 2023 By: /s/ Eugene J. Bredow
 Eugene J. Bredow
President and Chief Executive Officer

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

Signature	Title	Date
<u>/s/ Paul C. Saville</u> Paul C. Saville	Executive Chairman	February 15, 2023
<u>/s/ C.E. Andrews</u> C. E. Andrews	Director	February 15, 2023
<u>/s/ Sallie B. Bailey</u> Sallie B. Bailey	Director	February 15, 2023
<u>/s/ Thomas D. Eckert</u> Thomas D. Eckert	Director	February 15, 2023
<u>/s/ Alfred E. Festa</u> Alfred E. Festa	Director	February 15, 2023
<u>/s/ Alexandra A. Jung</u> Alexandra A. Jung	Director	February 15, 2023
<u>/s/ Mel Martinez</u> Mel Martinez	Director	February 15, 2023
<u>/s/ David A. Preiser</u> David A. Preiser	Director	February 15, 2023
<u>/s/ W. Grady Rosier</u> W. Grady Rosier	Director	February 15, 2023
<u>/s/ Susan Williamson Ross</u> Susan Williamson Ross	Director	February 15, 2023
<u>/s/ Eugene J. Bredow</u> Eugene J. Bredow	Principal Executive Officer	February 15, 2023
<u>/s/ Daniel D. Malzahn</u> Daniel D. Malzahn	Principal Financial Officer	February 15, 2023
<u>/s/ Matthew B. Kelpy</u> Matthew B. Kelpy	Principal Accounting Officer	February 15, 2023

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors
NVR, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of NVR, Inc. and subsidiaries (the Company) as of December 31, 2022 and 2021, the related consolidated statements of income, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2022, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2022, in conformity with U.S. generally accepted accounting principles.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the Company's internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission, and our report dated February 15, 2023 expressed an unqualified opinion on the effectiveness of the Company's internal control over financial reporting.

Basis for Opinion

These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these consolidated financial statements based on our audits. We are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

The critical audit matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the consolidated financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of a critical audit matter does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Assessment of the allowance for losses on contract land deposits

As discussed in Notes 1 and 3 to the consolidated financial statements, the Company's allowance for losses on contract land deposits ("lot deposit reserve") was \$57,060,000 recorded against total contract land deposit assets of \$553,140,000 as of December 31, 2022. The Company estimated the lot deposit reserve using a loss contingency analysis that assesses a combination of quantitative and qualitative information for each individual deposit associated with a community. As the Company does not own the lots on which they have placed a deposit, the loss contingency analysis assesses contracts on a community-by-community basis, and records an estimated lot deposit reserve for communities which may result in forfeiture of the lot deposit. In estimating this reserve, the Company evaluates whether it can sell houses at an acceptable profit margin and sales pace, and considers market and economic conditions.

We identified the assessment of the lot deposit reserve as a critical audit matter. Such assessment involved measurement uncertainty that required subjective auditor judgment. Specifically, the assessment encompassed the evaluation of the loss contingency analysis, inclusive of (1) the method used to estimate the reserve assigned to a lot deposit, (2) the quantitative data metrics, as applicable, of profit margin and sales volumes, and (3) the qualitative factors, as applicable, of developer performance and community specific factors. In addition, it was challenging to obtain objective audit evidence, and evaluate the sufficiency of that audit evidence.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design and tested the operating effectiveness of certain internal controls over (1) the development and approval of the loss contingency analysis, (2) the determination of the quantitative data metrics and qualitative factors used in the analysis, and (3) the preparation and measurement of the lot deposit reserve estimate. We evaluated the process to develop the quantitative and qualitative information used to assess the lot deposit reserve rates. Specifically, we assessed the consistency of data used in the process with its source, evaluated the reliability of data sources, and considered if all relevant data points were used in the analysis. We tested the reserve balance by:

- assessing the recoverability of a sample of individual lot deposits and comparing our results to those of the Company
- analyzing the timing of changes for a sample of lot deposits for consistency with changes in quantitative or qualitative data
- evaluating the consistency of the loss contingency analysis by comparing the reserve treatment of similar lot deposits and community positions between the current and prior years
- comparing prior reserve estimates to subsequent lot deposit forfeiture activity.

We also evaluated the collective results of the procedures performed to assess the sufficiency of the audit evidence obtained related to the Company's lot deposit reserve.

KPMG LLP

We have served as the Company's auditor since 1987.

McLean, Virginia
February 15, 2023

Report of Independent Registered Public Accounting Firm

To the Shareholders and Board of Directors
NVR, Inc.:

Opinion on Internal Control Over Financial Reporting

We have audited NVR, Inc. and subsidiaries' (the Company) internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission. In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2022, based on criteria established in *Internal Control - Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We also have audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States) (PCAOB), the consolidated balance sheets of the Company as of December 31, 2022 and 2021, the related consolidated statements of income, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2022, and the related notes (collectively, the consolidated financial statements), and our report dated February 15, 2023 expressed an unqualified opinion on those consolidated financial statements.

Basis for Opinion

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 are a public accounting firm registered with the PCAOB and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audit in accordance with the standards of the PCAOB. 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 of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audit also included performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

Definition and Limitations of Internal Control Over Financial Reporting

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

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

KPMG LLP

McLean, Virginia
February 15, 2023

NVR, Inc.
 Consolidated Balance Sheets
 (in thousands, except share and per share data)

	December 31, 2022	December 31, 2021
ASSETS		
<i>Homebuilding:</i>		
Cash and cash equivalents	\$ 2,503,424	\$ 2,545,069
Restricted cash	48,455	60,730
Receivables	20,842	18,552
Inventory:		
Lots and housing units, covered under sales agreements with customers	1,554,955	1,777,862
Unsold lots and housing units	181,952	127,434
Land under development	27,100	12,147
Building materials and other	24,268	29,923
	1,788,275	1,947,366
Contract land deposits, net	496,080	497,139
Property, plant and equipment, net	57,950	56,979
Operating lease right-of-use assets	71,081	59,010
Reorganization value in excess of amounts allocable to identifiable assets, net	41,580	41,580
Deferred tax assets, net	143,585	132,894
Other assets	75,898	96,124
	5,247,170	5,455,443
<i>Mortgage Banking:</i>		
Cash and cash equivalents	19,415	28,398
Restricted cash	2,974	2,519
Mortgage loans held for sale, net	316,806	302,192
Property and equipment, net	3,559	3,658
Operating lease right-of-use assets	16,011	9,758
Reorganization value in excess of amounts allocable to identifiable assets, net	7,347	7,347
Other assets	47,691	25,160
	413,803	379,032
Total assets	\$ 5,660,973	\$ 5,834,475

See notes to consolidated financial statements.

NVR, Inc.
 Consolidated Balance Sheets (Continued)
 (in thousands, except share and per share data)

	December 31, 2022	December 31, 2021
LIABILITIES AND SHAREHOLDERS' EQUITY		
<i>Homebuilding:</i>		
Accounts payable	\$ 334,016	\$ 336,560
Accrued expenses and other liabilities	437,234	435,860
Customer deposits	313,804	417,463
Operating lease liabilities	75,818	64,128
Senior notes	914,888	1,516,255
	<u>2,075,760</u>	<u>2,770,266</u>
<i>Mortgage Banking:</i>		
Accounts payable and other liabilities	61,396	51,394
Operating lease liabilities	16,968	10,437
	<u>78,364</u>	<u>61,831</u>
Total liabilities	<u>2,154,124</u>	<u>2,832,097</u>
<i>Commitments and contingencies</i>		
<i>Shareholders' equity:</i>		
Common stock, \$0.01 par value; 60,000,000 shares authorized; 20,555,330 shares issued as of both December 31, 2022 and December 31, 2021	206	206
Additional paid-in capital	2,600,014	2,378,191
Deferred compensation trust – 106,697 shares of NVR, Inc. common stock as of both December 31, 2022 and December 31, 2021	(16,710)	(16,710)
Deferred compensation liability	16,710	16,710
Retained earnings	11,773,414	10,047,839
Less treasury stock at cost – 17,336,397 and 17,107,889 shares as of December 31, 2022 and December 31, 2021, respectively	(10,866,785)	(9,423,858)
Total shareholders' equity	<u>3,506,849</u>	<u>3,002,378</u>
Total liabilities and shareholders' equity	<u>\$ 5,660,973</u>	<u>\$ 5,834,475</u>

See notes to consolidated financial statements.

NVR, Inc.
Consolidated Statements of Income
(in thousands, except per share data)

	Year Ended December 31,		
	2022	2021	2020
Homebuilding:			
Revenues	\$ 10,326,770	\$ 8,701,693	\$ 7,328,889
Other income	37,038	6,559	16,938
Cost of sales	(7,662,271)	(6,763,115)	(5,937,401)
Selling, general and administrative	(532,353)	(474,808)	(431,008)
Operating income	2,169,184	1,470,329	977,418
Interest expense	(38,140)	(51,530)	(39,458)
Homebuilding income	2,131,044	1,418,799	937,960
Mortgage Banking:			
Mortgage banking fees	199,664	249,332	208,034
Interest income	11,853	8,725	8,930
Other income	4,963	3,753	3,249
General and administrative	(92,946)	(88,619)	(78,726)
Interest expense	(1,384)	(1,587)	(1,414)
Mortgage banking income	122,150	171,604	140,073
Income before taxes	2,253,194	1,590,403	1,078,033
Income tax expense	(527,619)	(353,684)	(176,785)
Net income	<u>\$ 1,725,575</u>	<u>\$ 1,236,719</u>	<u>\$ 901,248</u>
Basic earnings per share	<u>\$ 525.20</u>	<u>\$ 345.37</u>	<u>\$ 244.11</u>
Diluted earnings per share	<u>\$ 491.82</u>	<u>\$ 320.48</u>	<u>\$ 230.11</u>
Basic weighted average shares outstanding	<u>3,286</u>	<u>3,581</u>	<u>3,692</u>
Diluted weighted average shares outstanding	<u>3,509</u>	<u>3,859</u>	<u>3,917</u>

See notes to consolidated financial statements.

NVR, Inc.
Consolidated Statements of Shareholders' Equity
(in thousands)

	Common Stock	Additional Paid-In Capital	Retained Earnings	Treasury Stock	Deferred Compensation Trust	Deferred Compensation Liability	Total
Balance, December 31, 2019	\$ 206	\$ 2,055,407	\$ 7,909,872	\$ (7,624,241)	\$ (16,912)	\$ 16,912	\$ 2,341,244
Net income	—	—	901,248	—	—	—	901,248
Deferred compensation activity, net	—	—	—	—	202	(202)	—
Purchase of common stock for treasury	—	—	—	(371,078)	—	—	(371,078)
Equity-based compensation	—	50,794	—	—	—	—	50,794
Proceeds from stock options exercised	—	180,866	—	—	—	—	180,866
Treasury stock issued upon option exercise and restricted share vesting	—	(72,641)	—	72,641	—	—	—
Balance, December 31, 2020	206	2,214,426	8,811,120	(7,922,678)	(16,710)	16,710	3,103,074
Net income	—	—	1,236,719	—	—	—	1,236,719
Deferred compensation activity, net	—	—	—	—	—	—	—
Purchase of common stock for treasury	—	—	—	(1,538,019)	—	—	(1,538,019)
Equity-based compensation	—	58,234	—	—	—	—	58,234
Proceeds from stock options exercised	—	142,370	—	—	—	—	142,370
Treasury stock issued upon option exercise and restricted share vesting	—	(36,839)	—	36,839	—	—	—
Balance, December 31, 2021	206	2,378,191	10,047,839	(9,423,858)	(16,710)	16,710	3,002,378
Net income	—	—	1,725,575	—	—	—	1,725,575
Purchase of common stock for treasury	—	—	—	(1,500,358)	—	—	(1,500,358)
Equity-based compensation	—	82,537	—	—	—	—	82,537
Proceeds from stock options exercised	—	196,717	—	—	—	—	196,717
Treasury stock issued upon option exercise and restricted share vesting	—	(57,431)	—	57,431	—	—	—
Balance, December 31, 2022	<u>\$ 206</u>	<u>\$ 2,600,014</u>	<u>\$ 11,773,414</u>	<u>\$ (10,866,785)</u>	<u>\$ (16,710)</u>	<u>\$ 16,710</u>	<u>\$ 3,506,849</u>

See notes to consolidated financial statements.

NVR, Inc.
Consolidated Statements of Cash Flows
(in thousands)

	Year Ended December 31,		
	2022	2021	2020
Cash flows from operating activities:			
Net income	\$ 1,725,575	\$ 1,236,719	\$ 901,248
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization	17,396	19,463	21,992
Equity-based compensation expense	82,537	58,234	50,794
Contract land deposit impairments (recoveries) and other impairments, net	28,466	(20,827)	28,079
Gain on sale of loans, net	(152,668)	(205,582)	(168,720)
Deferred tax benefit	(11,101)	(234)	(17,565)
Mortgage loans closed	(6,314,514)	(6,079,454)	(5,323,932)
Mortgage loans sold and principal payments on mortgage loans held for sale	6,471,270	6,424,204	5,536,568
Distribution of earnings from unconsolidated joint ventures	9,000	9,500	1,432
Net change in assets and liabilities:			
Decrease (increase) in inventory	159,091	(238,284)	(362,384)
(Increase) decrease in contract land deposits	(26,407)	(87,374)	519
(Increase) decrease in receivables	(27,384)	1,956	(1,675)
(Decrease) increase in accounts payable and accrued expenses	(13,777)	(19,954)	168,667
(Decrease) increase in customer deposits	(103,659)	176,705	108,872
Other, net	26,276	(32,679)	(18,626)
Net cash provided by operating activities	<u>1,870,101</u>	<u>1,242,393</u>	<u>925,269</u>
Cash flows from investing activities:			
Investments in and advances to unconsolidated joint ventures	(9,735)	(1,282)	(435)
Distribution of capital from unconsolidated joint ventures	—	—	11,625
Purchase of property, plant and equipment	(18,428)	(17,875)	(16,119)
Proceeds from the sale of property, plant and equipment	732	978	996
Net cash used in investing activities	<u>(27,431)</u>	<u>(18,179)</u>	<u>(3,933)</u>
Cash flows from financing activities:			
Purchase of treasury stock	(1,500,358)	(1,538,019)	(371,078)
Proceeds from the issuance of senior notes	—	—	923,905
Redemption of senior notes	(600,000)	—	—
Debt issuance costs	—	—	(5,062)
Principal payments on finance lease liabilities	(1,495)	(1,363)	(989)
Proceeds from the exercise of stock options	196,717	142,370	180,866
Net cash (used in) provided by financing activities	<u>(1,905,136)</u>	<u>(1,397,012)</u>	<u>727,642</u>
Net (decrease) increase in cash, restricted cash, and cash equivalents	(62,466)	(172,798)	1,648,978
Cash, restricted cash, and cash equivalents, beginning of the year	2,636,984	2,809,782	1,160,804
Cash, restricted cash, and cash equivalents, end of the year	<u>\$ 2,574,518</u>	<u>\$ 2,636,984</u>	<u>\$ 2,809,782</u>
Supplemental disclosures of cash flow information:			
Interest paid during the year, net of interest capitalized	<u>\$ 47,502</u>	<u>\$ 53,680</u>	<u>\$ 36,805</u>
Income taxes paid during the year, net of refunds	<u>\$ 529,820</u>	<u>\$ 389,383</u>	<u>\$ 163,076</u>

See notes to consolidated financial statements.

1. Summary of Significant Accounting Policies

Principles of Consolidation

The accompanying consolidated financial statements include the accounts of NVR, Inc. and its subsidiaries ("NVR", the "Company", "we", "us", or "our") and certain other entities in which the Company is deemed to be the primary beneficiary (see Notes 3 and 4 herein for additional information). All significant intercompany transactions have been eliminated in consolidation.

Use of Estimates in the Preparation of Financial Statements

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America ("GAAP") requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, the disclosure of contingent assets and liabilities at the date of the financial statements, and the reported amounts of revenues and expenses during the reporting periods. Management continually evaluates the estimates used to prepare the consolidated financial statements and updates those estimates as necessary. In general, our estimates are based on historical experience, on information from third party professionals, and other various assumptions that are believed to be reasonable under the facts and circumstances. Actual results could differ materially from those estimates made by management.

Cash and Cash Equivalents

Cash and cash equivalents include short-term investments with maturities at acquisition of three months or less.

Restricted Cash

Homebuilding restricted cash was attributable to customer deposits for certain home sales. Mortgage banking restricted cash includes amounts collected from customers for loans in process and closed mortgage loans held for sale.

At December 31, 2022 and 2021, \$250 and \$268, respectively, of cash related to a consolidated variable interest entity is included in homebuilding "Other assets" on the accompanying consolidated balance sheet.

Homebuilding Inventory

The carrying value of inventory is stated at the lower of cost or market value. Cost of lots and completed and uncompleted housing units represent the accumulated actual cost of the units. Field construction supervisors' salaries and related direct overhead expenses are included in inventory costs. Interest costs are not capitalized into inventory, with the exception of land under development and joint venture investments, as applicable (see below). Upon settlement, the cost of the unit is expensed on a specific identification basis. Cost of building materials is determined on a first-in, first-out basis.

Sold inventory is evaluated for impairment based on the contractual sales price compared to the total estimated cost to construct. Unsold inventory is evaluated for impairment by analyzing recent comparable sales prices within the applicable community compared to the costs incurred to date plus the expected costs to complete. Any calculated impairments are recorded immediately in cost of sales.

Contract Land Deposits

We purchase finished lots under fixed price lot purchase agreements ("LPAs") that require deposits that may be forfeited if we fail to perform under the contract. The deposits are in the form of cash or letters of credit in varying amounts and represent a percentage of the aggregate purchase price of the finished lots.

We maintain an allowance for losses on contract land deposits that reflects our judgment of the present loss exposure in the existing contract land deposit portfolio at the end of the reporting period. To analyze contract land deposit impairments, we conduct a loss contingency analysis each quarter. In addition to considering market and economic conditions, we assess contract land deposit impairments on a community-by-community basis pursuant to the purchase contract terms, analyzing quantitative and qualitative information including, as applicable, current sales absorption levels, recent sales' profit margin, the dollar differential between the contractual purchase price and the current market price for lots, a developer's performance, a developer's financial ability or willingness to reduce lot prices to current market prices, if necessary, and the contract's default status by either us or the developer along with an analysis of the expected outcome of any such default.

Our analysis is focused on whether we can sell houses at an acceptable profit margin and sales pace in a particular community in the current market with which we are faced. Because we do not own the finished lots on which we have placed a contract land deposit, if the above analysis leads to a determination that we cannot sell homes at an acceptable profit margin and sales pace at the current contractual lot price, we then determine whether we will elect to default under the contract, forfeit the deposit and terminate the contract, or whether we will attempt to restructure the LPA, which may require us to forfeit the deposit to obtain contract

NVR, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except per share data)

concessions from a developer. We also assess whether impairment is present due to collectibility issues resulting from a developer's non-performance because of financial or other conditions.

For the year ended December 31, 2022 we incurred a net pre-tax charge of approximately \$27,500 related to the impairment of contract land deposits. For the year ended December 31, 2021, we recognized a net pre-tax recovery of approximately \$22,100 of contract land deposits previously determined to be unrecoverable. For the year ended December 31, 2020, we incurred a net pre-tax charge of approximately \$25,600 related to the impairment of contract land deposits. The contract land deposit assets on the accompanying consolidated balance sheets are shown net of the allowance for losses of \$57,060 and \$30,041 at December 31, 2022 and 2021, respectively.

Land Under Development

On a limited basis, we directly acquire raw parcels of land already zoned for its intended use to develop into finished lots. Land under development includes the land acquisition costs, direct improvement costs, capitalized interest, where applicable, and real estate taxes.

Land under development, including the land under development held by our unconsolidated joint ventures and the related joint venture investments, is reviewed for potential write-downs when impairment indicators are present. In addition to considering market and economic conditions, we assess land under development impairments on a community-by-community basis, analyzing, as applicable, current sales absorption levels, recent sales' profit margin, and the dollar differential between the projected fully-developed cost of the lots and the current market price for lots. If indicators of impairment are present for a community, we perform an analysis to determine if the undiscounted cash flows estimated to be generated by those assets are less than their carrying amounts, and if so, impairment charges are required to be recorded in an amount by which the carrying amount of the assets exceeds the fair value of such assets. Our determination of fair value is primarily based on discounting the estimated future cash flows at a rate commensurate with the inherent risks associated with the assets and related estimated cash flow streams. See Notes 4 and 5 for further discussion of joint venture investments and land under development, respectively.

Property, Plant, and Equipment

Property, plant, and equipment are carried at cost less accumulated depreciation and amortization. Depreciation is based on the estimated useful lives of the assets using the straight-line method. Model home furniture and fixtures are generally depreciated over a 2-year period, office facilities and other equipment are depreciated over a period of 3 to 10 years and production facilities are depreciated over periods of 5 to 40 years.

Leases

We determine if an arrangement is a lease, or contains a lease, at the inception of the arrangement. Once determined that an arrangement is a lease, we then determine if the lease is an operating lease or a finance lease. Both operating and finance leases result in us recording a right-of-use ("ROU") asset and lease liability on our balance sheet. The ROU assets and lease liabilities are recognized based on the present value of lease payments over the lease term, discounted using our incremental borrowing rate at the commencement date of the lease. We estimate our incremental borrowing rate based on available published borrowing rates commensurate with our debt rating and the leases term, adjusted to infer collateralization. Specific lease terms may include options to extend or terminate the lease when we believe it is reasonably certain that we will exercise that option.

We recognize operating lease expense on a straight-line basis over the lease term. We have elected to use the portfolio approach for certain equipment leases which have similar lease terms and payment schedules. Additionally, for certain equipment we account for the lease and non-lease components as a single lease component. Our sublease income is de minimis. We have certain leases, primarily the leases of model homes, which have initial lease terms of twelve months or less ("Short-term leases"). As is allowed under GAAP, we have elected to exclude Short-term leases from the recognition requirements and they are not included in our recognized ROU assets and lease liabilities. Operating leases are reported in "Operating lease right-of-use assets" and "Operating lease liabilities" and finance leases are recorded in homebuilding "Property, plant and equipment, net" and "Accrued expenses and other liabilities" on the accompanying consolidated balance sheets. See Note 13 herein for further information.

Warranty/Product Liability Reserves

We establish warranty and product liability reserves ("Warranty Reserve") to provide for estimated future expenses as a result of construction and product defects, product recalls and litigation incidental to our homebuilding business. Liability estimates are determined based on management's judgment considering such factors as historical experience, the likely current cost of corrective action, manufacturers' and subcontractors' participation in sharing the cost of corrective action, consultations with third party experts such as engineers, and discussions with our general counsel and outside counsel retained to handle specific product liability cases.

NVR, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except per share data)

Mortgage Repurchase Reserve, Mortgage Loans Held for Sale and Derivatives and Hedging Activities

We originate several different loan products to our customers to finance the purchase of a home through our wholly-owned mortgage subsidiary, NVR Mortgage Finance, Inc. (“NVRM”). NVRM sells almost all of the loans it originates into the secondary market on a servicing released basis, typically within 30 days from closing. All of the loans that NVRM originates are underwritten to the standards and specifications of the ultimate investor. Those underwriting standards are typically equal to or more stringent than the underwriting standards required by Fannie Mae (“FNMA”), Ginnie Mae (“GNMA”), Freddie Mac (“FHLMC”), the Department of Veterans Affairs (“VA”) and the Federal Housing Administration (“FHA”). Insofar as NVRM underwrites its originated loans to those standards, NVRM bears no increased concentration of credit risk from the issuance of loans, except in certain limited instances where repurchases or early payment defaults occur. NVRM employs a quality control department to ensure that its underwriting controls are effectively operating, and further assesses the underwriting function as part of its assessment of internal controls over financial reporting. NVRM maintains a reserve for losses on mortgage loans originated that reflects our judgment of the present loss exposure in the loans that NVRM has originated and sold. The reserve is calculated based on an analysis of historical experience and exposure (see Note 16 herein for further information).

Mortgage loans held for sale are recorded at fair value when closed, and thereafter are carried at the lower of cost or fair value, net of deferred origination costs, until sold.

In the normal course of business, NVRM enters into contractual commitments to extend credit to buyers of single-family homes with fixed expiration dates. The commitments become effective when the borrowers “lock-in” a specified interest rate within time frames established by NVRM. All borrowers are evaluated for credit worthiness prior to the extension of the commitment. Market risk arises if interest rates move adversely between the time of the “lock-in” of rates by the borrower and the sale date of the loan to an investor. To mitigate the effect of the interest rate risk inherent in providing rate lock commitments to borrowers, NVRM enters into optional or mandatory delivery forward sale contracts to sell whole loans and mortgage-backed securities to investors. The forward sale contracts lock-in a range of interest rates and prices for the sale of loans similar to the specific rate lock commitments. NVRM does not engage in speculative or trading derivative activities. Both the rate lock commitments to borrowers and the forward sale contracts to investors are undesignated derivatives, and, accordingly, are marked to fair value through earnings. At December 31, 2022, there were contractual commitments to extend credit to borrowers aggregating \$1,607,055, and open forward delivery sale contracts aggregating \$1,752,852, which hedge both the rate lock loan commitments and closed loans held for sale (see Note 15 herein for a description of the Company’s fair value accounting).

Earnings per Share

The following weighted average shares and share equivalents were used to calculate basic and diluted earnings per share for the years ended December 31, 2022, 2021 and 2020:

	Year Ended December 31,		
	2022	2021	2020
Weighted average number of shares outstanding used to calculate basic EPS	3,285,562	3,580,800	3,691,987
<i>Dilutive securities:</i>			
Stock options and restricted share units	222,962	278,112	224,674
Weighted average number of shares and share equivalents outstanding used to calculate diluted EPS	3,508,524	3,858,912	3,916,661

The assumed proceeds used in the treasury method for calculating our diluted earnings per share includes the amount the employee must pay upon exercise and the amount of compensation cost attributed to future services not yet recognized.

The following stock options issued under equity incentive plans were outstanding during the years ended December 31, 2022, 2021 and 2020, but were not included in the computation of diluted earnings per share because the effect would have been anti-dilutive.

	Year Ended December 31,		
	2022	2021	2020
Anti-dilutive securities	194,884	23,062	31,210

NVR, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except per share data)

Revenues – Homebuilding Operations

We build single-family detached homes, townhomes and condominium buildings, which generally are constructed on a pre-sold basis. Revenue is recognized on the settlement date at the contract sales price, when control is transferred to our customers. Our contract liabilities, consisting of deposits received from customers on homes not settled, were \$313,804 and \$417,463 as of December 31, 2022 and 2021, respectively. Substantially all customer deposits are recognized in revenue within twelve months of being received from customers. Our contract assets, consisting of prepaid sales compensation, totaled approximately \$15,300 and \$25,200, as of December 31, 2022 and 2021, respectively. These amounts are included in homebuilding “Other assets” on the accompanying consolidated balance sheets.

Mortgage Banking Fees

Mortgage banking fees include income earned by NVRM for originating mortgage loans, servicing mortgage loans held on an interim basis, title fees, gains and losses on the sale of mortgage loans and mortgage servicing and other activities incidental to mortgage banking. Mortgage banking fees are generally recognized after the loan has been sold to an unaffiliated, third party investor.

Income Taxes

Income taxes are accounted for under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax basis. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on the deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date.

ASC 740-10, *Income Taxes*, provides that a tax benefit from an uncertain tax position may be recognized when it is more-likely-than-not (defined as a likelihood of more than 50%) that the position will be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits. If a tax position does not meet the more-likely-than-not recognition threshold, despite our belief that its filing position is supportable, the benefit of that tax position is not recognized in the statements of income. We recognize interest related to unrecognized tax benefits as a component of income tax expense. Based on our historical experience in dealing with various taxing authorities, we have found that it is the administrative practice of the taxing authorities to not seek penalties from us for the tax positions we have taken on our returns related to our unrecognized tax benefits. Therefore, we do not accrue penalties for the positions in which we have an unrecognized tax benefit. We recognize unrecognized tax benefits in the period that the uncertainty is eliminated by either affirmative agreement of the uncertain tax position by the applicable taxing authority, by expiration of the applicable statute of limitation, or by determination in accordance with certain states’ administrative practices that the uncertain tax position has been effectively settled (see Note 11 herein for further information).

Financial Instruments

Except as otherwise noted herein, we believe that the carrying value approximates the fair value of our financial instruments (see Note 15 herein for further information).

Equity-Based Compensation

We recognize equity-based compensation expense within our income statement for all share-based payment arrangements, which includes non-qualified stock options to purchase shares of NVR common stock (“Options”) and restricted share units (“RSUs”). Compensation expense is based on grant-date fair value of the Options and RSUs granted, and is recognized on a straight-line basis over the requisite service period for the entire award (from the date of grant through the period of the last separately vesting portion of the grant). Options and RSUs which are subject to a performance condition are treated as a separate award from the “service-only” Options and RSUs, and compensation expense is recognized when it becomes probable that the stated performance target will be achieved. We calculate the fair value of our Options, which are non-publicly traded, using the Black-Scholes option-pricing model. The grant date fair value of the RSUs is the closing price of our common stock on the day immediately preceding the date of grant. The reversal of compensation expense previously recognized for grants forfeited is recorded in the period in which the forfeiture occurs. Our equity-based compensation plans are accounted for as equity-classified awards (see Note 12 herein for further discussion of equity-based compensation plans).

Comprehensive Income

For the years ended December 31, 2022, 2021 and 2020, comprehensive income equaled net income; therefore, a separate statement of comprehensive income is not included in the accompanying consolidated financial statements.

NVR, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except per share data)

2. Segment Information, Nature of Operations, and Certain Concentrations

Our homebuilding operations primarily construct and sell single-family detached homes, townhomes and condominium buildings under three trade names: Ryan Homes, NVHomes and Heartland Homes. The Ryan Homes product is marketed primarily to first-time and first-time move-up buyers. Ryan Homes operates in thirty-five metropolitan areas located in Maryland, Virginia, Washington, D.C., Delaware, West Virginia, Pennsylvania, Ohio, New York, New Jersey, Indiana, Illinois, North Carolina, South Carolina, Georgia, Florida and Tennessee. The NVHomes and Heartland Homes products are marketed primarily to move-up and luxury buyers. NVHomes operates in Delaware and the Washington, D.C., Baltimore, MD and Philadelphia, PA metropolitan areas. Heartland Homes operates in the Pittsburgh, PA metropolitan area. We derived approximately 21% of our 2022 homebuilding revenues from the Washington, D.C. metropolitan area.

Our mortgage banking segment is a regional mortgage banking operation. Substantially all of our loan closing activity is for our homebuilding customers. Our mortgage banking business generates revenues primarily from origination fees, gains on sales of loans, and title fees. A substantial portion of our mortgage operations is conducted in the Washington, D.C. metropolitan area.

The following disclosure includes four homebuilding reportable segments that aggregate geographically our homebuilding operating segments, and the mortgage banking operations presented as a single reportable segment. The homebuilding reportable segments are comprised of operating divisions in the following geographic areas:

<i>Mid Atlantic:</i>	Maryland, Virginia, West Virginia, Delaware and Washington, D.C.
<i>North East:</i>	New Jersey and Eastern Pennsylvania
<i>Mid East:</i>	New York, Ohio, Western Pennsylvania, Indiana and Illinois
<i>South East:</i>	North Carolina, South Carolina, Tennessee, Florida and Georgia

Homebuilding profit before tax includes all revenues and income generated from the sale of homes, less the cost of homes sold, selling, general and administrative expenses, and a corporate capital allocation charge. The corporate capital allocation charge is eliminated in consolidation and is based on the segment's average net assets employed. The corporate capital allocation charged to the operating segment allows the Chief Operating Decision Maker ("CODM") to determine whether the operating segment's results are providing the desired rate of return after covering our cost of capital.

Assets not allocated to the operating segments are not included in either the operating segment's corporate capital allocation charge or the CODM's evaluation of the operating segment's performance. We record charges on contract land deposits when it is determined that it is probable that recovery of the deposit is impaired. For segment reporting purposes, impairments on contract land deposits are charged to the operating segment upon the termination of an LPA with the developer, or the restructuring of an LPA resulting in the forfeiture of the deposit.

Mortgage banking profit before tax consists of revenues generated from mortgage financing, title insurance and closing services, less the costs of such services and general and administrative costs. Mortgage banking operations are not charged a corporate capital allocation charge.

In addition to the corporate capital allocation and contract land deposit impairments discussed above, the other reconciling items between segment profit and consolidated profit before tax include unallocated corporate overhead (including all management incentive compensation), equity-based compensation expense, consolidation adjustments and external corporate interest income and expense. Our overhead functions, such as accounting, treasury and human resources are centrally performed and the costs are not allocated to our operating segments. Consolidation adjustments consist of such items necessary to convert the reportable segments' results, which are predominantly maintained on a cash basis, to a full accrual basis for external financial statement presentation purposes, and are not allocated to our operating segments. External corporate interest expense primarily consists of interest charges on our 3.00% Senior Notes due 2030 (the "Senior Notes"), which are not charged to the operating segments because the charges are included in the corporate capital allocation discussed above.

NVR, Inc.
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(dollars in thousands, except per share data)

The following tables present certain segment financial data, with reconciliations to the amounts reported for the consolidated company, where applicable:

	Year Ended December 31,		
	2022	2021	2020
Revenues:			
Homebuilding Mid Atlantic	\$ 4,766,329	\$ 4,049,871	\$ 3,668,542
Homebuilding North East	892,543	767,828	538,772
Homebuilding Mid East	2,147,262	1,891,729	1,524,667
Homebuilding South East	2,520,636	1,992,265	1,596,908
Mortgage Banking	199,664	249,332	208,034
Consolidated revenues	<u>\$ 10,526,434</u>	<u>\$ 8,951,025</u>	<u>\$ 7,536,923</u>
Profit before taxes:			
Homebuilding Mid Atlantic	\$ 994,027	\$ 734,941	\$ 437,849
Homebuilding North East	157,333	105,432	50,677
Homebuilding Mid East	343,236	271,756	168,605
Homebuilding South East	577,030	329,982	205,029
Mortgage Banking	125,756	176,251	143,319
Total segment profit	<u>2,197,382</u>	<u>1,618,362</u>	<u>1,005,479</u>
Reconciling items:			
Contract land deposit reserve adjustment (1)	(27,300)	22,163	(24,633)
Equity-based compensation expense (2)	(82,537)	(58,234)	(50,794)
Corporate capital allocation (3)	302,904	252,787	239,233
Unallocated corporate overhead	(129,998)	(139,611)	(114,921)
Consolidation adjustments and other (4)	(1,719)	(56,511)	54,561
Corporate interest income	32,457	2,840	8,464
Corporate interest expense	(37,995)	(51,393)	(39,356)
Reconciling items sub-total	<u>55,812</u>	<u>(27,959)</u>	<u>72,554</u>
Consolidated profit before taxes	<u>\$ 2,253,194</u>	<u>\$ 1,590,403</u>	<u>\$ 1,078,033</u>

- (1) This item represents changes to the contract land deposit impairment reserve, which are not allocated to the reportable segments. See further discussion of contract land deposit impairment charges in Note 3.
- (2) The increase in equity-based compensation expense in 2022 was primarily attributable to a four year block grant of Options and RSUs in May 2022. See Note 12 for additional discussion of equity-based compensation.
- (3) This item represents the elimination of the corporate capital allocation charge included in the respective homebuilding reportable segments. The corporate capital allocation charge is based on the segment's monthly average asset balance, and was as follows for the years presented:

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	Year Ended December 31,		
	2022	2021	2020
Corporate capital allocation charge:			
Homebuilding Mid Atlantic	\$ 143,251	\$ 124,316	\$ 124,426
Homebuilding North East	30,623	25,431	22,850
Homebuilding Mid East	51,376	43,686	40,256
Homebuilding South East	77,654	59,354	51,701
Total corporate capital allocation charge	<u>\$ 302,904</u>	<u>\$ 252,787</u>	<u>\$ 239,233</u>

- (4) The consolidation adjustments and other in each period are primarily driven by changes in units under construction as well as significant fluctuations in lumber prices year over year. Our reportable segments' results include the intercompany profits of our production facilities for home packages delivered to our homebuilding divisions. Costs related to homes not yet settled are reversed through the consolidation adjustment and recorded in inventory. These costs are subsequently recorded through the consolidation adjustment when the respective homes are settled. The consolidation adjustment in 2021 was negatively impacted by a higher number of units under construction as of the end of the year compared to the prior year end, resulting in an increase in the reversal of intercompany profits year over year through the consolidation adjustment. In 2022, the consolidation adjustment was favorably impacted by a reduction in the number of units under construction year over year, resulting in a decrease in intercompany profits deferred year over year. This favorable impact was offset by the recognition of previously deferred home package costs that included higher priced lumber.

	As of December 31,	
	2022	2021
Assets:		
Homebuilding Mid Atlantic	\$ 1,152,564	\$ 1,322,818
Homebuilding North East	250,001	235,048
Homebuilding Mid East	378,833	438,700
Homebuilding South East	697,923	629,198
Mortgage Banking	406,456	371,685
Total segment assets	<u>2,885,777</u>	<u>2,997,449</u>
Reconciling items:		
Cash and cash equivalents	2,503,424	2,545,069
Deferred taxes	143,585	132,894
Intangible assets and goodwill	49,368	49,368
Operating lease right-of-use assets	71,081	59,010
Finance lease right-of-use assets	13,745	14,578
Contract land deposit reserve	(57,060)	(30,041)
Consolidation adjustments and other	51,053	66,148
Reconciling items sub-total	<u>2,775,196</u>	<u>2,837,026</u>
Consolidated assets	<u>\$ 5,660,973</u>	<u>\$ 5,834,475</u>

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	Year Ended December 31,		
	2022	2021	2020
Interest income:			
Mortgage Banking	\$ 11,853	\$ 8,725	\$ 8,930
Total segment interest income	11,853	8,725	8,930
Other unallocated interest income	32,458	3,154	8,549
Consolidated interest income	<u>\$ 44,311</u>	<u>\$ 11,879</u>	<u>\$ 17,479</u>
Interest expense:			
Homebuilding Mid Atlantic	\$ 143,322	\$ 124,385	\$ 124,486
Homebuilding North East	30,658	25,463	22,859
Homebuilding Mid East	51,384	43,695	40,261
Homebuilding South East	77,685	59,381	51,729
Mortgage Banking	1,384	1,587	1,414
Total segment interest expense	304,433	254,511	240,749
Corporate capital allocation (3)	(302,904)	(252,787)	(239,233)
Senior Notes and other interest	37,995	51,393	39,356
Consolidated interest expense	<u>\$ 39,524</u>	<u>\$ 53,117</u>	<u>\$ 40,872</u>
Depreciation and amortization:			
Homebuilding Mid Atlantic	\$ 5,923	\$ 6,183	\$ 6,806
Homebuilding North East	1,216	1,628	1,800
Homebuilding Mid East	3,948	4,259	4,969
Homebuilding South East	3,093	3,325	3,636
Mortgage Banking	1,135	1,283	1,534
Total segment depreciation and amortization	15,315	16,678	18,745
Unallocated corporate	2,081	2,785	3,247
Consolidated depreciation and amortization	<u>\$ 17,396</u>	<u>\$ 19,463</u>	<u>\$ 21,992</u>
Expenditures for property and equipment:			
Homebuilding Mid Atlantic	\$ 7,033	\$ 7,073	\$ 5,712
Homebuilding North East	1,420	1,062	1,083
Homebuilding Mid East	4,504	4,813	5,041
Homebuilding South East	3,993	4,142	3,818
Mortgage Banking	1,062	401	265
Total segment expenditures for property and equipment	18,012	17,491	15,919
Unallocated corporate	416	384	200
Consolidated expenditures for property and equipment	<u>\$ 18,428</u>	<u>\$ 17,875</u>	<u>\$ 16,119</u>

3. Variable Interest Entities

Lot Purchase Agreements

We generally do not engage in land development. Instead, we typically acquire finished building lots from various third party land developers under LPAs. The LPAs require deposits that may be forfeited if we fail to perform under the LPAs. The deposits required under the LPAs are in the form of cash or letters of credit in varying amounts, and typically range up to 10% of the aggregate purchase price of the finished lots.

We believe this lot acquisition strategy reduces the financial risks associated with direct land ownership and land development. We may, at our option, choose for any reason and at any time not to perform under these LPAs by delivering notice of our intent not to acquire the finished lots under contract. Our sole legal obligation and economic loss for failure to perform under these LPAs is limited to the amount of the deposit pursuant to the liquidated damage provisions contained within the LPAs. None of the creditors of any of the development entities with which we enter LPAs have recourse to our general credit. We generally do not have any specific performance obligations to purchase a certain number or any of the lots, nor do we guarantee completion of the development by the developer or guarantee any of the developers' financial or other liabilities.

We are not involved in the design or creation of the development entities from which we purchase lots under LPAs. The developer's equity holders have the power to direct 100% of the operating activities of the development entity. We have no voting rights in any of the development entities. The sole purpose of the development entity's activities is to generate positive cash flow returns for the equity holders. Further, we do not share in any of the profit or loss generated by the project's development. The profits and losses are passed directly to the developer's equity holders.

The deposit placed by us pursuant to the LPA is deemed to be a variable interest in the respective development entities. Those development entities are deemed to be variable interest entities ("VIE"). Therefore, the development entities with which we enter into LPAs, including the joint venture limited liability corporations, discussed below, are evaluated for possible consolidation by us. An enterprise must consolidate a VIE when that enterprise has a controlling financial interest in the VIE. An enterprise is deemed to have a controlling financial interest if it has i) the power to direct the activities of a VIE that most significantly impact the entity's economic performance, and ii) the obligation to absorb losses of the VIE that could be significant to the VIE or the rights to receive benefits from the VIE that could be significant to the VIE.

We believe the activities that most significantly impact a development entity's economic performance are the operating activities of the entity. Unless and until a development entity completes finished building lots through the development process to be able to sell, the process of which the development entity's equity investors bear the full risk, the entity does not earn any revenues. The operating development activities are managed solely by the development entity's equity investors.

The development entities with which we contract to buy finished lots typically select the respective projects, obtain the necessary zoning approvals, obtain the financing required with no support or guarantees from us, select who will purchase the finished lots and at what price, and manage the completion of the infrastructure improvements, all for the purpose of generating a cash flow return to the development entity's equity holders and all independent of us. We possess no more than limited protective legal rights through the LPA in the specific finished lots that we are purchasing, and we possess no participative rights in the development entities. Accordingly, we do not have the power to direct the activities of a developer that most significantly impact the developer's economic performance. For this reason, we concluded that we are not the primary beneficiary of the development entities with which we enter into LPAs, and therefore we do not consolidate any of these VIEs.

As of December 31, 2022, we controlled approximately 125,100 lots under LPAs with third parties through deposits in cash and letters of credit totaling approximately \$543,100 and \$6,900, respectively. As noted above, our sole legal obligation and economic loss for failure to perform under these LPAs is limited to the amount of the deposit pursuant to the liquidated damage provisions contained in the LPAs and, in very limited circumstances, specific performance obligations. During 2022, we incurred pre-tax impairment charges on lot deposits of approximately \$27,500 based on current market conditions. Our contract land deposit asset is shown net of a \$57,060 and \$30,041 impairment reserve at December 31, 2022 and December 31, 2021, respectively.

In addition, we have certain properties under contract with land owners that are expected to yield approximately 19,300 lots, which are not included in the number of total lots controlled. Some of these properties may require rezoning or other approvals to achieve the expected yield. These properties are controlled with deposits in cash totaling approximately \$10,100 as of December 31, 2022, of which approximately \$2,500 is refundable if we do not perform under the contract. We generally expect to assign the raw land contracts to a land developer and simultaneously enter into an LPA with the assignee if the project is determined to be feasible.

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Our total risk of loss related to contract land deposits as of December 31, 2022 and 2021 was as follows:

	As of December 31,	
	2022	2021
Contract land deposits	\$ 553,140	\$ 527,180
Loss reserve on contract land deposits	(57,060)	(30,041)
Contract land deposits, net	496,080	497,139
Contingent obligations in the form of letters of credit	6,896	10,145
Total risk of loss	<u>\$ 502,976</u>	<u>\$ 507,284</u>

4. Joint Ventures

On a limited basis, we obtain finished lots using joint venture limited liability corporations (“JVs”). The JVs are typically structured such that we are a non-controlling member and at risk only for the amount we have invested, or committed to invest, in addition to any deposits placed under LPAs with the joint venture. We are not a borrower, guarantor or obligor on any debt of the JVs, as applicable. We enter into LPAs to purchase lots from these JVs, and as a result have a variable interest in these JVs.

At December 31, 2022, we had an aggregate investment totaling approximately \$27,200 in five JVs that are expected to produce approximately 5,300 finished lots, of which approximately 4,900 lots were controlled by us and the remaining approximately 400 lots were either under contract with unrelated parties or not currently under contract. We had additional funding commitments totaling approximately \$13,000 in one of the JVs at December 31, 2022.

During the fourth quarter of 2022, we recognized an impairment of approximately \$1,000 related to one of the JVs. The charge was recorded to homebuilding "Cost of sales" on the accompanying consolidated statements of income. None of the other JVs had any indicators of impairment during 2022.

We determined that we are not the primary beneficiary in four of the JVs because we and the other JV partner either share power or the other JV partner has the controlling financial interest. The aggregate investment in unconsolidated JVs was approximately \$27,200 and \$20,300 at December 31, 2022 and December 31, 2021, respectively, and is reported in the “Other assets” line item on the accompanying consolidated balance sheets. For the remaining JV, we concluded that we are the primary beneficiary because we have the controlling financial interest in the JV. All activities under the consolidated JV had been completed and as of December 31, 2022, we had no remaining investment in the JV. The JV had remaining balances of \$250 in cash and \$224 in accrued expenses, which are included in homebuilding "Other assets" and "Accrued expenses and other liabilities," respectively, in the accompanying consolidated balance sheets.

At December 31, 2021, we had an aggregate investment totaling approximately \$20,300 in four JVs that were expected to produce approximately 2,300 finished lots, of which approximately 1,900 lots were controlled by us and the remaining approximately 400 lots were either under contract with unrelated parties or not currently under contract. In addition, at December 31, 2021, we had additional funding commitments in the aggregate totaling \$2,500 in one of the JVs. During the fourth quarter of 2021, we recognized an impairment of approximately \$1,300 related to one of the JVs. The charge was recorded to homebuilding "Cost of sales" on the accompanying consolidated statements of income. None of the other JVs had any indicators of impairment during 2021.

5. Land Under Development

On a limited basis, we directly acquire raw land parcels already zoned for its intended use to develop into finished lots. Land under development includes the land acquisition costs, direct improvement costs, capitalized interest, where applicable, and real estate taxes.

As of December 31, 2022, we owned land with a carrying value of \$27,100 that we intend to develop into approximately 1,900 finished lots primarily for use in our homebuilding operations. We also have additional funding commitments of approximately \$2,100 under a joint development agreement related to one project, a portion of which we expect will be offset by development credits of approximately \$900. None of our land under development projects had any indicators of impairment as of December 31, 2022.

As of December 31, 2021, we directly owned land with a carrying value of \$12,147, which was expected to produce approximately 200 finished lots.

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6. Capitalized Interest

We capitalize interest costs to land under development during the active development of finished lots. In addition, we capitalize interest costs to our joint venture investments while the investments are considered qualified assets pursuant to ASC 835-20, *Interest*. Capitalized interest is transferred to inventory as the development of finished lots is completed, then charged to cost of sales upon our settlement of homes and the respective lots. Interest incurred in excess of the interest capitalizable based on the level of qualified assets is expensed in the period incurred.

Our interest costs incurred, capitalized, expensed and charged to cost of sales during the years ended December 31, 2022, 2021 and 2020 was as follows:

	Year Ended December 31,		
	2022	2021	2020
Interest capitalized, beginning of year	\$ 593	\$ 1,025	\$ 3,499
Interest incurred	39,626	53,248	41,327
Interest charged to interest expense	(39,524)	(53,117)	(40,872)
Interest charged to cost of sales	(125)	(563)	(2,929)
Interest capitalized, end of year	<u>\$ 570</u>	<u>\$ 593</u>	<u>\$ 1,025</u>

7. Related Party Transactions

During 2022, we purchased 642 developed lots for approximately \$102,125 from Elm Street Development, Inc. (“Elm Street”) at market prices. Elm Street is controlled by William A. Moran, a former non-independent director who retired from our Board effective May 4, 2022. The independent members of our Board of Directors approved these transactions. During 2021 and 2020, we purchased developed lots at market prices from Elm Street for approximately \$43,700 and \$60,200, respectively.

We also continue to control a parcel of raw land expected to yield approximately 1,400 finished lots through a JV entered into with Elm Street during 2009. We did not make any investments in the JV in 2022, 2021 or 2020.

8. Property, Plant and Equipment (“PP&E”)

	As of December 31,	
	2022	2021
Homebuilding:		
Office facilities and other	\$ 40,604	\$ 39,826
Model home furniture and fixtures	35,152	32,384
Production facilities	97,050	87,379
Finance lease right-of-use assets	13,745	14,578
Gross Homebuilding PP&E	186,551	174,167
Less: accumulated depreciation	(128,601)	(117,188)
Net Homebuilding PP&E	<u>\$ 57,950</u>	<u>\$ 56,979</u>
Mortgage Banking:		
Office facilities and other	\$ 15,964	\$ 15,090
Less: accumulated depreciation	(12,405)	(11,432)
Net Mortgage Banking PP&E	<u>\$ 3,559</u>	<u>\$ 3,658</u>

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9. Debt

During the second quarter of 2022, we redeemed the outstanding \$600,000 principal amount of 3.95% Senior Notes due September 15, 2022, at par, plus accrued interest.

As of December 31, 2022, we had the following debt instruments outstanding:

3.00% Senior Notes due 2030 ("2030 Senior Notes")

On May 4, 2020, we issued \$600,000 of the 2030 Senior Notes. The 2030 Senior Notes were issued at a discount to yield 3.02% and have been reflected net of the unamortized discount and unamortized debt issuance costs in the accompanying consolidated balance sheet. The offering of the 2030 Senior Notes resulted in aggregate net proceeds of approximately \$595,200, after deducting underwriting discount and offering expenses. The 2030 Senior Notes mature on May 15, 2030 and bear interest at 3.00%, payable semi-annually in arrears on May 15 and November 15. As of December 31, 2022 and 2021, the unamortized discount was \$871 and \$975, respectively, and unamortized debt issuance costs were \$2,664 and \$3,025, respectively.

On September 9 and September 17, 2020, we issued an additional \$250,000 and \$50,000, respectively, of the 2030 Senior Notes (the "2030 Additional Notes" and together with the 2030 Senior Notes, the "Senior Notes"). The 2030 Additional Notes were issued at a premium to yield 2.00% and have been reflected net of the unamortized premium and unamortized debt issuance costs in the accompanying consolidated balance sheet. The offering of the 2030 Additional Notes resulted in aggregate net proceeds of approximately \$323,600, including the underwriting premium, less offering expenses. As of December 31, 2022 and 2021, the 2030 Additional Notes unamortized premium was \$19,518 and \$21,945, respectively, and unamortized debt issuance costs were \$1,095 and \$1,243, respectively.

The Senior Notes are senior unsecured obligations and rank equally in right of payment with any of our existing and future unsecured senior indebtedness, will rank senior in right of payment to any of our future indebtedness that is by its terms expressly subordinated to the Senior Notes and will be effectively subordinated to any of our existing and future secured indebtedness to the extent of the value of the collateral securing such indebtedness. The indenture governing the Senior Notes has, among other items, and subject to certain exceptions, covenants that restrict our ability to create, incur, assume or guarantee secured debt, enter into sale and leaseback transactions and conditions related to mergers and/or the sale of assets. We were in compliance with all covenants under the Senior Notes at December 31, 2022.

Credit Agreement

On February 12, 2021, we entered into The Amended and Restated Credit Agreement with Bank of America, N.A., as Administrative Agent, BOFA Securities, Inc. as Sole Lead Arranger and Sole Bookrunner, and other lenders party thereto (the "Credit Agreement"). The Credit Agreement provides for aggregate revolving loan commitments of \$300,000 (the "Facility"). Under the Credit Agreement, we may request increases of up to \$300,000 to the Facility in the form of revolving loan commitments or term loans to the extent that new or existing lenders agree to provide additional revolving loan or term loan commitments. In addition, the Credit Agreement provides for a \$100,000 sublimit for the issuance of letters of credit of which approximately \$11,000 was outstanding at December 31, 2022.

Effective December 9, 2022, we entered into the First Amendment to Amended and Restated Credit Agreement (the "Amended Credit Agreement") which primarily replaces LIBOR based borrowing rates with SOFR as defined in the amendment. Borrowings under the Amended Credit Agreement generally bear interest for Base Rate Loans at a Base Rate equal to the highest of (a) the Federal Funds Rate plus one-half of one percent, (b) Bank of America's publicly announced "prime rate," (c) one percent or (d) Term SOFR plus 100 basis points.

The Amended Credit Agreement contains various representations and affirmative and negative covenants that are generally customary for credit facilities of this type. Such covenants include, among others, the following financial maintenance covenants: (i) minimum consolidated tangible net worth; (ii) minimum interest coverage ratio or minimum liquidity and (iii) a maximum leverage ratio. The negative covenants include, among others, certain limitations on liens, investments and fundamental changes. The Amended Credit Agreement termination date is February 12, 2026. We were in compliance with all covenants under the Amended Credit Agreement at December 31, 2022. There was no debt outstanding under the Facility at December 31, 2022. The Amended Credit Agreement is filed as Exhibit 10.37 in this Form 10-K. The above summary of the material terms of the Amended Credit Agreement is qualified in its entirety by reference to Exhibit 10.37.

Repurchase Agreement

In July 2022, NVRM entered into The Second Amended and Restated Master Repurchase Agreement with U.S. Bank National Association, as Agent and a Buyer (the "Repurchase Agreement"), which replaced our prior repurchase agreement in its entirety. The Repurchase Agreement provides for loan purchases up to \$150,000, subject to certain sub-limits.

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Advances under the Repurchase Agreement bear interest at the secured overnight financing rate published by the Board of Governors of the Federal Reserve System ("SOFR") plus the SOFR Margin of 1.70%, per annum, provided that the Pricing Rate shall not be less than 1.70%. The Pricing Rate at December 31, 2022 was 6.06%. There are several restrictions on purchased loans, including that they cannot be sold to others, they cannot be pledged to anyone other than the agent, and they cannot support any other borrowing or repurchase agreement. Amounts outstanding under the Repurchase Agreement are collateralized by our mortgage loans held for sale. At December 31, 2022, there were no borrowing base limitations reducing the amount available under the Repurchase Agreement. As of both December 31, 2022 and 2021, there was no debt outstanding under the Repurchase Agreement. The Repurchase Agreement expires on July 19, 2023.

The Repurchase Agreement contains various affirmative and negative covenants. The negative covenants include, among others, certain limitations on transactions involving acquisitions, mergers, the incurrence of debt, sale of assets and creation of liens upon any of its Mortgage Notes. Additional covenants include (i) a tangible net worth requirement, (ii) a minimum liquidity requirement, (iii) a minimum net income requirement, and (iv) a maximum leverage ratio requirement. NVRM was in compliance with all covenants under the Repurchase Agreement at December 31, 2022.

10. Common Stock

There were 3,218,933 and 3,447,441 common shares outstanding at December 31, 2022 and 2021, respectively. We made the following share repurchases during the years indicated:

	Year Ended December 31,		
	2022	2021	2020
Aggregate purchase price	\$ 1,500,358	\$ 1,538,019	\$ 371,078
Number of shares repurchased	323,652	322,038	96,346

We issue shares from the treasury account for all equity plan activity. We issued 95,069, 74,027 and 159,151 such shares during 2022, 2021 and 2020, respectively.

11. Income Taxes

The provision for income taxes consists of the following:

	Year Ended December 31,		
	2022	2021	2020
Current:			
Federal	\$ 412,036	\$ 272,971	\$ 151,532
State	126,686	80,650	42,769
Deferred:			
Federal	(6,753)	873	(13,289)
State	(4,350)	(810)	(4,227)
Income tax expense	<u>\$ 527,619</u>	<u>\$ 353,684</u>	<u>\$ 176,785</u>

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Deferred income taxes on our consolidated balance sheets were comprised of the following:

	As of December 31,	
	2022	2021
Deferred tax assets:		
Other accrued expenses and contract land deposit reserve	\$ 73,555	\$ 64,123
Deferred compensation	4,728	4,682
Equity-based compensation expense	47,605	46,020
Inventory	13,981	13,014
Unrecognized tax benefit	8,849	10,634
Other	11,364	9,876
Total deferred tax assets	160,082	148,349
Less: Deferred tax liabilities	8,505	7,874
Net deferred tax asset	\$ 151,577	\$ 140,475

Deferred tax assets arise principally as a result of various accruals required for financial reporting purposes and equity-based compensation expense, which are not currently deductible for tax return purposes.

Management believes that we will have sufficient future taxable income to make it more likely than not that the net deferred tax assets will be realized. Federal taxable income is estimated to be approximately \$1,997,100 for the year ended December 31, 2022, and was \$1,348,600 for the year ended December 31, 2021.

A reconciliation of income taxes computed at the federal statutory rate (21% in 2022, 2021, and 2020) to income tax expense is as follows:

	Year Ended December 31,		
	2022	2021	2020
Income taxes computed at the federal statutory rate	\$ 473,171	\$ 333,985	\$ 226,387
State income taxes, net of federal income tax benefit (1)	105,867	72,082	47,469
Excess tax benefits from equity-based compensation	(50,324)	(48,369)	(92,234)
Other, net (2)	(1,095)	(4,014)	(4,837)
Income tax expense	\$ 527,619	\$ 353,684	\$ 176,785

(1) Excludes state excess tax benefits from equity-based compensation included in the line below.

(2) Primarily attributable to tax benefits from certain energy credits for the years ended December 31, 2022, 2021 and 2020.

Our effective tax rate in 2022, 2021 and 2020 was 23.42%, 22.24% and 16.40%, respectively.

We file a consolidated U.S. federal income tax return, as well as state and local tax returns in all jurisdictions where we maintain operations. With few exceptions, we are no longer subject to income tax examinations by tax authorities for years prior to 2019.

A reconciliation of the beginning and ending amount of unrecognized tax benefits is as follows:

	Year Ended December 31,	
	2022	2021
Balance at beginning of year	\$ 33,490	\$ 36,817
Additions based on tax positions related to the current year	1,326	3,436
Reductions for tax positions of prior years	(5,290)	(6,763)
Settlements	—	—
Balance at end of year	\$ 29,526	\$ 33,490

If recognized, the total amount of unrecognized tax benefits that would affect the effective tax rate (net of the federal tax benefit) is \$23,326 as of December 31, 2022.

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We recognize interest related to unrecognized tax benefits as a component of income tax expense. For the years ended December 31, 2022, 2021, and 2020, we recognized a net reversal of accrued interest on unrecognized tax benefits in the amount of \$3,662, \$1,455 and \$420, respectively. As of December 31, 2022 and 2021, we had a total of \$10,186 and \$13,849, respectively, of accrued interest on unrecognized tax benefits which are included in "Accrued expenses and other liabilities" on the accompanying consolidated balance sheets.

We believe that within the next 12 months, it is reasonably possible that the unrecognized tax benefits, excluding interest, as of December 31, 2022 will be reduced by approximately \$3,720 due to statute expiration and effectively settled positions in various state jurisdictions.

12. Equity-Based Compensation, Profit Sharing and Deferred Compensation Plans

Equity-Based Compensation Plans

Our equity-based compensation plans provide for the granting of Options and RSUs to key management employees, including executive officers and members of our Board of Directors ("Directors"). The exercise price of Options granted is equal to the closing price of our common stock on the New York Stock Exchange (the "NYSE") on the day prior to the date of grant. Options are granted for a 10-year term and typically vest in separate tranches over periods of 3 to 6 years. RSUs generally vest in separate tranches over periods of 2 to 6 years. Grants to key management employees are generally divided such that vesting for 50% of the grant is contingent solely on continued employment, while vesting for the remaining 50% of the grant is contingent upon both continued employment and the achievement of a performance metric based on our return on capital performance relative to a peer group during a 3-year period specified on the date of grant. Grants to directors generally vest solely based on continued service as a Director.

The following table provides a summary of each of our equity-based compensation plans with grants outstanding at December 31, 2022. Each of the following plans was approved by our shareholders:

Equity-Based Compensation Plans	Shares Authorized	Options/RSUs Outstanding	Shares Available to Issue
2010 Equity Incentive Plan (1)	700,000	40,677	—
2014 Equity Incentive Plan (2)	950,000	415,281	140
2018 Equity Incentive Plan (3)	275,000	167,916	86,584

- (1) The 2010 Equity Incentive Plan (the "2010 Plan") authorizes us to issue Options and RSUs. There were 29,047 Options and 11,630 RSUs outstanding as of December 31, 2022. Shares can no longer be granted from this plan.
- (2) The 2014 Equity Incentive Plan (the "2014 Plan") authorizes us to issue Options only.
- (3) The 2018 Equity Incentive Plan (the "2018 Plan") authorizes us to issue Options and RSUs. Of the 275,000 aggregate shares authorized to issue, all may be granted in the form of Options and up to 40,000 may be granted in the form of RSUs. There were 146,226 Options and 21,690 RSUs outstanding as of December 31, 2022. Of the 86,584 shares available to issue, 18,310 may be granted in the form of RSUs.

During the second quarter of 2022, we issued 165,456 Options and 16,864 RSUs in a block grant to key management employees and Directors. Block grants are generally made once every four years. Option and RSU grants for the twelve month period ended December 31, 2022 totaled 177,486 and 18,408, respectively, and were granted under the 2014 Plan and the 2018 Plan as follows:

NVR, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except per share data)

Options Granted	2014 Plan	2018 Plan
Options - service-only (1)	57,635	33,691
Options - performance-based (2)	57,635	28,525
Total Options Granted	115,270	62,216
RSUs Granted		
RSUs - service-only (3)	—	9,227
RSUs - performance-based (4)	—	9,181
Total RSUs Granted	—	18,408

1. Of the 91,326 service-only Options granted, 69,361 Options will vest in 25% increments on December 31, 2024, 2025, 2026, and 2027; 16,415 Options will vest in 50% increments on December 31, 2026 and 2027; 3,100 Options will vest in 25% increments on December 31, 2025, 2026, 2027, and 2028; 2,210 Options will vest in 50% increments on December 31, 2024 and 2025; and the remaining 240 Options will vest in 50% increments on December 31, 2027 and 2028. Vesting for the Options is contingent solely upon continued employment or continued service as a Director.
2. Of the 86,160 performance-based Options granted, 64,195 will vest in 25% increments on December 31, 2024, 2025, 2026, and 2027; 16,415 Options will vest in 50% increments on December 31, 2026 and 2027; 3,100 Options will vest in 25% increments on December 31, 2025, 2026, 2027, and 2028; 2,210 Options will vest in 50% increments on December 31, 2024 and 2025; and the remaining 240 Options will vest in 50% increments on December 31, 2027 and 2028. Vesting for the performance-based Options is contingent upon both continued employment and the Company's return on capital performance during the three year periods beginning either 2022 or 2023.
3. Of the 9,227 service-only RSUs granted, 5,261 will vest in 50% increments on December 31, 2024 and 2025; 3,168 will vest in 25% increments on December 31, 2024, 2025, 2026, and 2027; 596 will vest in 50% increments on December 31, 2026 and 2027; 123 will vest in 25% increments on December 31, 2025, 2026, 2027 and 2028; and the remaining 79 will vest in 50% increments on December 31, 2025 and 2026. Vesting for the RSUs is contingent solely upon continued employment.
4. Of the 9,181 performance-based RSUs granted, 5,215 will vest in 50% increments on December 31, 2024 and 2025; 3,168 will vest in 25% increments on December 31, 2024, 2025, 2026, and 2027; 596 will vest in 50% increments on December 31, 2026 and 2027; 123 will vest in 25% increments on December 31, 2025, 2026, 2027 and 2028; and the remaining 79 will vest in 50% increments on December 31, 2025 and 2026. Vesting for the performance-based RSUs is contingent upon both continued employment and the Company's return on capital performance during the three year periods beginning either 2022 or 2023.

NVR, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except per share data)

The following table provides additional information relative to our equity-based compensation plans for the year ended December 31, 2022:

	Shares	Weighted Avg. Per Share Exercise Price	Weighted Avg. Remaining Contract Life (years)	Aggregate Intrinsic Value
Stock Options				
Outstanding at December 31, 2021	534,695	\$ 2,424.62		
Granted	177,486	4,478.88		
Exercised	(95,069)	2,068.60		
Forfeited	(26,558)	3,283.34		
Outstanding at December 31, 2022	<u>590,554</u>	\$ 3,060.71	5.9	\$ 917,424
Exercisable at December 31, 2022	<u>317,019</u>	\$ 2,201.66	3.8	\$ 764,250
RSUs				
Outstanding at December 31, 2021	16,564			
Granted	18,408			
Vested	—			
Forfeited	(1,652)			
Outstanding at December 31, 2022	<u>33,320</u>			\$ 153,691
Vested, but not issued at December 31, 2022	<u>5,756</u>			\$ 26,550

To estimate the grant-date fair value of our Options, we use the Black-Scholes option-pricing model (the "Pricing Model"). The Pricing Model estimates the per share fair value of an option on its date of grant based on the following factors: the option's exercise price; the price of the underlying stock on the date of grant; the estimated dividend yield; a risk-free interest rate; the estimated option term; and the expected volatility. For the risk-free interest rate, we use U.S. Treasury STRIPS which mature at approximately the same time as the option's expected holding term. For expected volatility, we have concluded that our historical volatility over the option's expected holding term provides the most reasonable basis for this estimate.

The fair value of the Options granted during 2022, 2021 and 2020 was estimated on the grant date using the Pricing Model, based on the following assumptions:

	2022	2021	2020
Estimated option life (years)	5.61	5.31	5.36
Risk free interest rate (range)	1.17%-4.36%	0.30%-1.55%	0.22%-1.94%
Expected volatility (range)	24.93%-30.89%	24.46%-30.80%	18.78%-32.48%
Expected dividend rate	— %	— %	— %
Weighted average grant-date fair value per share of options granted	\$ 1,437.93	\$ 1,235.91	\$ 737.19

The weighted average grant date fair value per share of \$4,502.61 for the RSUs was the closing price of our common stock on the day immediately preceding the date of grant.

Compensation cost for Options and RSUs is recognized on a straight-line basis over the requisite service period for the entire award (from the date of grant through the period of the last separately vesting portion of the grant). For the recognition of equity-based compensation, the Options and RSUs which are subject to a performance condition are treated as a separate award from the "service-only" Options and RSUs, and compensation cost is recognized when it becomes probable that the stated performance target will be achieved. We currently believe that it is probable that the stated performance condition will be satisfied at the target level for all of our Options and RSUs granted. Compensation cost is recognized within the income statement in the same expense line as the cash compensation paid to the respective employees.

NVR, Inc.
Notes to Consolidated Financial Statements
(dollars in thousands, except per share data)

We recognize forfeitures of equity-based awards as a reduction to compensation costs in the period in which they occur. In 2022, 2021 and 2020, we recognized \$82,537, \$58,234, and \$50,794 in equity-based compensation costs, respectively, and approximately \$16,700, \$12,000, and \$10,500 in tax benefit related to equity-based compensation costs, respectively.

As of December 31, 2022, the total unrecognized compensation cost for all outstanding Options and RSUs equaled approximately \$356,500. The unrecognized compensation cost will be recognized over each grant's applicable vesting period with the latest vesting date being December 31, 2028. The weighted-average period over which the unrecognized compensation cost will be recorded is equal to approximately 2.6 years.

We settle Option exercises and vesting of RSUs by issuing shares of treasury stock. Shares are relieved from the treasury account based on the weighted average cost of treasury shares acquired. During the years ended December 31, 2022, 2021 and 2020, we issued 95,069, 74,027 and 159,151 shares, respectively, from the treasury account for Option exercises and vesting of RSUs. Information with respect to the vested RSUs and exercised Options is as follows:

	Year Ended December 31,		
	2022	2021	2020
Aggregate exercise proceeds	\$ 196,717	\$ 142,370	\$ 180,866
Aggregate intrinsic value on exercise dates	\$ 234,732	\$ 219,219	\$ 432,772

Profit Sharing Plans

We have a trustee-administered, profit sharing retirement plan (the "Profit Sharing Plan") and an Employee Stock Ownership Plan ("ESOP") covering substantially all employees. The Profit Sharing Plan and the ESOP provide for annual discretionary contributions in amounts as determined by our Board of Directors. The combined plan contribution for the years ended December 31, 2022, 2021 and 2020 was approximately \$26,500, \$24,700 and \$22,500, respectively. We purchased approximately 5,100 and 4,500 shares of our common stock in the open market for the 2022 and 2021 plan year contributions to the ESOP. As of December 31, 2022, all shares held by the ESOP had been allocated to participants' accounts. The 2022 plan year contribution was funded and fully allocated to participants in February 2023.

Deferred Compensation Plans

We have two deferred compensation plans ("Deferred Comp Plans"). The specific purpose of the Deferred Comp Plans is to i) establish a vehicle whereby named executive officers may defer the receipt of salary and bonus that otherwise would be nondeductible for Company tax purposes into a period where we would realize a tax deduction for the amounts paid, and ii) to enable certain employees who are subject to our stock holding requirements to acquire shares of our common stock on a pre-tax basis in order to more quickly meet, and maintain compliance with those stock holding requirements. Amounts deferred into the Deferred Comp Plans are invested in our common stock, held in a rabbi trust account, and are paid out in a fixed number of shares upon expiration of the deferral period.

The rabbi trust account held 106,697 shares of NVR common stock as of both December 31, 2022 and 2021. Shares held by the Deferred Comp Plans are treated as outstanding shares in our earnings per share calculation for each of the years ended December 31, 2022, 2021 and 2020.

13. Leases

We have operating leases for our corporate and division offices, production facilities, model homes, and certain office and production equipment. Additionally, we have entered into finance leases for one of our production facilities and certain plant equipment. Our leases have remaining lease terms of up to 17.7 years, some of which include options to extend the leases for up to 20 years, and some of which include options to terminate the lease. See Note 1 herein for additional information regarding leases.

NVR, Inc.
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The components of lease expense were as follows:

	Year Ended December 31,		
	2022	2021	2020
Lease expense			
Operating lease expense	\$ 34,467	\$ 31,923	\$ 31,704
Finance lease expense:			
Amortization of ROU assets	1,916	1,798	1,313
Interest on lease liabilities	417	429	281
Short-term lease expense	27,584	24,012	24,361
Total lease expense	\$ 64,384	\$ 58,162	\$ 57,659

Other information related to leases was as follows:

	Year Ended December 31,	
	2022	2021
Supplemental Cash Flows Information:		
Cash paid for amounts included in the measurement of lease liabilities:		
Operating cash flows from operating leases	\$ 28,837	\$ 27,849
Operating cash flows from finance leases	\$ 417	\$ 429
Financing cash flows from finance leases	\$ 1,495	\$ 1,363
ROU assets obtained in exchange for lease obligations:		
Operating leases	\$ 44,782	\$ 26,781
Finance leases	\$ 1,083	\$ 603
Weighted-average remaining lease term (in years):		
Operating leases	6.0	6.3
Finance leases	10.8	11.7
Weighted-average discount rate:		
Operating leases	3.6 %	3.0 %
Finance leases	2.9 %	2.8 %

NVR, Inc.
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We are committed under multiple non-cancelable operating and finance leases involving office space, model homes, production facilities, automobiles and equipment. Future lease payments under these operating and finance leases as of December 31, 2022 are as follows:

Year Ending December 31,	Operating Leases	Finance Leases
2023	\$ 33,453	\$ 2,025
2024	21,812	2,030
2025	16,074	2,035
2026	11,146	2,983
2027	7,429	1,410
Thereafter	21,140	7,227
Total lease payments	111,054	17,710
Less:		
Imputed interest	10,806	2,707
Short-term lease payments	7,462	—
Total lease liability	\$ 92,786	\$ 15,003

14. Commitments and Contingent Liabilities

Litigation

We are involved in various litigation arising in the ordinary course of business. In the opinion of management, and based on advice of legal counsel, this litigation is not expected to have a material adverse effect on our financial position, results of operations or cash flows. Legal costs incurred in connection with outstanding litigation are expensed as incurred.

Contract Land Deposits

We generally do not engage in land development. Instead, we typically acquire finished building lots from various third party land developers under LPAs. The LPAs require deposits that may be forfeited if we fail to perform under the agreement. The deposits required under the LPAs are in the form of cash or letters of credit in varying amounts, and typically range up to 10% of the aggregate purchase price of the finished lots. At December 31, 2022, assuming that contractual development milestones are met and we exercise our option, we expect to place additional forfeitable deposits with land developers under existing LPAs of approximately \$348,300. Additionally, as of December 31, 2022, we had funding commitments totaling approximately \$2,100 under a joint development agreement related to our land under development, a portion of which we expect will be offset by development credits of approximately \$900.

Bonds and Letters of Credit

During the ordinary course of operating the homebuilding and mortgage banking businesses, we are required to enter into bond or letter of credit arrangements with local municipalities, government agencies, or land developers to collateralize our obligations under various contracts. We had approximately \$34,000 of contingent obligations under such agreements, including approximately \$12,300 for letters of credit issued under the Credit Agreement as of December 31, 2022. We believe we will fulfill our obligations under the related contracts and do not anticipate any material losses under these bonds or letters of credit.

NVR, Inc.
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Warranty Reserve

The following table reflects the changes in our warranty reserve (see Note 1 herein for further discussion of warranty/product liability reserves):

	Year Ended December 31,		
	2022	2021	2020
Warranty reserve, beginning of year	\$ 134,859	\$ 119,638	\$ 108,053
Provision	96,577	94,605	75,288
Payments	(87,430)	(79,384)	(63,703)
Warranty reserve, end of year	<u>\$ 144,006</u>	<u>\$ 134,859</u>	<u>\$ 119,638</u>

15. Fair Value

GAAP assigns a fair value hierarchy to the inputs used to measure fair value. Level 1 inputs are quoted prices in active markets for identical assets and liabilities. Level 2 inputs are inputs other than quoted market prices that are observable for the asset or liability, either directly or indirectly. Level 3 inputs are unobservable inputs.

Financial Instruments

The following table presents the estimated fair values and carrying values of our Senior Notes as of December 31, 2022 and December 31, 2021. The estimated fair value is based on recent market prices of similar transactions, which is classified as Level 2 within the fair value hierarchy.

	As of December 31,	
	2022	2021
Estimated Fair Values:		
3.95% Senior Notes due 2022	\$ —	\$ 610,452
3.00% Senior Notes due 2030	788,166	942,192
Total	<u>\$ 788,166</u>	<u>\$ 1,552,644</u>
Carrying Values:		
3.95% Senior Notes due 2022	\$ —	\$ 599,553
3.00% Senior Notes due 2030	914,888	916,702
Total	<u>\$ 914,888</u>	<u>\$ 1,516,255</u>

Except as otherwise noted below, we believe that insignificant differences exist between the carrying value and the fair value of our financial instruments, which consists primarily of cash equivalents, due to their short term nature.

Derivative Instruments and Mortgage Loans Held for Sale

In the normal course of business, NVRM enters into contractual commitments to extend credit to buyers of single-family homes with fixed expiration dates. The commitments become effective when the borrowers “lock-in” a specified interest rate within time frames established by NVRM. All borrowers are evaluated for credit worthiness prior to the extension of the commitment. Market risk arises if interest rates move adversely between the time of the “lock-in” of rates by the borrower and the sale date of the loan to an investor. To mitigate the effect of the interest rate risk inherent in providing rate lock commitments to borrowers, NVRM enters into optional or mandatory delivery forward sales contracts to sell whole loans and mortgage-backed securities to investors. The forward sales contracts lock-in a range of interest rates and prices for the sale of loans similar to the specific rate lock commitments. NVRM does not engage in speculative or trading derivative activities. Both the rate lock commitments to borrowers and the forward sale contracts to investors are undesignated derivatives and, accordingly, are marked to fair value through earnings. At December 31, 2022, there were contractual commitments to extend credit to borrowers aggregating \$1,607,055 and open forward delivery contracts aggregating \$1,752,852, which hedge both the rate lock loan commitments and closed loans held for sale.

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The fair value of our rate lock commitments to borrowers and the related input levels includes, as applicable:

- i) the assumed gain/loss of the expected resultant loan sale (Level 2);
- ii) the effects of interest rate movements between the date of the rate lock and the balance sheet date (Level 2); and
- iii) the value of the servicing rights associated with the loan (Level 2).

The assumed gain/loss considers the excess servicing to be received or buydown fees to be paid upon securitization of the loan. The excess servicing and buydown fees are calculated pursuant to contractual terms with investors. To calculate the effects of interest rate movements, NVRM utilizes applicable published mortgage-backed security prices, and multiplies the price movement between the rate lock date and the balance sheet date by the notional loan commitment amount. NVRM sells almost all of its loans on a servicing released basis, and receives a servicing released premium upon sale. Thus, the value of the servicing rights is included in the fair value measurement and is based upon contractual terms with investors and varies depending on the loan type. NVRM assumes a fallout rate when measuring the fair value of rate lock commitments. Fallout is defined as locked loan commitments for which NVRM does not close a mortgage loan and is based on historical experience.

The fair value of NVRM's forward sales contracts to investors solely considers the market price movement of the same type of security between the trade date and the balance sheet date (Level 2). The market price changes are multiplied by the notional amount of the forward sales contracts to measure the fair value.

Mortgage loans held for sale are recorded at fair value when closed, and thereafter are carried at the lower of cost or fair value, net of deferred origination costs, until sold. Fair value is measured using Level 2 inputs. As of December 31, 2022, the fair value of loans held for sale of \$316,806 included on the accompanying consolidated balance sheets was decreased by \$2,675 from the aggregate principal balance of \$319,481. As of December 31, 2021, the fair value of loans held for sale of \$302,192 was increased by \$4,296 from the aggregate principal balance of \$297,896.

The fair value measurement of NVRM's undesignated derivative instruments was as follows:

	As of December 31,	
	2022	2021
Rate lock commitments:		
Gross assets	\$ 32,246	\$ 15,949
Gross liabilities	20,946	1,790
Net rate lock commitments	<u>\$ 11,300</u>	<u>\$ 14,159</u>
Forward sales contracts:		
Gross assets	\$ 4,843	708
Gross liabilities	20,903	926
Net forward sales contracts	<u>\$ (16,060)</u>	<u>\$ (218)</u>

As of December 31, 2022 and 2021, the net rate lock commitments are reported in mortgage banking "Other assets" and the net forward sales contracts are reported in mortgage banking "Accrued expenses and other liabilities" on the accompanying consolidated balance sheets.

The fair value measurement as of December 31, 2022 was as follows:

	Notional or Principal Amount	Assumed Gain From Loan Sale	Interest Rate Movement Effect	Servicing Rights Value	Security Price Change	Total Fair Value Measurement Gain/(Loss)
Rate lock commitments	\$ 1,607,055	\$ 2,213	\$ (12,034)	\$ 21,121	\$ —	\$ 11,300
Forward sales contracts	\$ 1,752,852	—	—	—	(16,060)	(16,060)
Mortgages held for sale	\$ 319,481	162	(7,483)	4,646	—	(2,675)
Total fair value measurement		<u>\$ 2,375</u>	<u>\$ (19,517)</u>	<u>\$ 25,767</u>	<u>\$ (16,060)</u>	<u>\$ (7,435)</u>

The total fair value measurement as of December 31, 2021 was \$18,237. NVRM recorded a fair value adjustment to expense of \$25,673 for the year ended December 31, 2022, a fair value adjustment to income of \$2,654 for the year ended December 31, 2021,

NVR, Inc.
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and a fair value adjustment to expense of \$1,472 for the year ended December 31, 2020. Unrealized gains/losses from the change in the fair value measurements are included in earnings as a component of mortgage banking fees in the accompanying consolidated statements of income. The fair value measurement will be impacted in the future by the change in the value of the servicing rights, interest rate movements, security price fluctuations, and the volume and product mix of NVRM's closed loans and locked loan commitments.

16. Mortgage Repurchase Reserve

During the years ended December 31, 2022, 2021 and 2020, we recognized pre-tax charges for loan losses related to mortgage loans sold of approximately \$2,500, \$2,600 and \$3,200, respectively. Included in NVRM's "Accounts payable and other liabilities" line item on the accompanying consolidated balance sheets is a mortgage repurchase reserve equal to approximately \$21,800 and \$21,400 at December 31, 2022 and 2021, respectively.

**FIRST AMENDMENT TO
AMENDED AND RESTATED CREDIT AGREEMENT**

This **FIRST AMENDMENT TO AMENDED AND RESTATED CREDIT AGREEMENT** (this "**Amendment**") is made and entered into as of December 9, 2022 (the "**Effective Date**") by and among **NVR, INC.**, a Virginia corporation ("**Borrower**"), **BANK OF AMERICA, N.A.**, a national banking association, as administrative agent for the lenders ("**Administrative Agent**"), and the lenders party to the Credit Agreement defined below ("**Lenders**").

Borrower, Administrative Agent and Lenders are party to that certain Amended and Restated Credit Agreement dated as of February 12, 2021 (the "**Credit Agreement**").

Borrower, Administrative Agent and Lenders have agreed, upon the following terms and conditions amend the Credit Agreement as reflected herein.

NOW, THEREFORE, in consideration of the mutual promises herein contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. **Defined Terms and Effective Date.** Unless otherwise specified, defined terms will have their meanings as provided in the Credit Agreement. The modifications set forth in this Amendment will be effective upon receipt by Administrative Agent of the documentation set forth in **Section 3** hereof.

2. **Amendments to Credit Agreement.** Effective as of the Effective Date, the Credit Agreement and schedules and exhibits thereto are hereby amended by deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and by adding the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in **Annex I** hereto.

3. **Effectiveness.** The effectiveness of this Amendment is subject to receipt by Administrative Agent of the following:

(a) **Amendment.** This Amendment, duly executed and delivered by Borrower, Administrative Agent and Lenders.

(b) **Fees.** Payment by Borrower of (i) all reasonable and documented out-of-pocket fees and expenses of Administrative Agent in connection with this Amendment and the transactions contemplated hereby (including without limitation reasonable attorneys' fees and disbursements), and (ii) all other fees and other amounts due and payable pursuant to the terms of the Credit Agreement by Borrower on or prior to the date hereof.

(c) **Other Information.** Such other information and documents as may reasonably be required by Administrative Agent and its counsel.

4. **Conversion to SOFR.** After the Effective Date and following delivery of a Loan Notice, each conversion of Loans from one Type to another, or a continuation of Loans, shall be a request for a new Loan bearing interest at Term SOFR or Daily SOFR, as requested by Borrower; *provided*, that, in any case, to the extent any Eurodollar Rate Loan (as defined in the Credit Agreement immediately prior to the effectiveness of this Amendment) is outstanding on the Effective Date, such Loan shall continue to bear interest at the Eurodollar Rate (as defined in the Credit Agreement immediately prior to the effectiveness of this Amendment) until the end of the current Interest Period applicable to such Loan. If Borrower fails to give a timely notice requesting a conversion or continuation of any such Eurodollar Rate Loan, then the

5. **Representations and Warranties.** Borrower hereby represents and warrants to Administrative Agent and Lender that:

(a) **Due Authorization.** Borrower is duly authorized to execute, deliver and perform this Amendment, and the Credit Agreement, as amended by this Amendment, is the legal and binding obligation of Borrower enforceable against Borrower in accordance with its terms, subject to Debtor Relief Laws and equitable principles.

(b) **Representations and Warranties in Credit Agreement.** All of the representations and warranties contained in *Article V* of the Credit Agreement or any other Loan Document are true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) as of the date hereof, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they will be true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) as of such earlier date, and except that the representations and warranties contained in *subsection (a)* and *(b)* of *Section 5.05* of the Credit Agreement will be deemed to refer to the most recent financial statements furnished pursuant to *subsections (a)* and *(b)*, respectively, of *Section 6.01* thereof.

(c) **No Event of Default.** No event has occurred and is continuing, or otherwise would result from entering into this Amendment, which constitutes or would constitute an Event of Default or Default.

(d) **No Amendments.** There have been no amendments to the Organization Documents of Borrower, except as may have been otherwise disclosed to Administrative Agent in accordance with the terms of the Credit Agreement, since the latest delivery thereof (i.e., February 12, 2021) by Borrower to Administrative Agent.

6. **Miscellaneous.**

(a) **No Further Amendments.** Except as expressly amended or waived herein, the terms of the Credit Agreement and the other Loan Documents will remain in full force and effect.

(b) **Limitation on Agreements.** The amendments set forth herein are limited precisely as written and will not be deemed: (i) to be a consent under or waiver of any other term or condition in the Credit Agreement or any of the Loan Documents; or (ii) to prejudice any right or rights which Administrative Agent and Lenders now have or may have in the future under, or in connection with the Credit Agreement, as amended hereby, the Loan Documents or any of the other documents referred to herein or therein. From and after the effectiveness of this Amendment, all references in the Credit Agreement to the Credit Agreement will be deemed to be references to the Credit Agreement after giving effect to this Amendment.

(c) **Ratification.** Borrower hereby ratifies, confirms and agrees that, following the effectiveness of this Amendment, the Credit Agreement, as amended hereby, and the other Loan Documents will continue to be binding against each such Person party thereto and will remain in full force and effect.

(d) **No Waiver.** The execution, delivery and effectiveness of this Amendment will not operate as a waiver of any right, power or remedy of the Administrative Agent, L/C Issuer or any Lenders under the Credit Agreement or any other Loan Documents, nor constitute a waiver of any provision contained therein, except as specifically set forth herein.

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(e) **Counterparts.** This Amendment may be executed in two or more counterparts, each of which will constitute an original but all of which when taken together will constitute but one contract. Delivery of an executed counterpart of a signature page to this Amendment by facsimile or electronic mail will be effective as delivery of a manually executed counterpart hereof.

(f) **Headings.** The Section headings in this Amendment are inserted for convenience of reference only and will not affect the meaning or interpretation of this Amendment or any provision hereof.

(g) **GOVERNING LAW.** THIS AMENDMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE PRINCIPLES OF CONFLICT OF LAWS.

(h) ENTIRETIES. THE CREDIT AGREEMENT AS AMENDED BY THIS AMENDMENT REPRESENTS THE FINAL AGREEMENT BETWEEN THE PARTIES ABOUT THE SUBJECT MATTER OF THE CREDIT AGREEMENT AS AMENDED BY THIS AMENDMENT AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

*Remainder of Page Intentionally Blank;
Signature Pages Follow.*


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IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the day and year first above written.

BORROWER:

NVR, INC., a Virginia corporation

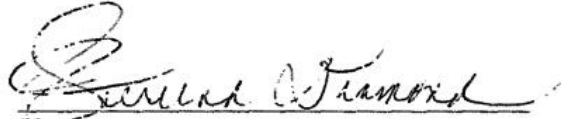
By: _____


Name: Daniel D. Malzahn
Title: Senior Vice President, Chief
Financial Officer and Treasurer

Signature Page to
First Amendment to
Amended and Restated Credit Agreement


ADMINISTRATIVE AGENT:

BANK OF AMERICA, N.A., as Administrative Agent

By: 
Name: **Gerund Diamond**
Title: **Vice President**


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BANK OF AMERICA, N.A., as L/C Issuer and a Lender

By: 
Name: Cheryl Sneor
Title: Vice President

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PNC BANK, NATIONAL ASSOCIATION, as a
Lender

By: 
Name: J. Richard Litton
Title: Senior Vice President

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U.S. BANK NATIONAL ASSOCIATION, as a Lender

By:


Name: Leonard Olsavsky
Title: Senior Vice President

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**WELLS FARGO BANK, NATIONAL
ASSOCIATION, as a Lender**

By: Amade Henley
Name: Amade Henley
Title: VP

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Amended and Restated Credit Agreement

By: Richard C. Thiel, Jr.
Name: Richard C. Thiel Jr
Title: SVP

Signature Page to
First Amendment to
Amended and Restated Credit Agreement

UNITED BANK, as a Lender

By: Kurtis J. Marx
Name: Kurtis J. Marx
Title: Executive Vice President

Signature Page to
First Amendment to
Amended and Restated Credit Agreement

ANNEX I

[CONFORMED CREDIT AGREEMENT]

[Attached]

Annex I

Published Deal CUSIP Number: 62945YAC7
Published Revolver CUSIP Number: 62945YAD5

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of February 12, 2021

among

NVR, INC.,
as Borrower,

BANK OF AMERICA, N.A.,
as Administrative Agent and L/C Issuer,

and

The Other Lenders Party Hereto

BOFA SECURITIES, INC.,
as Sole Lead Arranger and Sole Bookrunner

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This **AMENDED AND RESTATED CREDIT AGREEMENT** (this “*Agreement*”) is entered into as of February 12, 2021, among **NVR, INC.**, a Virginia corporation (“*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 and L/C Issuer.

Borrower, Administrative Agent, L/C Issuer, and certain Lenders are parties to that certain Credit Agreement dated as of July 15, 2016 (as amended, the “*Original Credit Agreement*”). Borrower, Administrative Agent, L/C Issuer and Lenders desire to amend and restate the Original Credit Agreement in its entirety.

In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

I. DEFINITIONS AND ACCOUNTING TERMS.

1.01 Defined Terms

. As used in this Agreement, the following terms shall have the meanings set forth below:

“*Adjusted Consolidated Indebtedness*” means, for NVR as of any date of determination, (a) the Indebtedness of NVR on a consolidated basis, *minus* (b) all Unrestricted Cash in excess of \$25,000,000.

“*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 Administrative Agent’s address and, as appropriate, account as set forth on *Schedule 10.03*, or such other address or account as Administrative Agent may from time to time notify to Borrower and the Lenders.

“*Administrative Questionnaire*” means an Administrative Questionnaire in a form approved by Administrative Agent.

“*Affected Financial Institution*” means (a) any EEA Financial Institution or (b) any UK Financial Institution.

“*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.

“*Aggregate Commitments*” means the Commitments of all the Lenders.

“*Agreement*” has the meaning specified in the introductory paragraph.

“*Applicable Percentage*” means with respect to any Lender at any time, the percentage (carried out to the ninth decimal place) of the Aggregate Commitments represented by such Lender’s Commitment at such time, subject to adjustment as provided in *Section 2.15*. If the commitment of each Lender to make Loans and the obligation of L/C Issuer to make L/C Credit Extensions have been terminated pursuant to *Section 8.02* or if the Aggregate Commitments have expired, then the Applicable Percentage of each Lender shall be determined based on the Applicable Percentage of such Lender most

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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, from time to time, the following percentages *per annum*, based upon the Leverage Ratio as set forth in the most recent Compliance Certificate received by Administrative Agent pursuant to *Section 6.02(a)*:

Applicable Rate				
			Eurodollar Term	
			Rate and Daily	

Pricing Level	Leverage Ratio	Base Rate Applicable Rate	SOFRA Applicable Rate	Unused Fee Applicable Rate
1	≤ 15%	0%	1.000%	0.125%
2	> 15% and ≤ 20%	0.125%	1.125%	0.150%
3	> 20% and ≤ 30%	0.250%	1.250%	0.175%
4	> 30% and ≤ 50%	0.500%	1.500%	0.200%
5	> 50%	0.750%	1.750%	0.250%

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 6.02(a)**; provided, however, 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 5 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. The Applicable Rate in effect from the Closing Date through the date of delivery of the first Compliance Certificate due hereunder 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 2.09(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 BofA Securities, Inc., in its capacity as sole lead arranger and sole bookrunner.

“**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 10.07(b)**), and accepted by Administrative Agent, in substantially the form of **Exhibit D** or any other form (including electronic documentation generated by use of an electronic platform) approved by Administrative Agent.

“**Audited Financial Statements**” means the audited consolidated balance sheet of Borrower and its Subsidiaries for the fiscal year ended December 31, 2019, and the related consolidated statements of operations, retained earnings and cash flows for such fiscal year of Borrower and its Subsidiaries, including the notes thereto.

“**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 2.05**,

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and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of L/C Issuer 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 Resolution Authority in respect of any liability of an Affected Financial Institution.

“**Bail-In Legislation**” means, (a) 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, rule, regulation or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

“**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 one-half of one percent (0.50%), (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 Eurodollar Rate for one percent (1.00%) or (d) Term SOFR on such day plus one percent 100 basis points (1.00%). 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 such 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. If the Base Rate is being used as an alternate rate of interest pursuant to [Section 3.02](#) or [Section 3.03](#), then the Base Rate shall be the greater of **clauses (a) and (b) and (c)** above and shall be determined without reference to **clause (e)d)** above.

“**Base Rate Loan**” means a Loan that bears interest based on the Base Rate.

“**Beneficial Ownership Certification**” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation.

“**Beneficial Ownership Regulation**” means 31 C.F.R. §1010.230.

“**Benefit Plan**” means any of (a) an “*employee benefit plan*” (as defined in ERISA) that is subject to *Title I* of ERISA, (b) a “*plan*” as defined in and subject to *Section 4975* of the Code or (c) any Person whose assets include (for purposes of ERISA *Section 3(42)* or otherwise for purposes of *Title I* of ERISA or *Section 4975* of the Code) the assets of any such “employee benefit plan” or “plan”.

“**Bonding Obligations**” means liabilities and obligations arising under surety bonds and other similar instruments including, but not limited to, performance bonds, completion bonds, payment bonds, maintenance bonds, license bonds, permit bonds, sediment control bonds, grading bonds, condominium association bonds, settlement and title bonds, escrow bonds, insurance bonds, notary bonds, mortgage broker bonds, real estate broker bonds and forest conservation bonds and undrawn letters of credit.

“**Borrower**” has the meaning specified in the introductory paragraph hereto.

“**Borrower Materials**” has the meaning specified in [Section 6.02](#).

“**Borrowing**” means a borrowing consisting of simultaneous Loans of the same Type and, in the case of Eurodollar Term Rate Loans, having the same Interest Period made by each of the Lenders pursuant to **Section 2.01**.

“**Business Day**” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located ~~and, if such day relates to any Eurodollar Rate Loan or LIBOR Daily Rate Loan, means any such day that is also a London Banking Day.~~

“**Capitalization**” means, for NVR as of any date of determination, the sum of (a) Adjusted Consolidated Indebtedness plus (b) consolidated net stockholders’ equity determined in accordance with GAAP.

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

“**Cash Equivalents**” means (a) direct obligations of the United States Treasury including Treasury bills, notes and bonds, (b) securities of agencies of the United States Government which carry the direct or implied guarantee of the United States Government including, but not limited to, Government National Mortgage Association (GNMA), Federal Home Loans Bank (FHLB), Federal Farm Credit Bank (FFCB), Federal National Mortgage Association (FNMA), Federal Home Loan Mortgage Corporation (FHLMC), Student Loan Marketing Association (SLMA), World Bank and Tennessee Valley Authority, (c) certificates of deposit, eurodollar time deposits, eurodollar certificates of deposits, Yankee certificates of deposit, bankers acceptances or bank money market accounts which are issued by any bank or savings and loan association whose short-term debt is rated either “A1” or comparable by S&P or “P1” or comparable by Moody’s or a comparable rating by Fitch or Thompson’s Bank Watch, or if such an institution is a Subsidiary, then its parent corporation may have such a rating, *provided* that deposits placed by depository intermediaries into a network of financial institutions and that are fully insured by the Federal Deposit Insurance Corporation are excepted from such short term ratings requirement, (d) commercial paper or finance company paper which is rated not less than prime-one or “A-1” or their equivalent by Moody’s or S&P or comparable Fitch rating, (e) corporate bonds or debentures including auction rate securities and variable rate demand notes rated either “AA” or comparable by S&P or “Aa2” or comparable by Moody’s or comparable Fitch rating, (f) short-term tax exempt securities including municipal notes, commercial paper, auction rate securities and floating rate/variable rate demand notes rated at least “A1” or “P1” by Moody’s or S&P, (g) repurchase agreements collateralized by assets of the type described in the foregoing *clauses (a) through (e)*, *provided* that repurchase agreements which involve a tri-party custodian may be collateralized by assets which have investment grade debt ratings (e.g., “BBB-“ or comparable by S&P or Fitch, or “Baa3” or comparable by Moody’s, or better) as long as the repurchase counterparty has a short-term debt rating of either “A1” or comparable by S&P or Fitch, or “P1” or comparable by Moody’s, (h) money market funds regulated by the United States Government under Investment Company Act rule 2a-7 and investment funds advised by a Registered Investment Advisor under SEC rule 3c7, which funds shall have as their highest priority the preservation of principal and, therefore, seek to maintain a fixed share price, (i) “yield enhanced” funds which, with the exception of including assets whose final maturity exceeds the 397-day maturity allowable under Investment Company Act rule 2a7, comply with such rule and which funds shall have as their highest priority the preservation of principal and, therefore, seek to maintain a fixed share

assets of at least \$5,000,000,000 and whose underlying assets consist of the types of instruments enumerated above.

“**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, issued or implemented.

“**Change of Control**” means an event or series of events by which 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 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) becomes the “beneficial owner” (as defined in *Rules 13d-3* and *13d-5* under the Securities Exchange Act of 1934, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time (such right, an “option right”), directly or indirectly, of 50% or more of the equity securities of Borrower entitled to vote for members of the board of directors or equivalent governing body of Borrower on a fully-diluted basis (and taking into account all such securities that such person or group has the right to acquire pursuant to any option right).

“**Closing Date**” means the first date all the conditions precedent in *Section 4.01* are satisfied or waived in accordance with *Section 10.01*.

“**CME**” means [CME Group Benchmark Administration Limited](#).

“**Code**” means the Internal Revenue Code of 1986.

“**Collateral Value**” means the product of “*Eligible Loans*” and the applicable “*Buyers’ Margin Percentage*”, as such terms are defined in and determined under that certain Amended and Restated Mortgage Banking Master Repurchase Agreement, dated as of August 2, 2011, by and among U.S. Bank National Association, the other buyers from time to time party thereto and NVR Mortgage Finance, Inc., as amended, modified, refinanced or replaced from time to time.

“**Commitment**” means, as to each Lender, its obligation to (a) make Loans to Borrower pursuant to *Section 2.01* and (b) purchase participations in L/C Obligations, in an aggregate principal amount at any one time outstanding not to exceed the 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.

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

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

“**Conforming Changes**” means, with respect to the use, administration of or any conventions associated with SOFR, Daily Simple SOFR, Term SOFR or any proposed Successor Rate, as applicable, any conforming changes to the definitions of “Base Rate”, “Daily Simple SOFR”, “Term SOFR” “SOFR”, or “Interest Period”, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of “Business Day”, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the discretion of Administrative Agent, to reflect the adoption and implementation of such applicable rate, and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent determines in consultation with Borrower that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such rate exists, in such

other manner of administration as Administrative Agent determines in consultation with Borrower is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).

“**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 EBITDA**” means, for any period, (a) Consolidated Net Income, *plus* (b) to the extent deducted from revenues in determining such Consolidated Net Income, (i) Consolidated Interest Expense, (ii) expense for federal, state and local income taxes paid or accrued, (iii) depreciation, (iv) amortization, (v) extraordinary or non-recurring losses incurred other than in the ordinary course of business, excluding losses attributable to the write-down or downward evaluation of assets (including the establishment of reserves) and (vi) any loss or expense resulting from early extinguishment of Indebtedness, minus (c) to the extent included in such Consolidated Net Income, (i) interest income, (ii) extraordinary or non-recurring gains realized other than in the ordinary course of business, and (iii) any income or gain resulting from early extinguishment of Indebtedness.

“**Consolidated Interest Expense**” means, for any period, the interest expense of NVR on a consolidated basis for such period.

“**Consolidated Interest Incurred**” means, for any period, the aggregate amount (without duplication and determined in each case in accordance with GAAP) of interest incurred by NVR, whether such interest was expensed or capitalized, paid, accrued, or scheduled to be paid or accrued during such period, all determined on a consolidated basis for such period, including (i) original issue discount and non-cash interest payments or accruals, (ii) the interest portion of all deferred payment obligations, and (iii) all commissions, discounts and other fees and charges owed with respect to bankers’ acceptances and letter of credit financings and interest swap and hedging obligations, in each case to the extent attributable to such period, *provided, however*, that interest or other payments or accruals of a consolidated subsidiary that is not wholly owned shall be included only to the extent of the interest in such subsidiary *minus* interest income of NVR attributable to such period. Notwithstanding that GAAP may otherwise provide, Consolidated Interest Incurred shall not include the amount of any loss or expense resulting from early extinguishment of Indebtedness or interest and other charges amortized to cost of sales. For purposes of this definition, interest on capitalized lease obligations shall be deemed to accrue at an interest rate reasonably determined by Borrower to be the rate of interest implicit in such capitalized lease obligations in accordance with GAAP.

“**Consolidated Net Income**” means, for any period, without duplication, the net income of NVR on a consolidated basis, determined in accordance with GAAP.

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“**Consolidated Tangible Net Worth**” means, as of any date of determination, the consolidated stockholders’ equity of NVR less the aggregate amount of all goodwill and other assets that are properly classified as “*intangible assets*” at such date in accordance with GAAP.

“**Contractual Obligation**” means, as to any Person, any provision of any security issued by such Person or of any agreement, instrument or other undertaking 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.

“**Covered Entity**” has the meaning specified in **Section 10.22**.

“**Credit Extension**” means each of the following: (a) a Borrowing; and (b) an L/C Credit Extension.

“**Daily Simple SOFR**” with respect to any applicable determination date means SOFR determined for such date. Notwithstanding anything to the contrary contained herein, to the extent that, at any time, Daily Simple SOFR shall be less than the Floor, Daily Simple SOFR shall be deemed to be the Floor for purposes of the Loan Documents.

“Daily SOFR” means, for any day, the per annum rate equal to Daily Simple SOFR for such day plus the SOFR Adjustment.

“Daily SOFR Loan” means a Loan made hereunder with respect to which the interest rate is calculated by reference to Daily SOFR.

“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 Laws of the United States or other applicable jurisdictions from time to time in effect.

“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 other than Letter of Credit Fees, an interest rate equal to (i) the Base Rate plus (ii) the highest Applicable Rate (regardless of Leverage Ratio), if any, applicable to Base Rate Loans plus (iii) 2% per annum; provided, however, that with respect to a Eurodollar-Rate Term SOFR Loan, the Default Rate shall be an interest rate equal to the interest rate (including highest Applicable Rate (regardless of Leverage Ratio)) 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 highest Applicable Rate (regardless of Leverage Ratio) plus 2% per annum.

“Defaulting Lender” means, subject to **Section 2.15(b)**, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies Administrative Agent and 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 Administrative Agent, L/C Issuer or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of

Credit) within two (2) Business Days of the date when due, (b) has notified Borrower, Administrative Agent or L/C Issuer 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 (3) Business Days after written request by Administrative Agent or Borrower, to confirm in writing to Administrative Agent and 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 Administrative Agent and 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, (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 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 2.15(b)**) as of the date established therefor by Administrative Agent in a written notice of such determination, which shall be delivered by Administrative Agent to Borrower, L/C Issuer 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 the subject of any Sanction (which, as of the date of this Agreement, are Cuba, Iran, North Korea, Sudan, Syria and Crimea).

"Dividing Person" has the meaning assigned to it in the definition of **"Division."**

"Division" means the division of the assets, liabilities and/or obligations of a Person (the **"Dividing Person"**) among two or more Persons (whether pursuant to a "plan of division" or similar arrangement), which may or may not include the Dividing Person and pursuant to which the Dividing Person may or may not survive.

"Dollar" and **"\$"** mean lawful money of the United States.

"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.

with public administrative authority of any EEA Member Country (including any delegate) 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 10.07(b)(iii)** and **(v)** (subject to such consents, if any, as may be required under **Section 10.07(b)(iii)**).

“**Environmental Laws**” means any and all Federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

“**Environmental Liability**” means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of Borrower, any other Loan Party or any of their respective Subsidiaries directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

“**Equity Interests**” means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) under common control with Borrower within the meaning of **Section 414(b)** or **(c)** of the Code (and **Sections 414(m)** and **(o)** of the Code for purposes of provisions relating to **Section 412** of the Code).

“**ERISA Event**” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of Borrower or any ERISA Affiliate from a Pension Plan subject to **Section 4063** of ERISA during a plan year in which such entity was a “substantial employer” as defined in **Section 4001(a)(2)** of ERISA or a cessation of operations that is treated as such a withdrawal under **Section 4062(e)** of ERISA; (c) a complete or partial withdrawal by Borrower or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under **Section 4041** or **4041A** of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under **Section 4042** of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of **Sections 430, 431** and **432** of the Code or

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Sections 303, 304 and **305** of ERISA; or (h) the imposition of any liability under **Title IV** of ERISA, other than for PBGC premiums due but not delinquent under **Section 4007** of ERISA, upon Borrower or any ERISA Affiliate.

“**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.

“**Eurodollar Rate**” means:

(a) — for any Interest Period with respect to a Eurodollar Rate Loan, the rate *per annum* equal to the London Interbank Offered Rate as administered by ICE Benchmark

~~Administration (or any other Person that takes over the administration of such rate for Dollars for a period equal in length to such Interest Period) (“LIBOR”) as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time), at approximately 11:00 a.m., London time, two (2) Business 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;~~

~~(b) — for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to LIBOR, at approximately 11:00 a.m., London time, determined two (2) Business Days prior to such date for Dollar deposits with a term of one (1) month commencing that day; and~~

~~(c) — if the Eurodollar Rate shall be less than zero (0), then such rate shall be deemed zero (0) for purposes of this Agreement.~~

~~“Eurodollar Rate Loan” means a Loan that bears interest at a rate based on clause (a) of the definition of “Eurodollar Rate.”~~

~~“Event of Default” has the meaning specified in Section 8.01.~~

~~“Excluded Subsidiaries” means (a) all Mortgage Banking Subsidiaries, (b) NVR Services, Inc., RVN, Inc., and NVR Funding II, Inc., and (c) all Immaterial Subsidiaries.~~

~~“Excluded Swap Obligations” means, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of such Guarantor’s failure for any reason to constitute an “eligible contract participant” as defined in the Commodity Exchange Act (determined after giving effect to Section 6.14 and any other “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 Guarantee 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, then such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes 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~~

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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, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by Borrower under Section 10.14) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii), (a)(iii) or (c), amounts with respect to such Taxes were payable either to such Lender’s assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient’s failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

~~“Extended Commitment” means any portion of the Commitments the maturity of which shall have been extended pursuant to Section 10.02.~~

~~“Extended Loans” means any Loans made pursuant to the Extended Commitments.~~

~~“Extension” has the meaning specified in Section 10.02(a).~~

“**Extension Amendment**” means an amendment to this Agreement (which may, at the option of Administrative Agent and Borrower, be in the form of an amendment and restatement of this Agreement) among the Loan Parties, the applicable extending Lenders, Administrative Agent and, to the extent required by **Section 10.02**, and/or L/C Issuer implementing an Extension in accordance with **Section 10.02**.

“**Extension Offer**” has the meaning specified in **Section 10.02(a)**.

“**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 and any agreements entered into pursuant to *Section 1471(b)(1)* of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities entered into in connection with the implementation of the foregoing.

“**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, 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, then the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, (b) if no such rate is so published on such next succeeding Business Day, then 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 Administrative Agent, and (c) if the Federal Funds Rate shall be less than zero (0), then such rate shall be deemed zero (0) for purposes of this Agreement.

“**Fee Letter**” means the fee letter agreement, dated January 13, 2021, among Borrower, Administrative Agent and Arranger.

“**Fitch**” means Fitch, Inc., and any successor thereto.

“**Floor**” means zero percent (0%).

“**Foreign Lender**” means (a) if Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which Borrower is resident for tax purposes. For purposes of this definition, the United States, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

“**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, with respect to L/C Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding L/C Obligations 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.

“**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).

“**Guarantee**” means, as to any Person, (a) any obligation, contingent or otherwise, of such Person guaranteeing or having the economic effect of guaranteeing any Indebtedness or other obligation payable or performable by another Person (the “**primary obligor**”) in any manner, whether directly or indirectly, and including any obligation of such Person, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the obligee in respect of such Indebtedness or other obligation of the payment or performance of such Indebtedness or other obligation, (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity or level of income or cash flow of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation, or (iv) entered into for the purpose of assuring in any other manner the obligee in respect of such Indebtedness or other obligation of the payment or performance thereof or to protect such obligee against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of such Person securing any Indebtedness or other obligation of any other Person, whether or not such Indebtedness or other obligation is assumed by such Person (or any right, contingent or otherwise, of any holder of such Indebtedness to obtain any such Lien). The amount of any Guarantee shall be deemed to be

thereof, in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by the guaranteeing Person in good faith. The term "Guarantee" as a verb has a corresponding meaning.

"**Guarantors**" means, collectively, as of any date of determination, (a) each Subsidiary of Borrower which has executed a Guaranty, together with their successors and assigns, in each case to the extent such Subsidiary has not been released from its obligations under the Guaranty pursuant to the terms of this Agreement, and (b) with respect to the payment and performance by each Specified Loan Party of its obligations under a Guaranty with respect to all Swap Obligations, Borrower. As of the Closing Date, there are no Guarantors.

"**Guaranty**" means a guaranty, substantially in the form of *Exhibit E*, executed by a Guarantor or Guarantors in favor of Administrative Agent and the Lenders.

"**Hazardous Materials**" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"**Immaterial Subsidiary**" means, as of any date of determination, each Subsidiary of Borrower, now owned or hereafter acquired, that has assets as of such date with a GAAP book value of less than \$5,000,000, *provided* that the aggregate GAAP book value of assets of all Immaterial Subsidiaries as of any such date shall not exceed \$100,000,000.

"**Indebtedness**" of any Person means, without duplication, all liabilities and obligations, contingent or otherwise, of such Person:

(a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof and whether or not such liabilities or obligations are subordinate to any other liabilities or obligations);

(b) evidenced by bonds, notes, debentures or similar instruments;

(c) representing the balance deferred and unpaid of the purchase price (including any seller financing) of any property or services, except (i) those incurred in the ordinary course of its business that would constitute ordinarily a trade payable to trade creditors and (ii) liabilities related to consolidated variable interest entities (but specifically excluding from such exception the deferred purchase price of Real Estate, *provided* that, for clarity, Indebtedness shall not include the deferred purchase price of Real Estate under options to purchase such Real Estate that have not been exercised or the obligation of Borrower or any Subsidiary of Borrower to make Scheduled Lot Deposit Payments);

(d) evidenced by bankers' acceptances;

(e) consisting of obligations, whether or not assumed, secured by Liens on any property (including Equity Interests held by such Person) now or hereafter owned or acquired by such Person (in the case of such obligations where recourse to Borrower and its Subsidiaries is limited to the assets secured by such Liens, valued at an amount not to exceed the value of the property securing such Liens, and, in the case of Equity Interests securing Indebtedness of a non-wholly-owned Subsidiary, valued at an amount not to exceed the amount of the Indebtedness

allocable to the Equity Interests in such Subsidiary) or payable out of the proceeds or production from property now or hereafter owned or acquired by such Person (except (i) joint development agreements to pay or reimburse the costs of construction or development in the ordinary course of business, (ii) Liens securing Bonding Obligations, or (iii) Liens securing land deposits from third parties);

(f) consisting of capitalized lease obligations or finance lease liabilities (specifically excluding any operating lease liabilities under GAAP as in effect on July 15, 2016 and upon the adoption of ASU 2016-02);

(g) consisting of net liabilities under hedging obligations (valued as the termination

value thereof, computed in accordance with a method approved by the International Swaps and Derivatives Association and agreed to by such Person in the applicable agreement);

(h) any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off balance sheet financing product of such Person where such transaction is considered borrowed money indebtedness for tax purposes but is classified as an operating lease in accordance with GAAP;

(i) obligations of such Person to reimburse the issuer of a letter of credit for amounts that have been paid by such issuer in respect of drawings thereunder;

(j) consisting of contingent obligations of a Person in respect of liabilities and obligations of another Person of the type described in *clauses (a) through (i)* above (except “bad boy” or completion or performance guarantees or contingent obligations shall not constitute contingent obligations except to the extent of the amount then due and payable thereunder); and

(k) such Person’s *pro rata* share of the obligations and liabilities under *clauses (a) through (j)* above of any joint venture in which such Person holds an interest to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such joint venture, except to the extent that the terms of such obligations and liabilities provide that such Person is not liable therefor,

provided that “Indebtedness” shall not include Bonding Obligations.

“**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 *clause (a)*, Other Taxes.

“**Indemnitees**” has the meaning specified in *Section 10.05(b)*.

“**Information**” has the meaning specified in *Section 10.08*.

“**Interest Coverage Ratio**” means, as of the last day of any fiscal quarter of NVR for the twelve (12) month period ending on such date, the ratio of (a) Consolidated EBITDA to (b) Consolidated Interest Incurred.

“**Interest Payment Date**” means, (a) as to any ~~Loan other than a Base Rate Loan or LIBOR Daily Term~~ 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 Eurodollar Term Rate Loan exceeds three (3) months, the respective dates that fall every three (3) months after the beginning of such Interest Period shall also

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be Interest Payment Dates; ~~and~~ (b) as to any Base ~~Rate Loan or LIBOR Daily~~ Rate Loan, the last Business Day of each March, June, September and December and the Maturity Date and (c) as to any Daily SOFR Loan, the first Business Day of each month and the Maturity Date.

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

(i) 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, in the case of a Eurodollar Term Rate Loan, such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(ii) any Interest Period pertaining to a Eurodollar Term Rate Loan that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period; and

(iii) no Interest Period shall extend beyond the Maturity Date.

“**Investment**” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) the purchase or other acquisition of Equity Interests or other securities of another Person, (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person, or (c) the purchase or other acquisition (in one transaction or a series of transactions) of assets of another Person that constitute a business unit. For purposes of covenant compliance, the amount of any Investment shall be the amount actually invested, net of any returns (including any return of capital) on such Investment, without adjustment for subsequent increases or decreases in the value of such Investment.

“**IRS**” means the United States Internal Revenue Service.

~~“**ISDA Definitions**” means the 2006 ISDA Definitions published by the International Swaps and Derivatives Association, Inc. or any successor thereto, as amended or supplemented from time to time, or any successor definitional booklet for interest rate derivatives published from time to time by the International Swaps and Derivatives Association, Inc. or such successor thereto.~~

“**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 L/C Issuer and Borrower (or any Subsidiary) or in favor of L/C Issuer and relating to such Letter of Credit.

“**Laws**” means, collectively, all international, foreign, Federal, state and local statutes, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed

duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“**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.

“**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 Borrowing.

“**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 in its capacity as issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder.

“**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 1.06**. 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.

“**Lender**” has the meaning specified in the introductory paragraph hereto.

“**Lender Party**” has the meaning specified in **Section 9.12**.

“**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 Borrower and 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 standby letter of credit issued hereunder providing for the payment of cash upon the honoring of a presentation thereunder.

“**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 L/C Issuer.

“**Letter of Credit Expiration Date**” means the day that is one (1) year after the Maturity Date (or, if such day is not a Business Day, the next preceding Business Day).

“**Letter of Credit Fee**” has the meaning specified in **Section 2.03(h)**.

“**Letter of Credit Sublimit**” means an amount equal to the lesser of (a) \$100,000,000 and (b) the Aggregate Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Commitments.

“**Leverage Ratio**” means, as of any date of determination, the quotient obtained by dividing (a) Adjusted Consolidated Indebtedness, by (b) Capitalization.

~~“LIBOR Daily Rate” means, for any day, a fluctuating rate of interest per annum equal to LIBOR, or a comparable or successor rate, which rate is approved by Administrative Agent, as published on the applicable Bloomberg screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time), at approximately 11:00 a.m., London time, two (2) Business Days prior to such day, for Dollar deposits with a term of one (1) month commencing that day; provided that if the LIBOR Daily Rate shall be less than zero (0), then such rate will be deemed zero (0) for purposes of this Agreement.~~

~~“LIBOR Daily Rate Loan” means a Loan that bears interest based on the LIBOR Daily Rate.~~

~~“LIBOR Replacement Date” has the meaning specified in Section 3.03(c).~~

~~“LIBOR Screen Rate” means the LIBOR quote on the applicable screen page Administrative Agent designates to determine LIBOR (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time).~~

~~“LIBOR Successor Rate” has the meaning specified in Section 3.03(c).~~

~~“LIBOR Successor Rate Conforming Changes” means, with respect to any proposed LIBOR Successor Rate, any conforming changes to the definition of Base Rate, Interest Period, timing and frequency of determining rates and making payments of interest and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices and length of lookback periods) as may be appropriate, in the reasonable discretion of Administrative Agent, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit the administration thereof by Administrative Agent in a manner substantially consistent with market practice (or, if Administrative Agent reasonably determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as Administrative Agent determines is reasonably necessary in connection with the administration of this Agreement and any other Loan Document).~~

“Lien” means any mortgage, deed of trust, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

“Loan” has the meaning specified in Section 2.01.

“Loan Documents” means this Agreement, each Note, each Issuer Document, any agreement creating or perfecting rights in Cash Collateral pursuant to the provisions of Section 2.14 of this Agreement, the Fee Letter, and any Guaranty.

“Loan Notice” means a notice of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of Eurodollar Term 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 Administrative Agent

(including any form on an electronic platform or electronic transmission system as shall be approved by Administrative Agent), appropriately completed and signed by a Responsible Officer of Borrower.

“Loan Parties” means, collectively, Borrower and each Guarantor.

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

“Mandate Letter” means the mandate letter, dated January 13, 2021, among Borrower, Administrative Agent and Arranger.

“**Material Adverse Effect**” means a material adverse effect on: (a) the business, properties, financial condition or results of operations of Borrower and its Subsidiaries taken as a whole; (b) the ability of Borrower to perform its payment and other material obligations under any Loan Document to which it is a party; or (c) the rights and remedies of Administrative Agent, L/C Issuer and the Lenders under any Loan Document.

“**Material Subsidiary**” means, as of any date of determination, any Subsidiary of Borrower that is not an Immaterial Subsidiary.

“**Maturity Date**” means February 12, 2026; *provided, however*, that if such date is not a Business Day, then the Maturity Date shall be the next preceding Business Day.

“**Minimum Collateral Amount**” means, at any time, (a) 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 one hundred and two percent (102%) of the Fronting Exposure of L/C Issuer with respect to Letters of Credit issued and outstanding at such time, and (b) with respect to Cash Collateral consisting of cash or deposit account balances provided in accordance with the provisions of **Section 2.14(a)(i), (a)(ii) or (a)(iii)**, an amount equal to one hundred and two percent (102%) of the Outstanding Amount of all LC Obligations.

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

“**Mortgage Banking Subsidiaries**” means Subsidiaries of Borrower that are principally engaged in the mortgage banking and title services businesses.

“**Multiemployer Plan**” means any employee benefit plan of the type described in *Section 4001(a)(3)* of ERISA, to which Borrower or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“**Multiple Employer Plan**” means a Plan which has two or more contributing sponsors (including Borrower or any ERISA Affiliate) at least two of whom are not under common control, as such a plan is described in *Section 4064* of ERISA.

“**Non-Consenting Lender**” means any Lender that does not approve any consent, waiver or amendment that (a) requires the approval of all Lenders or all affected Lenders in accordance with the terms of **Section 10.01** and (b) has been approved by the Required Lenders.

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

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“**Note**” means a promissory note made by Borrower in favor of a Lender evidencing Loans made by such Lender, substantially in the form of **Exhibit B**.

“**NVR**” means Borrower and all consolidated Subsidiaries of Borrower (but excluding all Mortgage Banking Subsidiaries).

“**Obligations**” means all advances to, and debts, liabilities, obligations, covenants and duties of, any Loan Party arising under any Loan Document or otherwise with respect to any Loan or Letter of Credit, whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including (a) interest and fees that accrue after the commencement by or against any Loan Party or any Affiliate thereof of any proceeding under any Debtor Relief Laws naming such Person as the debtor in such proceeding, regardless of whether such interest and fees are allowed claims in such proceeding and (b) any Swap Contract entered into in connection with the Loans by any Loan Party with respect to which a Lender or any Affiliate of a Lender is a party; *provided* that the “Obligations” with respect to any Guarantor shall exclude any Excluded Swap Obligations of such Guarantor.

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

“**Organization Documents**” means (a) with respect to any corporation, the certificate or articles

of incorporation and the bylaws (or equivalent or comparable constitutive documents with respect to any non-U.S. jurisdiction), (b) with respect to any limited liability company, the certificate or articles of formation or organization and operating agreement or limited liability company agreement, and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization of such entity.

“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 3.06**).

“Outstanding Amount” means: (a) with respect to Loans, on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date; and (b) with respect to any L/C Obligations on any date, the 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 Borrower of Unreimbursed Amounts.

“**Participant**” has the meaning specified in *Section 10.07(d)*.

“**Participant Register**” has the meaning specified in *Section 10.07(d)*.

“**Payment in Full**” means all Commitments shall have expired or been terminated and the principal amount of and interest on each Loan and all fees, expenses and other amounts payable under the Loan Documents shall have been paid in full (other than contingent obligations with respect to which no claim has been asserted) and all Letters of Credit shall have expired or terminated (other than Letters of Credit for which Borrower has provided Cash Collateral in accordance with the terms hereof or as to which other arrangements with respect thereto satisfactory to Administrative Agent and L/C Issuer in their sole discretion shall have been made).

“**PBGC**” means the Pension Benefit Guaranty Corporation.

“**Pension Act**” means the Pension Protection Act of 2006.

“**Pension Funding Rules**” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, *Section 412* of the Code and *Section 302* of ERISA, each as in effect prior to the Pension Act and, thereafter, *Section 412, 430, 431, 432* and *436* of the Code and *Sections 302, 303, 304* and *305* of ERISA.

“**Pension Plan**” means any employee pension benefit plan (including a Multiple Employer Plan or a Multiemployer Plan) that is maintained or is contributed to by Borrower or any ERISA Affiliate and is either covered by *Title IV* of ERISA or is subject to the minimum funding standards under *Section 412* of the Code.

“**Permitted Liens**” means:

(a) Liens imposed by any Governmental Authority for taxes, assessments or other charges not yet subject to penalty or which are being contested in good faith and by appropriate proceedings, if adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP;

(b) statutory Liens of carriers, warehousemen, mechanics, materialmen, landlords, repairmen or other like Liens arising by operation of law in the ordinary course of business, *provided* that (i) the underlying obligations are not overdue for a period of more than thirty (30) days or (ii) such Liens are being contested in good faith and by appropriate proceedings and adequate reserves with respect thereto are maintained on the books of Borrower in accordance with GAAP;

(c) Liens securing the performance of bids, trade contracts (other than borrowed money), leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature incurred in the ordinary course of business;

(d) easements, rights-of-way, zoning restrictions, assessment district or similar Liens in connection with municipal financing, and similar restrictions, encumbrances or title defects which, singly or in the aggregate, do not in any case interfere with the ordinary conduct of the business of Borrower or any of its Subsidiaries;

(e) Liens arising by operation of law in connection with judgments, only to the extent for an amount and for a period not resulting in an Event of Default with respect thereto;

extent, for an amount and for a period not resulting in an Event of Default with respect thereto,

(f) pledges or deposits made in the ordinary course of business in connection with workers' compensation, unemployment insurance and other types of social security legislation;

(g) Liens existing on the Closing Date and identified on **Schedule 7.01**; *provided* that such Liens shall secure only those obligations which they secure on the Closing Date (and any renewals, extensions and refinancings of such obligations) and shall not extend to any other assets of Borrower or any of its Subsidiaries;

(h) Liens securing Indebtedness of a Person existing at the time such Person becomes a Subsidiary of Borrower or is merged with or into Borrower or a Subsidiary of Borrower and Liens on assets or properties at the time of acquisition thereof, *provided* that such Liens were in existence prior to the date of such acquisition, merger or consolidation, were not incurred in anticipation thereof and do not extend to any other assets (and any renewals, extensions and refinancings, but not increases of the principal amount of such Indebtedness except by an amount no greater than accrued and unpaid interest in respect of such Indebtedness and any fees, premiums and expenses relating to such renewal, extension or refinancing);

(i) Liens securing seller financing incurred in connection with the acquisition of an asset, *provided* that such Lien is incurred at the time of such acquisition and such Lien encumbers only the asset so acquired (and any renewals, extensions and refinancings, but not increases or refundings, of such Indebtedness);

(j) Liens securing land deposits from third parties;

(k) Liens pursuant to any Loan Document;

(l) Liens against the Equity Interests held by Borrower or any of its Subsidiaries in a (x) joint venture securing (i) Indebtedness of such joint venture or (ii) obligations owing to any joint venture partner or (y) Subsidiary securing Indebtedness of such Subsidiary and is otherwise non-recourse to ~~the~~ Borrower or any other Subsidiary (other than customary "bad boy" Guarantees);

(m) Liens (i) arising pursuant to vexatious, frivolous or meritless claims, suits, actions or filings, or other similar bad faith actions, taken by a Person not an Affiliate of Borrower; *provided* that a Loan Party is disputing such Lien in good faith by appropriate proceedings and such Lien is released within ninety (90) days of the date such Lien arose or (ii) securing judgments to the extent not constituting an Event of Default pursuant to **Section 8.01(h)**;

(n) Liens securing Swap Obligations arising in the ordinary course of business and not for speculative purposes;

(o) Liens arising by virtue of any statutory or common law provisions relating to banker's Liens, rights of setoff or similar rights as to deposit accounts or other funds maintained with a creditor depository institution;

(p) (i) Liens securing obligations (not constituting Indebtedness) to third parties, in connection with joint development agreements with such third parties, to perform and/or pay for or reimburse the costs of construction and/or development related to or benefiting the property

belonging to such third parties, and (ii) to the extent constituting Liens (and not securing Indebtedness), Liens, encumbrances and restrictions arising in purchase and sale contracts, in each case of **subclauses (i)** and **(ii)**, incurred in the ordinary course of business;

(q) leases or subleases granted to others not materially interfering with the ordinary business of Borrower and or any of its Subsidiaries; and

(r) Liens securing other Indebtedness or obligations in an aggregate amount not to exceed \$100,000,000 at any time outstanding.

"Person" means any natural person, corporation, limited liability company, trust, joint venture,

association, company, partnership, Governmental Authority or other entity.

“**Plan**” means any employee benefit plan within the meaning of *Section 3(3)* of ERISA (including a Pension Plan), maintained for employees of Borrower or any ERISA Affiliate or any such Plan to which Borrower or any ERISA Affiliate is required to contribute on behalf of any of its employees.

“**Platform**” has the meaning specified in *Section 6.02*.

~~“**Pre-Adjustment Successor Rate**” has the meaning specified in *Section 3.03(e)*.~~

“**PTE**” means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

“**Public Lender**” has the meaning specified in *Section 6.02*.

“**Real Estate**” means land, rights in land and interests therein (including leasehold interests), and equipment, structures, improvements, furnishings, fixtures and buildings (including a mobile home installed on a developed site) located on or used in connection with land, rights in land or interests therein (including leasehold interests), but shall not include mortgages or interests therein.

“**Recipient**” means Administrative Agent, any Lender, L/C Issuer or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder.

“**Reference Rate**” means Daily SOFR or the Base Rate, as applicable, or a Successor Rate calculated with respect to a daily index, and for which no Interest Period applies.

“**Reference Rate Loan**” means a Loan bearing interest with reference to a Reference Rate.

“**Register**” has the meaning specified in *Section 10.07(c)*.

~~“**Related Adjustment**” means, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by Administrative Agent applicable to such LIBOR Successor Rate:~~

~~(a) — the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (x) is published on an information service as selected by Administrative Agent from time to time in its reasonable discretion or (y) solely with respect to Term SOFR, if not currently~~

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~~published, which was previously so recommended for Term SOFR and published on an information service acceptable to Administrative Agent; or~~

~~(b) — the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto).~~

“**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.

“**Relevant Governmental Body**” means the Board of Governors of the Federal Reserve Board and/System or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Board of Governors of the Federal Reserve Board and/System or the Federal Reserve Bank of New York, or any successor thereto.

“**Relevant Rate**” means Daily SOFR, Term SOFR, Base Rate, and any Successor Rate.

“**Reportable Event**” means any of the events set forth in *Section 4043(c)* of ERISA, other than events for which the thirty (30) day notice period has been waived.

“**Request for Credit Extension**” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Loan Notice and (b) with respect to an L/C Credit Extension, a Letter of Credit Application.

“**Required Lenders**” means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders or, if the commitment of each Lender to make Loans and the obligation of L/C Issuer to make L/C Credit Extensions have been terminated pursuant to **Section 8.02**, Lenders holding in the aggregate more than 50% of the Total Outstandings (with the aggregate amount of each Lender’s participation in L/C Obligations being deemed “held” by such Lender for purposes of this computation). The Total Credit Exposure of, and Total Outstandings held by, any Defaulting Lender shall be disregarded in determining Required Lenders at any time; *provided* that the amount of 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 L/C Issuer in making such determination. At any time that there is only (1) Lender, then “**Required Lenders**” means such Lender. At any time there are two (2) or more Lenders, then, subject to the following sentence, “**Required Lenders**” means at least two (2) Lenders that are not Affiliates of each other. At any time that all but one (1) of the Lenders are Defaulting Lenders, then “**Required Lenders**” shall mean the non-Defaulting Lender.

“**Rescindable Amount**” has the meaning specified in **Section 2.11(b)(iii)**.

“**Resolution Authority**” means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

“**Responsible Officer**” means the chief executive officer, president, chief financial officer, treasurer, assistant treasurer or controller of a Loan Party, and solely for purposes of the delivery of incumbency certificates pursuant to **Section 4.01**, the secretary or any assistant secretary of a Loan Party and, solely for purposes of notices given pursuant to **Section II**, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to Administrative Agent

or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and 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 any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of Borrower or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to Borrower’s stockholders, partners or members (or the equivalent Person thereof); *provided, however*, that no such dividend, distribution, payment or return of capital shall constitute a “Restricted Payment” to the extent made solely with the common Equity Interests of Borrower.

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

“Sanction(s)” means any sanction administered or enforced by the United States Government (including OFAC), the United Nations Security Council, the European Union, Her/His Majesty’s Treasury (“HMT”) or other relevant sanctions authority.

“S&P” means S&P Global Ratings, a subsidiary of S&P Global, Inc., and any successor thereto.

“Scheduled Lot Deposit Payments” means obligations of Borrower or any Subsidiary of Borrower to increase the amount of earnest money deposit payable under an option or other contract to purchase Real Estate.

“Scheduled Unavailability Date” has the meaning specified in **Section 3.03(eb)**.

“SEC” means the Securities and Exchange Commission, or any Governmental Authority succeeding to any of its principal functions.

“SOFR” ~~with respect to any Business Day means the secured overnight financing rate published for such day by~~ means, with respect to any applicable determination date, the Secured Overnight Financing Rate published on the fifth U.S. Government Securities Business Day preceding such date by the SOFR Administrator ~~on the Federal Reserve Bank of New York’s website (or any successor source);~~ *provided, however*, that if such determination date is not a U.S. Government Securities Business Day, then SOFR means such rate that applied on the first U.S. Government Securities Business Day immediately prior thereto.

“SOFR Adjustment” means 0.10% (10 basis points).

“SOFR Administrator” means ~~the Federal Reserve Bank of New York, as the administrator of the benchmark (SOFR, or any successor administrator) on the Federal Reserve Bank of New York’s website (or any successor source) at approximately 8:00 a.m. (New York City time) on the immediately succeeding Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body of SOFR designated by the Federal Reserve Bank of New York or other Person acting as the SOFR Administrator at such time that is satisfactory to Administrative Agent.~~

“**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. Unless otherwise specified, all references herein to a “**Subsidiary**” or to “**Subsidiaries**” shall refer to a Subsidiary or Subsidiaries of Borrower.

“**Successor Rate**” has the meaning specified in [Section 3.03\(b\)](#).

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

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

“**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.

“**Term Rate**” means (a) Term SOFR, or (b) any Successor Rate pursuant to which interest is calculated with respect to, and fixed for the duration of, an Interest Period.

“**Term Rate Loan**” means a Loan bearing interest based on a Term Rate.

~~“**Term SOFR**” means the forward-looking term rate for any period that is approximately (as determined by Administrative Agent) as long as any of the Interest Period options set forth in the~~

~~definition of “**Interest Period**” and that is based on SOFR and that has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service as selected by Administrative Agent from time to time in its reasonable discretion.;~~

(a) for any Interest Period with respect to a Term SOFR Loan, the rate per annum equal to the Term SOFR Screen Rate two (2) U.S. Government Securities Business Days prior to the commencement of such Interest Period with a term equivalent to such Interest Period; provided that if the rate is not published prior to 11:00 a.m. on such determination date then Term SOFR means the Term SOFR Screen Rate on the first U.S. Government Securities Business Day immediately prior thereto, in each case, plus the SOFR Adjustment; and

(b) for any interest calculation with respect to a Base Rate Loan on any date, the rate per annum equal to the Term SOFR Screen Rate with a term of one month commencing that day;

provided that if Term SOFR determined in accordance with either of the foregoing provisions (a) or (b) of this definition would otherwise be less than the Floor, Term SOFR shall be deemed the Floor for purposes of this Agreement

“Term SOFR Loan” means a Credit Extension made hereunder with respect to which the interest rate is calculated by reference to Term SOFR.

“Term SOFR Replacement Date” has the meaning specified in Section 3.03(b).

“Term SOFR Screen Rate” means the forward-looking SOFR term rate administered by CME (or any successor administrator satisfactory to Administrative Agent) and published on the applicable Reuters screen page (or such other commercially available source providing such quotations as may be designated by Administrative Agent from time to time).

“Threshold Amount” means \$75,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the unused Commitments and Revolving Credit Exposure of 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, ~~LIBOR~~ Daily RateSOFR Loan or a ~~Eurodollar~~Term Rate Loan.

“UCC” means the Uniform Commercial Code in effect in the applicable jurisdiction.

“UCP” means, with respect to any Letter of Credit, the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 600 (or such later version thereof as may be in effect at the time of issuance).

“UK Financial Institution” means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person subject to IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

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“UK Resolution Authority” means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

“United States” and “U.S.” mean the United States of America.

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unrestricted Cash” means cash and Cash Equivalents of NVR (including cash that a title company or other escrow agent is unconditionally prepared to disburse to NVR) that are free and clear of all Liens (other than Liens securing the Obligations and bankers’ Liens) and not subject to any restrictions on the use thereof to pay Indebtedness and other obligations of NVR.

“U.S. Government Securities Business Day” means any Business Day, except any Business Day on which any of the Securities Industry and Financial Markets Association, the New York Stock Exchange or the Federal Reserve Bank of New York is not open for business because such day is a legal holiday under the federal laws of the United States or the laws of the State of New York, as applicable.

“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(e)(ii)(B)(3).

“**Withholding Agent**” means any Loan Party and Administrative Agent.

“**Write-Down and Conversion Powers**” means, (a) 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, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

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 Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (including, in the case of an agreement relating to Indebtedness, any refinancing or replacement thereof, but in any event subject to any restrictions on such amendments, supplements, refinancings, replacements 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, *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 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 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 Borrower or the Required Lenders shall so request, Administrative Agent, the Lenders and 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, (A) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (B) Borrower shall provide to 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 shall continue to be classified and accounted for on a basis consistent with that reflected in the Audited Financial Statements 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 Borrower and its Subsidiaries or to the determination of any

each case, be deemed to include each variable interest entity that 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 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 Times of Day; Rates

. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable). Administrative Agent does not warrant, nor accept responsibility for, nor ~~shall~~does Administrative Agent have any liability with respect to the administration, submission or any other matter related to the rates in the ~~definition~~definitions of “~~Eurodollar Rate~~” or “~~LIBOR Daily Rate~~”Simple SOFR”, “Term SOFR”, or the related definitions, or with respect to any other reference rate referred to herein or with respect to any rate (including, for the avoidance of doubt, the selection of such rate and any related spread or other adjustment) that is an alternative or replacement for or successor to any ~~of~~ such rate (including, without limitation, any LIBOR-Successor Rate) (or any component of any of the foregoing) or the effect of any of the foregoing, or of any ~~LIBOR-Successor Rate~~-Conforming Changes. Administrative Agent and its affiliates or other related entities may engage in transactions or other activities that affect any reference rate referred to herein, or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing) or any related spread or other adjustments thereto, in each case, in a manner adverse to Borrower. Administrative Agent may select information sources or services in its reasonable discretion to ascertain any reference rate referred to herein or any alternative, successor or replacement rate (including, without limitation, any Successor Rate) (or any component of any of the foregoing), in each case pursuant to the terms of this Agreement, and shall have no liability to Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or other action or omission related to or affecting the selection, determination, or calculation of any rate (or component thereof) provided by any such information source or service.

1.06 Letter of Credit Amounts

. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be 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 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.

II. THE COMMITMENTS AND CREDIT EXTENSIONS.

2.01 Loans

. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “*Loan*”) to Borrower from time to time, on any Business Day during the Availability Period,

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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 Borrowing, (a) the Total Outstandings shall not exceed the Aggregate Commitments, and (b) the Revolving Credit Exposure of any Lender shall not exceed such Lender’s Commitment. Within the limits of each Lender’s Commitment, and subject to the other terms and conditions hereof, Borrower may borrow under this **Section 2.01**, prepay under **Section 2.04**, and reborrow under this **Section 2.01**. Loans may be Base Rate Loans, EurodollarTerm Rate Loans or LIBOR Daily RateSOFR Loans, as further provided herein.

2.02 Borrowings, Conversions and Continuations of Loans.

(a) Each Borrowing, each conversion of Loans from one Type to the other, and each

continuation of EurodollarTerm Rate Loans shall be made upon Borrower's irrevocable notice to Administrative Agent, which may be given by (A) telephone, or (B) a Loan Notice; *provided* that any telephonic notice must be confirmed immediately by delivery to Administrative Agent of a Loan Notice. Each such Loan Notice must be received by Administrative Agent not later than 11:00 a.m. (i) three (3) Business Days prior to the requested date of any Borrowing of, conversion to or continuation of EurodollarTerm Rate Loans or of any conversion of EurodollarTerm Rate Loans to ~~LIBOR Daily Rate Loans or Base~~Reference Rate Loans, and (ii) on the requested date of any Borrowing of ~~or conversion to LIBOR Daily Rate Loans or Base~~Reference Rate Loans (other than any conversion of EurodollarTerm Rate Loans to ~~LIBOR Daily Rate Loans or to~~BaseReference Rate Loans). Each Borrowing of, conversion to or continuation of EurodollarTerm Rate Loans or ~~LIBOR Daily Rate~~SOFR 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 **Section 2.03(c)**, each 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 Loan Notice shall specify (i) whether Borrower is requesting a Borrowing, a conversion of Loans from one Type to the other, or a continuation of EurodollarTerm Rate Loans, (ii) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be borrowed, converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If Borrower fails to specify a Type of Loan in a Loan Notice or if Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable 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 EurodollarTerm Rate Loans. If Borrower requests a Borrowing of, conversion to, or continuation of EurodollarTerm Rate Loans in any such Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one (1) month.

(b) Following receipt of a Loan Notice, Administrative Agent shall promptly notify each Lender of the amount of its Applicable Percentage of the applicable Loans, and if no timely notice of a conversion or continuation is provided by Borrower, Administrative Agent shall notify each Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Borrowing, each Lender shall make the amount of its Loan available to Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable Loan Notice. Upon satisfaction of the applicable conditions set forth in **Section 4.02** (and, if such Borrowing is the initial Credit Extension, **Section 4.01**), Administrative Agent shall make all funds so received available to Borrower in like funds as received by Administrative Agent either by (i) crediting the account of 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) Administrative Agent by Borrower; *provided, however*, that if, on the date the Loan Notice with respect to such Borrowing is given by Borrower, there are L/C Borrowings outstanding, then the proceeds of such Borrowing, *first*, shall be applied to the payment in full of any such L/C Borrowings, and *second*, shall be made available to Borrower as provided above.

(c) Except as otherwise provided herein, a EurodollarTerm Rate Loan may be continued or converted only on the last day of an Interest Period for such EurodollarTerm Rate Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as EurodollarTerm Rate Loans ~~or LIBOR Daily Rate Loans~~ without the consent of the Required Lenders.

(d) Administrative Agent shall promptly notify Borrower and the Lenders of the interest rate applicable to any Interest Period for EurodollarTerm Rate Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, Administrative Agent shall notify 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 Borrowings, all conversions of Loans from one Type to the other, and all continuations of Loans as the same Type, there shall not be more than ten (10) Interest Periods in effect with respect to Loans.

(f) Notwithstanding anything to the contrary in this Agreement, any Lender may exchange, continue or rollover all of the portion of its Loans in connection with any refinancing, extension, loan modification or similar transaction permitted by the terms of this Agreement, pursuant to a cashless settlement mechanism approved by Borrower, Administrative Agent, and such Lender.

(g) With respect to SOFR, Daily Simple SOFR or Term SOFR, Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document; provided that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such Conforming Changes to Borrower and Lenders reasonably promptly after such amendment becomes effective.

2.03 Letters of Credit.

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) 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 date that is five (5) Business Days prior to the Maturity Date, to issue Letters of Credit for the account of Borrower or its Subsidiaries, 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 Borrower or its Subsidiaries and any drawings thereunder; *provided* that after giving effect to any L/C Credit Extension with respect to any Letter of Credit, (x) the Total Outstandings shall not exceed the Aggregate Commitments, (y) the Revolving Credit Exposure of any Lender shall not exceed such

Lender's Commitment, and (z) the Outstanding Amount of the L/C Obligations shall not exceed the Letter of Credit Sublimit. Each request by Borrower for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by 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, Borrower's ability to obtain Letters of Credit shall be fully revolving, and accordingly Borrower may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) L/C Issuer shall not issue any Letter of Credit, if:

(A) subject to **Section 2.03(b)(iii)**, the expiry date of the requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension, unless the Required Lenders have approved such expiry date; or

(B) the expiry date of the requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless all the Lenders have approved such expiry date.

(iii) L/C Issuer shall not 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 L/C Issuer from issuing the Letter of Credit, or any Law applicable to L/C Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over L/C Issuer shall prohibit, or request that L/C Issuer refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon L/C Issuer with respect to the Letter of Credit any restriction, reserve or capital requirement (for which L/C Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon L/C Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which 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 L/C Issuer applicable to letters of credit generally;

(C) except as otherwise agreed by Administrative Agent and L/C Issuer, the Letter of Credit is in an initial stated amount less than \$50,000;

(D) the Letter of Credit is to be denominated in a currency other than Dollars;

(E) any Lender is at that time a Defaulting Lender, unless L/C Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to L/C Issuer (in its sole discretion) with Borrower or such Lender to eliminate L/C Issuer's actual or potential Fronting Exposure (after giving effect to **Section 2.15(a)(iv)**) with respect to the Defaulting Lender arising from either

under L/C Obligations as to which L/C Issuer has actual or potential FROTHING Exposure, as it may elect in its sole discretion.

(iv) L/C Issuer shall not amend any Letter of Credit if 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) L/C Issuer shall be under no obligation to amend any Letter of Credit if (A) 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) 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 L/C Issuer shall have all of the benefits and immunities (A) provided to Administrative Agent in **Section IX** with respect to any acts taken or omissions suffered by 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 **Section IX** included L/C Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to L/C Issuer.

(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 Borrower delivered to L/C Issuer (with a copy to Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of Borrower. 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 L/C Issuer, by personal delivery or by any other means acceptable to L/C Issuer. Such Letter of Credit Application must be received by L/C Issuer and Administrative Agent not later than 3:00 p.m. at least two (2) Business Days (or such later date and time as Administrative Agent and 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 L/C Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount 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) the purpose and nature of the requested Letter of Credit; and (H) such other matters as 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 L/C Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as L/C Issuer may require. Additionally, Borrower shall furnish to L/C Issuer and Administrative Agent such other documents and information pertaining to such requested

Letter of Credit issuance or amendment, including any Issuer Documents, as L/C Issuer or Administrative Agent may require.

(ii) Promptly after receipt of any Letter of Credit Application, L/C Issuer will confirm with Administrative Agent (by telephone or in writing) that Administrative Agent has received a copy of such Letter of Credit Application from Borrower and, if not, L/C Issuer will provide Administrative Agent with a copy thereof. Unless L/C Issuer has received written notice from any Lender, 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 **Section IV** shall not then be satisfied, then, subject to the terms and conditions hereof, L/C Issuer

shall, on the requested date, issue a Letter of Credit for the account of Borrower (or the applicable Subsidiary) or enter into the applicable amendment, as the case may be, in each case in accordance with 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 L/C Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Lender's Applicable Percentage *times* the amount of such Letter of Credit.

(iii) If Borrower so requests in any applicable Letter of Credit Application, 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 L/C Issuer to prevent any such extension at least once in each twelve-month period (commencing with the date of issuance of such Letter of Credit) by giving prior notice to the beneficiary thereof not later than a day (the "**Non-Extension Notice Date**") in each such twelve-month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by L/C Issuer, Borrower shall not be required to make a specific request to 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) L/C Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; *provided, however*, that L/C Issuer shall not permit any such extension if (A) 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 (7) Business Days before the Non-Extension Notice Date (1) from Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from Administrative Agent, any Lender or Borrower that one or more of the applicable conditions specified in **Section 4.02** is not then satisfied, and in each such case directing L/C Issuer not to permit such extension.

(iv) 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, L/C Issuer will also deliver to Borrower and 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, L/C Issuer shall notify Borrower and

Administrative Agent thereof. Not later than 11:00 a.m. on the Business Day following the date of any payment by L/C Issuer under a Letter of Credit (each such date, an "**Honor Date**"), *provided* that L/C Issuer shall have provided written notice of such payment not later than 11:00 a.m. on the preceding Business Day for which reimbursement is due, Borrower shall reimburse L/C Issuer through Administrative Agent in an amount equal to the amount of such drawing. If Borrower fails to so reimburse L/C Issuer by such time, Administrative Agent shall promptly notify each Lender of the Honor Date, the amount of the unreimbursed drawing (the "**Unreimbursed Amount**"), and the amount of such Lender's Applicable Percentage thereof. In such event, Borrower shall be deemed to have requested a Borrowing of **Base-Rate Daily SOFR** 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 Daily SOFR** Loans, but subject to the amount of the unutilized portion of the Aggregate Commitments and the conditions set forth in **Section 4.02** (other than the delivery of a Loan Notice). Any notice given by L/C Issuer or 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 Administrative Agent may apply Cash Collateral provided for this

purpose) for the account of L/C Issuer at the Administrative Agent's Office 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 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~~Daily SOFR Loan to Borrower in such amount. Administrative Agent shall remit the funds so received to L/C Issuer.

(iii) With respect to any Unreimbursed Amount that is not (x) fully refinanced by a Borrowing of ~~Base-Rate~~Daily SOFR Loans because the conditions set forth in **Section 4.02** cannot be satisfied or for any other reason or (y) otherwise reimbursed by Borrower on the Honor Date, Borrower shall be deemed to have incurred from 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 Administrative Agent for the account of 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 Loan or L/C Advance pursuant to this **Section 2.03(c)** to reimburse 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 L/C Issuer.

(v) Each Lender's obligation to make Loans or L/C Advances to reimburse 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 L/C Issuer, 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 Loans pursuant to this **Section 2.03(c)** is subject to the conditions set forth in **Section 4.02** (other than delivery by Borrower of a Loan Notice). No such making of an L/C Advance shall relieve or otherwise impair the obligation of Borrower to reimburse L/C Issuer for the amount of any payment made by L/C Issuer under any Letter of Credit, together with interest as provided herein.

(vi) If any Lender fails to make available to Administrative Agent for the account of 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, L/C Issuer shall be entitled to recover from such Lender (acting through 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 L/C Issuer at a rate *per annum* equal to the greater of the Federal Funds Rate and a rate determined by L/C Issuer in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by 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 Loan included in the relevant Borrowing or L/C Advance in respect of the relevant L/C Borrowing, as the case may be. A certificate of L/C Issuer submitted to any Lender (through 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 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 Administrative Agent receives for the account of L/C Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from Borrower or otherwise, including proceeds of Cash Collateral applied thereto by Administrative Agent), Administrative Agent will distribute to such Lender its Applicable Percentage thereof in the same funds as those received by Administrative Agent.

(ii) If any payment received by Administrative Agent for the account of L/C Issuer pursuant to **Section 2.03(c)(i)** is required to be returned under any of the circumstances described in **Section 10.06** (including pursuant to any settlement entered into by L/C Issuer in its discretion), each Lender shall pay to Administrative Agent for the account of L/C Issuer its Applicable Percentage thereof on demand of 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 Federal Funds 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 Borrower to reimburse L/C Issuer for each drawing under each Letter of Credit and 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:

(ii) the existence of any claim, counterclaim, setoff, defense or other right that 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), 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 L/C Issuer of any requirement that exists for L/C Issuer's protection and not the protection of Borrower or any waiver by L/C Issuer which does not in fact materially prejudice Borrower;

(v) honor of a demand for payment presented electronically even if such Letter of Credit requires that demand be in the form of a draft;

(vi) any payment made by 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;

(vii) any payment by 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 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; 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, Borrower or any Subsidiary.

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 Borrower's instructions or other irregularity, Borrower will, promptly upon becoming aware of such noncompliance, notify L/C Issuer. Borrower shall be conclusively deemed to have waived any such claim against L/C Issuer and its correspondents unless such notice is given as aforesaid.

(f) **Role of L/C Issuer.** Each Lender and Borrower agree that, in paying any drawing under a Letter of Credit, L/C Issuer shall not 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 L/C Issuer,

Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of 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. 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 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 L/C Issuer, Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of 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, Borrower may have a claim against L/C Issuer, and L/C Issuer may be liable to Borrower, to the extent, but only to the extent, of any direct, as opposed to consequential or exemplary, damages suffered by Borrower which Borrower proves were caused by L/C Issuer's willful misconduct or gross negligence or 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, 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 L/C Issuer shall not 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. 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 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 L/C Issuer and Borrower when a Letter of Credit is issued, the rules of the ISP shall apply to each standby Letter of Credit. Notwithstanding the foregoing, L/C Issuer shall not be responsible to Borrower for, and L/C Issuer's rights and remedies against Borrower shall not be impaired by, any action or inaction of 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 the Law or any order of a jurisdiction where 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.** Borrower shall pay to Administrative Agent for the account of each Lender in accordance, subject to *Section 2.15*, with its Applicable Percentage a Letter of Credit fee (the "**Letter of Credit Fee**") for each Letter of Credit equal to the ~~Eurodollar~~Term Rate Applicable Rate *times* the daily amount available to be drawn under such Letter of Credit. 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 1.06*. Letter of Credit Fees shall be (i) due and payable on the third (3rd) Business Day after the end of each March, June, September and December (*provided* that Administrative Agent shall have provided to Borrower a written invoice at least two (2) Business Days' prior to the date such payment is due), commencing with the first such date to occur after the issuance of such

Letter of Credit, on the Maturity Date, 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 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, while any Event of Default exists pursuant to *Section 8.01(a)* or *(f)*, all Letter of Credit Fees shall accrue at the Default Rate.

(i) **Fronting Fee and Documentary and Processing Charges Payable to L/C Issuer.** Borrower shall pay directly to L/C Issuer for its own account a fronting fee with respect to each Letter of Credit, at the rate *per annum* specified in the Fee Letter, computed on the daily amount available to be drawn under such Letter of Credit on a quarterly basis in arrears. Such fronting fee shall be due and payable on the tenth (10th) Business Day after the end of each March, June, September and December in respect of the most recently-ended quarterly period (or portion thereof, in the case of the first payment) (*provided* that L/C Issuer shall have provided to Borrower a written invoice at least two (2) Business Days' prior to the date such payment is due), commencing with the first such date to occur after the issuance of such Letter of Credit, on the Maturity Date, on the Letter of Credit Expiration Date and thereafter on demand. 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 1.06*. In addition, Borrower shall pay directly to L/C Issuer for its own account the customary issuance, presentation, amendment

and other processing fees, and other standard costs and charges, of 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 Subsidiaries.** Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, Borrower shall be obligated to reimburse L/C Issuer hereunder for any and all drawings under such Letter of Credit. Borrower hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of Borrower, and that Borrower's business derives substantial benefits from the businesses of such Subsidiaries.

2.04 Prepayments.

(a) Borrower may, upon notice to Administrative Agent, at any time or from time to time voluntarily prepay Loans in whole or in part without premium or penalty; *provided* that: (i) such notice must be in a form acceptable to Administrative Agent and be received by Administrative Agent not later than 11:00 a.m. (A) three (3) Business Days prior to any date of prepayment of ~~Eurodollar~~Term Rate Loans and (B) on the date of prepayment of ~~LIBOR-Daily Rate Loans or Base~~Reference Rate Loans; (ii) any prepayment of ~~Eurodollar~~Term Rate Loans or ~~LIBOR-Daily Rate~~SOFR 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 ~~Eurodollar~~Term Rate Loans are to be prepaid, the Interest Period(s) of such Loans. Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's Applicable Percentage of such prepayment. If such notice is given

by Borrower, Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein; *provided* that a notice of prepayment delivered by Borrower may state that such notice is conditioned on the occurrence of a refinancing of all or any portion of the Loans or the occurrence of any other event which would have provided the cash proceeds for such prepayment, in which case such notice may be revoked (subject to payment of any amounts, if any, required pursuant to **Section 3.05**) by Borrower (by notice to Administrative Agent on or prior to the specified closing date of such refinancing or other such event) if such condition is not satisfied. Any prepayment of a **EurodollarTerm** 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 2.15**, each such prepayment shall be applied to the Loans of the Lenders in accordance with their respective Applicable Percentages.

(b) If for any reason the Total Outstandings at any time exceed the Aggregate Commitments then in effect, Borrower shall immediately prepay Loans and/or Cash Collateralize the L/C Obligations in an aggregate amount equal to such excess; *provided, however*, that Borrower shall not be required to Cash Collateralize the L/C Obligations pursuant to this **Section 2.04(b)** unless after the prepayment in full of the Loans the Total Outstandings exceed the Aggregate Commitments then in effect.

(c) Within the parameters of the applications set forth above, prepayments shall be applied (i) as directed by Borrower, or if not so directed, (ii) first to Base Rate Loans, second to **LIBOR-Daily Floating RateSOFR** Loans and then to **EurodollarTerm** Rate Loans in direct order of Interest Period maturities.

2.05 Termination or Reduction of Commitments

. Borrower may, upon notice to Administrative Agent, terminate the Aggregate Commitments, or from time to time permanently reduce the Aggregate Commitments; *provided* that (i) any such notice shall be received by Administrative Agent not later than 11:00 a.m. five (5) Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of at least \$5,000,000 or any whole multiple of \$1,000,000 in excess thereof, (iii) Borrower shall not terminate or reduce the Aggregate Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Outstandings would exceed the Aggregate Commitments, and (iv) if, after giving effect to any reduction of the Aggregate Commitments, the Letter of Credit Sublimit exceeds the amount of the Aggregate Commitments, the Letter of Credit Sublimit shall be automatically reduced by the amount of such excess. Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Commitments. Any reduction of the Aggregate Commitments shall be applied to the Commitment of each Lender according to its Applicable Percentage. All fees accrued until the effective date of any termination of the Aggregate Commitments shall be paid on the effective date of such termination. A notice of termination delivered by Borrower may state that such notice is conditioned on the effectiveness of other credit facilities, in which case such notice may be revoked (subject to payment of any amounts, if any, required pursuant to **Section 3.05**) by Borrower (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied.

2.06 Repayment of Loans

. Borrower shall repay to the Lenders on the Maturity Date the aggregate principal amount of Loans outstanding on such date.

2.07 Interest.

(a) Subject to the provisions of *subsection (b)* below, (i) each EurodollarTerm Rate Loan shall bear interest on the outstanding principal amount thereof for each Interest Period at a rate *per annum* equal to the EurodollarTerm 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 LIBOR-Daily RateSOFR Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate *per annum* equal to the LIBOR-Daily RateSOFR *plus* the Applicable Rate set forth in the EurodollarDaily SOFR Rate column in “Applicable Rate”.

(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 Laws.

(ii) If any amount (other than principal of any Loan) payable by 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 Laws.

(iii) While any Event of Default exists pursuant to *Section 8.01(a)* or *(f)* exists, 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 Laws.

(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.

2.08 Fees

. In addition to certain fees described in *subsections (h)* and *(i)* of *Section 2.03*:

(a) **Unused Fee.** Borrower shall pay to Administrative Agent for the account of each Lender in accordance with its Applicable Percentage, an unused fee equal to the Applicable Rate *times* the actual daily amount by which the Aggregate Commitments exceed the sum of (i) the Outstanding Amount of Loans, and (ii) the Outstanding Amount of L/C Obligations, subject to adjustment as provided in *Section 2.15*. The unused fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in *Section IV* is not met, and shall be due and payable quarterly in arrears on the first (1st) Business Day after the end 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. The unused fee

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 the Applicable Rate separately for each period during such quarter that such Applicable Rate was in effect.

(b) **Other Fees.** Borrower shall pay to Arranger and Administrative Agent for their own respective accounts or, as applicable, the accounts of the Lenders, fees in the amounts and at the times specified in the Fee Letter. Such fees shall be fully earned when paid and shall not be refundable (except to the extent expressly provided for therein) for any reason whatsoever.

2.09 Computation of Interest and Fees.

(a) All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Eurodollar Term 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 2.11(a)**, bear interest for one (1) day. Each determination by 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 Borrower or for any other reason, Borrower or the Lenders determine that (i) the Leverage Ratio as calculated by 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, Borrower shall immediately and retroactively be obligated to pay to Administrative Agent for the account of the applicable Lenders or L/C Issuer, as the case may be, promptly on demand by Administrative Agent (or, after the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, automatically and without further action by Administrative Agent, any Lender or 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 **clause (b)** shall not limit the rights of Administrative Agent, any Lender or L/C Issuer, as the case may be, under **Section 2.03(c)(iii)**, **2.03(h)** or **2.07(b)** or under **Section VIII**. Borrower's obligations under this **clause (b)** shall survive the termination of the Aggregate Commitments and the repayment of all other Obligations hereunder.

2.10 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 Administrative Agent in the ordinary course of business. The accounts or records maintained by Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to 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 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 Administrative Agent in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through Administrative Agent, Borrower shall execute and deliver to such Lender (through Administrative Agent) a Note,

which shall evidence such Lender's Loans in addition to such accounts or records. Each Lender may attach schedules to its 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)** above, each Lender and 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. In the event of any conflict between the accounts and records maintained by Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of Administrative Agent shall control in the absence of manifest error.

2.11 Payments Generally; Administrative Agent's Clawback.

(a) **General.** All payments to be made by Borrower shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by Borrower hereunder shall be made to 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 immediately available funds not later than 2:00 p.m. on the date specified herein (subject to any notice requirements set forth herein). 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 Administrative Agent 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 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 Administrative Agent shall have received notice from a Lender prior to the proposed date of any Borrowing of ~~Eurodollar Term~~ Rate Loans (or, in the case of any Borrowing of ~~Base Rate Loans or LIBOR Daily Reference~~ Rate Loans, prior to 12:00 noon on the date of such Borrowing) that such Lender will not make available to Administrative Agent such Lender's share of such Borrowing, 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 Borrowing of ~~Base Reference~~ 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 Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to Administrative Agent, then the applicable Lender and Borrower severally agree to pay to Administrative Agent forthwith on demand such corresponding amount in immediately available funds with interest thereon, for each day from and including the date such amount is made available to Borrower to but excluding the date of payment to Administrative Agent, at (A) in the case of a payment to be made by such Lender, the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation, *plus* any administrative, processing or similar fees customarily charged by Administrative Agent in connection with the foregoing, and (B) in the case of a payment to be made by Borrower, the interest rate applicable to Base Rate Loans. If Borrower and such Lender shall pay such interest to Administrative Agent for the same or an overlapping period, Administrative Agent shall promptly remit to Borrower the amount of such interest paid by Borrower for such period. If such Lender pays its share of the applicable Borrowing to Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by Borrower shall be without prejudice to any claim

Borrower may have against a Lender that shall have failed to make such payment to Administrative Agent.

(ii) **Payments by Borrower; Presumptions by Administrative Agent.**

Unless Administrative Agent shall have received notice from Borrower prior to the date on which any payment is due to Administrative Agent for the account of the Lenders or L/C Issuer hereunder that Borrower will not make such payment, Administrative Agent may assume that Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or L/C Issuer, as the case may be, the amount due. In such event, if Borrower has not in fact made such payment, then each of the Lenders or L/C Issuer, as the case may be, severally agrees to repay to Administrative Agent forthwith on demand the amount so distributed to such Lender or L/C Issuer, in immediately available 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 Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

(iii) With respect to any payment that Administrative Agent makes for the account of the Lenders or the L/C Issuer hereunder as to which Administrative Agent determines (which determination shall be conclusive absent manifest error) that any of the following applies (such payment referred to as the “Rescindable Amount”): (A) Borrower has not in fact made such payment; (B) Administrative Agent has made a payment in excess of the amount so paid by Borrower (whether or not then owed); or (C) Administrative agent has for any reason otherwise erroneously made such payment; then each of the Lenders or the L/C Issuers, as the case may be, severally agrees to repay to Administrative Agent forthwith on demand the Rescindable Amount so distributed to such Lender or the L/C Issuer, in immediately available 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 Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation.

A notice of Administrative Agent to any Lender or 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 Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this **Section II**, and such funds are not made available to Borrower by Administrative Agent because the conditions to the applicable Credit Extension set forth in **Section IV** are not satisfied or waived in accordance with the terms hereof, 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 Loans, to fund participations in Letters of Credit and to make payments pursuant to **Section 10.05(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 10.05(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

(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.

2.12 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 Loans made by it, or the participations in L/C Obligations held by it resulting in such Lender's receiving payment of a proportion of the aggregate amount of such 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 Administrative Agent of such fact, and (b) purchase (for cash at face value) participations in the Loans and subparticipations in L/C Obligations of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and other amounts owing them, *provided that*:

(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 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 2.14*, 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 to any assignee or participant, other than an assignment to Borrower or any Affiliate thereof (as to which the provisions of this *Section* shall apply).

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 Borrower rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of Borrower in the amount of such participation.

2.13 Increase in Commitments.

(a) **Request for Increase.** Provided there exists no Default, upon notice to Administrative Agent (which shall promptly notify the Lenders), Borrower may from time to time request an increase in the Aggregate Commitments (which increase may take the form of additional Commitments or one or more additional term loan tranches) by an amount (for all such requests) not exceeding \$300,000,000; *provided that* any such request for an increase shall be in a minimum amount of \$25,000,000. At the time of sending such notice, Borrower (in consultation with Administrative Agent) shall specify the time period within which each Lender is requested

to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the Lenders).

(b) **Lender Elections to Increase.** Each Lender shall notify Administrative Agent within such time period whether or not it agrees to increase its Commitment and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage of such requested increase. Any Lender not responding within such time period shall be deemed to have declined to increase its Commitment.

(c) **Notification by Administrative Agent; Additional Lenders.** Administrative Agent shall notify Borrower and each Lender of the Lenders' responses to each request made

hereunder. To achieve the full amount of a requested increase and subject to the approval of Administrative Agent and L/C Issuer, Borrower may also invite additional Eligible Assignees to become Lenders pursuant to a joinder agreement in form and substance satisfactory to Administrative Agent and its counsel.

(d) **Effective Date and Allocations.** If the Aggregate Commitments are increased in accordance with this *Section*, Administrative Agent and Borrower shall determine the effective date (the “*Increase Effective Date*”) and the final allocation of such increase. Administrative Agent shall promptly notify Borrower and the Lenders of the final allocation of such increase and the Increase Effective Date.

(e) **Conditions to Effectiveness of Increase.** As a condition precedent to such increase, Borrower shall deliver to Administrative Agent a certificate of each Loan Party dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (i) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (ii) in the case of Borrower, certifying that, before and after giving effect to such increase, (A) the representations and warranties contained in *Section V* and the other Loan Documents are true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) 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 (without duplication of any materiality qualifiers set forth therein) as of such earlier date, and except that for purposes of this *Section 2.13*, the representations and warranties contained in *subsections (a)* and *(b)* of *Section 5.05* shall be deemed to refer to the most recent statements furnished pursuant to *subsections (a)* and *(b)*, respectively, of *Section 6.01*, and (B) no Default exists. To the extent that the increase of the Aggregate Commitments shall take the form of a new term loan tranche, this Agreement shall be amended, in form and substance reasonably satisfactory to Administrative Agent, Borrower and the Lenders providing such term loan tranche to include such terms as are necessary and customary to implement such term loan commitments. Borrower shall prepay any Loans outstanding on the Increase Effective Date (and pay any additional amounts required pursuant to *Section 3.05*) to the extent necessary to keep the outstanding Loans ratable with any revised Applicable Percentages arising from any nonratable increase in the Commitments under this *Section*.

(f) **Conflicting Provisions.** This *Section* shall supersede any provisions in *Section 2.12* or *10.01* to the contrary.

2.14 Cash Collateral.

(a) **Certain Credit Support Events.** If (i) L/C Issuer has honored any full or partial drawing request under any Letter of Credit and such drawing has resulted in an L/C Borrowing, (ii) as of the date that is thirty (30) days prior to the Maturity Date, any L/C Obligation for any reason remains outstanding, (iii) Borrower shall be required to provide Cash Collateral pursuant to *Section 8.02(c)*, or (iv) there shall exist a Defaulting Lender, Borrower shall immediately (in the case of *clause (iii)* above) or within one Business Day (in all other cases) following any request by Administrative Agent or 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 (iv)* above, after giving effect to *Section 2.15(a)(iv)* and any Cash Collateral provided by the Defaulting Lender).

(b) **Grant of Security Interest.** Borrower, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grants to (and subjects to the control of) Administrative Agent, for the benefit of Administrative Agent, L/C Issuer and the Lenders, 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 hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to *Section 2.14(c)*. If at any time Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than Administrative Agent or L/C

Issuer as herein provided, or that the total amount of such Cash Collateral is less than the Minimum Collateral Amount, Borrower will, promptly upon demand by Administrative Agent, pay or provide to Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in blocked, non-interest bearing deposit accounts at Bank of America. 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 2.14** or **Sections 2.03, 2.04, 2.15** or **8.02** in respect of Letters of Credit shall be held and applied to the satisfaction of the specific L/C Obligations, 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 otherwise 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 10.07(b)(vi)**)) or (ii) the determination by Administrative Agent and L/C Issuer that there exists excess Cash Collateral; *provided, however*, the Person providing Cash Collateral and L/C Issuer may agree that Cash Collateral shall not be released but instead held to support future anticipated Fronting Exposure or other obligations.

2.15 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 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 Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to **Section VIII** or otherwise) or received by Administrative Agent from a Defaulting Lender pursuant to **Section 10.09** shall be applied at such time or times as may be determined by Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to Administrative Agent hereunder; *second*, to the payment on a *pro rata* basis of any amounts owing by such Defaulting Lender to L/C Issuer hereunder; *third*, to Cash Collateralize L/C Issuer's Fronting Exposure with respect to such Defaulting Lender in accordance with **Section 2.14**; *fourth*, as Borrower may request (so long as no Default or Event of 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 Administrative Agent; *fifth*, if so determined by Administrative Agent and Borrower, to be held in a 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 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 2.14**; *sixth*, to the payment of any amounts owing to the Lenders or L/C Issuer as a result of any judgment of a court of competent jurisdiction obtained by any Lender or L/C Issuer against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to Borrower as a result of any judgment of a court of competent jurisdiction obtained by 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 4.02** 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 are held by the Lenders *pro rata* in accordance with the Commitments hereunder without giving effect to **Section 2.15(a)(iv)**. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this **Section 2.15(a)(ii)** shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(A) No Defaulting Lender shall be entitled to receive any fee payable under **Section 2.08(a)** for any period during which that Lender is a Defaulting Lender (and 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 2.14**.

(C) With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to **clause (A)** or **(B)** above, 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 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 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. Subject to **Section 10.21**, 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.** If the reallocation described in **clause (a)(iv)** above cannot, or can only partially, be effected, Borrower shall, without prejudice to any right or remedy available to it hereunder or under applicable Law, Cash Collateralize L/C Issuers' Fronting Exposure in accordance with the procedures set forth in **Section 2.14**.

(b) **Defaulting Lender Cure.** If Borrower, Administrative Agent, and L/C Issuer agree in writing that a Lender is no longer a Defaulting Lender, 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 Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit to be held on a *pro rata* basis by the Lenders in accordance with their Applicable Percentages (without giving effect to **Section 2.15(a)(iv)**), whereupon such Lender will cease to be a Defaulting Lender; *provided* that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of 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.

III. TAXES, YIELD PROTECTION AND ILLEGALITY.

3.01 Taxes.

(a) **Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.**

(1) 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 Laws. If any applicable Laws (as determined in the good faith discretion of a Withholding Agent) require the deduction or withholding of any Tax from any such payment by a Withholding Agent, then the applicable Withholding Agent shall be entitled to make such deduction or withholding, upon the basis of the information and documentation to be delivered pursuant to **subsection (e)** below.

(ii) If any Loan Party or 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, then (A) Administrative Agent shall withhold or make such deductions as are determined by Administrative Agent to be required based upon the information and documentation it has received pursuant to **subsection (e)** below, (B) 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 been made.

(iii) If a Withholding Agent shall be required by any applicable Laws other than the Code to withhold or deduct any Taxes from any payment, then (A) such Withholding Agent, as required by such Laws, 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 (e)** below, (B) such Withholding Agent, to the extent required by such Laws, shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with such Laws, 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 been made.

(b) **Payment of Other Taxes by Borrower.** Without limiting the provisions of **subsection (a)** above, Borrower shall timely pay to the relevant Governmental Authority in

accordance with applicable law, or at the option of Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) **Tax Indemnifications.** (i) Borrower shall, and does hereby, indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 3.01**) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender or L/C Issuer (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of a Lender or L/C Issuer, shall be conclusive absent manifest error.

(ii) Each Lender and L/C Issuer shall, and does hereby, severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (x) Administrative Agent against any Indemnified Taxes attributable to such Lender or L/C Issuer (but only to the extent that Borrower has not already indemnified Administrative Agent for such Indemnified Taxes and without limiting the obligation of Borrower to do so), (y) Administrative Agent and any Loan Party, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of **Section 10.07(d)**

relating to the maintenance of a Participant Register and (z) Administrative Agent and any Loan Party, as applicable, against any Excluded Taxes attributable to such Lender or L/C Issuer, in each case, that are payable or paid by Administrative Agent or such 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 Administrative Agent shall be conclusive absent manifest error. Each Lender and L/C Issuer hereby authorizes Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or L/C Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to Administrative Agent under this *clause (ii)*.

(d) **Evidence of Payments.** As soon as practicable after any payment of Taxes by Borrower to a Governmental Authority as provided in this **Section 3.01**, Borrower shall deliver to Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to Administrative Agent.

(e) **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 Borrower and Administrative Agent, at the time or times reasonably requested by Borrower or Administrative Agent, such properly completed and executed documentation reasonably requested by Borrower or 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 Borrower or Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by Borrower or Administrative Agent as will enable Borrower or 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(e)(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, in the event that Borrower is a U.S. Person,

(A) any Lender that is a U.S. Person shall deliver to Borrower and 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 Borrower or Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender 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 Borrower and 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 Borrower or Administrative Agent), whichever of the following is applicable:

(1) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BENE (or W-8BEN, 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, IRS Form W-8BENE (or W-8BEN, 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;

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

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

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BENE (or W-8BEN, as applicable), a U.S. Tax Compliance Certificate substantially in the form of **Exhibit F-2** or

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 F-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 Borrower and 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 Borrower or Administrative Agent), executed copies of any other form prescribed by applicable 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 law to permit Borrower or 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 Borrower and Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by Borrower or Administrative Agent such documentation prescribed by applicable law (including as prescribed by *Section 1471(b)(3)(C)(i)* of the Code) and such additional documentation reasonably requested by Borrower or Administrative Agent as may be necessary for Borrower and 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 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 Borrower and Administrative Agent in writing of its legal inability to do so.

(f) **Treatment of Certain Refunds.** Unless required by applicable Laws, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or L/C Issuer, or have any obligation to pay to any Lender or L/C Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or L/C Issuer, as the case may be. If any Recipient determines that it has received a refund of any Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this *Section 3.01*, it shall pay to Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrower under this *Section 3.01* with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund),

provided that Borrower, upon the request of the Recipient, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient in the event the Recipient is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this subsection, in no event will the applicable Recipient be required to pay any amount to Borrower pursuant to this subsection the payment of which would place the Recipient in a less favorable net after-Tax position than such Recipient would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This subsection shall not be construed to require any Recipient to make available its tax returns (or any other information relating to its taxes that it deems confidential) to Borrower or any other Person.

(g) **Survival.** Each party's obligations under this *Section 3.01* shall survive the resignation or replacement of Administrative Agent or any assignment of rights by, or the replacement of, a Lender or L/C Issuer, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

3.02 Illegality

. If any Lender determines that any Change in Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its Lending Office to ~~perform any of its obligations hereunder or~~ make, maintain or fund ~~or charge~~ Loans whose interest is determined with respect reference to any ~~Credit Extension~~ Relevant Rate, or to determine or charge interest rates based upon ~~the Eurodollar Rate or the LIBOR Daily Rate,~~ any Relevant 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 London interbank market,~~ engage in reverse repurchase of U.S. Treasury securities transactions of the type included in the determination of SOFR then, on notice thereof by such Lender to Borrower through Administrative Agent, ~~(i) any obligation of such Lender to issue, make, maintain, fund or charge interest~~ continue Loans with respect reference to any such Credit Extension or continue Eurodollar Rate Loans or LIBOR Daily Relevant Rate Loans or to convert ~~Base Rate Loans to~~ Loans to Eurodollar Rate Loans or LIBOR Daily Rate Loans with reference to such Relevant Rate shall be suspended, ~~and (ii) 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 Eurodollar 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 Administrative Agent without reference to the Eurodollar Rate component of the Base Rate,~~ in each case until such Lender notifies Administrative Agent and Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, ~~(x): the applicable~~ Borrower Party shall, upon demand from such Lender (with a copy to Administrative Agent), prepay, or, ~~if in the event any applicable Daily SOFR Loans or Term Rate Loans are so affected,~~ convert all ~~Eurodollar Rate Loans and LIBOR Daily Rates~~ such 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 Administrative Agent without reference to the Eurodollar Rate component of the Base Rate),~~ either on the next Interest Payment Date with respect to Daily SOFR Loans or on the last day of the Interest Period therefor with respect to Term Rate Loans, if such Lender may lawfully continue to maintain such ~~Eurodollar Rate Loans or LIBOR Daily Term Rate Loans~~ Term Rate Loans to such day, or ~~immediately,~~ if such Lender may not lawfully continue to maintain ~~such Eurodollar Term Rate Loans or LIBOR Daily Rate Loans~~ and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the Eurodollar Rate or LIBOR Daily Rate, Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Eurodollar Rate component thereof until 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 Eurodollar Rate or the

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~~or LIBOR Daily Rate, immediately.~~ Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so ~~prepaid or~~ converted, together with any additional amounts required pursuant to Section 3.05. Upon any conversion of the applicable Loans to Base Rate Loans, and for the duration of the unavailability of the Relevant Rate under this *Section 3.02*, the terms "Term SOFR" or "Daily Simple SOFR", as applicable, and "Term Rate Loan" or "Daily SOFR Loan", as applicable, in this Agreement and the other Loan Documents shall be deemed to refer to "Base Rate" and "Base Rate Loan".

3.03 Inability to Determine Rates.

(a) **Market Disruption; SOFR.** If, in connection with any request for a ~~Eurodollar Rate~~ Term SOFR Loan or LIBOR Daily Rate SOFR Loan ~~or a, including any conversion to or~~ continuation thereof, (i) Administrative Agent determines (which determination shall be conclusive absent manifest error) that (A) ~~Dollar deposits are not being offered to banks in the London interbank market for the applicable amount and Interest Period of such Eurodollar Rate Loan, or~~ no Successor Rate has been determined in accordance with *Section 3.03(b)*, and the circumstances under Section 3.03(b)(i) or the Scheduled Unavailability Date has occurred, (B) ~~(x)~~ adequate and reasonable means do not otherwise exist for determining ~~the LIBOR Daily Rate or Eurodollar Rate~~ Term SOFR for any requested Interest Period with respect to a proposed ~~LIBOR Daily Rate Loan or Eurodollar Rate Loan, respectively, or~~ Term SOFR Loan, or (C) adequate and reasonable means do not otherwise exist for determining Daily Simple SOFR in connection with an existing or proposed ~~Base Rate Daily SOFR Loan and (v) the circumstances described in~~

~~Section 3.03(c)(i) do not apply (in each case with respect to *clause (a)(i)(A)* above, “*Impacted Loans*”), or (ii) Administrative Agent or the Required Lenders determine that for any reason the Eurodollar Rate that Term SOFR for any requested Interest Period with respect to a proposed Eurodollar Rate Loan or the LIBOR Daily Rate Simple SOFR with respect to a proposed LIBOR Daily Rate Loan does not adequately and fairly reflect the cost to such Lenders of funding such Eurodollar Rate Loan or LIBOR Daily Rate Loan; then, Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Term SOFR Loans, Daily SOFR Loans, or LIBOR to convert Daily Rate SOFR Loans to Term SOFR Loans, shall be suspended; (to the extent of the affected Eurodollar Rate Loans, LIBOR Daily Rate Loans or Interest Periods), and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the Eurodollar Rate component in determining the Base Rate shall be suspended, in each case Loans) until Administrative Agent (or, in the case of a determination by the Required Lenders described in *clause (ii)* above of this *Section 3.03(a)*, until Administrative Agent upon the instruction of the as applicable, Required Lenders) revokes such notice. Upon receipt of such notice, (1) Borrower may revoke any pending request for a Borrowing borrowing of, or conversion to, or continuation of Eurodollar Rate Term SOFR Loans or Daily SOFR Loans (to the extent of the affected Eurodollar Rate Term SOFR Loans, Daily SOFR Loans, or Interest Periods) or LIBOR Daily Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing borrowing of (x) to the extent unaffected, Daily SOFR Loans, or if Daily SOFR Loans are unavailable, (y) Base Rate Loans, in each case, in the amount specified therein, (2) any outstanding Term SOFR Loans shall be deemed to have been converted to (x) to the extent unaffected, Daily SOFR Loans, or if Daily SOFR Loans are unavailable, (y) Base Rate Loans, in each case, immediately at the end of their respective applicable Interest Period, and (3) any outstanding Daily SOFR Loans shall immediately be deemed to have been converted to Base Rate Loans.~~

~~(b) — Notwithstanding the foregoing, if Administrative Agent has made the determination described in *clause (i)* of *Section 3.03(a)*, Administrative Agent, in consultation with Borrower and 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 (i) Administrative Agent revokes the notice delivered with respect to the Impacted Loans under *clause (i)* of the first sentence of *Section 3.03(a)*, (ii) Administrative Agent or the Required Lenders notify Administrative Agent and Borrower that such alternative interest rate does not adequately and fairly reflect the cost to such Lenders of funding the Impacted Loans, or (iii) 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 Administrative Agent and Borrower written notice thereof. Administrative Agent will promptly (in one or more notices) notify Borrower and each Lender of the establishment of an alternative interest rate pursuant to this *clause (b)*.~~

~~(b)~~ (e) Successor Rates. Notwithstanding anything to the contrary in this Agreement or any other Loan Documents, if Administrative Agent determines (which determination shall be conclusive absent manifest error), or Borrower or Required Lenders notify Administrative Agent (with, in the case of the Required Lenders, a copy to Borrower) that Borrower or Required Lenders (as applicable) have determined, that:

(i) ~~If~~ adequate and reasonable means do not exist for ascertaining ~~LIBOR~~ LIBOR for any relevant Interest Period ~~hereunder or any other tenors of LIBOR Term SOFR,~~ including, ~~without limitation,~~ because the LIBOR Term SOFR Screen Rate is not available or published on a current basis and such circumstances are unlikely to be temporary; or

(ii) ~~the~~ CME or any successor administrator of the LIBOR Term SOFR Screen Rate or a Governmental Authority having jurisdiction over Administrative Agent or CME or such administrator with respect to its publication of Term SOFR, in each case acting in such capacity, has made a public statement identifying a specific date after which ~~LIBOR~~ the applicable interest periods of Term SOFR or the LIBOR Term SOFR Screen Rate shall or will no longer be made available, or permitted to be used for determining the interest rate of U.S. Dollar-denominated syndicated loans, or shall or will otherwise cease, provided that, at the time of such statement, there is no successor administrator that is satisfactory to Administrative Agent, that will continue to provide ~~LIBOR~~ such interest periods of Term SOFR after such specific date (such specific date the latest date on which such interest periods of Term SOFR or the Term SOFR Screen Rate are no longer available permanently or indefinitely, the “*Scheduled Unavailability Date*”); ~~or~~

~~(iii) — the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative; or~~

~~(iv) — syndicated loans currently being executed, or that include language similar to that contained in this *Section 3.03*, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;~~

then, ~~in the case of *clauses (i)-(iii)* above,~~ on a time and date ~~and time~~ determined by Administrative Agent (any such date, the “LIBOR Term SOFR Replacement Date”), which date

interest calculated and shall occur within a reasonable period of time after the occurrence of any of the events or circumstances under ~~clauses (i), (ii) or (iii)~~ above and, solely with respect to ~~clause (ii)~~ above, no later than the Scheduled Unavailability Date, ~~LIBOR~~ Term SOFR will be replaced hereunder and under any Loan Document with, ~~subject to the proviso below, the first available alternative set forth in the order below~~ Daily SOFR for any payment period for interest calculated that can be determined by Administrative Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document (the "~~LIBOR Successor Rate~~"; and any such rate before giving effect to the Related Adjustment, the "~~Pre-Adjustment Successor Rate~~").

~~(x)~~ — ~~Term SOFR plus the Related Adjustment; and~~

~~(y)~~ — ~~SOFR plus the Related Adjustment;~~

~~and in the case of clause (iv) above, Borrower and~~

Notwithstanding anything to the contrary herein, (x) if Administrative Agent determines that Daily Simple SOFR is not available on or prior to the Term SOFR Replacement Date, or (y) if the events or circumstances of the type described in clauses (i) or (ii) above have occurred with respect to Daily Simple SOFR or the Successor Rate then in effect, then in each case, Administrative Agent and Borrower may amend this Agreement solely for the purpose of replacing ~~LIBOR under this Agreement~~ Term SOFR, Daily Simple SOFR, and under/or any other Loan Document then current Successor Rate in accordance with this Section 3.03 at any relevant interest payment date or the definition end of any payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. Dollar-denominated syndicated credit facilities for such alternative benchmark and, in each case, including any mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. Dollar-denominated syndicated credit facilities for such benchmark. For the avoidance of doubt, any such proposed rate and adjustments, shall constitute a "LIBOR Successor Rate" and. Any such amendment will become effective at 5:00 p.m. on the fifth (5th) Business Day after Administrative Agent ~~shall have notified~~ has posted such proposed amendment to all Lenders and Borrower ~~of the occurrence of the circumstances described in clause (iv) above~~ unless, prior to such time, Lenders comprising ~~the~~ Required Lenders have delivered to Administrative Agent written notice that such Required Lenders object to ~~the implementation of a LIBOR Successor Rate pursuant to such clause;~~ amendment.

~~provided that, if Administrative Agent determines that Term SOFR has become available, is administratively feasible for Administrative Agent and would have been identified as the Pre-Adjustment Successor Rate in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and Administrative Agent notifies Borrower and each Lender of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment~~

(c) Notice and Implementation.

(i) Administrative Agent will promptly (in one or more notices) notify Borrower Parties and each Lender of ~~(x) any occurrence of any of the events, periods or circumstances under clauses (i) through (iii) above, (y) a LIBOR Replacement Date and (z) the LIBOR~~ the implementation of any Successor Rate.

(ii) Any ~~LIBOR~~ Successor Rate shall be applied in a manner substantially consistent with market practice; provided that to the extent such market practice is not administratively feasible for Administrative Agent, such ~~LIBOR~~ Successor Rate shall be applied in a manner as otherwise reasonably determined by Administrative Agent.

(iii) Notwithstanding anything else herein, if at any time any ~~LIBOR~~

Successor Rate as so determined would otherwise be less than ~~zero (0)~~ the Floor, the LIBOR Successor Rate will be deemed to be ~~zero (0)~~ the Floor for the purposes of this Agreement and the other Loan Documents.

(iv) In connection with the implementation of a ~~LIBOR~~ Successor Rate, Administrative Agent will have the right to make ~~LIBOR Successor Rate~~ Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such ~~LIBOR Successor Rate~~ Conforming Changes will become effective without any further action or consent of any other party to this Agreement; *provided* that, with respect to any such amendment effected, Administrative Agent shall post each such amendment implementing such ~~LIBOR Successor Rate~~ Conforming Changes to Borrower and the Lenders reasonably promptly after such amendment becomes effective.

~~If the events or circumstances of the type described in Sections 3.03(e)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect, then the successor rate thereto shall be determined in accordance with the definition of "LIBOR Successor Rate."~~

~~(d) — Notwithstanding anything to the contrary herein, (i) after any such determination by Administrative Agent or receipt by Administrative Agent of any such notice described under Sections 3.03(e)(i)-(iii), as applicable, if Administrative Agent determines that none of the LIBOR Successor Rates is available on or prior to the LIBOR Replacement Date, (ii) if the events or circumstances described in Section 3.03(e)(iv) have occurred but none of the LIBOR Successor Rates is available, or (iii) if the events or circumstances of the type described in Sections 3.03(e)(i)-(iii) have occurred with respect to the LIBOR Successor Rate then in effect and Administrative Agent determines that none of the LIBOR Successor Rates is available, then in each case, Administrative Agent and Borrower may amend this Agreement solely for the purpose of replacing LIBOR or any then current LIBOR Successor Rate in accordance with this Section 3.03 at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar Dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating such adjustment shall be published on an information service as selected by Administrative Agent from time to time in its reasonable discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after Administrative Agent shall have posted such proposed amendment to all Lenders and Borrower~~

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~~unless, prior to such time, Lenders comprising the Required Lenders have delivered to Administrative Agent written notice that such Required Lenders object to such amendment.~~

~~(e) — If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with clauses (e) or (d) of this Section 3.03 and the circumstances under clauses (e)(i) or (e)(iii) above exist or the Scheduled Unavailability Date has occurred (as applicable), Administrative Agent will promptly so notify Borrower and each Lender. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Rate Loans or LIBOR Daily Rate Loans shall be suspended (to the extent of the affected Eurodollar Rate Loans, LIBOR Daily Rate Loans, Interest Periods, interest payment dates or payment periods), and (y) the Eurodollar Rate component shall no longer be utilized in determining the Base Rate, until the LIBOR Successor Rate has been determined in accordance with clauses (e) or (d). Upon receipt of such notice, Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Rate Loans (to the extent of the affected Eurodollar Rate Loans, Interest Periods, interest payment dates or payment periods) or LIBOR Daily Rate Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of Base Rate Loans (subject to the foregoing clause (y)) in the amount specified therein.~~

3.04 ~~Increased Costs; Reserves on Eurodollar Rate Loans and LIBOR Daily 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 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 L/C Issuer or the ~~London~~[applicable](#) interbank market any other condition, cost or expense affecting this Agreement or ~~Eurodollar~~[Term](#) Rate Loans or ~~LIBOR~~-Daily ~~Rate~~[SOFR](#) 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, continuing or maintaining any Loan (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or 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 L/C Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or L/C Issuer, Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer, as the case may be, for such additional costs incurred or reduction suffered; *provided* that Borrower shall not be required to pay any such amounts to any Recipient under and pursuant to this [Section 3.04\(a\)](#) which are owing as a result of any Change in Law if and to the extent such Recipient is not at

such time generally assessing such costs in a similar manner to other similarly situated borrowers with similar credit facilities.

(b) **Capital Requirements.** If any Lender or L/C Issuer determines that any Change in Law affecting such Lender or L/C Issuer or any Lending Office of such Lender or such Lender's or 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 L/C Issuer's capital or on the capital of such Lender's or 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 held by, such Lender, or the Letters of Credit issued by L/C Issuer, to a level below that which such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or L/C Issuer's policies and the policies of such Lender's or L/C Issuer's holding company with respect to capital adequacy), then from time to time Borrower will pay to such Lender or L/C Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or L/C Issuer or such Lender's or L/C Issuer's holding company for any such reduction suffered; *provided* that Borrower shall not be required to pay any such amounts to any Recipient under and pursuant to this **Section 3.04(b)** which are owing as a result of any Change in Law if and to the extent such Recipient is not at such time generally assessing such costs in a similar manner to other similarly situated borrowers with similar credit facilities.

(c) **Certificates for Reimbursement.** A certificate of a Lender or L/C Issuer setting forth the amount or amounts necessary to compensate such Lender or L/C Issuer or its holding company, as the case may be, as specified in *subsection (a) or (b)* of this **Section** and delivered to Borrower shall be conclusive absent manifest error. Borrower shall pay such Lender or L/C Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) **Delay in Requests.** Failure or delay on the part of any Lender or 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 L/C Issuer's right to demand such compensation, *provided* that Borrower shall not be required to compensate a Lender or L/C Issuer pursuant to the foregoing provisions of this **Section** for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or L/C Issuer, as the case may be, notifies Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or 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 six-month period referred to above shall be extended to include the period of retroactive effect thereof).

~~(e) — **Reserves on Eurodollar Rate Loans or LIBOR Daily Rate Loan.** If any Lender is required after the date of this Agreement to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits (currently known as "**Eurocurrency liabilities**") that were not required to be maintained prior to the date hereof, then Borrower shall pay to such Lender additional interest on the unpaid principal amount of each Eurodollar Rate Loan and each LIBOR Daily 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), which shall be due and payable on each date on which interest is payable on such Loan, *provided* Borrower shall have received at least ten (10) days' prior notice (with a copy to Administrative Agent) of such additional interest from such Lender (or if a Lender fails to give notice ten (10) days prior to the relevant Interest Payment Date, such additional interest shall be due and payable ten (10) days from receipt of such notice); *provided*~~

~~that Borrower shall not be required to pay any such amounts to any Lender under and pursuant to this **Section 3.04(a)** which are owing as a result of any Change in Law if and to the extent such~~

~~this Section 3.04(c) when are owing as a result of any change in Law and to the extent such Lender is not at such time generally assessing such costs in a similar manner to other (but not necessarily all) similarly situated borrowers with similar credit facilities.~~

3.05 Compensation for Losses

. Upon demand of any Lender (with a copy to Administrative Agent) from time to time, 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 or LIBOR Daily~~ Term 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 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~~ Term Rate Loan on the date or in the amount notified by Borrower; or

(c) any assignment of a Eurodollar Term Rate Loan on a day other than the last day of the Interest Period therefor as a result of a request by Borrower pursuant to **Section 10.14**;

excluding any loss of anticipated profits, but 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. Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing.

For purposes of calculating amounts payable by Borrower to the Lenders under this **Section 3.05**, each Lender shall be deemed to have funded each Eurodollar Term Rate Loan or ~~LIBOR Daily~~ Rate SOFR Loan made by it at the ~~Eurodollar Rate or LIBOR Daily~~ Relevant Rate, respectively, for such Loan by a matching deposit or other borrowing in the London applicable interbank eurodollar market for a comparable amount and for a comparable period, whether or not such ~~Eurodollar Rate Loan or LIBOR Daily Rate~~ Loan was in fact so funded.

3.06 Mitigation Obligations; Replacement of Lenders.

(a) **Designation of a Different Lending Office.** Each Lender may make any Credit Extension to Borrower through any Lending Office, *provided* that the exercise of this option shall not affect the obligation of Borrower to repay the Credit Extension in accordance with the terms of this Agreement. If any Lender requests compensation under **Section 3.04**, or requires Borrower to pay any Indemnified Taxes or additional amounts to any Lender, L/C Issuer, or any Governmental Authority for the account of any Lender or 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 Borrower such Lender or 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 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 L/C Issuer, as the case may be, to any unreimbursed cost or expense and would not

otherwise be disadvantageous to such Lender or L/C Issuer, as the case may be. Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender or L/C Issuer in connection with any such designation or assignment.

(b) **Replacement of Lenders.** If (i) any Lender requests compensation under **Section 3.04**, (ii) if Borrower is required to pay any Indemnified Taxes or additional amounts to any Lender or any Governmental Authority for the account of any Lender pursuant to **Section 3.01** or (iii) any Lender delivers a notice pursuant to **Section 3.02**, and, in each case, such Lender has declined or is unable to designate a different lending office in accordance with **Section 3.06(a)**, Borrower may replace such Lender in accordance with **Section 10.14**.

. All of Borrower's obligations under this **Section III** shall survive termination of the Aggregate Commitments, repayment of all other Obligations hereunder, and resignation of Administrative Agent.

IV. **CONDITIONS PRECEDENT TO CREDIT EXTENSIONS.**

4.01 **Conditions of Initial Credit Extension**

. The obligation of L/C Issuer and each Lender to make its initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

(a) Administrative Agent's receipt of the following, each of which shall be originals or electronic copies (followed promptly by originals where requested by ~~the~~ Administrative Agent) unless otherwise specified, each properly executed by a Responsible Officer of the signing Loan Party, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to Administrative Agent and each of the Lenders:

(i) executed counterparts of this Agreement, sufficient in number for distribution to Administrative Agent, each Lender and Borrower (unless otherwise approved by Administrative Agent);

(ii) a Note executed by Borrower in favor of each Lender requesting a Note;

(iii) such certificates of resolutions or other action, incumbency certificates and/or other certificates of Responsible Officers of each Loan Party as 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;

(iv) such documents and certifications as Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that Borrower is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization or formation;

(v) a favorable opinion of Hogan Lovells US LLP, counsel to the Loan Parties, addressed to Administrative Agent and each Lender, in form and substance reasonably satisfactory to Administrative Agent;

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(vi) a certificate signed by a Responsible Officer of Borrower certifying (A) that the conditions specified in **Sections 4.02(a)** and **(b)** have been satisfied, (B) that there has been no event or circumstance since the date of the Audited Financial Statements that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect and (C) no consents, licenses or approvals are required in connection with the execution, delivery and performance by each Loan Party and the validity against such Loan Party of the Loan Documents to which it is a party;

(vii) a duly completed Compliance Certificate as of the last day of the fiscal quarter of Borrower ended on September 30, 2020, signed by a Responsible Officer of Borrower; and

(viii) such other customary documents, instruments, agreements, or information, as Administrative Agent reasonably may require.

(b) There shall not exist any action, suit, investigation, or proceeding, pending or, to the knowledge of a Responsible Officer of Borrower, threatened in any court or before any arbitrator or Governmental Authority related in any way to the Obligations or that could reasonably be expected to have a Material Adverse Effect.

(c) No Default shall exist, or would result from such proposed Credit Extension or

from the application of the proceeds thereof.

(d) Any fees required to be paid on or before the Closing Date shall have been paid.

(e) Unless waived by Administrative Agent, Borrower shall have paid, subject to any limitations described in the Mandate Letter, all reasonable and documented out-of-pocket fees, charges and disbursements of counsel to Administrative Agent (directly to such counsel if requested by Administrative Agent) to the extent invoiced not less than one (1) Business Day prior to or on the Closing Date, *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 Borrower and Administrative Agent).

(f) (i) Upon the reasonable request of any Lender made at least ten (10) days prior to the Closing Date, Borrower shall have provided to such Lender, and such Lender shall be reasonably satisfied with, the documentation and other information so requested in connection with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case at least five (5) days prior to the Closing Date; and (ii) at least five (5) days prior to the Closing Date, any Loan Party that qualifies as a “*legal entity customer*” under the Beneficial Ownership Regulation shall deliver, to each Lender that so requests, a Beneficial Ownership Certification in relation to such Loan Party.

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 Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

4.02 Conditions to all Credit Extensions

. The obligation of each Lender to honor any Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type, or a continuation of Eurodollar Term Rate Loans) is subject to the following conditions precedent:

(a) The representations and warranties of Borrower and each other Loan Party contained in *Section V* or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) 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 (without duplication of any materiality qualifiers set forth therein) as of such earlier date, and except that for purposes of this *Section 4.02*, the representations and warranties contained in *subsections (a) and (b) of Section 5.05* shall be deemed to refer to the most recent statements furnished pursuant to *subsections (a) and (b)*, respectively, of *Section 6.01*.

(b) No Default shall exist, or would result from such proposed Credit Extension or from the application of the proceeds thereof.

(c) Administrative Agent and, if applicable, L/C Issuer, shall have received a Request for Credit Extension in accordance with the requirements hereof.

Each Request for Credit Extension (other than a Loan Notice requesting only a conversion of Loans to the other Type or a continuation of Eurodollar Term Rate Loans) submitted by Borrower shall be deemed to be a representation and warranty that the conditions specified in *Sections 4.02(a) and (b)* have been satisfied on and as of the date of the applicable Credit Extension.

V. REPRESENTATIONS AND WARRANTIES

. Borrower represents and warrants to Administrative Agent and the Lenders that:

5.01 Existence, Qualification and Power

. Borrower and its Subsidiaries (other than Excluded Subsidiaries) each (a) are duly organized or formed, validly existing and, as applicable, in good standing under the Laws of the jurisdiction of its incorporation or organization, (b) have all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business and (ii) in the case of the Loan Parties, execute, deliver and perform its obligations under the Loan Documents to which it is a party, and (c) are duly qualified and is licensed and, as applicable, in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in *clause (b)(i) or (c)*, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

5.02 Authorization; No Contravention

. The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of any of such Person's Organization Documents, (b) conflict with or result in any breach or contravention of, or the creation of any Lien under, or require any payment to be made under (i) any material Contractual Obligation to which such Person is a party or affecting such

5.03 Governmental Authorization; Other Consents

. No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document, except for such as have been made or obtained and are in full force and effect.

5.04 Binding Effect

. This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, subject to Debtor Relief Laws and to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

5.05 Financial Statements; No Material Adverse Effect.

(a) The Audited Financial Statements: (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of Borrower and its Subsidiaries in all material respects as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; and (iii) show in accordance with GAAP all material indebtedness and other liabilities, direct or contingent, of Borrower and its Subsidiaries as of the date thereof, including liabilities for taxes, material commitments and Indebtedness.

(b) The unaudited consolidated balance sheet of Borrower and its Subsidiaries dated September 30, 2020, and the related consolidated statements of operations, retained earnings and cash flows for the fiscal quarter ended on that date (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present in all material respects the financial condition of Borrower and its Subsidiaries as of the date thereof and their results of operations for the period covered thereby, subject, in the case of *clauses (i) and (ii)*, to the absence of footnotes and to normal year-end audit adjustments.

(c) Since the date of the Audited Financial Statements, there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

5.06 Litigation

. There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Responsible Officer of Borrower, threatened or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against Borrower or any of its Subsidiaries (other than Excluded Subsidiaries) or against any of their properties or revenues that (a) purport to affect or pertain to this

Agreement or any other Loan Document, or any of the transactions contemplated hereby, or (b) either individually or in the aggregate could reasonably be expected to have a Material Adverse Effect.

5.07 No Default

. Neither Borrower nor any of its Subsidiaries (other than Excluded Subsidiaries) is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the transactions contemplated by this Agreement or any other Loan Document.

5.08 Ownership of Property; Liens

. Each of Borrower and each of its Subsidiaries (other than Excluded Subsidiaries) has good record and marketable title in fee simple to, or valid leasehold interests in, all real property necessary or used in the ordinary conduct of its business, except for such defects in title as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The property of Borrower and its Subsidiaries (other than Excluded Subsidiaries) is subject to no Liens, other than Permitted Liens.

5.09 Environmental Compliance

. Borrower and its Subsidiaries (other than Excluded Subsidiaries) conduct in the ordinary course of business a review of the effect of existing Environmental Laws and claims alleging potential liability or responsibility for violation of any Environmental Law on their respective businesses, operations and properties, and as a result thereof Borrower has reasonably concluded that such Environmental Laws and claims could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.10 Insurance

. The properties of Borrower and its Subsidiaries (other than Excluded Subsidiaries) are insured with financially sound and reputable insurance companies not Affiliates of Borrower, in such amounts, with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where Borrower or the applicable Subsidiary operates.

5.11 Taxes

. Borrower and its Subsidiaries (other than Excluded Subsidiaries) have filed all Federal, state and other material tax returns and reports required to be filed, and have paid all Federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except (a) those which are being contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves have been provided in accordance with GAAP or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect. There is no proposed tax assessment against Borrower or any Subsidiary (other than Excluded Subsidiaries) that would, if made, have a Material Adverse Effect. Neither Borrower nor any of its Subsidiaries (other than Excluded Subsidiaries) is party to any tax sharing agreement other than tax sharing agreements or arrangements among Borrower and its Subsidiaries (and not involving any third party).

5.12 ERISA Compliance.

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other Federal or state laws, and (ii) each Plan that is intended to be a qualified plan under *Section 401(a)* of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under *Section 401(a)* of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under *Section 501(a)* of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service.

(b) There are no pending or, to the best knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to result in liability of Borrower or any of its Subsidiaries (other than Excluded Subsidiaries) in excess of the Threshold Amount, individually or in the aggregate. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in liability of Borrower or any of its Subsidiaries (other than Excluded Subsidiaries) in excess of the Threshold Amount, individually or in the aggregate.

(c) (i) No ERISA Event has occurred for which there remains any outstanding liability for Borrower or any ERISA Affiliate, and neither Borrower nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) Borrower and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in *Section 430(d)(2)* of the Code) is 60% or higher and neither Borrower nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) neither Borrower nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) neither Borrower nor any ERISA Affiliate has engaged in a transaction that could be subject to *Section 4069* or *Section 4212(c)* of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under *Title IV* of ERISA to terminate any Pension Plan.

(d) Borrower is not and will not be using “*plan assets*” (within the meaning of 29 CFR §2510.3-101, as modified by *Section 3(42)* of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments.

5.13 Subsidiaries

. Set forth on *Schedule 5.13* is a complete and accurate list of all Subsidiaries of Borrower as of the Closing Date and whether each such Person is a Material Subsidiary.

5.14 **Margin Regulations; Investment Company Act.**

(a) Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock.

(b) None of Borrower or any Loan Party is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

(c) No proceeds of the Loans will be used, directly or indirectly, for the purpose of purchasing or carrying any “margin stock” within the meaning of Regulation U, or for the purpose of purchasing or carrying or trading in any securities.

5.15 **Disclosure.**

(a) Borrower has disclosed to Administrative Agent and the Lenders all matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate or other information (other than information of a general economic or industry nature) furnished in writing by or on behalf of any Loan Party to Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; *provided* that, with respect to projected financial information, Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time furnished (it being understood that projections as to future events are not to be viewed as facts or guaranties of future performance, that actual results during the period or periods covered by such projections may differ from the projected results and that such differences may be material and that no assurances are being given that such projections will be in fact realized).

(b) As of the date most recently delivered, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

5.16 **Compliance with Laws**

. Borrower and each of its Subsidiaries (other than Excluded Subsidiaries) are in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

5.17 **OFAC**

. Neither Borrower, nor any of its Subsidiaries (other than Excluded Subsidiaries), nor, to the knowledge of Borrower and its Subsidiaries (other than Excluded Subsidiaries), any director, officer, employee, agent, affiliate or representative thereof, is an individual or entity that is, or is owned or controlled by any individual or entity that is (i) currently the subject or target of any Sanctions, (ii) included on OFAC’s

Investment Ban List, or any similar list enforced by any other relevant sanctions authority or (iii) located, organized or resident in a Designated Jurisdiction. Borrower and its Subsidiaries (other than Excluded Subsidiaries) have conducted their businesses in compliance in all material respects with all applicable Sanctions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such Sanctions.

5.18 Anti-Corruption Laws

. Borrower and its Subsidiaries (other than Excluded Subsidiaries) have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions, in each case to the extent applicable to Borrower and its Subsidiaries, and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

5.19 EEA Financial Institution

. No Loan Party is an Affected Financial Institution.

5.20 Covered Entities

. No Loan Party is a Covered Entity.

VI. AFFIRMATIVE COVENANTS

. Until Payment in Full, Borrower shall, and shall (except in the case of the covenants set forth in **Sections 6.01, 6.02, and 6.03**) cause each of its Subsidiaries (other than Excluded Subsidiaries) to:

6.01 Financial Statements

. Deliver to Administrative Agent (for distribution to each Lender):

(a) **Annual Financial Statements.** As soon as available, but in any event within ninety (90) days after the end of each fiscal year of Borrower, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal year, and the related consolidated statements of operations, retained earnings and cash flows for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, audited and accompanied by a report and opinion of an independent certified public accountant of nationally recognized standing, which report and opinion shall be prepared in accordance with generally accepted auditing standards and shall not be subject to (i) any “going concern” or like qualification or (ii) any qualification or exception as to the scope of such audit; and

(b) **Quarterly Financial Statements.** As soon as available, but in any event within forty-five (45) days after the end of each of the first three (3) fiscal quarters of each fiscal year of Borrower, a consolidated balance sheet of Borrower and its Subsidiaries as at the end of such fiscal quarter, the related consolidated statements of operations, retained earnings and cash flows for such fiscal quarter and for the portion of Borrower’s fiscal year then ended, and the related consolidated statements of changes in retained earnings and cash flows for the portion of Borrower’s fiscal year then ended, in each case setting forth in comparative form, as applicable, the figures for the corresponding fiscal quarter of the previous fiscal year and the corresponding

portion of the previous fiscal year, all in reasonable detail and prepared in accordance with GAAP, subject only to normal year-end audit adjustments and the absence of footnotes.

As to any information contained in materials furnished pursuant to **Section 6.02**, Borrower shall not be separately required to furnish such information under **subsection (a)** or **(b)** above, but the foregoing shall not be in derogation of the obligation of Borrower to furnish the information and materials described in **subsections (a)** and **(b)** above at the times specified therein.

6.02 Certificates; Other Information

. Deliver to Administrative Agent (for distribution to each Lender):

(a) concurrently with the delivery of the financial statements referred to in **Sections 6.01(a)** and **(b)**, a duly completed Compliance Certificate signed by the chief executive officer, chief financial officer, treasurer or controller of Borrower (which delivery may be by electronic communication including fax or email and shall be deemed to be an original authentic counterpart thereof for all purposes);

(b) concurrently with the delivery of the financial statements referred to in **Sections 6.01(a)**, an update to **Schedule 5.13**;

(c) promptly following any request therefor, information and documentation reasonably requested by Administrative Agent or any Lender for purposes of compliance with applicable “know your customer” and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act and the Beneficial Ownership Regulation; and

(d) promptly, such additional information regarding the business, financial or corporate affairs of Borrower or any of its Subsidiaries, or compliance with the terms of the Loan Documents, as Administrative Agent or any Lender may from time to time reasonably request (subject to the last sentence of **Section 6.10**).

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 Borrower posts such documents, or provides a link thereto on Borrower’s website on the Internet at the website address listed on **Schedule 10.03**; or (ii) on which such documents are posted on Borrower’s behalf on an Internet or intranet website, if any, to which each Lender and Administrative Agent have access (whether a commercial, third-party website or whether sponsored by Administrative Agent); *provided* that Borrower shall notify Administrative Agent (by facsimile or electronic mail) of the posting of any such documents. 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 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.

Borrower hereby acknowledges that (a) Administrative Agent and/or Arranger may, but shall not be obligated to, make available to the Lenders and L/C Issuer materials and/or information provided by or on behalf of Borrower hereunder (collectively, “**Borrower Materials**”) by posting Borrower Materials on IntraLinks, SyndTrak, ClearPar, or a substantially similar electronic transmission system (the “**Platform**”) and (b) certain of the Lenders (each, a “**Public Lender**”) may have personnel who do not wish to receive material non-public information with respect to 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. Borrower hereby agrees that upon the request of Administrative Agent that (w) all Borrower Materials that are 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,” Borrower shall be deemed to have authorized Administrative Agent, Arranger, L/C Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to 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 10.08**); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Side Information;” and (z) Administrative Agent and Arranger shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Side Information.”

6.03 Notices

. Promptly notify Administrative Agent (for distribution to each Lender), after actual knowledge thereof by any Responsible Officer of Borrower:

(a) of the occurrence of any Default;

(b) of any matter that has resulted or could reasonably be expected to result in a

Material Adverse Effect, including, to the extent as such matter has resulted or could reasonably be expected to result in a Material Adverse Effect, (i) breach or non-performance of, or any default under, a Contractual Obligation of Borrower or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between Borrower or any Subsidiary and any Governmental Authority; or (iii) the commencement of, or any material development in, any litigation or proceeding affecting Borrower or any Subsidiary, including pursuant to any applicable Environmental Laws;

(c) of the occurrence of any ERISA Event which could reasonably be expected to result in liability in excess of the Threshold Amount to Borrower or any Subsidiary; and

(d) of any material change in accounting policies or financial reporting practices by Borrower or any Subsidiary.

Each notice pursuant to *clauses (a) through (d)* of this **Section 6.03** shall be accompanied by a statement of a Responsible Officer of Borrower setting forth details of the occurrence referred to therein and stating what action 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.

6.04 Payment of Obligations

. Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets to the extent that the failure to make any such payment could be reasonably expected to have a Material Adverse Effect, unless the same are being contested in good faith by appropriate proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by Borrower or such Subsidiary; and (b) all other lawful claims which, if unpaid, would by law become a Lien upon its property (other than Permitted Liens), unless the same are being contested in good faith by appropriate

proceedings diligently conducted and adequate reserves in accordance with GAAP are being maintained by Borrower or such Subsidiary.

6.05 Preservation of Existence, Etc

. (a) Preserve, renew and maintain in full force and effect its legal existence except in a transaction permitted by **Section 7.04**; (b) preserve, renew and maintain in full force and effect its good standing under the Laws of the jurisdiction of its organization except, in the case of any Subsidiary of Borrower, to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; (c) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (d) preserve or renew all of its registered patents, trademarks, trade names and service marks, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

6.06 Maintenance of Properties

. (a) Maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear and casualty and condemnation events excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof except, in the case of each of **clauses (a)** and **(b)**, where the failure to do so could not reasonably be expected to have a Material Adverse Effect.

6.07 Maintenance of Insurance

. Maintain with financially sound and reputable insurance companies not Affiliates of Borrower, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business operating in the same or similar locations, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons.

6.08 Compliance with Laws

. Comply in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its business or property (including Environmental Laws), except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted; or (b) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.

6.09 Books and Records

. Maintain proper books of record and account, in which full, true and correct in all material respects entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of Borrower or such Subsidiary, as the case may be.

6.10 Inspection Rights

. Permit representatives and independent contractors of Administrative Agent and each Lender to visit and inspect any of its properties, to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom, and to discuss its affairs, finances and accounts with its directors, officers, and representatives, all at such reasonable times during normal business hours and as often as may be

Agent of such Lender, provided, however, that when an Event of Default exists, Administrative Agent or any Lender (or any of their respective representatives or independent contractors) may do any of the foregoing at the reasonable and, when possible, documented expense of Borrower at any time during normal business hours and without advance notice. Notwithstanding the foregoing or any other provision of this Agreement or any other Loan Document, in no event will Borrower or its Subsidiaries be required to disclose to Administrative Agent or any Lender privileged documents or other documents the disclosure of which would violate regulatory or contractual confidentiality obligations binding upon Borrower or any of its Subsidiaries.

6.11 Use of Proceeds

. Use the proceeds of the Credit Extensions for general corporate purposes not in contravention of any Law or of any Loan Document.

6.12 Guarantors

. Promptly notify Administrative Agent at the time that any Subsidiary of Borrower (other than an Excluded Subsidiary) Guarantees, or otherwise becomes obligated in respect of, any Indebtedness of Borrower or another Subsidiary of Borrower (excluding Guarantees of, and other obligations in respect of, (a) Indebtedness relating to non-recourse financings (such as customary “bad boy” Guarantees or a pledge of Equity Interests in the Subsidiary incurring such non-recourse financing) or (b) other Indebtedness in an aggregate amount not in excess of the Threshold Amount at any time outstanding), and promptly thereafter (and in any event within thirty (30) days), cause such Subsidiary to (i) become a Guarantor by executing and delivering to Administrative Agent a Guaranty or such other document as Administrative Agent shall deem appropriate for such purpose, and (ii) deliver to Administrative Agent documents of the types referred to in *clauses (iii) and (iv) of Section 4.01(a)* and, if requested by Administrative Agent, favorable opinions of counsel to such Subsidiary (which shall, if requested, cover, among other things, the legality, validity, binding effect and enforceability of the documentation referred to in the foregoing *clause (i)*), all in form, content and scope reasonably satisfactory to Administrative Agent; *provided* that, for the avoidance of doubt, Borrower may also cause other Subsidiaries of Borrower to become Guarantors as may be necessary, appropriate or otherwise desirable in the judgment of Borrower in order to comply with its obligations under the Loan Documents, in which instance Borrower shall cause such Subsidiaries to become Guarantors by executing and delivering to Administrative Agent the documents described in the foregoing *clauses (i) and (ii)*.

6.13 Anti-Corruption Laws; Sanctions

. Conduct its businesses in all material respects in compliance with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other applicable anti-corruption legislation in other jurisdictions and with all applicable Sanctions, in each case, to the extent applicable to Borrower and its Subsidiaries, and maintain policies and procedures designed to promote and achieve compliance with such laws and Sanctions.

6.14 Keepwell

. Borrower, at the time the Guaranty by any Specified Loan Party becomes effective with respect to any Swap Obligations, hereby absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum

amount of such liability that can be hereby incurred without rendering Borrower’s obligations and undertakings under this *Section 6.14* voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of Borrower under this *Section 6.14* shall remain in full force and effect until the Obligations have been indefeasibly paid and performed in full. Borrower intends this *Section 6.14* to constitute, and this *Section 6.14* shall be deemed to constitute, a Guarantee of the obligations of, and a “keepwell, support, or other agreement” for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act.

6.15 Financial Covenants.

(a) **Consolidated Tangible Net Worth.** Cause Consolidated Tangible Net Worth as

of the last day of each fiscal quarter of Borrower to be equal to or greater than the sum of (i) \$750,000,000, *plus* (ii) if, as of the last day of any fiscal quarter, the Leverage Ratio exceeds 50%, an amount equal to 50% of the amount of Consolidated Net Income (without deduction for losses) for that fiscal quarter (it being understood that this *clause (ii)* shall not apply to compliance determinations for any quarter other than the quarter in which the Leverage Ratio exceeds 50%).

(b) **Interest Coverage Ratio/Minimum Liquidity.** As of the last day of each fiscal quarter of Borrower, cause either (i) the Interest Coverage Ratio to be equal to or greater than 1.50 to 1.0, *or* (ii) the ratio of (x) Unrestricted Cash as of such last day, to (y) Consolidated Interest Incurred for the twelve (12) month period ending on such last day to be equal to or greater than 1.0 to 1.0.

(c) **Leverage Ratio.** Cause the Leverage Ratio as of the last day of each fiscal quarter of Borrower to be equal to or less than 60%.

VII. NEGATIVE COVENANTS

. Until Payment in Full, Borrower shall not, nor shall it permit any of its Subsidiaries (other than Excluded Subsidiaries) to, directly or indirectly:

7.01 Liens

. Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than Permitted Liens.

7.02 Agreement for Negative Pledge

. Agree with any third party not to create, incur, assume or suffer to exist any Lien securing the Obligations upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than such restrictions:

(a) arising under the terms of any secured Indebtedness otherwise permitted under the Loan Documents that prohibit Liens on the collateral securing such Indebtedness;

(b) arising under other unsecured Indebtedness otherwise permitted under the Loan Documents so long as the prohibitions against Liens are substantially the same as, or, taken as a whole, not more burdensome (as reasonably determined by Borrower) in any material respect than, those included under the Loan Documents;

(c) arising under contracts for the sale of any assets or merger transaction limiting the incurrence of Liens on such assets pending consummation of the sale or merger transaction;

(d) arising under licenses, leases, joint venture agreements and other contracts entered into in the ordinary course of business that contain restrictions on the transfer of (including the grant of a Lien in) such licenses, leases, joint venture agreements (including direct or indirect Equity Interests in the applicable joint venture) or other contracts or the assets that are the subject thereof;

(e) arising under any non-recourse Indebtedness of any Subsidiary of Borrower or Indebtedness of any Mortgage Banking Subsidiary, in each case, to the extent relating to the direct or indirect Equity Interests held by Borrower in such Subsidiary or Mortgage Banking Subsidiary;

(f) financial covenants under any agreements governing Indebtedness otherwise permitted under the Loan Documents that have the effect of limiting the amount of assets that are permitted to secure Indebtedness; and

(g) in relation to direct or indirect Equity Interests in any Excluded Subsidiary.

7.03 Investments

. Make any Investments, except:

(a) Investments held by Borrower and its Subsidiaries in the form of (i) deposits in the ordinary course of business or (ii) Cash Equivalents;

(b) advances to officers, directors, employees, agents, customers and suppliers of Borrower and Subsidiaries in the ordinary course of business, including financing to purchasers of homes and other residential properties, an aggregate amount outstanding not to exceed \$10,000,000 at any time;

(c) Investments of Borrower in any Subsidiary of Borrower that is a Guarantor;

(d) Investments (i) consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the ordinary course of business and (ii) received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss;

(e) Investments existing on the Closing Date and identified on **Schedule 7.03**, including Equity Interests in, and loans and advances to, or guarantees of obligations of, all Subsidiaries and joint ventures of Borrower, but excluding loans and advances to Mortgage Banking Subsidiaries;

(f) loans and advances to Mortgage Banking Subsidiaries so long as the aggregate amount outstanding of all such loans and advances that are made in reliance on this **clause (f)** does not exceed an amount equal to the Collateral Value *plus* \$45,000,000 as of the last day of any fiscal quarter of Borrower;

(g) Investments not otherwise permitted by this **Section 7.03** in Subsidiaries (including Excluded Subsidiaries) that are not Guarantors so long as the aggregate amount

outstanding of all such Investments made in reliance on this *clause (g)*, does not exceed thirty percent (30%) of Consolidated Tangible Net Worth as of the last day of any fiscal quarter of Borrower (*provided* that if the foregoing requirement is not satisfied as of the end of any fiscal quarter of Borrower, Borrower shall have a period of thirty (30) days following the delivery of the Compliance Certificate in relation to such fiscal quarter to permit Borrower to add such Subsidiaries as Guarantors as may be required to permit compliance with this *clause (g)*, and no Default or Event of Default shall be deemed to exist pending the expiration of such thirty (30) day period);

(h) repurchases of the capital stock or other Equity Interests of Borrower to the extent permitted by *Section 7.05*; and

(i) Investments consisting of noncash consideration received from a disposition permitted by *Section 7.04*.

7.04 Fundamental Changes

. Merge, dissolve, liquidate, consolidate with or into another Person, or sell, transfer 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 (including, in each case, pursuant to a Division), except that, so long as no Default exists or would result therefrom:

(a) any Subsidiary may merge or consolidate with (i) Borrower; *provided* that Borrower shall be the continuing or surviving Person, or (ii) any one or more other Subsidiaries; *provided* that when any Guarantor is merging with another Subsidiary, the continuing or surviving Person shall be or become a Guarantor (if such surviving entity is required to be a Guarantor hereunder);

(b) any Subsidiary may dissolve or liquidate into (i) Borrower; *provided* that Borrower shall be the continuing or surviving Person, or (ii) another Subsidiary; *provided* that when any Guarantor is dissolving or liquidating into another Subsidiary, the continuing or surviving Person shall be or become a Guarantor (if such surviving entity is required to be a Guarantor hereunder);

(c) any Subsidiary may Dispose of all or substantially all of its assets (upon voluntary liquidation or otherwise); *provided* that if the transferor in such a transaction is a Guarantor and the transferee is Borrower or another Subsidiary, then (i) the transferee shall be Borrower or a Guarantor or (ii) if the transferee is a Subsidiary that is not a Guarantor, the transaction shall otherwise constitute an Investment permitted pursuant to *Section 7.03*; and

(d) Borrower or any Subsidiary may merge or consolidate with any other Person that is not Borrower or any of its Subsidiaries so long as: (i) if such merger or consolidation is with Borrower, then Borrower shall be the continuing or surviving Person; and (ii) if such merger or consolidation is with a Guarantor, then the continuing or surviving Person shall be or become a Guarantor (if such surviving entity is required to be a Guarantor hereunder).

7.05 Restricted Payments

. Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, if a Default shall have occurred and be continuing at the time thereof or would result therefrom; *provided* that (i) any wholly-owned Subsidiary of Borrower shall in any event be permitted to

non-wholly-owned Subsidiary that is not a Guarantor shall in any event be permitted to make Restricted Payments to Borrower and any Subsidiary and to each other owner of capital stock or other Equity Interests of such Subsidiary on a *pro rata* basis based on their relative ownership interests according to their respective holdings of the type of Equity Interest in respect of which such Restricted Payment is being made, or otherwise as provided pursuant to the constituent documents governing such non-wholly-owned Subsidiary, so long as the *pro rata* share of the proceeds of such Restricted Payments are immediately paid to Borrower or a wholly-owned Subsidiary of Borrower.

7.06 Change in Nature of Business

. Engage in any material line of business substantially different from those lines of business conducted by Borrower and its Subsidiaries on the date hereof or any business activity reasonably similar, incidental or complementary thereto and reasonable extensions thereof.

7.07 Transactions with Affiliates

. Enter into any transaction of any kind with any Affiliate of Borrower, whether or not in the ordinary course of business, other than (a) transactions on fair and reasonable terms substantially as favorable to Borrower or such Subsidiary as would be obtainable by Borrower or such Subsidiary at the time in a comparable arm's length transaction with a Person other than an Affiliate, (b) Investments, Restricted Payments, mergers, dissolutions, liquidations, consolidations, dispositions and sales of assets that are otherwise permitted under the Loan Documents, (c) any issuances by Borrower or any Subsidiary of awards or grants of equity securities, stock options and stock ownership plans approved by Borrower's board of directors or the compensation committee thereof, and (d) the payment of reasonable fees to directors of Borrower or any of its Subsidiaries who are not employees of such Person, and compensation and employee benefit arrangements paid to, and indemnities provided for the benefit of, directors, officers or employees of Borrower or any of its Subsidiaries in the ordinary course of business.

7.08 Use of Proceeds

. Use the proceeds of any Credit Extension, whether directly or indirectly, and whether immediately, incidentally or ultimately, to purchase or carry margin stock (within the meaning of Regulation U of the FRB) or to extend credit to others for the purpose of purchasing or carrying margin stock or to refund indebtedness originally incurred for such purpose.

7.09 Organization Documents

. Amend its Organization Documents in any manner that would reasonably be likely to materially and adversely affect the rights of Administrative Agent, L/C Issuer or the Lenders.

7.10 Accounting Policies

. Except in accordance with GAAP, make any changes to its accounting policies or financial reporting practices.

7.11 Sanctions

. Directly or indirectly, use the proceeds of any Credit Extension, or lend, contribute or otherwise make available such proceeds to any Subsidiary, joint venture partner or other individual or entity, (i) to fund any prohibited activities of or business with any individual or entity, or in any Designated Jurisdiction,

that, at the time of such funding, is the subject of Sanctions, or (ii) in any other manner that will result in a violation by any individual or entity (including any individual or entity participating in the transaction, whether as Lender, Arranger, Administrative Agent, L/C Issuer, or otherwise) of Sanctions.

7.12 Anti-Corruption Laws

. Directly or indirectly use the proceeds of any Credit Extension for any purpose which would breach the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar anti-corruption legislation in other jurisdictions, in each case to the extent applicable to Borrower and its Subsidiaries.

8.01 Events of Default

. Any of the following shall constitute an “*Event of Default*”:

(a) **Non-Payment.** Borrower or any other Loan Party fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any L/C Obligation, or (ii) within five (5) Business Days after the same becomes due, any interest on any Loan or on any L/C Obligation, or any fee due hereunder, or any other amount payable hereunder or under any other Loan Document; or

(b) **Specific Covenants.** Borrower or any other Loan Party fails to perform or observe any term, covenant or agreement contained in:

(i) **Section 6.05(a)** (with respect to Borrower only), **Section 6.15** or **Section VII**; or

(ii) **Section 6.01** or **6.03** and such default shall continue unremedied for a period of five (5) Business Days; or

(c) **Other Defaults.** Borrower or any other Loan Party fails to perform or observe any other covenant or agreement (not specified in **subsection (a)** or **(b)** above) contained in any Loan Document on its part to be performed or observed and such failure continues unremedied for a period of thirty (30) days after the earlier of a Responsible Officer of Borrower becoming aware of such default or written notice thereof given by Administrative Agent; or

(d) **Representations and Warranties.** Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of Borrower or any other Loan Party herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be materially incorrect or misleading when made or deemed made; or

(e) **Cross-Default.** (i) Borrower, any Guarantor or any Material Subsidiary (other than any Mortgage Banking Subsidiary) (A) fails to make any payment when due (after giving effect to any applicable grace period) (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Indebtedness or Guarantee (other than Indebtedness hereunder, Indebtedness under Swap Contracts, and non-recourse financing or Indebtedness of any Mortgage Banking Subsidiary) the principal amount of which, either individually or in the aggregate, is in excess of the Threshold Amount (including undrawn committed or available amounts and including amounts owing to all creditors under any

combined or syndicated credit arrangement), or (B) fails to observe or perform any other agreement (after giving effect to any applicable grace period) or condition relating to any such Indebtedness or Guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs (other than customary non-default mandatory prepayment requirements or non-default requirements to provide cash collateral, including mandatory prepayment events associated with asset sales, casualty events, debt or equity issuances, extraordinary receipts or borrowing base limitations), the effect of which default or other event is to cause, or to permit the holder or holders of such Indebtedness or the beneficiary or beneficiaries of such Guarantee (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such Guarantee to become payable or cash collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which Borrower or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as so defined) under such Swap Contract as to which Borrower or any Subsidiary is an Affected Party (as so defined) and, in either event, the Swap Termination Value owed by Borrower or such Subsidiary as a result thereof is greater than the Threshold Amount; or

(f) **Insolvency Proceedings, Etc.** Borrower, any Guarantor or any Material Subsidiary (other than any Mortgage Banking Subsidiary) institutes or consents to the institution of any proceeding under any Debtor Relief Law, or makes an assignment for the benefit of creditors; or applies for or consents to the appointment of any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer for it or for all or any material part of its property; or any receiver, trustee, custodian, conservator, liquidator, rehabilitator or similar officer is appointed without the application or consent of such Person and the appointment continues undischarged or unstayed for sixty (60) days; or any proceeding under any Debtor Relief Law relating to any such Person or to all or any material part of its property is instituted without the consent of such Person and continues undischarged or unstayed for sixty (60) days, or an order for relief is entered in any such proceeding; or

(g) **Inability to Pay Debts; Attachment.** (i) Borrower, any Guarantor or any Material Subsidiary (other than any Mortgage Banking Subsidiary) becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, or (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any such Person and is not released, vacated or fully bonded within thirty (30) days after its issue or levy; or

(h) **Judgments.** There is entered against Borrower, any Guarantor or any Material Subsidiary (other than any Mortgage Banking Subsidiary) (i) one or more final judgments or orders for the payment of money in an amount that, either individually or in the aggregate, exceeds the Threshold Amount (to the extent not covered by independent third-party insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments that have, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or

(i) **ERISA.** (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of Borrower, any of its Subsidiaries or any ERISA Affiliate under *Title IV* of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an amount, either individually or in the aggregate, in excess of the Threshold Amount, or (ii) Borrower or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under *Section 4201* of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount; or

(j) **Invalidity of Loan Documents.** Any Loan Document, at any time after its execution and delivery and for any reason other than as expressly permitted hereunder or thereunder or satisfaction in full of all the Obligations (other than contingent indemnification obligations for which no claim has been asserted), ceases to be in full force and effect; or any Loan Party or any other Person contests in any manner the validity or enforceability of any Loan Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or

(k) **Stock Exchange De-Listing.** Borrower shall cease to maintain the listing of its common Equity Interests on the New York Stock Exchange, NASDAQ or other nationally recognized exchange; or

(l) **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, 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 L/C Issuer 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 Borrower;

(c) require that Borrower Cash Collateralize the L/C Obligations (in an amount equal to the Minimum Collateral Amount with respect thereto); and

(d) exercise on behalf of itself, the Lenders and L/C Issuer all rights and remedies available to it, the Lenders and L/C Issuer under the Loan Documents;

provided, however, that upon the occurrence of an actual or deemed entry of an order for relief with respect to Borrower under the Bankruptcy Code of the United States, the obligation of each Lender to make Loans and any obligation of L/C Issuer 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 Borrower to Cash Collateralize the L/C Obligations as aforesaid shall automatically become effective, in each case without further act of Administrative Agent or any Lender.

. 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 2.14** and **2.15**, be applied by 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 Administrative Agent and amounts payable under **Section III**) payable to 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 L/C Issuer (including fees, charges and disbursements of counsel to the respective Lenders and L/C Issuer (including fees and time charges for attorneys who may be employees of any Lender or L/C Issuer, but expressly excluding any amounts due in connection with any Swap Contracts that constitute a portion of the Obligations) and amounts payable under **Section 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 (other than Obligations related to Swap Contracts), ratably among the Lenders and L/C Issuer 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 and L/C Borrowings, ratably among the Lenders and L/C Issuer in proportion to the respective amounts described in this *clause Fourth* held by them;

Fifth, to Administrative Agent for the account of L/C Issuer, to Cash Collateralize that portion of L/C Obligations comprised of the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by Borrower pursuant to **Sections 2.03** and **2.14**;

Sixth, to any counterparties under any Swap Contracts constituting a portion of the Obligations, any amounts due and owing by any Loan Party or any Subsidiary thereof under such Swap Contracts ratably among such counterparties in proportion to the net obligations due and owing by any Loan Party or any Subsidiary thereof under such Swap Contracts; and

Last, the balance, if any, after all of the Obligations have been indefeasibly paid in full, to Borrower or as otherwise required by Law;

provided that Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth in this **Section 8.03**.

Subject to **Sections 2.03(c)** and **2.14**, 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.

IX. ADMINISTRATIVE AGENT.

9.01 Appointment and Authority

. Each of the Lenders and L/C Issuer hereby irrevocably appoints Bank of America to act on its behalf as Administrative Agent hereunder and under the other Loan Documents and authorizes Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental

thereto. The provisions of this **Section IX** (other than **Sections 9.06** and **9.10**) are solely for the benefit of Administrative Agent, the Lenders and L/C Issuer, and Borrower shall not have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

9.02 Rights as a Lender

. The Person serving as 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 Administrative Agent and the term “Lender” or “Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as 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 Borrower or any Subsidiary or other Affiliate thereof as if such Person were not Administrative Agent hereunder and without any duty to account therefor to the Lenders.

9.03 Exculpatory Provisions

. Neither Administrative Agent nor Arranger shall have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and each of their duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, neither Administrative Agent nor Arranger, as applicable:

(a) shall be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(b) shall 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 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 Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose 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;

(c) shall, 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 Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as Administrative Agent or Arranger or any of their Affiliates in any capacity;

(d) shall 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 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. Administrative Agent shall not be deemed to have knowledge of any Default unless and until notice describing such Default is given in writing to Administrative Agent by Borrower, a Lender or L/C Issuer; and

(e) shall 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 (v) the

satisfaction of any condition set forth in *Section IV* or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to Administrative Agent.

9.04 **Reliance by Administrative Agent**

. 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. 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 L/C Issuer, Administrative Agent may presume that such condition is satisfactory to such Lender or L/C Issuer unless Administrative Agent shall have received notice to the contrary from such Lender or L/C Issuer prior to the making of such Loan or the issuance of such Letter of Credit. Administrative Agent may consult with legal counsel (who may be counsel for 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**

. 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 Administrative Agent. 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 *Section IX* shall apply to any such sub-agent and to the Related Parties of 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. 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 Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

9.06 Resignation of Administrative Agent.

(a) Administrative Agent may at any time give notice of its resignation to the Lenders, L/C Issuer and Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with, and so long as no Event of Default exists, with the consent of, 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 thirty (30) days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders and, so long as no Event of Default exists, Borrower) (the “**Resignation Effective Date**”), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders and L/C Issuer and so long as no Event of Default exists, with the consent of, Borrower, 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. 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 Borrower and such Person remove such Person as Administrative Agent and, in consultation with and so long as no Event of Default exists, with the consent of, Borrower, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (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 Administrative Agent on behalf of the Lenders or L/C Issuer 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 Administrative Agent shall instead be made by or to each Lender and 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(g)** 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 Borrower to a successor Administrative Agent shall be the same as those payable to

or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this **Section IX** and **Section 10.05** 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 (i) while the retiring or removed Administrative Agent was acting as Administrative Agent and (ii) after such resignation or removal for as long as any of them continues to act in any capacity hereunder or under the other Loan Documents, including (a) acting as collateral agent or otherwise holding any collateral security on behalf of any of the Lenders and (b) in respect of any actions taken in connection with transferring the agency to any successor 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. If Bank of America resigns as an L/C Issuer, it shall retain all the rights, powers, privileges and duties of L/C Issuer hereunder with respect to all Letters of Credit 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)**. Upon the appointment by Borrower of a successor L/C Issuer hereunder (which successor shall in all cases be a Lender other than a Defaulting Lender), (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, (ii) the retiring L/C Issuer shall be discharged from all of its respective duties and obligations hereunder or under the other Loan Documents, and (iii) 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 L/C Issuer acknowledges that it has, independently and without reliance upon 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 L/C Issuer also acknowledges that it will, independently and without reliance upon 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 Bookrunners or Arrangers 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 Administrative Agent, a Lender or 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, 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 Administrative Agent shall have made any demand on 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 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, L/C Issuer and Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, L/C Issuer and Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, L/C Issuer and Administrative Agent under **Sections 2.03(i)** and **(j)**, **2.08** and **10.05**) 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 L/C Issuer to make such payments to Administrative Agent and, in the event that Administrative Agent shall consent to the making of such payments directly to the Lenders and L/C Issuer, to pay to Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of Administrative Agent and its agents and counsel, and any other amounts due Administrative Agent under **Sections 2.08** and **10.05**.

Nothing contained herein shall be deemed to authorize Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or L/C Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or L/C Issuer to authorize Administrative Agent to vote in respect of the claim of any Lender or L/C Issuer in any such proceeding.

9.10 Guaranty Matters

. Administrative Agent, L/C Issuer and the Lenders agree that, so long as no Default exists, upon any Subsidiary ceasing to be required to be a Guarantor pursuant to this Agreement, Administrative Agent shall, upon Borrower's written request, execute, at Borrower's expense, such release documentation as is necessary to release such Subsidiary from its obligations under the Guaranty and such Subsidiary shall no longer be a Guarantor.

9.11 Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "*plan assets*" (within the meaning of 29 CFR §2510.3-101, as modified by *Section 3(42)* of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "*Qualified Professional Asset Manager*" (within the meaning of *Part VI* of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of *subsections (b) through (g)* of *Part I* of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of *subsection (a)* of *Part I* of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the

(iv) such other representation, warranty and covenant as may be agreed in writing between Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless *subclause (i)* in the immediately preceding *clause (a)* is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in *subclause (iv)* in the immediately preceding *clause (a)*, such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, Administrative Agent, Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of Borrower or any other Loan Party, that:

(i) none of Administrative Agent, Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),

(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR §2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR §2510.3-21(c)(1)(i)(A)-(E),

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of

evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to Administrative Agent, Arranger or any their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

(c) Administrative Agent and Arranger hereby inform the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

9.12 Recovery of Erroneous Payments

. Without limitation of any other provision in this Agreement, if at any time Administrative Agent makes a payment hereunder in error to any Lender or the L/C Issuer (for purposes of this Section 9.12, the "Lender Party"), whether or not in respect of an Obligation due and owing by Borrower at such time, where such payment is a Rescindable Amount, then in any such event, each Lender Party receiving a Rescindable Amount severally agrees to repay to Administrative Agent forthwith on demand the Rescindable Amount received by such Lender Party in immediately available funds in the currency so received, with interest thereon, for each day from and including the date such Rescindable Amount is received by it to but excluding the date of payment to Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by Administrative Agent in accordance with banking industry rules on interbank compensation. Each Lender Party irrevocably waives any and all defenses, including any "discharge for value" (under which a creditor might otherwise claim a right to retain funds mistakenly paid by a third party in respect of a debt owed by another) or similar defense to its obligation to return any Rescindable Amount. Administrative Agent shall inform each Lender Party promptly upon determining that any payment made to such Lender Party comprised, in whole or in part, a Rescindable Amount.

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 Borrower or any other Loan Party therefrom, shall be effective unless in writing signed by the Required Lenders and Borrower or the applicable Loan Party, as the case may be, and acknowledged by 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(a)** without the written consent of each Lender;

(b) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to **Section 8.02**) without the written consent of such Lender (it being understood and agreed that a waiver of any condition precedent set forth in **Section 4.02** or of any Default is not considered an extension or increase in Commitments of any Lender);

(c) postpone any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby (subject to an extension of the Maturity Date of any Lender in accordance with **Section 10.02**);

(d) reduce the principal of, or the rate of interest specified herein on, any Loan or L/C Borrowing, or (subject to *clause (iii)* of the second proviso to this **Section 10.01** relating to the Fee Letter) any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; *provided, however*, that only the consent of the Required Lenders shall be necessary to amend (i) the definition of “*Default Rate*” or to waive any obligation of Borrower to pay interest or Letter of Credit Fees at the Default Rate or (ii) **Section 6.15** (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 to reduce any fee payable under the Loan Documents;

(e) without the written consent of each Lender, (i) change **Section 2.12**, **Section 8.03** or any other provision hereof in a manner that would have the effect of altering the ratable reduction of Commitments or the *pro rata* sharing of payments otherwise required hereunder; (ii) subordinate, or have the effect of subordinating, the Obligations hereunder to any other Indebtedness or other obligation and (iii) release, or have the effect of releasing, all or substantially all of the value of the Obligations;

(f) change any provision of this **Section** 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, without the written consent of each Lender;

(g) release, or have the effect of releasing, all or substantially all of the value of the Guaranty without the written consent of each Lender, except to the extent the release of any

Guarantor is permitted pursuant to **Section 9.10** (in which case such release may be made by Administrative Agent acting alone); or

(h) release Borrower from any of its rights or obligations under this Agreement or the other Loan Documents without the written consent of Administrative Agent and each Lender;

and, *provided further*, that (i) no amendment, waiver or consent shall, unless in writing and signed by L/C Issuer in addition to the Lenders required above, affect the rights or duties of 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 Administrative Agent in addition to the Lenders required above, affect the rights or duties of

Administrative Agent under this Agreement or any other Loan Document; (iii) the Fee Letter may be amended, or rights or privileges thereunder waived, in a writing executed only by the parties thereto; and (iv) Administrative Agent may, after consultation with Borrower, agree to the modification of any term of this Agreement or any other Loan Document in order to correct any printing, stenographic or clerical errors or omissions or ambiguity or inconsistency that are inconsistent with the terms hereof. Notwithstanding anything to the contrary herein, 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 (x) the Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) 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.

10.02 Amend and Extend Transactions.

(a) Borrower may, by written notice to Administrative Agent from time to time, request an extension (each, an “**Extension**”) of the maturity date of the Loans and Commitments to the extended maturity date specified in such notice. Such notice shall set forth (i) the amount of the Commitments that will be subject to the Extension (which shall be in minimum increments of \$5,000,000 and a minimum amount of \$50,000,000), and (ii) the date on which such Extension is requested to become effective (which shall be not less than ten (10) Business Days nor more than sixty (60) days after the date of such Extension notice (or such longer or shorter periods as Administrative Agent shall agree in its sole discretion)). Each Lender shall be offered (an “**Extension Offer**”) an opportunity to participate in such Extension on a *pro rata* basis and on the same terms and conditions as each other Lender pursuant to procedures established by, or reasonably acceptable to, Administrative Agent and Borrower. The election of any Lender to agree to any such Extension shall not obligate any other Lender to so agree without such other Lender’s consent. If the aggregate principal amount of Commitments in respect of which Lenders shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Commitments subject to the Extension Offer as set forth in the Extension notice, then the Commitments of Lenders shall be extended ratably up to such maximum amount based on the respective principal amounts with respect to which such Lenders have accepted such Extension Offer.

(b) The following shall be conditions precedent to the effectiveness of any Extension: (i) no Default or Event of Default shall have occurred and be continuing immediately prior to and immediately after giving effect to such Extension, (ii) the representations and warranties set forth in **Section V** and in each other Loan Document shall be deemed to be made

and shall be true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) on and as of the effective date of such 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 (without duplication of any materiality qualifiers set forth therein) as of such earlier date and except that for purposes of this **Section 10.02(b)**, the representations and warranties contained in **subsections (a) and (b) of Section 5.05** shall be deemed to refer to the most recent statements furnished pursuant to **subsections (a) and (b)**, respectively, of **Section 6.01**, (iii) L/C Issuer shall have consented to any Extension of the Commitments, to the extent that such Extension provides for the issuance or extension of Letters of Credit at any time during the extended period and (iv) the terms of such Extended Commitments shall comply with **paragraph (c) of this Section**.

(c) The terms of each Extension shall be determined by Borrower and the applicable extending Lenders and set forth in an Extension Amendment; *provided* that (i) the final maturity date of any Extended Commitment shall be no earlier than the Maturity Date, (ii) there shall be no scheduled amortization prior to the Maturity Date of the loans or reductions of commitments under any Extended Commitments, (iii) the Extended Loans will rank *pari passu* in right of payment and with respect to security with the existing Loans and Borrower and guarantors of the Extended Commitments shall be the same as Borrower and Guarantors with respect to the existing Loans, (iv) the interest rate margin, rate floors, and fees applicable to any Extended Commitment (and the Extended Loans thereunder) shall be determined by Borrower and the

applicable extending Lenders, (v) borrowing and prepayment of Extended Loans, or reductions of Extended Commitments, and participation in Letters of Credit, shall be on a *pro rata* basis with the other Loans or Commitments (other than upon the maturity of the non-extended Loans and Commitments) and (vi) the terms of the Extended Commitments shall be substantially identical to the terms set forth herein (except as set forth in *clauses (i)* through *(v)* above).

(d) In connection with any Extension, Borrower, Administrative Agent and each applicable extending Lender shall execute and deliver to Administrative Agent an Extension Amendment and such other documentation as Administrative Agent shall reasonably specify to evidence the Extension. Administrative Agent shall promptly notify each Lender as to the effectiveness of each Extension. Any Extension Amendment may, without the consent of any other Lender, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of Administrative Agent and Borrower, to implement the terms of any such Extension, including any amendments necessary to establish Extended Commitments as a new tranche of Commitments, and such other technical amendments as may be necessary or appropriate in the reasonable opinion of Administrative Agent and Borrower in connection with the establishment of such new tranche (including to preserve the *pro rata* treatment of the extended and non-extended tranches and to provide for the reallocation of Revolving Credit Exposure upon the expiration or termination of the commitments under any tranche), in each case on terms consistent with this *Section*.

10.03 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 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 Borrower, Administrative Agent or L/C Issuer, to the address, facsimile number, electronic mail address or telephone number specified for such Person on **Schedule 10.03**; and

(ii) if to any other Lender, to the address, facsimile 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 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)**. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, if any notice, certificate or other document required to be delivered by Borrower hereunder or under any other Loan Document shall be required to be delivered on a day other than a Business Day, such notice, certificate or other document shall be required to be delivered on the next following Business Day.

(b) **Electronic Communications.** Notices and other communications to the Lenders and 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 Administrative Agent, *provided* that the foregoing shall not apply to notices to any Lender or L/C Issuer pursuant to **Section II** if such Lender or L/C Issuer, as applicable, has notified Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. Administrative Agent, L/C Issuer or 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 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

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 Administrative Agent or any of its Related Parties (collectively, the “*Agent Parties*”) have any liability to Borrower, any Lender, 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 Borrower’s, any Loan Party’s or Administrative Agent’s transmission of Borrower Materials or notices through the Platform, any other electronic platform or 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.

(d) **Change of Address, Etc.** Each of Borrower, Administrative Agent and L/C Issuer 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 Borrower, Administrative Agent and L/C Issuer. In addition, each Lender agrees to notify Administrative Agent from time to time to ensure that 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. 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 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 Borrower or its securities for purposes of United States Federal or state securities laws.

(e) **Reliance by Administrative Agent, L/C Issuer and Lenders.** Administrative Agent, L/C Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic notices, Loan Notices and Letter of Credit Applications) purportedly given by or on behalf of Borrower 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. Borrower shall indemnify Administrative Agent, 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 Borrower. All telephonic notices to and other telephonic communications with Administrative Agent may be recorded by Administrative Agent, and each of the parties hereto hereby consents to such recording.

10.04 No Waiver; Cumulative Remedies; Enforcement

. No failure by any Lender, L/C Issuer or 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, Administrative Agent in accordance with **Section 8.02** for the benefit of all the Lenders and L/C Issuer; *provided, however*, that the foregoing shall not prohibit (a) 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) L/C Issuer from exercising the rights and remedies that inure to its benefit

(solely in its capacity as L/C Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with **Section 10.09** (subject to the terms of **Section 2.12**), 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 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 2.12**, 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.

10.05 Expenses; Indemnity; Damage Waiver.

(a) **Costs and Expenses.** Borrower shall pay (i) subject to any limitations described in the Mandate Letter, all reasonable and documented out-of-pocket expenses incurred by Administrative Agent, Arranger, and their Affiliates (including the reasonable fees, charges and disbursements of counsel for Administrative Agent), in connection with the syndication of the credit facilities provided for herein, the preparation, negotiation, execution, delivery and administration of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions hereof or thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable and documented out-of-pocket expenses incurred by 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 reasonable and, when possible, documented out-of-pocket expenses incurred by Administrative Agent, Arranger, any Lender or L/C Issuer (including the reasonable and documented out-of-pocket fees, charges and disbursements of any counsel for Administrative Agent, Arranger, any Lender or L/C Issuer; *provided* that absent a conflict of interest, Borrower shall not be required to pay for more than one (1) counsel (and appropriate local and special counsel)), 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.

(b) **Indemnification by Borrower.** Borrower shall indemnify Administrative Agent (and any sub-agent thereof), Arranger, each Lender and 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 (including the reasonable and documented out-of-pocket fees, disbursements and other charges of a single counsel to all Indemnitees taken as a whole and, if reasonably necessary, a single local counsel for all Indemnitees taken as a whole in each relevant jurisdiction, and in the case of an

actual or perceived conflict of interest, additional counsel in each relevant jurisdiction to the affected Indemnitees), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including 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 Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in **Section 3.01**), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by 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 Hazardous Materials on or from any property owned or operated by Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to 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 Borrower or any other Loan Party, and regardless of whether any Indemnitee is a party thereto, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE NEGLIGENCE OF THE INDEMNITEE;** *provided* that such

indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have (x) resulted from (A) the gross negligence, bad faith or willful misconduct of such Indemnitee or (B) such Indemnified Party's material breach of its obligations under this Agreement or any other Loan Document, or (y) arisen out of a dispute solely between or among Indemnified Parties (but excluding any disputes involving Administrative Agent or Arranger acting in its capacity or fulfilling its role as Administrative Agent, Arranger or similar role); *provided, further*, that, so long as no Event of Default shall have occurred and be continuing at such time, the consent of Borrower (which consent shall not be unreasonably withheld or delayed) shall be required with respect to the settlement of any dispute arising out of, in connection with, or as a result of *clauses (i)-(iv)* of this **Section 10.05(b)**. Without limiting the provisions of **Section 3.01(c)**, this **Section 10.05(b)** shall not apply with respect to (i) Taxes other than any Taxes that represent losses, claims, damages, etc. arising from any non-Tax claim or (ii) increased cost matters of the type described in **Section 3.04**.

(c) **Reimbursement by Lenders.** To the extent that Borrower for any reason fails to indefeasibly pay any amount required under *subsection (a) or (b)* of this **Section** to be paid by it to Administrative Agent (or any sub-agent thereof), L/C Issuer, Arranger or any Related Party of any of the foregoing, each Lender severally agrees to pay to Administrative Agent (or any such sub-agent), L/C Issuer, Arranger or such Related Party, as the case may be, such Lender's *pro rata* share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought based on each Lender's share of the 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 Lenders' 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 Administrative Agent (or any such sub-agent), L/C Issuer or Arranger in its capacity as such, or against any Related Party of any of the foregoing acting for Administrative Agent (or any such

sub-agent), L/C Issuer or Arranger in connection with such capacity. The obligations of the Lenders under this *subsection (c)* are subject to the provisions of *Section 2.11(d)*.

(d) **Waiver of Consequential Damages, Etc.** To the fullest extent permitted by applicable law, Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, 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.

(e) **Payments.** All amounts due under this *Section* shall be payable not later than ten (10) Business Days after demand therefor.

(f) **Survival.** The agreements in this *Section* and the indemnity provisions of *Section 10.03(e)* shall survive the resignation of Administrative Agent, L/C Issuer and Arranger, the replacement of any Lender, the termination of the Aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

10.06 Payments Set Aside

. To the extent that any payment by or on behalf of Borrower is made to Administrative Agent, L/C Issuer or any Lender, or Administrative Agent, 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 Administrative Agent, 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 L/C Issuer severally agrees to pay to Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by 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 Federal Funds Rate from time to time in effect. The obligations of the Lenders and L/C Issuer under *clause (b)* of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

10.07 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 Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of 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

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 Administrative Agent, L/C Issuer 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) at the time owing to it); *provided* that 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 (determined after giving effect to such Assignments) that equal at least the amount specified in *paragraph (b)(i)(B)* of this *Section* in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in *subsection (b)(i)(A)* of this *Section*, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to 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 Administrative Agent and, so long as no Event of Default has occurred and is continuing, 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;

(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 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;

(B) the consent of Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required 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 L/C Issuer shall be required for any assignment (other than an assignment to an existing Lender that is not a Defaulting Lender).

(iv) **Assignment and Assumption.** The parties to each assignment shall execute and deliver to Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; *provided, however*, that 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

(v) **No Assignment to Certain Persons.** No such assignment shall be made (A) to Borrower or any of Borrower's Affiliates or Subsidiaries, (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 a holding company, investment vehicle or trust for, or owned and operated for the primary benefit of a natural Person).

(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 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 Borrower and 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 Administrative Agent, 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 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 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 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 10.05* 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, 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.** Administrative Agent, acting solely for this purpose as an agent of 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 Borrower, Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by 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, Borrower or Administrative Agent, sell participations to any Person (other than a natural Person, or a holding company, investment vehicle or trust for, or owned and operated for the primary

benefit of a natural Person, a Defaulting Lender or Borrower or any of Borrower's Affiliates or Subsidiaries) (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) 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) Borrower, Administrative Agent, the Lenders and 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 10.05(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. Borrower agrees that each Participant shall be entitled to the benefits of **Sections 3.01, 3.04 and 3.05** to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **subsection (b)** of this **Section** (it being understood that the documentation required under **Section 3.01(e)** shall be delivered to the Lender who sells the participation) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to **paragraph (b)** of this **Section**; *provided* that such Participant (A) agrees to be subject to the provisions of **Sections 3.06, 10.08 and 10.14** 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, regardless of any Change in Law that occurs after the Participant acquired the applicable participation that affects such Participant differently than the Lender from whom it acquired the applicable participation. Each Lender that sells a participation agrees, at Borrower's request and expense, to use reasonable efforts to cooperate with Borrower to effectuate the provisions of **Section 3.06**

with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of **Section 10.09** as though it were a Lender; *provided* that such Participant agrees to be subject to **Section 2.12** as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of 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, Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(e) **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, 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.

(f) **Resignation as L/C Issuer after Assignment.** Notwithstanding anything to the contrary contained herein, if at any time Bank of America assigns all of its Commitment and Loans pursuant to **subsection (b)** above, Bank of America may, upon thirty (30) days' notice to Borrower and the Lenders, resign as L/C Issuer. In the event of any such resignation as L/C Issuer, Borrower shall be entitled to appoint from among the Lenders a successor L/C Issuer hereunder; *provided, however*, that no failure by Borrower to appoint any such successor shall affect the resignation of Bank of America as L/C Issuer. If Bank of America resigns as L/C Issuer, it shall retain all the rights, powers, privileges and duties of L/C Issuer hereunder with respect to all Letters of Credit 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)**). Upon the appointment of a successor L/C Issuer, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring L/C Issuer, and (b) 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.

10.08 Treatment of Certain Information; Confidentiality

. Each of Administrative Agent, the Lenders and 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

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 and obligations under this Agreement or any Eligible Assignee invited to be a Lender pursuant to **Section 2.13(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 Borrower and its obligations, this Agreement or payments hereunder, (g) on a confidential basis to (i) any rating agency in connection with rating 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 Borrower or (i) 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 Administrative Agent, any Lender, L/C Issuer or any of their respective Affiliates on a nonconfidential basis from a source other than Borrower who is not, to the knowledge of Administrative Agent, L/C Issuer or such Lender, under an obligation of confidentiality to Borrower with respect to such Information. In addition, 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 Borrower or any Subsidiary relating to Borrower or any Subsidiary or any of their respective businesses.

Each of Administrative Agent, the Lenders and L/C Issuer acknowledges that (a) the Information may include material non-public information concerning 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 Law, including United States Federal and state securities Laws.

10.09 **Right of Setoff**

. If an Event of Default shall have occurred and be continuing, each Lender, 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 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, L/C Issuer or any such Affiliate to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Agreement or any other Loan Document to such Lender or L/C Issuer or their respective Affiliates, irrespective of whether or not such Lender, L/C Issuer or Affiliate shall have made any demand under this Agreement or any other Loan Document and although such obligations of Borrower may be contingent or unmatured or are owed to a branch, office or Affiliate of such Lender or 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 Administrative Agent for further application in accordance with the provisions of **Section 2.15** and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of Administrative Agent, L/C Issuer and the Lenders, and (y) the Defaulting Lender shall provide promptly to 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, 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, L/C Issuer or their respective Affiliates may have. Each Lender and L/C Issuer agrees to notify Borrower and 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.

10.10 **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 Law (the “**Maximum Rate**”). If 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 Borrower. In determining whether the interest contracted for, charged, or received by Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable 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.

10.11 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 Administrative Agent or 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 Administrative Agent and when 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.

10.12 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 Administrative Agent and each Lender, regardless of any investigation made by Administrative Agent or any Lender or on their behalf and notwithstanding that 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.

10.13 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

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unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this **Section 10.13**, 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 Administrative Agent or L/C Issuer, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

10.14 Replacement of Lenders

. If Borrower is entitled to replace a Lender pursuant to the provisions of **Section 3.06**, or if any Lender is a Defaulting Lender or a Non-Consenting Lender, then Borrower may, at its sole expense and effort, upon notice to such Lender and 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 10.07**), 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) Borrower shall have paid to Administrative Agent the assignment fee (if any) specified in **Section 10.07(b)**;

(b) such Lender shall have received payment of an amount equal to 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 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 Laws; and

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

provided that the failure by such replaced Lender to execute and deliver an Assignment and Assumption shall not impair the validity of the removal of such replaced Lender and the mandatory assignment of such replaced Lender's Commitments and outstanding Loans and participations in L/C Obligations pursuant to this **Section 10.14** shall nevertheless be effective without the execution by such replaced Lender of an Assignment and Assumption.

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 Borrower to require such assignment and delegation cease to apply.

10.15 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.** 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 ADMINISTRATIVE AGENT, ANY LENDER, 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 ADMINISTRATIVE AGENT, ANY LENDER OR L/C ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST BORROWER OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** 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 10.03**. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

10.16 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

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**.

10.17 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), Borrower acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i)(A) the arranging and other services regarding this Agreement provided by Administrative Agent, Arranger, and the Lenders are arm's-length commercial transactions between Borrower and its Affiliates, on the one hand, and Administrative Agent, Arranger, and the Lenders, on the other hand, (B) Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) 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) Administrative Agent, 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 Borrower or any of its Affiliates, or any other Person and (B) neither Administrative Agent, Arranger nor any Lender has any obligation to Borrower or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) Administrative Agent, Arranger and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Affiliates, and neither Administrative Agent, Arranger, nor any Lender has any obligation to disclose any of such interests to Borrower or its Affiliates. To the fullest extent permitted by law, Borrower hereby waives and releases any claims that it may have against Administrative Agent, 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.

10.18 Electronic Execution of Assignments and Certain Other Documents

(a) 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 modifications, Loan Notices, waivers or consents) are deemed to include Electronic Signatures, the electronic matching of assignment terms and contract formations on electronic platforms approved by Administrative Agent, and any other Electronic Record.

(b) This Agreement and any document, amendment, approval, consent, information, notice, certificate, request, statement, disclosure or authorization related to this Agreement (each a "**Communication**"), including Communications required to be in writing, may be in the form of an Electronic Record and may be executed using Electronic Signatures. Each of the Loan Parties agrees that any Electronic Signature on or associated with any Communication shall be valid and binding on each such Loan Party to the same extent as a manual, original signature, and that any Communication entered into by Electronic Signature, will constitute the legal, valid and binding

obligation of such Loan Party, enforceable against such Loan Party in accordance with the terms thereof to the same extent as if a manually executed original signature was delivered or a paper-based recordkeeping system was used, as the case may be. Any Communication may be executed in as many counterparts as necessary or convenient, including both paper and electronic counterparts, but all such counterparts are one and the same Communication. For the avoidance of doubt, the authorization under this paragraph may include, without limitation, use or acceptance by Administrative Agent and each of the Secured Parties of a manually signed paper Communication which has been converted into electronic form (such as scanned into PDF format), or an electronically signed Communication converted into another format, for transmission, delivery and/or retention. Administrative Agent and each of the Secured Parties may, at its option, create one or more copies of any Communication in the form of an imaged

Electronic Record (“*Electronic Copy*”), which shall be deemed created in the ordinary course of the such Person’s business, and destroy the original paper document. All Communications in the form of an Electronic Record, including an Electronic Copy, shall be considered an original for all purposes, and shall have the same legal effect, validity and enforceability as a paper record. Notwithstanding anything contained herein to the contrary, Administrative Agent is under no obligation to accept an Electronic Signature in any form or in any format unless expressly agreed to by Administrative Agent pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent Administrative Agent has agreed to accept such Electronic Signature, Administrative Agent and each of the Secured Parties shall be entitled to rely on any such Electronic Signature purportedly given by or on behalf of any Loan Party without further verification and (ii) upon the request of Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by such manually executed counterpart. For purposes hereof, “*Electronic Record*” and “*Electronic Signature*” shall have the meanings assigned to them, respectively, by 15 USC §7006, as it may be amended from time to time.

10.19 USA PATRIOT Act

. Each Lender that is subject to the Act (as hereinafter defined) and Administrative Agent (for itself and not on behalf of any Lender) hereby notifies 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 “*Act*”), it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender or Administrative Agent, as applicable, to identify Borrower in accordance with the Act. Borrower shall, promptly following a request by Administrative Agent or any Lender, provide all documentation and other information that Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable “know your customer” and anti-money laundering rules and regulations, including the Act.

10.20 ENTIRE AGREEMENT

. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT AMONG THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMONG THE PARTIES.

10.21 Acknowledgement and Consent to Bail-In of Affected Financial Institutions

. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Lender that is an Affected Financial Institution arising under any Loan Document, to the extent such liability is

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unsecured, may be subject to the Write-Down and Conversion Powers of the applicable 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 the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any Lender that is an Affected 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 Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

10.22 Acknowledgement Regarding Any Supported QFCs

. To the extent that this Agreement or any other Loan Document provide support, through a guarantee or otherwise, for any Swap Contract or any other agreement or instrument that is a QFC (such support, “**QFC Credit Support**”, and each such QFC, a “**Supported QFC**”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “**U.S. Special Resolution Regimes**”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “**Covered Party**”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this **Section 10.22**, the following terms have the following meanings:

“**BHC Act Affiliate**” of a party means an “*affiliate*” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“**Covered Entity**” means any of the following: (i) a “*covered entity*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “*covered bank*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §47.3(b); or (iii) a “*covered FSP*” as that term is defined in, and interpreted in accordance with, 12 C.F.R. §382.2(b).

“**Default Right**” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§252.81, 47.2 or 382.1, as applicable.

“**QFC**” has the meaning assigned to the term “*qualified financial contract*” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

10.23 **Restatement of Original Credit Agreement**

. The parties hereto agree that as of the Closing Date: (a) the Obligations hereunder represent the amendment, restatement, extension, and consolidation of the “*Obligations*” under the Original Credit Agreement; (b) this Agreement amends, restates, supersedes, and replaces the Original Credit Agreement in its entirety; and (c) any Guaranty executed pursuant to this Agreement amends, restates, supersedes, and replaces the “*Guaranty*” executed pursuant to the Original Credit Agreement. On the Closing Date, (i) the commitment of any “*Lender*” under the Original Credit Agreement that is not continuing as a Lender hereunder shall terminate and (ii) Administrative Agent shall reallocate the Commitments hereunder to reflect the terms hereof.

***Remainder of page intentionally left blank.
Signature pages follow.***

NVR, INC.

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as Administrative Agent

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as L/C Issuer and a Lender

By: _____
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION, as a Lender

By: _____
Name:
Title:

U.S. BANK NATIONAL ASSOCIATION, as a Lender

By: _____
Name:

Signature Page to
Amended and Restated Credit Agreement

Title:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as a Lender

By: _____
Name:
Title:

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M&T BANK, as a Lender

By: _____
Name:
Title:

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UNITED BANK, as a Lender

By: _____
Name:
Title:

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Amended and Restated Credit Agreement

COMMITMENTS AND APPLICABLE PERCENTAGES

Lender	Commitment	Applicable Percentage
Bank of America, N.A.	\$60,000,000	20.000000000%
PNC Bank, National Association	\$50,000,000	16.666666667%
Wells Fargo Bank, National Association	\$50,000,000	16.666666667%
US Bank National Association	\$50,000,000	16.666666667%
M&T Bank	\$45,000,000	15.000000000%
United Bank	\$45,000,000	15.000000000%
Total	\$300,000,000	100.000000000%

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Schedule 2.01

SCHEDULE 5.13

SUBSIDIARIES

- * Denotes Material Subsidiary
- ** Denotes Borrower

NVR, Inc., a Virginia corporation**
NVR Services, Inc., a Delaware corporation
RVN, Inc., a Delaware corporation*
NVR Funding II, Inc., a Delaware corporation*

CLKBG, LLC, a Maryland limited liability company
 Bentley Park, LLC, a Maryland limited liability company
 Bentley Park Front Foot, LLC, a Maryland limited liability company
 NVR Mortgage Finance, Inc. , a Virginia corporation*
 NVR Settlement Services, Inc., a Pennsylvania corporation*
 NVR Settlement Services of Maryland, Inc., a Maryland corporation*
 Kenmare LLC, a North Carolina limited liability company
 McJunkin Acquisition, LLC, a Florida limited liability company
 MTG Acquisition, LLC, a Maryland limited liability company
 Parklands Assessment Company, LLC, a Maryland limited liability company

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Schedule 5.13

SCHEDULE 7.01

EXISTING LIENS

Property Encumbered	Owner of Encumbered Property	Secured Party
Portion of Property known as Cabin Branch	NVR, Inc.	First Indemnity of America Insurance company

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Schedule 7.01

EXISTING INVESTMENTS

1. Investments as of the Closing Date constituting the ownership of Equity Interests in, and equity contributions to, the Subsidiaries identified on *Schedule 5.13*.
2. Investments as of the Closing Date constituting Equity Interests in, and equity contributions to the following joint ventures:
 - (a) NVR MS Cavalier Holdings, LLC
 - (b) WBLH, LLC
 - (c) RHEIA LLC
 - (d) NVR Liganore, LLC

ADMINISTRATIVE AGENT'S OFFICE; CERTAIN ADDRESSES FOR NOTICES

BORROWER:

NVR Inc.
11700 Plaza America Drive, Suite 500
Reston, Virginia 20190
Attention: Daniel Malzahn
Telephone: 703-956-4000
Facsimile: 703-956-4750
Electronic Mail: dmalzahn@nvrinc.com
Website Address: www.nvrinc.com

ADMINISTRATIVE AGENT:

*Administrative Agent's Office
(for payments and Requests for Credit Extensions):*

Bank of America, N.A.
901 Main Street
Mail Code: TX1-492-14-11
Dallas, Texas 75202
Attention: Karen R. Puente
Telephone: 972-338-3810
Facsimile: 214-290-8378
Electronic Mail: Karen.R.Puente@baml.com
Account No.: 001292000883
Ref: NVR, Inc.
ABA# 026009593

Other Notices as Administrative Agent:

Bank of America, N.A.
135 S. LaSalle Street
Mail Code: IL4-135-09-61
Chicago, Illinois 60603
Attention: Gerund Diamond
Telephone: 312-992-8588
Facsimile: 312-453-3635
Electronic Mail: Gerund.Diamond@bofa.com

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Schedule 10.03

L/C ISSUER:

Bank of America, N.A.
Trade Operations-Standby
1 Fleet Way
Mail Code: PA6-580-02-30
Scranton, Pennsylvania 18507
Attention: Charles P. Herron
Telephone: 570-496-9564
Facsimile: 800-755-8743
Electronic Mail: Charles.P.Herron@baml.com

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Schedule 10.03

EXHIBIT A

[FORM OF] LOAN NOTICE

Date: _____, 20__

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of February 12, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Agreement**;" the terms defined therein being used herein as therein defined), among NVR, Inc., a Virginia corporation (the "**Borrower**"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

The undersigned hereby requests (select one):

- A Borrowing of Loans A conversion or continuation of Loans

1. On _____ (a Business Day).

2. In the amount of \$_____.
3. Comprised of _____.
[Type of Loan requested]
4. For Eurodollar Term Rate Loans: with an Interest Period of ____ months.

The Borrowing, if any, requested herein complies with the requirements of the proviso to the first sentence of *Section 2.01* of the Agreement.

NVR, INC.

By: _____
Name:
Title:

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Exhibit A

[FORM OF] NOTE

[_____, 20__]

FOR VALUE RECEIVED, the undersigned (the "**Borrower**"), hereby promises to pay to _____ or registered assigns (the "**Lender**"), in accordance with the provisions of the Agreement (as hereinafter defined), the principal amount of each Loan from time to time made by the Lender to Borrower under that certain Amended and Restated Credit Agreement, dated as of February 12, 2021 (as amended, restated, extended, supplemented or otherwise modified from time to time, the "**Agreement**;" the terms defined therein being used herein as therein defined), among Borrower, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

Borrower promises to pay interest on the unpaid principal amount of each Loan from the date of such Loan until such principal amount is paid in full, at such interest rates and at such times as provided in the Agreement. All payments of principal and interest shall be made to Administrative Agent for the account of the Lender in Dollars in immediately available funds at the Administrative Agent's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the *per annum* rate set forth in the Agreement.

This Note is one of the Notes referred to in the Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. This Note is also entitled to the benefits of the Guaranty. Upon the occurrence and continuation of one or more of the Events of Default specified in the Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Agreement. Loans made by the Lender shall be evidenced by one or more loan accounts or records maintained by the Lender in the ordinary course of business. The Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Loans and payments with respect thereto.

Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

NVR, INC.

By: _____
Name:
Title:

Signature Page to
Note

LOANS AND PAYMENTS WITH RESPECT THERETO

Date	Type of Loan Made	Amount of Loan Made	End of Interest Period	Amount of Principal or Interest Paid This Date	Outstanding Principal Balance This Date	Notation Made By

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Loans and Payments

EXHIBIT C

[FORM OF] COMPLIANCE CERTIFICATE

Financial Statement Date: _____, 20__

To: Bank of America, N.A., as Administrative Agent

Ladies and Gentlemen:

Reference is made to that certain Amended and Restated Credit Agreement, dated as of February 12, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the “*Agreement*,” the terms defined therein being used herein as therein defined), among NVR, Inc., a Virginia corporation (the “*Borrower*”), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

The undersigned Responsible Officer hereby certifies as of the date hereof that he/she is the _____ of Borrower, and that, as such, he/she is authorized to execute and deliver this Certificate to Administrative Agent on the behalf of Borrower, and not in his/her individual capacity that:

[Use following paragraph 1 for fiscal year-end financial statements]

1. Borrower has delivered the year-end audited financial statements required by *Section 6.01(a)* of the Agreement for the fiscal year of Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such section.

[Use following paragraph 1 for fiscal quarter-end financial statements]

1. Borrower has delivered the unaudited financial statements required by *Section 6.01(b)* of the Agreement for the fiscal quarter of Borrower ended as of the above date. Such financial statements fairly present in all material respects the financial condition, results of operations and cash flows of Borrower and its Subsidiaries in accordance with GAAP as at such date and for such period, subject only to normal year-end audit adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Agreement and has made, or has caused to be made under his/her supervision, a detailed review of the transactions and condition (financial or otherwise) of Borrower during the accounting period covered by such financial statements.

3. A review of the activities of Borrower during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period Borrower performed and observed all its Obligations under the Loan Documents, and

[select one:]

[to the best knowledge of the undersigned, no Default has occurred and is continuing.]

--or--

[to the best knowledge of the undersigned, the following is a list of each Default that has occurred and is continuing (including its nature and status):]

4. The financial covenant analyses and information set forth on *Schedule 1* attached hereto are calculated as of the last day of such fiscal period and are true and accurate as of the date hereof.

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IN WITNESS WHEREOF, the undersigned has executed this Certificate as of _____,

NVR, INC.

By: _____
Name:
Title:

Signature Page to
Compliance Certificate

For the Quarter/Year ended _____, 20__ ("*Statement Date*")

SCHEDULE 1
to the Compliance Certificate

[Calculations to be attached in a form to be agreed by Administrative Agent and Borrower]

EXHIBIT D

[FORM OF] ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this “*Assignment and Assumption*”) is dated as of the Effective Date set forth below and is entered into by and between [the][each]¹ Assignor identified in *item 1* below ([the][each, an] “*Assignor*”) and [the][each]² Assignee identified in *item 2* below ([the][each, an] “*Assignee*”). [It is understood and agreed that the rights and obligations of [the Assignors][the Assignees]³ hereunder are several and not joint.]⁴ Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in *Annex 1* attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, [the][each] Assignor hereby irrevocably sells and assigns to [the Assignee][the respective Assignees], and [the][each] Assignee hereby irrevocably purchases and assumes from [the Assignor][the respective Assignors], subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by Administrative Agent as contemplated below (i) all of [the Assignor’s][the respective Assignors’] rights and obligations in [its capacity as a Lender][their respective capacities as Lenders] under the Credit Agreement and any other documents or instruments delivered pursuant thereto in the amount[s] and equal to the percentage

interest[s] identified below of all the outstanding rights and obligations of the Assignor under the respective facilities identified below (including the Letters of Credit included in such facilities⁵) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of [the Assignor (in its capacity as a Lender)][the respective Assignors (in their respective capacities as Lenders)] against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to **clause (i)** above (the rights and obligations sold and assigned by [the][any] Assignor to [the][any] Assignee pursuant to **clauses (i)** and **(ii)** above being referred to herein collectively as [the][an] “**Assigned Interest**”). Each such sale and assignment is without recourse to [the][any] Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by [the][any] Assignor.

1. **Assignor[s]:** _____

[Assignor [is] [is not] a Defaulting Lender]

¹ For bracketed language here and elsewhere in this form relating to the Assignor(s), if the assignment is from a single Assignor, choose the first bracketed language. If the assignment is from multiple Assignors, choose the second bracketed language.

² For bracketed language here and elsewhere in this form relating to the Assignee(s), if the assignment is to a single Assignee, choose the first bracketed language. If the assignment is to multiple Assignees, choose the second bracketed language.

³ Select as appropriate.

⁴ Include bracketed language if there are either multiple Assignors or multiple Assignees.

⁵ Include all applicable subfacilities.

2. **Assignee[s]:** _____

[for each Assignee, indicate [Affiliate][Approved Fund] of [identify Lender]]

3. **Borrower(s):** NVR, Inc., a Virginia corporation

4. **Administrative Agent:** Bank of America, N.A., as the administrative agent under the Credit Agreement

5. **Credit Agreement:** Amended and Restated Credit Agreement, dated as of February 12, 2021 (as amended, modified, supplemented or extended from time to time, the “**Credit Agreement**”), among NVR, Inc., a Virginia corporation, the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer

6. **Assigned Interest[s]:**⁶

Assignor[s] ⁷	Assignee[s] ⁸	Facility Assigned ⁹	Aggregate Amount of Commitment/Loans for all Lenders ¹⁰	Amount of Commitment / Loans Assigned	Percentage Assigned of Commitment/Loans ¹¹	CUSIP Number
			\$	\$	%	
			\$	\$	%	
			\$	\$	%	

[7. **Trade Date:** _____, 20__]¹²

Effective Date: _____, 20__ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

⁶ The reference to “Loans” in the table should be used only if the Credit Agreement provides for Term Loans.

⁷ List each Assignor, as appropriate.

⁸ List each Assignee and, if available, its market entity identifier, as appropriate.

⁹ Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. “Revolving Credit Commitment”, “Term Loan Commitment”, etc.).

¹⁰ Amounts in this column and in the column immediately to the right to be adjusted by the counterparties to take into account any payments or prepayments made between the Trade Date and the Effective Date.

¹¹ Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

¹² To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

ASSIGNOR[S]¹³

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

[NAME OF ASSIGNOR]

By: _____
Name:
Title:

ASSIGNEE[S]¹⁴

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[NAME OF ASSIGNEE]

By: _____
Name:
Title:

[Consented to and]¹⁵ Accepted:

¹³ Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

¹⁴ Add additional signature blocks as needed. Include both Fund/Pension Plan and manager making the trade (if applicable).

¹⁵ To be added only if the consent of Administrative Agent is required by the terms of the Credit Agreement.

Signature Page to
Assignment and Assumption

BANK OF AMERICA, N.A., as Administrative Agent

By: _____
Name:
Title:

[Consented to:]¹⁶

By: _____
Name:
Title:

¹⁶To be added only if the consent of Borrower and/or other parties (e.g. L/C Issuer) is required by the terms of the Credit Agreement.

Signature Page to
Assignment and Assumption

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

_____ ¹⁷

STANDARD TERMS AND CONDITIONS FOR ASSIGNMENT AND ASSUMPTION

1. Representations and Warranties.

1.1. **Assignor.** [The][Each] Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of [the][the relevant] Assigned Interest, (ii) [the][such] Assigned Interest is free and clear of any lien, encumbrance or other adverse claim, (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and (iv) it is [not] a Defaulting Lender; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. **Assignee.** [The][Each] Assignee (a) represents and warrants that (i) it has full power and

authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all the requirements to be an assignee under *Section 10.07(b)(iii)* and (v) of the Credit Agreement (subject to such consents, if any, as may be required under *Section 10.07(b)(iii)* of the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of [the][the relevant] Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by [the][such] Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire [the][such] Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Credit Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to *Section 6.01* thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, (vi) it has, independently and without reliance upon Administrative Agent or any other Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase [the][such] Assigned Interest, and (vii) if it is a Foreign Lender, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by [the][such] Assignee; and (b) agrees that (i) it will, independently and without reliance upon Administrative Agent, [the][any] Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. **Payments.** From and after the Effective Date, Administrative Agent shall make all payments in respect of [the][each] Assigned Interest (including payments of principal, interest, fees and other amounts) to [the][the relevant] Assignor for amounts which have accrued to but excluding the Effective Date and to [the][the relevant] Assignee for amounts which have accrued from and after the Effective

¹⁷ Describe Credit Agreement at option of Administrative Agent.

Date. Notwithstanding the foregoing, Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to [the][the relevant] Assignee.

3. **General Provisions.** This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of _____ [*confirm that choice of law provision parallels the Credit Agreement*].

[FORM OF] UNCONDITIONAL GUARANTY AGREEMENT

THIS UNCONDITIONAL GUARANTY AGREEMENT (this “*Guaranty*”) is executed as of [_____], by EACH OF THE SUBSIDIARIES OF NVR, INC., a Virginia corporation (“*Borrower*”), LISTED ON *SCHEDULE 1* ATTACHED HERETO or which become a party hereto pursuant to *Section 20* below (each a “*Guarantor*” and collectively, “*Guarantors*”), for the benefit of the Credit Parties defined below.

RECITALS:

1. Borrower may, from time to time, be indebted to the Credit Parties pursuant to that certain Amended and Restated Credit Agreement dated as of February 12, 2021 (herein referred to, together with all amendments, modifications, restatements, or supplements thereof, as the “*Credit Agreement*”), by and among Borrower, Bank of America, N.A., a national banking association (“*Administrative Agent*”), as Administrative Agent and L/C Issuer, and the Lenders defined therein (Administrative Agent, the Lenders, and any Person who is a provider of a Swap Contract guaranteed hereunder, together with their respective successors and assigns are herein called the “*Credit Parties*”).

2. Capitalized terms used herein shall, unless otherwise indicated, have the respective meanings set forth in the Credit Agreement.

3. It is a condition to the Credit Parties making, or continuing to make, the loans under the Credit Agreement or otherwise extending, or continuing to extend, credit to Borrower from time to time that Guarantors unconditionally guarantee payment of all present and future indebtedness and obligations of Borrower to the Credit Parties under the Credit Agreement and the Loan Documents.

4. Each Guarantor will, directly or indirectly, benefit from the Credit Parties’ extension of credit to Borrower.

NOW, THEREFORE, as an inducement to the Credit Parties to make, or continue to make, loans to Borrower under the Credit Agreement, and to extend, or continue to extend, such credit to Borrower as the Credit Parties may from time to time agree to extend, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, Guarantors hereby jointly and severally guarantee payment of the Guaranteed Obligations (hereinafter defined) as more specifically described below in *Section 1* and hereby agree as follows:

1. **Guaranty.** Each Guarantor hereby absolutely and unconditionally guarantees, jointly and severally, as a guarantee of payment and not merely as a guarantee of collection, prompt payment when due, whether at stated maturity, upon acceleration or otherwise, and at all times thereafter, of (a) any and all existing and future indebtedness and liabilities of every kind, nature and character, direct or indirect, absolute or contingent, liquidated or unliquidated, voluntary or involuntary, of Borrower to the Credit Parties arising under the Credit Agreement and any other Loan Document (including all renewals, extensions and modifications thereof and all reasonable and, when possible, documented out-of-pocket costs, attorneys’ fees and expenses incurred by the Credit Parties in connection with the collection or enforcement thereof) and (b) any and all Obligations of Borrower arising under any Swap Contract that relates solely to the Obligations entered into with a Person who is a Lender or an Affiliate of a Lender at the time that such Swap Contract was entered into (whether or not such Lender ceases to be a party to the Credit Agreement) (collectively, the “*Guaranteed Obligations*”); *provided* that the Guaranteed Obligations shall exclude any Excluded Swap Obligations. Administrative Agent’s books and records

showing the amount of the Guaranteed Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor and conclusive, absent manifest error, for the purpose of establishing the amount of the Guaranteed Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor, or by any fact or circumstance relating to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of any Guarantor under this Guaranty. The obligations of each Guarantor hereunder shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance under *Section 548* of the Bankruptcy Code (*Title 11*, United States Code) or any comparable provisions of any applicable state law.

2. **No Setoff or Deductions; Taxes.** Each Guarantor represents and warrants that it is resident in the United States of America. All payments by any Guarantor hereunder shall be paid in full, without setoff or counterclaim or any deduction or withholding whatsoever, including, without limitation, for any and all present and future taxes. If any Guarantor must make a payment under this Guaranty, such Guarantor represents and warrants that it will make the payment from one of its U.S. resident offices to the Credit Parties so that no withholding tax is imposed on the payment. If notwithstanding the foregoing, any Guarantor makes a payment under this Guaranty to which withholding tax applies, or any taxes (other than Excluded Taxes) are at any time imposed on any payments under or in respect of this Guaranty including, but not limited to, payments made pursuant to this *Section 2*, such Guarantor shall pay all such taxes to the relevant authority in accordance with applicable law such that the Credit Parties receive the sum they would have received had no such deduction or withholding been made and shall also pay to the Credit Parties, on demand, all additional amounts which the Credit Parties specify as necessary to preserve the after-tax yield the Credit Parties would have received if such taxes had not been imposed. Guarantors shall promptly provide Administrative Agent with an original receipt or certified copy issued by the relevant authority evidencing the payment of any such amount required to be deducted or withheld.

3. **No Termination.** This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the Payment in Full of the Obligations, except to the extent that, and only with respect to the applicable Guarantor, the release of any Guarantor is permitted pursuant to *Section 9.10* of the Credit Agreement. All payments under this Guaranty shall be made at Administrative Agent's Office in U.S. Dollars.

4. **Waiver of Notices.** Each Guarantor waives notice of the acceptance of this Guaranty and of the extension or continuation of the Guaranteed Obligations or any part thereof. Each Guarantor further waives presentment, protest, notice, dishonor or default, demand for payment and any other notices to which any Guarantor might otherwise be entitled.

5. **Subrogation.** No Guarantor shall exercise any right of subrogation, contribution or similar rights with respect to any payments it makes under this Guaranty until the Payment in Full of the Obligations. If any amounts are paid to any Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Credit Parties and shall forthwith be paid to Administrative Agent for the benefit of the applicable Credit Parties to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.

6. **Waiver of Suretyship Defenses.** Each Guarantor agrees that Administrative Agent on behalf of the Lenders may, at any time and from time to time, and without notice to Guarantors, make any agreement with Borrower or with any other Person liable on any of the Guaranteed Obligations or providing collateral as security for the Guaranteed Obligations, for the extension, renewal, payment, compromise, discharge or release of the Guaranteed Obligations or any collateral (in whole or in part), or

for any modification or amendment of the terms thereof or of any instrument or agreement evidencing the Guaranteed Obligations or the provision of collateral, all without in any way impairing, releasing, discharging or otherwise affecting the obligations of any Guarantor under this Guaranty. Each Guarantor waives any defense arising by reason of any disability or other defense of Borrower or any other guarantor, or the cessation from any cause whatsoever of the liability of Borrower, or any claim that any Guarantor's obligations exceed or are more burdensome than those of Borrower and waives the benefit of any statute of limitations affecting the liability of any Guarantor hereunder. Each Guarantor waives any right to enforce any remedy which such Guarantor now has or may hereafter have against Borrower and waives any benefit of and any right to participate in any security now or hereafter held by Administrative Agent for the benefit of the Credit Parties. Further, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

7. **Exhaustion of Other Remedies Not Required.** The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed Obligations. Each Guarantor waives diligence by the Credit Parties and action on delinquency in respect of the Guaranteed Obligations or any part thereof, including, without limitation any provisions of law requiring the Credit Parties to exhaust any right or remedy or to take any action against Borrower, any other guarantor or any other Person or property before enforcing this Guaranty against any Guarantor.

8. **Reinstatement.** Notwithstanding anything in this Guaranty to the contrary, this Guaranty shall

continue to be effective or be reinstated, as the case may be, if at any time any payment of any portion of the Guaranteed Obligations is revoked, terminated, rescinded or reduced or must otherwise be restored or returned upon the insolvency, bankruptcy or reorganization of Borrower or any other Person or otherwise, as if such payment had not been made and whether or not Administrative Agent is in possession of or has released this Guaranty and regardless of any prior revocation, rescission, termination or reduction.

9. **Subordination.** Each Guarantor hereby subordinates the payment of all obligations and indebtedness of Borrower owing to such Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of Borrower to such Guarantor as subrogee of the Credit Parties or resulting from such Guarantor's performance under this Guaranty, to the indefeasible payment in full of all Guaranteed Obligations. If any Event of Default exists and Administrative Agent so requests, any such obligation or indebtedness of Borrower to any Guarantor shall be enforced and performance received by such Guarantor as trustee for the Credit Parties and the proceeds thereof shall be paid over to Administrative Agent on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of any Guarantor under this Guaranty.

10. **Information.** Each Guarantor agrees to furnish promptly to Administrative Agent any and all financial or other information regarding such Guarantor or its property as Administrative Agent may reasonably request in writing.

11. **Stay of Acceleration.** In the event that acceleration of the time for payment of any of the Guaranteed Obligations is stayed, upon the insolvency, bankruptcy or reorganization of Borrower or any other Person, or otherwise, all such amounts shall nonetheless be payable by Guarantors immediately upon demand by Administrative Agent.

12. **Expenses.** Guarantors shall pay on demand all reasonable and, when possible, documented out-of-pocket expenses (including reasonable and documented out-of-pocket attorneys' fees and expenses of counsel for any Credit Party; *provided* that absent a conflict of interest, the Guarantors shall not be required to pay for more than one (1) counsel (and appropriate local and special counsel) in any way relating to the enforcement or protection of the Credit Parties' rights under this Guaranty, including any

incurred in the preservation, protection or enforcement of any rights of the Credit Parties in any case commenced by or against any Guarantor under the Bankruptcy Code (*Title 11*, United States Code) or any similar or successor statute. The obligations of Guarantors under the preceding sentence shall survive termination of this Guaranty.

13. **Amendments.** No provision of this Guaranty may be waived, amended, supplemented or modified, except by a written instrument executed by Administrative Agent and Guarantors.

14. **No Waiver; Enforceability.** No failure by the Credit Parties to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or in equity. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision herein.

15. **Assignments.** This Guaranty shall (a) bind each Guarantor and its successors and assigns, *provided* that no Guarantor may assign its rights or obligations under this Guaranty without the prior written consent of Administrative Agent (and any attempted assignment without such consent shall be void), and (b) inure to the benefit of the Credit Parties and their successors and assigns and the Credit Parties may, in accordance with the applicable provisions of the Credit Agreement, assign or sell participations in the Guaranteed Obligations, in whole or in part. Subject to *Section 10.08* of the Credit Agreement, each Guarantor agrees that the Credit Parties may disclose to any prospective purchaser and any purchaser of all or part of the Guaranteed Obligations any and all information in the Credit Parties' possession concerning any Guarantor, this Guaranty and any security for this Guaranty.

16. **Condition of Borrower.** Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from Borrower such information concerning the financial condition, business and operations of Borrower as Guarantors require, and that Credit Parties have no duty, and Guarantors are not relying on the Credit Parties at any time, to disclose to Guarantors any information relating to the business, operations or financial condition of Borrower.

17. **Setoff.** If and to the extent any payment is not made when due hereunder, each Credit Party is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Credit Party to or for the credit or the account of Guarantor against any and all of the obligations of Guarantor now or hereafter existing under this Guaranty to such Credit Party, irrespective of whether or not such Credit Party shall have made any demand under this Guaranty and although such obligations of Guarantor may be contingent or unmatured or are owed to a branch, office or Affiliate of such Credit Party 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 Administrative Agent for further application in accordance with the provisions of *Section 2.15* of the Credit Agreement and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of each Credit Party, and (y) the Defaulting Lender shall provide promptly to 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 Credit Party under this *Section* are in addition to other rights and remedies (including other rights of setoff) that such Credit Party may have. Each Credit Party agrees to notify Borrower and Administrative Agent promptly after any such setoff and

18. **Other Guarantees.** Unless otherwise agreed by Administrative Agent and Guarantors in writing, this Guaranty is not intended to supersede or otherwise affect any other guaranty now or hereafter given by Guarantors for the benefit of the Credit Parties or any term or provision thereof.

19. **Representations and Warranties.** Each Guarantor represents and warrants that (a) it is duly organized and in good standing under the laws of the jurisdiction of its organization and has full capacity and right to make and perform this Guaranty, and all necessary authority to do so has been obtained; (b) this Guaranty constitutes its legal, valid and binding obligation enforceable in accordance with its terms, except as limited by Debtor Relief Laws and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; (c) the making and performance of this Guaranty does not and will not violate the provisions of any applicable law, regulation or order, and does not and will not result in the breach of, or constitute a default or require any consent (that has not been obtained) under, any material agreement, instrument, or document to which it is a party or by which it or any of its property may be bound or affected; (d) all consents, approvals, licenses and authorizations of, and filings and registrations with, any governmental authority required under applicable law and regulations for the making and performance of this Guaranty have been obtained or made and are in full force and effect; and (e) by virtue of its relationship with Borrower, the execution, delivery and performance of this Guaranty is for the direct benefit of such Guarantor and it has received adequate consideration for this Guaranty. By execution hereof, each Guarantor covenants and agrees that certain representations, warranties, terms, covenants, and conditions set forth in the Loan Documents are applicable to such Guarantor and shall be imposed upon such Guarantor, and such Guarantor reaffirms that each such representation and warranty is true and correct in all material respects (without duplication of any materiality qualifiers set forth therein) and covenants and agrees to promptly and properly perform, observe, and comply with each such term, covenant, or condition. Each Guarantor hereby acknowledges, agrees and confirms that, by its execution hereof, such Guarantor will be deemed to be a Loan Party under the Credit Agreement and a “*Guarantor*” for all purposes of the Credit Agreement. Moreover, each Guarantor acknowledges and agrees that this Guaranty is subject to the setoff provisions of the Loan Documents in favor of the Credit Parties. In the event the Credit Agreement or any other Loan Document shall cease to remain in effect for any reason whatsoever during any period when any part of the Guaranteed Obligations remains unpaid (other than contingent obligations with respect to which no claim has been asserted and Guaranteed Obligations in respect of Swap Contracts for which arrangements with respect thereto satisfactory to the applicable Credit Party in its sole discretion shall have been made), the terms, covenants, and agreements of the Credit Agreement or such other Loan Document incorporated herein by reference shall nevertheless continue in full force and effect as obligations of such Guarantor under this Guaranty.

20. **Additional Guarantors.** The initial Guarantors hereunder shall be each of the Subsidiaries of Borrower that are signatories hereto and that are listed on *Schedule 1* attached hereto. From time to time subsequent to the date hereof, additional Subsidiaries of Borrower may become parties hereto as additional Guarantors (each an “*Additional Guarantor*”) by executing a counterpart of this Guaranty in the form of *Exhibit A* attached hereto. Upon delivery of any such counterpart to Administrative Agent, notice of which is hereby waived by Guarantors, each such Additional Guarantor shall be a Guarantor and shall be a party hereto as if such Additional Guarantor were an original signatory hereof. Each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the addition or release of any other Guarantor hereunder, or by any election by Administrative Agent not to cause any Subsidiary of Borrower to become an Additional Guarantor hereunder. This Guaranty shall be fully effective as to any Guarantor that is or becomes a party hereto regardless of whether any other Person becomes or fails to become or ceases to be a Guarantor hereunder.

21. **Release of Guarantors.** Pursuant to *Section 9.10* of the Credit Agreement, any Guarantor may be released from its obligations under this Guaranty by Administrative Agent’s execution of a Release of Guaranty in the form of *Exhibit B* attached hereto. Each Guarantor expressly agrees that its obligations arising hereunder shall not be affected or diminished by the release of any other Guarantor hereunder. Subject to *Section 8* above, upon the Payment in Full of the Obligations, this Guaranty shall be automatically terminated and each Guarantor shall be released from its obligations under this Guaranty. Upon any permitted release of a Guarantor, Administrative Agent shall take such action and execute such documents as such Guarantor may reasonably request (and at such Guarantor’s sole cost and expense) in order to evidence the release of such Guarantor from this Guaranty.

22. **Keepwell.** Each Loan Party that is a Qualified ECP Guarantor (as hereinafter defined) at the time

this Guaranty by any Specified Loan Party becomes effective with respect to any Swap Obligation, hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under this Guaranty and the other Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP Guarantor's obligations and undertakings under this **Section 22** voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations and undertakings of each Qualified ECP Guarantor under this **Section 22** shall remain in full force and effect until the Guaranteed Obligations have been indefeasibly paid and performed in full. Each Qualified ECP Guarantor intends this **Section 22** to constitute, and this **Section 22** shall be deemed to constitute, a Guarantee of the obligations of, and a "keepwell, support, or other agreement" for the benefit of, each Specified Loan Party for all purposes of the Commodity Exchange Act. For purposes of this **Section 22**, "**Qualified ECP Guarantor**" means, at any time, each Guarantor with total assets exceeding \$10,000,000 or that qualifies at such time as an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" at such time under §1418 (A)(v)(II) of the Commodity Exchange Act.

23. **Governing Law; Jurisdiction; Etc.**

(a) **GOVERNING LAW.** THIS GUARANTY 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 GUARANTY 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.** EACH GUARANTOR 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 ADMINISTRATIVE AGENT, ANY LENDER, L/C ISSUER, OR ANY RELATED PARTY OF THE FOREGOING IN ANY WAY RELATING TO THIS GUARANTY 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 AND EACH CREDIT PARTY 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 AND EACH CREDIT PARTY AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION, LITIGATION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS GUARANTY OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT ADMINISTRATIVE AGENT OR ANY CREDIT PARTY MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT AGAINST ANY GUARANTOR OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) **WAIVER OF VENUE.** EACH GUARANTOR IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN **PARAGRAPH (b)** OF THIS **SECTION**. EACH OF THE PARTIES HERETO AND EACH CREDIT PARTY 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 AND EACH CREDIT PARTY

IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN *SECTION 10.03* OF THE CREDIT AGREEMENT. NOTHING IN THIS GUARANTY WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) **WAIVER OF JURY TRIAL.** EACH PARTY HERETO AND EACH CREDIT PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO AND EACH OF THE CREDIT PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

24. **COUNTERPARTS.** This Guaranty 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. Delivery of an executed signature page of this Guaranty by electronic transmission shall be effective as delivery of a manually executed counterpart hereof. This Guaranty and the other Loan Documents 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.

*[Remainder of Page Intentionally Left Blank;
Signature Page(s) Follow(s).]*

GUARANTORS:

By: _____

Name:

Title:

[Signature blocks to be inserted.]

INITIAL GUARANTORS

[Guarantors to be identified.]

EXHIBIT A

COUNTERPART TO UNCONDITIONAL GUARANTY AGREEMENT

In witness whereof, the undersigned Additional Guarantor has caused this Unconditional Guaranty Agreement to be executed and delivered by its officer thereunto duly authorized as of _____, 20__.

[NAME OF ADDITIONAL GUARANTOR]

By: _____
Name:
Title:

[FORM OF] RELEASE OF GUARANTOR

In witness whereof, the undersigned Administrative Agent, for itself and on behalf of each of the Credit Parties (as defined in the Guaranty (defined hereinafter)), hereby releases and discharges _____ from any and all obligations and liabilities under that certain Unconditional Guaranty Agreement (the "**Guaranty**") dated as of [_____, 20__], executed by certain Subsidiaries of NVR, INC., a Virginia corporation, described therein in favor of the Credit Parties defined therein.

BANK OF AMERICA, N.A., as Administrative Agent

By: _____
Name:
Title:

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of February 12, 2021 (as amended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among NVR, Inc., a Virginia corporation (the “*Borrower*”), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of *Section 3.01(e)* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of *Section 881(c)(3)(A)* of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code and (iv) it is not a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished Administrative Agent and Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BENE (or W-8BEN, as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____, 20__

EXHIBIT F-2

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of February 12, 2021 (as amended, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), among NVR, Inc., a Virginia corporation (the “*Borrower*”), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of *Section 3.01(e)* of the Credit Agreement, the undersigned hereby

certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of *Section 881(c)(3)(A)* of the Code, (iii) it is not a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code, and (iv) it is not a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BENE (or W-8BEN, as applicable). By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20__

EXHIBIT F-3

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of February 12, 2021 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among NVR, Inc., a Virginia corporation (the "**Borrower**"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of *Section 3.01(e)* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of *Section 881(c)(3)(A)* of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by

one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BENE (or W-8BEN, as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BENE (or W-8BEN, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF PARTICIPANT]

By: _____
Name:
Title:

Date: _____, 20__

[FORM OF] U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Amended and Restated Credit Agreement dated as of February 12, 2021 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among NVR, Inc., a Virginia corporation (the "**Borrower**"), the Lenders from time to time party thereto, and Bank of America, N.A., as Administrative Agent and L/C Issuer.

Pursuant to the provisions of *Section 3.01(e)* of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to ~~this~~the Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of *Section 881(c)(3)(A)* of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of Borrower within the meaning of *Section 871(h)(3)(B)* of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to Borrower as described in *Section 881(c)(3)(C)* of the Code.

The undersigned has furnished Administrative Agent and Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BENE (or W-8BEN, as applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BENE (or W-8BEN, as applicable) from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform Borrower and Administrative Agent, and (2) the undersigned shall have at all times furnished Borrower and Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: _____, 20__

NVR, Inc.
Summary of the 2023 Executive Officer Annual Incentive Compensation Plan

The following is a description of NVR, Inc.'s ("NVR" or the "Company") 2023 annual incentive compensation plan (the "Bonus Plan"). The Bonus Plan is not set forth in a formal written document, and therefore NVR is providing this description of the plan pursuant to Item 601(b)(10)(iii) of Regulation S-K. All of NVR's executive officers; Paul C. Saville (Executive Chairman of the Board of NVR), Eugene J. Bredow (President and Chief Executive Officer), Daniel D. Malzahn (Senior Vice President, Chief Financial Officer and Treasurer of NVR) and Matthew B. Kelpy (Vice President and Chief Accounting Officer), participate in the Bonus Plan.

Under the Bonus Plan, the executive officers' bonus opportunity is limited to 100% of their base salary. The executive officers' annual bonus opportunity will be based 80% upon the Company's consolidated pre-tax profit (before consolidated annual bonus and stock-based compensation expense but after all other charges) and 20% based on the number of new orders, net of cancellations ("New Orders") compared to the consolidated pre-tax profit and New Orders within the Company's 2023 annual business plan. The executive officers begin to earn the consolidated pre-tax profit portion of their annual bonus award once the annual business plan is at least 80% attained. The full amount of the consolidated pre-tax profit portion of their annual bonus award is earned ratably from 80% up to 100% achievement of the annual business plan. The executive officers begin to earn the New Orders portion of their annual bonus award once the annual business plan is at least 85% attained. The full amount of the New Orders portion of their annual bonus award is earned ratably from 85% up to 100% achievement of the annual business plan.

NVR, Inc. Subsidiaries

<u>Name of Subsidiary</u>	<u>State of Incorporation or Organization</u>
NVR Mortgage Finance, Inc.	Virginia
NVR Settlement Services, Inc.	Pennsylvania
RVN, Inc.	Delaware
NVR Services, Inc.	Delaware
NVR Funding II, Inc.	Delaware

Consent of Independent Registered Public Accounting Firm

We consent to the incorporation by reference in the registration statement (No. 333-29241) on Form S-8 (for the Profit Sharing Plan of NVR, Inc. and Affiliated Companies), the registration statement (No. 333-82756) on Form S-8 (for the Profit Sharing Plan of NVR, Inc. and Affiliated Companies), the registration statement (No. 333-166512) on Form S-8 (for the NVR, Inc. 2010 Equity Incentive Plan), the registration statement (No. 333-195756) on Form S-8 (for the NVR, Inc. 2014 Equity Incentive Plan), the registration statement (No. 333-224628) on Form S-8 (for the NVR, Inc. 2018 Equity Incentive Plan), and the registration statement (No. 333-237918) on Form S-3ASR (for the 2020 shelf registration) of our reports dated February 15, 2023, with respect to the consolidated financial statements of NVR, Inc. and the effectiveness of internal control over financial reporting.

KPMG LLP

McLean, Virginia
February 15, 2023

SARBANES-OXLEY ACT SECTION 302 CERTIFICATIONS

I, Eugene J. Bredow, certify that:

1. I have reviewed this Annual Report on Form 10-K of NVR, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 15, 2023

By: /s/ Eugene J. Bredow
Eugene J. Bredow
President and Chief Executive Officer

SARBANES-OXLEY ACT SECTION 302 CERTIFICATIONS

I, Daniel D. Malzahn, certify that:

1. I have reviewed this Annual Report on Form 10-K of NVR, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: February 15, 2023

By: /s/ Daniel D. Malzahn
Daniel D. Malzahn
Senior Vice President, Chief Financial Officer and Treasurer

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report on Form 10-K of NVR, Inc. for the period ended December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), each of the undersigned officers of NVR, Inc., hereby certifies pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of NVR, Inc.

Date: February 15, 2023

By: /s/ Eugene J. Bredow
Eugene J. Bredow
President and Chief Executive Officer

By: /s/ Daniel D. Malzahn
Daniel D. Malzahn
Senior Vice President, Chief Financial Officer and Treasurer